

Background checks: Who isn't allowed to buy a gun?

By: Liz Goodwin – April 4, 2013

Later this month, the Senate is expected to begin debating a Democrat-backed bill to vastly expand the federal background check system for gun buyers. The proposed legislation, part of President Barack Obama's recent push to curb gun violence, would close the so-called gun show loophole that allows a substantial minority of overall gun sales to take place without background checks.

The bill's proponents say fewer domestic abusers, felons and mentally ill people will be able to buy weapons if Congress passes it. The National Rifle Association, however, says expanding the checks won't stop crime, because most criminals get their guns on the black market. The group also pointed out that gaping holes in the national background check system make it ineffective.

So what does the background check system do, and who will be prevented from buying weapons if it expands to cover every gun purchase?

The National Instant Criminal Background Check System (NICS), which is managed by the FBI, quickly checks the name of a prospective buyer against federal and state criminal records to see if he or she is disqualified from buying a gun. Federal law prevents the sale of weapons to people who have been convicted of a felony, have a warrant out for their arrest, have used drugs within the past year, were committed involuntarily to a mental institution or ruled mentally incompetent by a judge, are living in the U.S. illegally, have a domestic-violence-related restraining order against them or have a misdemeanor domestic violence conviction. People who were dishonorably discharged from the military or who have renounced their U.S. citizenship are also barred from gun purchases.

Between 1998 and 2010, the Justice Department turned down just 2.1 million of 118 million gun applications, most of them people with felony convictions who tried to purchase a gun.

But some people—including at least one mass murderer, Seung-Hui Cho—who should not have been allowed to buy guns have slipped through the cracks over the same period.

The problem is states vary greatly in the amount and quality of information they provide to the database, especially when it comes to mental health issues. (The federal government cannot compel the states to share all their records with the database, though it can offer them financial incentives to do so.)

In 2007, Cho was able to buy a weapon from a licensed dealer and then kill 32 people at Virginia Tech, even though he had been declared mentally ill by a judge in 2005. The state never submitted that record to NICS, so his name cleared the database when he bought the gun. The incident spurred 18 states to pass laws requiring agencies to report more mental health information to the database, and a Government Accountability

Office report from last year found that mental health records in the system increased eightfold from 2004 to 2011.

A 2010 Justice Department report also identified problems with states' reporting records on people convicted of domestic violence misdemeanors or who are under restraining orders. Some states do not know how to determine which orders are still active, while others don't maintain records on restraining orders at all.

Even if all the holes in the database are eventually filled, some gun researchers think federal law does not go far enough in prohibiting people who may be at risk for becoming violent from buying weapons.

Daniel Webster, a professor of health policy and management at the Johns Hopkins Bloomberg School of Public Health, says based on his research he believes more categories of people should be prohibited from buying weapons. People who have temporary domestic-violence-related restraining orders against them, for example, can still buy and own weapons under federal law. Federal law also counts only couples who have lived together or were married in the definition of domestic violence. So an ex-boyfriend with an active order of protection out against him could still buy a weapon if he was never married or lived with his former partner.

Webster also thinks there's an argument for excluding people with multiple drunken driving convictions from buying weapons, because those who abuse alcohol are at an increased risk for committing violent crimes.

"The research indicates that people who have problems with alcohol actually have much greater risk for being violent than those who use illegal drugs," Webster said. Current law also allows people aged 18 or older to buy weapons from private dealers, while people have to be 21 to buy from a licensed seller.

But Dave Kopel, a professor at Denver University and an analyst at the libertarian Cato Institute, said the current law sometimes excludes too many people from their constitutional right to own a weapon to defend themselves.

Kopel said the current background check system mainly catches buyers who don't realize that a past infraction prevents them from legally buying a weapon, such as "some guy who got into a fight with his live-in girlfriend in 1977, threw a coffee cup against the wall ... and pleaded guilty to disturbing the peace." Those who know they can't own a weapon go to the black market, he said.