

NICS and Mental Health Written Comments

Thursday, February 13, 2014

Law and Justice Meeting
February 13, 2014

Exhibit 1

Montana Legislature
Law and Justice Interim Committee
National Instant Criminal Background Check System (NICS) and Mental Health
February 13, 2014

Testimony for Committee, by
Gary Marbut, President
Montana Shooting Sports Association

Will improved mental health evaluations, and data collection and reporting of mental health information decrease violence, especially gun-related violence?

I. Qualifications to provide information.

Mr. Marbut is accepted in state and federal courts in civil and criminal cases concerning firearms safety, use of force, legitimate self defense, and related topics. Mr. Marbut is an active self defense instructor and has graduated over 3,800 students from curriculae concerning Montana laws, and the tactics and methods of defense. Mr. Marbut is a member of the International Association of Law Enforcement Firearms Instructors, and a follower of and sometimes contributor to the Force Science Research Center.

II. Precursor, background issues.

Before the question posed above can be effectively answered, some foundation issues must be addressed.

1. **Are people with mental health issues commonly prone to future violence?** No. A 2009 study found that individuals with mental health disorders no more likely to commit acts of violence than the rest of the population; rather, future violence was indicated by other factors, such as substance abuse and a prior history of such acts. One explanation is that some individuals with severe disorders are too disorganized or afraid to commit crimes. For example, individuals with severe schizophrenia may have

delusions – for instance, a belief that they and others around them face a danger of attack or threat. This leads some persons suffering from this form of delusion to seclude themselves from the outside world and to express extreme caution toward others...

<http://leb.fbi.gov/2014/february/responding-to-persons-with-mental-illness-can-screening-checklists-aid-law-enforcement>

2. Is gun-related mass violence by persons with mental health issues increasing and is it a pressing national problem? No and no. Despite obsessive media reporting when such incidents occur, the number of those incidents and the number of victims claimed in those incidents remain static, this notwithstanding an increasing population size and increasing levels of gun ownership.

<http://hereandnow.wbur.org/2013/09/23/mass-murder-decline>

3. Is there an increased national murder rate that can be attributed to mental health failures? No. Actually, murder rates in the US are dramatically down, again despite increasing rates of firearms ownership, increasing population, and stressful economic times. Because overall murder rates, including murder rates with firearms, are in a definite downward trend, there is no rationale' to claim increases because of people with mental health problems, or inadequate mental health reporting.

<http://www.breitbart.com/Big-Government/2013/12/03/Congressional-Research-Service-More-Guns-Less-Crime>

4. Is the state of the art in psychology capable of correctly identifying people with mental health problems who are prone to violence. No. This answer only repeats what many professionals and experts in the field of psychology insist, that the art of psychology simply does not possess the tools at this stage in the evolution of the art to accurately predict violence. Much better predictors of violence include drug use, and history of violence.

<http://www.psychlawjournal.com/2012/08/risk-assessment-how-psychologists.html>

<http://articles.latimes.com/2012/dec/17/news/la-heb-predicting-violent-behavior-20121217>

"Skilled and practiced mental health professionals have gotten a lot better at predicting short-term dangerousness," said Dr. Steven E. Pitt, a forensic psychiatrist who consults with the Phoenix Police Department and directed the Columbine Psychiatric Autopsy Project after the 1999 school shootings. "But who's going to commit violence in some unspecified future? You might as well consult a Ouija board."

