

## **The Public Safety and Second Amendment Rights Protection Act**

**Sens. Joe Manchin and Pat Toomey**

**Bottom Line:** The Public Safety and Second Amendment Rights Protection Act would require states and the federal government to send all necessary records on criminals and the violently mentally ill to the National Instant Criminal Background Check System (NICS). The bill extends the existing background check system to gun shows and online sales.

The bill explicitly bans the federal government from creating a national firearms registry, and imposes serious criminal penalties (a felony with up to 15 years in prison) on any person who misuses or illegally retains firearms records.

### **TITLE ONE: GETTING ALL THE NAMES OF PROHIBITED PURCHASERS INTO THE BACKGROUND CHECK SYSTEM**

Summary of Title I: This section improves background checks for firearms by strengthening the instant check system.

- Encourage states to provide all their available records to NICS by restricting federal funds to states who do not comply.
- Allow dealers to voluntarily use the NICS database to run background checks on their prospective employees.
- Clarifies that submissions of mental health records into the NICS system are not prohibited by federal privacy laws (HIPAA).
- Provides a legal process for a veteran to contest his/her placement in NICS when there is no basis for barring the right to own a firearm.

### **TITLE TWO: REQUIRING BACKGROUND CHECKS FOR FIREARM SALES**

Summary of Title II: This section of the bill requires background checks for sales at gun shows and online while securing certain aspects of 2nd Amendment rights for law abiding citizens.

- Closes the gun show and other loopholes (e.g., intra-state Internet sales) while exempting temporary transfers and transfers between family members.
- Protects gun owners from arrest and detention by fixing interstate travel laws for gun owners who are transporting legal firearms across state lines.
- Protects sellers from lawsuits if the weapon cleared through the expanded background checks and is subsequently used in a crime. This is the same treatment gun dealers receive now.
- Allows dealers to complete transactions at gun shows that take place in a state for which they are not a resident.
- Ensures that sales at gun shows are not prevented by delayed approvals from NICS.
- Requires the FBI to give priority to finalizing background checks at gun shows over checks at store front dealerships.
- Authorizes use of a state concealed carry permit instead of a background check when purchasing a firearm from a dealer.

- Permits interstate handgun sales from dealers.
- Allows active military to buy firearms in their home states.
- Family transfers and some private sales (friends, neighbors, other individuals) are exempt from background checks
- Adds a 15 year penalty for improper use or storage of records.

### **TITLE THREE: NATIONAL COMMISSION ON MASS VIOLENCE**

Summary of Title III: : This section of the bill creates a commission to study the causes of mass violence in the United States, looking at all aspects of the problem, including guns, school safety, mental health, and violent media or video games.

The Commission would consist of six experts appointed by the Senate Majority Leader and six experts appointed by the Speaker of the House. They would be required to submit an interim report in three months and a completed report in six months.

#### **WHAT THE BILL WILL NOT DO:**

The bill **will not** take away anyone's guns.

The bill **will not** ban any type of firearm.

The bill **will not** ban or restrict the use of any kind of bullet or any size clip or magazine.

The bill **will not** create a national registry; in fact, it specifically makes it illegal to establish any such registry.

The bill **will not**, in any way at all, infringe upon the Constitutional rights of law-abiding citizens.

## **Section by Section**

### **TITLE I—PUBLIC SAFETY AND SECOND AMENDMENT RIGHTS PROTECTION ACT**

#### **SEC. 101. Short title.**

**SEC. 102. Findings.** Congress supports and defends the rights to keep and bear arms under the Second Amendment; Congress reaffirms prohibition of a national firearms registry; Congress believes the Department of Justice (DOJ) should prosecute violations of background check requirements to the fullest extent of the law; DOJ should make it a top priority to work with States to input missing records into the NICS system.

**SEC. 103. Rule of Construction.** This section clearly states that the bill does (1) does not expand the authority or jurisdiction of the Bureau of Alcohol, Tobacco, Firearms and Explosives and (2) does not allow for the creation or establishment of a national firearms registry.

**SEC. 104. Severability.** Makes clear that if any part of this bill is held by a court to be invalid, the remainder of the bill is not affected and remains in effect.

#### **SUBTITLE A—Ensuring That All Individuals Who Should be Prohibited from Buying a Gun are Listed in the National Instant Criminal Background Check System**

**SEC. 111. Reauthorization of the National Criminal History Records Improvements Program.**

- Reauthorizes the NCHIP grant program to ensure states have the funds necessary to improve and automate criminal record repositories and send those records to the federal government’s criminal record repositories.
- Authorizes \$100,000,000. a year for fiscal years 2014-2017.