5. Is there any connection at all between mass shootings and mental health? Yes. Besides that we'd consider crazy any person who would take the lives of innocents, there is another connection

between mass shootings and mental health. That connection is psychotropic drugs. All of the mass shootings in recent memory have been done by people who either were actively taking prescribed psychotropic drugs, or who were supposed to be taking psychotropic drugs but quit. In order to obtain these psychotropic drugs, these people perpetrating mass shootings were under the care of a mental health practitioner licensed to prescribe the drugs. See:

<http://www.ladailypost.com/content/brief-history-psychotropic-drugs-prescribed-mass-murderers>

http://www.naturalnews.com/025826_Antidepressants_school_shootings.html

<http://ssristories.org/category/violence/school-or-other-mass-shooting/>

6. **Base Rate Fallacy.** A well defined and important but little known phenomenon is base rate fallacy. It has to do as much with statistics than with psychology, but it is essential for psychology. There is an excellent article on Base Rate Fallacy in Wikipedia at:

http://en.wikipedia.org/wiki/Base_rate_fallacy

Anyone contemplating the issue of mental health and persistent mental health records would be wise to learn about and understand the concept of base rate fallacy.

The essence is this: Any widespread screening for a condition (e.g., mentally unstable person prone to violence) among the general population is guaranteed to turn up many more false positives than true positives, just because of an unavoidable error rate, which would be especially pronounced in the fuzzy field of psychology. The false positives would outnumber the true positives by one or more orders of magnitude. Thus, people not prone to violence would unavoidably be stigmatized and likely lose civil rights because of an error rate that cannot be eliminated.

7. **Persistent records/improper records non-correction.** There are not good, affordable or comprehensive mechanisms in place or available to get persistent records corrected if a person is incorrectly identified as prone to violence, or if the person gets treatment and is cured of any tendency towards violence. This is especially true of the National Instant Check System (NICS). People who are marked on NICS as ineligible for firearms transfer find it difficult or impossible to get records corrected.

Summery of a Texas legal case is in order here (US v. Bean, 537 U.S. 77(2002)). After attending a gun show in Texas, Thomas Bean drove to Mexico. When Mexican officials stopped his vehicle at the border, they found ammunition, and Bean was subsequently convicted in a Mexican court of importing ammunition. Because of his felony conviction, 18 USC section 922(g)(1) prohibited Bean from

possessing, distributing, or receiving firearms or ammunition. Bean applied to the Bureau of Alcohol, Tobacco, and Firearms (ATF) for relief from his firearms disabilities, but the ATF returned the application unprocessed, explaining that its annual appropriations law forbade it from expending any funds to investigate or act upon applications such as Bean's. Bean then filed suit, asking the District Court to conduct its own inquiry into his fitness to possess a gun and grant relief from his inability to possess, distribute, or receive firearms or ammunition.

In a unanimous opinion delivered by Justice Clarence Thomas, the Court held that the absence of an actual denial of Bean's petition by ATF precludes judicial review. Because Bean's application for relief from the firearms disabilities was not considered due to appropriation provisions, Justice Thomas reasoned that the court could not grant relief since the statute only permitted judicial review of an affirmative denial of an application.

Thus, Bean could not get his rights restored, notwithstanding that what he was convicted of in Mexico is not a crime in the US, simply because Congress had not funded the BATF's process to correct records swept in from other countries, and restore Bean's rights. Not only was Bean, a competitive trapshooter, unable to purchase new firearms, he was ineligible for life to possess any firearms he had previously purchased legally.

http://www.oyez.org/cases/2000-2009/2002/2002_01_704

8. Barking up the wrong tree; “Gun free zones.” Besides psychotropic drugs, the other common denominator for mass shootings in schools, theaters, and other places, is that they ALL happen in purported “gun free zones.” These alleged “gun free zones,” of course, are NEVER “gun free,” but only gun free for the victims. People bent on mayhem never respect “gun free zones.” In fact, perpetrators of mass violence seek out disarmed victim zones, for obvious reasons. Only those who respect the law and have no murderous intent comply with such silly zone rules and are thereby rendered defenseless. Thus, “alleged “gun free zones” are demonstrated to be very dangerous places, places where deranged perpetrators are assured of a resistance free killing field. Collection and sharing of mental health records will do nothing to address this glaring problem.