**SEC. 112. Improvement of Metrics and Incentives.**

- 112(b)(1) creates a new requirement that states that wish to apply for grant funding must submit a four year plan to ensure that all records are searchable by the NICS database.
- 112(b)(2) requires that each plan include annual benchmarks in which the Attorney General can assess the implementation of each state’s plan.
- 112(b)(3) creates new penalties for failing to meet the annual benchmarks established by each state’s individual action plan.
  - (A) If a state fails to meet an annual benchmark for any of the four years they would lose a certain amount of their Byrne/JAG (crime bill) funding. The penalties would be as below:

Year 1	10% of Total Byrne/JAG funding
Year 2	11% of Total Byrne/JAG funding
Year 3	13% of Total Byrne/JAG funding
Year 4	15% of Total Byrne/JAG funding

- (B) If a state chose to not submit a plan, they would be penalized as if they failed their benchmark in each of the four years.

**SEC. 113. Grants to States for Improvement of Coordination and Automation of NICS Record Reporting**

- 113(a) the bipartisan NICS Improvement Amendments Act of 2007 (Public Law 110-180) established a grant program for states to improve the submission of records to the NICS database. This section combines two duplicative grant programs to allow states, state court systems, or Indian tribal governments to apply for funding to improve the submission of records of persons prohibited from owning a gun to the NICS database.
- 113(b) the grants can be used to:
  - 1) carry out an assessment of the needs of a state or state court system,
  - 2) implement procedures for the automation and submission of records of prohibited persons,
  - 3) create electronic systems to allow for the submission of records of prohibited persons,
  - 4) allow states to perform their own background checks,

5) develop and maintain relief from disability programs.

- 113(c) requires that states that wish to apply for grants must be allowed to submit records to the NICS database and, within two years of passage, implement a relief from disability program.
- 113(d) ensures that all grant funding is spent to get records into the NICS system. It requires states to provide three matching dollars for every federal dollar for a study or other non-material activity.
- 113(e) allows for up to 5% of the total available funding to be used for Indian tribal governments.
- 113(f) authorizes \$100,000,000 for FY 2014 through 2017. This is \$25 million less than the previous authorization.

#### **SEC. 114. Relief from Disabilities Program.**

Creates penalties if a state does not implement a relief from disability (which is a way to get a person out of the NICS system) program. These penalties begin two years after enactment of the bill and are detailed below:

Year 1	10% of Total Byrne/JAG funding
Year 2	11% of Total Byrne/JAG funding
Year 3	13% of Total Byrne/JAG funding
Year 4	15% of Total Byrne/JAG funding

**SEC. 115. Additional Protections for Our Veterans.** This section requires a veteran who is adjudicated as mentally defective to receive extra due process prior to losing his right to buy a gun.

- 115(a)(a) requires that prior to the Department of Veterans Affairs (VA) submitting a record of a veteran who has been adjudicated as mentally defective, the veteran shall have a 30 day window to appeal the decision and the record shall not be submitted until the appeal is decided.
- 115(a)(b) requires that the VA notify a veteran prior to the 30 day window that he has the opportunity to appeal the decision and the implication of being considered adjudicated as mentally defective.
- 115(a)(c) requires that the VA either establish or designate a board for the purposes of hearing appeals by veterans who are considered adjudicated as mentally defective but believe they have the ability to safely use, carry, possess, or store a firearm. A veteran can either appeal the decision to this board or to a court of competent jurisdiction.
- 115(a)(d) allows a veteran to appeal the decision by the special VA board established above to a Federal court of competent jurisdiction.
- 115(a)(e) requires the VA to send notice to every veteran who is currently considered adjudicated as mentally defective that specifies their options if they wish to own a gun.
- 115(a)(f) requires the VA Secretary to review all the policies of the VA to ensure that an

individual who voluntarily turns over management of his or her finances to a fiduciary would not be considered a prohibited person.

- 115(c) states that the provisions in this subsection shall only apply after the enactment of this law.

**SEC. 116. Clarification that Federal court information is to be made available to the National Instant Criminal Background Check System.**

- The bill clarifies that federal courts must report to NICS the names of people sent to diversionary programs who qualify as prohibited gun purchasers.

**SEC. 117. Clarification that Submission of Mental Health Records to the National Instant Criminal Background Check System is Not Prohibited by the Health Insurance Portability and Accountability Act.**

- Adds clarification of current law that HIPPA does not prohibit submission of mental health to NICS.

**SEC. 118. Publication of NICS Index Statistics.**

- This bill requires the Attorney General to publish the NICS statistics on a public website twice a year.

**SEC. 119. Effective Date.**

- This part of the bill will take effect 180 days after enactment.

**SUBTITLE B—Providing a Responsible and Consistent Background Check Process.**

**SEC. 121. Purpose.** The purpose of the bill is to enhance the current background check system and ensure that criminals and the mentally ill are not able to purchase firearms.

**SEC. 122. Firearms Transfers.**

- 122(a)(1), (2), and (3) simply clean up existing code, removing now-defunct (s), replacing it with the current background check law (currently (t)), and making the private sales background check law in this bill the new (t).
  - 122(a)(3)(A)(iii)(iii) requires that NICS must finalize a background check within 48 hours for the first four years after passage of the bill. If the background check is not finished, the sale may proceed.
  - 122(a)(3)(A)(iii)(iv) requires that after four years, NICS has 24 hours to finalize a background check.
  - 122(a)(3)(C)(8) continues the current requirement that the FBI must provide NICS for free.
  - 122(a)(3)(C)(9) says that NICS must prioritize checks that come from a gun show over those checks that do not come from a gun show.
- 122(a)(4) creates the background check requirement for commercial sellers.
  - (t)(1) prohibits transfers between private sellers (i.e. persons who are not federally licensed) at (A) a gun show or (B) if the sale was advertised on the internet or in a news publication. These types of transactions would require private sellers to visit a

licensed firearms dealer to run the necessary background check before the gun sale is finalized, and the dealer would perform the check as though the gun were in the dealer's own inventory.

- (t)(2) Exempts certain transfers from the above prohibition.
  - (A) The types of commercial transactions listed in (t)(1) would require private sellers to visit a licensed firearms dealer to run the necessary background check before the gun sale is finalized, and the dealer would perform the check as though the gun were in the dealer's own inventory. There would continue to be an exemption for those with a concealed carry permit.
  - (B) States may create their own similar system and request permission from the Attorney General to opt-out of the federal system.
  - (C) the transfer occurs between family members.
  - (D) National Firearms Act transfers would be exempt. These are special weapons such as automatic weapons that require a permit to own.
- (t)(3) provides a defense from license revocation and license denial for dealers that follow all the laws and rules in processing a transfer between private sellers.
- (t)(4) allows the Attorney General to implement the private sale requirement with regulations. The Attorney General is prohibited from issuing regulations that require dealers to process private transfers, require private sellers to keep records of background checks or transfers, or place a cap on the fee that dealers can charge to facilitate a private transfer.
- (t)(5) provides a liability defense for a person who is not a dealer who facilitates a private firearms transfer subject to a background check and an organizer of a gun show or the owner or operator of an internet website that facilitates private firearm transfers.
- (t)(6) provides that there shall be no civil liability or standard of care for private transfers that are not subject to this bill because this bill became law.
- (t)(7) provides definitions for gun show.
  - A gun show is defined using the definition from the McCain bill of 2003 which defines a gun show as an event which has more than 75 firearms for sale.
- 122(b) prohibits the Attorney General from seizing records from FFLs other than in the course of an investigation into a violation of the law.
- 122(c) prohibits the establishment of a national gun registry.

### **SEC. 123. Penalties.**

- Creates a felony punishable by up to five years imprisonment for failing to conduct a background check on a commercial sale of firearms 18 U.S.C. §922(t) for someone who is a prohibited purchaser or a police officer authorized to investigate violations of 18 U.S.C. §922(t).

- Adds a 15 year felony for violating the bill's prohibition on creating a national firearm registry.

#### **SEC. 124. Firearms Dispositions.**

- Allows dealers to sell all firearms and in this case handguns as well, across state lines.
- This would allow dealers to sell firearms to residents of other states as long as the firearm is legal in that state.

#### **SEC. 125. Firearm Dealer Access to Law Enforcement Information.**

- This section gives licensed dealers the option of running background checks through the NICS database on prospective employees. If an employee of a dealer has access to firearms or is responsible for conducting sales or transfers this option gives dealers the ability to ensure the employee is not a prohibited person.