9. Will a system-reported mental health deficiency prevent deranged people from acquiring guns?
No. Almost universally, those who have committed mass shootings have acquired the guns they used through means that would not be interdicted by a NICS check. A mental health disqualification for firearm purchase will only affect those who obtain guns through legal channels. That is, mental health evaluation and disqualification would have zero effect on the class of people intended for interdiction, perpetrators of mass shootings.

10. Will the prospective loss of civil rights dissuade possibly needy people from seeing mental

health professionals? Yes. If there are people who need psychological intervention, the expected loss of their civil rights via data sharing will certainly persuade many of them to avoid any contact with the mental health community. See:

<http://gunowners.org/congress1132014.htm>

III. Conclusion

People with mental health issues have no greater rate of violence than the public at large. Any mental health search for violent people would assuredly turn up far more false positives than true positives (base rate fallacy). These people tagged because of false positives would likely be stripped of their civil rights for life, with no practical way to get their records cleared or revised following treatment. Within the arena of psychology, experts disagree about whether the art has evolved sufficiently to provide tools allowing practitioners to correctly predict an individual's future violence. Even if the violent people could be identified and documented through mental health screenings, and disqualified from firearms purchase, that would not interdict the ability of such individuals to obtain guns and commit mayhem. Integrating mental health treatment with civil rights denial systems will persuade many people who may need treatment to avoid treatment. Nor would any such system address the dominant twin problems with mass shootings of psychotropic drugs and the low-hanging fruit for violent people of “gun free zones.”

Finally, there will be those who will respond with some version of, “... but if it saves just one life ...” Criminologist professor Gary Kleck estimates that 2.5 million people in the US defend themselves every year with a firearm. In most cases the mere display of a firearm is sufficient to make assailants go away and save the defender, since Kleck says shots are fired in only 9% of these cases. Causing a significant percentage of these 2.5 million people to be disarmed (revisit base rate fallacy) would certainly end up costing far more lives than might be saved through the fuzzy and problematic process of mental health screening and records sharing.

Will improved mental health evaluations, and data collection and reporting of mental health information decrease violence, especially gun-related violence? No. But it can destroy the civil rights of too many innocent people in a fruitless quest to “do something.” That would be especially unfortunate and unwise if the “something” were so easily predictable to be contraindicated.

Catherine Woods

On November 21, 2008, my daughter, Catherine Woods, was shot and killed by Justin Schiller with a handgun, called the FN Herstal Five-Seven, purchased from Steadman's Ace Hardware in Miles City. Shortly before purchasing the gun, Schiller had been involuntarily committed to Warm Springs mental hospital. It was illegal for Schiller to purchase the gun. However, Schiller lied on question 11. f. of the ATF form, which is attached. A NICS examiner was contacted about the sale. However, because the involuntary commitment was not reported to NICS, the sale went forward.

Schiller had an unhealthy fixation on Catherine and reported violent behavior towards her during his commitment. He was released after 13 days (though he was committed for 90) while the social worker assigned to his case was on vacation. Surveillance footage showed that Schiller was able to fire the gun 14 times in only a few seconds at Catherine, who was driving in her car. Even though Catherine arrived at the hospital within minutes, her life could not be saved.

Catherine was the 2001 valedictorian at Custer County District High School and graduated with honors from the University of Wyoming. Catherine planned to become a speech pathologist. She was the only certified Highland Dance Instructor in Montana, with over 50 students. She participated in local fund raisers, taught swimming lessons and helped coach Special Olympics.

Had Schiller's public involuntary commitment been reported to the NICS database, Catherine would be alive. Without a reporting requirement, Catherine's story will be repeated. The Justin Schillers of the world cannot be trusted to self-report truthfully. For the sake of Catherine's memory, the Legislature must require Montana's courts and its state mental hospital to report involuntary commitments to the NICS database.

-Sonja Woods

Firearms Transaction Record Part I - Over-the-Counter

WARNING: You may not receive a firearm if prohibited by Federal or State Law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction
Serial Number

3170

Prepare in original only. All entries must be in ink. Read the Important Notices, Instructions and Definitions on this form.
"Please Print."

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name

Last Name

First Name

Middle Name (If no middle name state "NMN")

Schiller

Justin

Brian

2. Current Residence Address (Cannot be a post office box.)

Number and Street Address

City

County

State

Zip Code

75 Sunset Drive

Miles City

Custer

MT

59301

3. Place of Birth

4. Height

5. Weight

6. Gender

7. Birth Date

U.S. City/State

Foreign Country

Ft.

In.

Male

Female

Miles City MT

6

2

185

8. Social Security Number (Optional, but will help prevent misidentification.)

9. Unique Personal Identifier
Instruction to Transferor

10. Race

A
 F

Black or African American
 Asian

Native Hawaiian or Other Pacific Islander
 White

11. Answer questions 11.a. through 12 by writing "yes" or "no" in the boxes to the right of the questions.

a. Are you the actual buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you. (See Important Notice 1 for actual buyer definition and examples.)	Yes
b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (An information is a formal accusation of a crime by a prosecutor. See Definition 3.)	No
c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Important Notice 4, Exception 1.)	No
d. Are you a fugitive from justice?	No
e. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	No
f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Important Notice 4 and Definitions 5 and 6.)	No
g. Have you been discharged from the Armed Forces under dishonorable conditions?	No
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Important Notice 5.)	No
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Important Notice 4, Exception 1 and Definition 4.)	No
j. Have you ever renounced your United States citizenship?	No
k. Are you an alien illegally in the United States?	No
l. Are you a nonimmigrant alien? (See Definition 8.) If you answered "no" to this question, you are not required to respond to question 12.	No
12. If you answered "yes" to question 11.l., do you fall within any of the exceptions set forth in Important Notice 4, Exception 2? (e.g., valid State hunting license.) (If "yes," the licensee must complete question 20c.)	No

13. What is your State of residence (if any)? Montana (See Definition 7. If you are not a citizen of the United States, you only have a State of residence if you have resided in a State for at least 90 continuous days immediately prior to the date of this sale.)

14. What is your country of citizenship? (List/check more than one, if applicable.)

United States of America

Other (Specify) _____

15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?

Complete ATF Form 3310.4 For Multiple Purchases Of Handguns (See Instruction to Transferor 13.)

31. Trade/corporate name and address of transferor (seller) (Hand stamp may be used.)

Steadmans ACE
611 S Hayes
Miles City MT 59301

32. Federal Firearms License Number (Complete 15 digit FFL Number.) (Hand stamp may be used.)

On the basis of (1) the statements in Section A (and Section C if the transfer does not occur on the day Section A was completed); (2) my verification of the identification noted in question 20a (and my reverification at the time of transfer if the transfer does not occur on the day Section A was completed); and (3) the information in the current State Laws and Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

The Person Transferring The Firearm(s) Must Complete Questions 33-36. For Denied/Cancelled Transactions, The Person Who Completed Section B Must Complete Questions 33-35.

33. Transferor's/Seller's Name (Please print.)

34. Transferor's/Seller's Signature

35. Transferor's/Seller's Title

36. Date Transfer is Completed

Charles Steadman

C Steadman RWR

owner

7-23-08

Important Notices

1. Actual Buyer: For purposes of this form, you are the actual buyer if you are purchasing the firearm for yourself or otherwise acquiring the firearm for yourself (for example, redeeming the firearm from pawn/retrieving it from consignment, firearm raffle winner). You are also the actual buyer if you are legitimately acquiring the firearm as a gift for a third party. **ACTUAL BUYER EXAMPLES:** Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is NOT the actual buyer of the firearm and must answer "no" to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown goes to buy a firearm with his own money to give to Mr. Black as a present, Mr. Brown is the actual buyer of the firearm and should answer "yes" to question 11.a. Please note, if you are picking up a repaired firearm for another person, you should answer "n/a" to question 11.a.