#### **SEC. 126. Dealer Location.**

- Dealers are allowed to transfer firearms to dealers that are located in another state. This also allows dealers to sell firearms at gun shows across state lines.

#### **SEC. 127. Residence of United States Officers.**

- Allows active duty military and their spouses to be considered for purposes of buying a firearm residents of their permanent duty station (as in current law), as well as residents of where they maintain a legal residence and where they maintain a residence from which the military member commutes each day to his or her permanent duty station.

#### **SEC 128. Interstate Transportation of Firearms or Ammunition.**

- 128(a)(1) Defines "transport" to include staying in a temporary lodging, stopping for food or other emergency situations in which one may find themselves while in legitimate interstate transit.
- 128(a)(2) Limits the definition if a person has the intent to commit a crime with the gun.
- 128(b) A legal firearm owner can transport a firearm between two states where that person can legally possess the gun.
  - If the transportation is by motor vehicle, the firearm may not be directly accessible from the passenger compartment of the vehicle. If there is no compartment, the firearm must be in a locked container, other than the glove compartment or console and/or secured by a safety device.
  - If the transportation is by other means, the firearm must be in a locked container or secured by a gun storage or safety advice.
  - A legal firearm owner can also transport ammunition between two states where that person can legally possess the gun.
    - If the transportation is by motor vehicle, the ammunition may not be directly accessible from the passenger compartment of the vehicle. If there is no compartment, the ammunition must be in a locked container other than the glove compartment or console.

- If the transportation is by other means, the ammunition must be in a locked container.
- 128(c) A person who is transporting a firearm or ammunition may not be arrested or otherwise detained for violation of any State or Local law or regulation related to the possession, transportation, or carrying of firearms, unless there is reasonable suspicion that the transportation is not in accordance with subsection (b)

**SEC. 129. Rule of Construction.**

Nothing in this amendment should be construed to extend background checks to transfers other than those made at gun shows or through advertised sales. Background checks are not required for any temporary transfers, such as loans for hunting and sporting purposes or for examining a firearm for potential purchase.

**SEC. 130. Effective Date.** This amendment takes effect 180 days after enactment.

**SUBTITLE C—National Commission on Mass Violence**

**SEC. 141. Short Title. “National Commission on Mass Violence Act of 2013”.**

**SEC. 142. National Commission on Mass Violence**

- (a) establishes a commission to study the availability and nature of firearms, issues relating to mental health, and the positive or negative impact that firearms have on incidents of mass violence or preventing mass violence.
- (b) membership of the commission will be 6 members appointed by the Senate Majority Leader and 6 members appointed by the Speaker of the House of Representatives. Commission members must be non-elected experts who are well-respected by their peers in the fields of firearms, mental health, school safety and mass media. All appointments must be made within 30 days of passage.

**SEC. 143. Duties of the Commission.**

- (a) requires the commission to study incidents of mass violence to discover the root causes of mass violence, including testimony from victims of mass violence. The Commission must study:
  - the role of schools (2)(A)
  - school security strategies (2)(B)
  - the role of families (2)(C)
  - the mental health system (2)(D)
  - medical doctors (2)(E)
  - the alienation of perpetrators of incidents (2)(F)
  - domestic violence (2)(G)
  - depictions of mass violence in the media (2)(H)
  - the availability and nature of firearms (2)(I)
  - the role of prosecutions (2)(J)



- the availability of information to construct weapons, including explosive devices (2)(K)
  - the views of law enforcement, clergy, mental health experts and other leaders (2)(L)
  - incidents in which firearms were used to stop mass violence (2)(M)
  - any other area that may appear to cause or contribute to mass violence (2)(N)
- (b) requires the commission to issue recommendations to the President and to Congress to address the causes of mass violence.
  - (c) requires the commission to submit an interim report within 3 months from the date in which the commission first meets and to submit a final report within 6 months.

**SEC. 144. Powers of the Commission.**

- The commission will be able to hold hearings and take testimony under oath. They may also seek information from federal agencies and departments. They can keep records secret and can contract out some research duties. All information will be kept confidential.

**SEC. 145. Commission Personnel Matters.**

- The commission can compensate members who serve on the commission at an appropriate amount. Its members will be allowed to travel. Finally, the Commission can hire staff necessary to enable the Commission to perform its duties.

**SEC. 146. Authorization of Appropriation.** The amount of appropriation needed for the commission shall be authorized.

**SEC. 147. Termination of the Commission.** The commission ends 30 days after issuing its final report.