2. Purpose of the Form: The information and certification on this form are designed so that a person licensed under 18 U.S.C. § 923 may determine if he or she lawfully may sell or deliver a firearm to the person identified in Section A, and to alert the buyer of certain restrictions on the receipt and possession of firearms. This form only should be used for sales or transfers where the seller is licensed under 18 U.S.C. § 923. The seller of a firearm must determine the lawfulness of the transaction and keep proper records of the transaction. Consequently, the seller must be familiar with the provisions of 18 U.S.C. §§ 921-931 and the regulations in 27 CFR Part 478. In determining the lawfulness of the sale or delivery of a long gun to a resident of another State, the seller is presumed to know applicable State laws and published ordinances in both the seller's State and the buyer's State.

3. Background Checks: The Brady law, 18 U.S.C. § 922(t), requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include contacts to State agencies designated to conduct NICS checks for the Federal Government. **WARNING:** Any seller who transfers a firearm to any person they know or have reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law even if the seller has complied with the background check requirements of the Brady law.

4. Prohibited Persons: Generally, 18 U.S.C. § 922 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a misdemeanor crime of domestic violence; has been convicted of a felony, or any other crime, punishable by imprisonment for a term exceeding one year (this does not include State misdemeanors punishable by imprisonment of two years or less); is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated mentally defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; has renounced his or her U.S. citizenship; is an alien illegally in the United States or a nonimmigrant alien; or is subject to certain restraining orders. Furthermore, section 922 prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony, or any other crime, punishable by imprisonment for a term exceeding one year.

I certify that the answers to Section A are true and correct. I am aware that ATF Form 4473 contains Important Notices, Instructions, and Definitions. I understand that answering "yes" to question 11.a. if I am not the actual buyer of the firearm is a crime punishable as a felony. I understand that a person who answers "yes" to any of the questions 11.b. through 11.k. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 11.l. is prohibited from purchasing or receiving a firearm, unless the person also answers "yes" to question 12. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law. (See Important Notice 6.)

16. Transferee's/Buyer's Signature <i>[Signature]</i>	17. Certification Date <i>7-23-08</i>
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Section B - Must Be Completed By Transferor (Seller)

18. Type of firearm(s) to be transferred: <input checked="" type="checkbox"/> Handgun <input type="checkbox"/> Long Gun <input type="checkbox"/> Both	19. Location of sale if at a gun show or other qualifying event. (See Instruction to Transferor 15.) (City, State)
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20a. Identification (e.g., driver's license or other valid government-issued photo identification.) (See Instruction to Transferor 1.)

Type of Identification <i>MT DL</i>	Number on Identification <i>[Redacted]</i>	Expiration Date of Identification (if any)		
		Month <i>10</i>	Day <i>07</i>	Year <i>13</i>

20b. Aliens only: Type and dates of additional registration agreements. (See Instruction to Transferor 2.)
Type of Identification
[Redacted]

20c. Nonimmigrant aliens only: Type of documentation showing an exception to the nonimmigrant alien prohibition (e.g., hunting license/permit/waiver.) (See Instruction to Transferor 3.)

Question 21, 22, or 23 Must Be Completed Prior To The Transfer Of The Firearm(s) (See Instructions to Transferor 5-8.)

21a. The transferee's identifying information in Section A was transmitted to NICS or the appropriate State agency on: <i>7-23-08</i> (Date)	21b. The NICS or State transaction number (if provided) was: <i>1702-5MM</i>
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21c. The response initially provided by NICS or the appropriate State agency was: <input type="checkbox"/> Proceed <input type="checkbox"/> Delayed <input type="checkbox"/> Denied [The firearm(s) may be transferred on _____ (MDI date provided by NICS) if State law permits (optional)] <input type="checkbox"/> Cancelled	21d. If initial NICS or State response was "Delayed," the following response was received from NICS or the appropriate State agency: <input checked="" type="checkbox"/> Proceed <i>7-23-08</i> (date) <input type="checkbox"/> Denied _____ (date) <input type="checkbox"/> Cancelled _____ (date) <input type="checkbox"/> No resolution was provided within 3 business days.
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21e. (Complete if applicable.) After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: _____ (date).
 Proceed Denied Cancelled

21f. The name and Brady identification number of the NICS examiner (optional) <i>Amanda</i> / <i>11140</i> (name) (number)	22. <input type="checkbox"/> No NICS check was required because the transfer involved only NFA firearm(s). (See Instruction to Transferor 8.)
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23. No NICS check was required because the buyer has a valid permit from the State where the transfer is to take place which qualifies as an exemption to NICS (See Instruction to Transferor 8.)

State Permit Type	Date of Issuance (if any)	Expiration Date (if any)	Permit Number (if any)

Section C

If the transfer of the firearm(s) takes place on a different day from the date that the transferee (buyer) signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s). (See Instruction to Transferee 3 & Instruction to Transferor 9.)

I certify that the answers I provided to the questions in Section A of this form are still true and correct.

24. Transferee's/Buyer's Signature	25. Recertification Date
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Section D (See Instructions to Transferor 10-11.)

26. Manufacturer and/or Importer <i>FNH</i>	27. Model <i>Five Seven</i>	28. Serial Number <i>386154376</i>	29. Type (pistol, revolver, rifle, shotgun, etc.) <i>Pistol</i>	30. Caliber or Gauge <i>5.7x28</i>

EXCEPTION 1: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had civil rights (*the right to vote, sit on a jury, and hold public office*) restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception should answer "no" to 11.c. or 11.i., as applicable. A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; and (2) if the person was entitled to a jury, was tried by a jury or gave up the right to a jury trial. Persons subject to this exception should answer "no" to 11.i.

EXCEPTION 2: A nonimmigrant alien is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued in the United States; or (2) has received a waiver from the prohibition from the Attorney General of the United States. (*See 18 U.S.C. § 922(y)(2) for additional exceptions.*) Persons subject to one of these exceptions should answer "yes" to questions 11.i. and 12 and provide the documentation requested by question 20c.

- Restraining Orders:** Under 18 U.S.C. § 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or has cohabited with the person.
- Engaged in the Business:** Under 18 U.S.C. §§ 922 and 923, it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he or she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his or her personal collection of firearms.
- Exportation of Firearms:** The State or Commerce Departments may require you to obtain a license prior to export.

Instructions To Transferee/Buyer

- The buyer must personally complete Section A of this form and certify (*sign*) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers (*other than the signature*) may be written by another person, excluding the seller. Two persons (*other than the seller*) must then sign as witnesses to the buyer's answers and signature.
- When the buyer of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his or her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity, and (B) the name and address of that business entity.
- If the transfer of the firearm takes place on a different day from the date that the buyer signed Section A, the seller must again check the photo identification of the buyer at the time of the transfer, and the buyer must complete the recertification in Section C at the time of transfer.

- If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but does not reside at his or her permanent duty station, the buyer must list both his or her permanent duty station address and his or her residence address in response to question 2.
- If you are a U.S. citizen with two states of residence, you should list your current residence address in response to question 2 (*e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2*).

Instructions To Transferor/Seller

- Know Your Customer:** Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. The buyer must provide a valid government-issued photo identification to the seller that contains the buyer's name, residence address, and date of birth. The licensee must record the type, identification number, and expiration date (*if any*) of the identification in question 20a. A driver's license or an identification card issued by a State in place of a license is acceptable. Social security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two states of residence and is trying to buy a handgun in State X, he may provide a driver's license (*showing his name, date of birth, and photograph*) issued by State Y and another government-issued document (*such as a tax document*) from State X showing his residence address. If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but he or she has a driver's license from another State, you should list the buyer's military identification card and official orders showing where his or her permanent duty station is located in response to question 20a.
- Sale of Firearms to Legal Aliens (Part 1):** A buyer who is not a citizen of the United States must provide additional documentation (*beyond a valid government-issued photo identification that contains the buyer's name, residence address, and date of birth*) to establish that he or she has resided in a State continuously for at least 90 days immediately prior to the date of the sale. *See Definition 7.* Examples of appropriate documents to establish State residency are utility bills from each of the last 3 months immediately prior to the sale or a lease agreement which demonstrates 90 days of residency immediately prior to the sale. A licensee may attach a copy of the documentation to ATF Form 4473, rather than record the type of documentation in question 20b.
- Sale of Firearms to Legal Aliens (Part 2):** Even if a nonimmigrant alien can establish that he or she has a U.S.-issued alien number or admission number and has resided in a State for at least 90 continuous days immediately prior to the date of sale, he or she is prohibited from receiving a firearm unless he or she falls within an exception to the nonimmigrant alien claims to fall within one of these exceptions by answering "yes" to question 12, he or she must provide the licensee with documentation of the exception (*e.g., hunting license/permit; waiver*). If the documentation is a hunting license/permit, the licensee must make sure it has not expired. An expired hunting license/permit does not qualify for the exception. A licensee may attach a copy of the documentation to ATF Form 4473, rather than record the type of documentation in question 20c.
- If the buyer's name in question 1 is illegible, the seller must print the buyer's name above the name written by the buyer.
- NICS Check:** After the buyer has completed Section A of the form and the licensee has completed questions 18-20, and before transferring the firearm, the licensee must contact NICS (*see Instruction 8 below for NICS check exceptions*). However, the licensee should NOT contact NICS and should stop the transaction if: the buyer answers "no" to question 11.a.; the buyer answers "yes" to any question in 11.b.-11.i., unless the buyer only has answered "yes" to question 11.i. and also answers "yes" to question 12; or the buyer is unable to provide the documentation required by question 20a, b, or c.

At the time that NICS is contacted, the licensee must record in question 21a-c: the date of contact, the NICS (or State) transaction number, and the initial response provided by NICS or the State. The licensee may record the Missing Disposition Information (MDI) date in 21c which NICS provides for delayed transactions (*States do not provide this number*). If the licensee receives a "delayed" response, before transferring the firearm, the licensee must record in question 21d any response later provided by NICS or the State or that no resolution was provided within 3 business days. If the licensee receives a response from NICS or the State after the firearm has been transferred, he or she must record this information in question 21e. Note: States acting as points of contact for NICS checks may use terms other than "proceed," "delayed," "cancelled," or "denied." In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

6. **Unique Personal Identification Number (UPIN):** For purchasers approved to have information maintained about them in the FBI NICS Voluntary Appeal File (VAF), NICS will provide them with a Unique Personal Identification Number (UPIN), which the buyer should record in question 9. The licensee may be asked to provide the UPIN to NICS or the State.
7. **NICS Responses:** If NICS provides a "proceed" response, the transaction may proceed. If NICS provides a "cancelled" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "denied" response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a "delayed" response, the seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the seller that the buyer's receipt or possession of the firearm would be in violation of law. See 27 CFR § 478.102(a) for an example of how to calculate 3 business days. If NICS provides a "delayed" response, NICS also will provide a Missing Disposition Information (MDI) date which calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. Please note State law may impose a waiting period on transferring firearms.
8. **EXCEPTIONS TO NICS CHECK:** A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR § 478.102(d). Generally these include: (a) transfers where the buyer has presented the licensee with a permit or license that allows the buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; (b) transfers of National Firearms Act weapons approved by ATF; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. See 27 CFR § 478.102(d) for a detailed explanation. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR § 478.131. A firearm must not be transferred to any buyer who fails to provide such documentation.
9. If the transfer takes place on a different day from the date that the buyer signed Section A, the licensee must again check the photo identification of the buyer at the time of transfer, and the buyer must complete the recertification in Section C at the time of transfer.
10. For "denied" and "cancelled" NICS transactions, the person who completed Section B must complete Section D, questions 33-35.
11. Immediately prior to transferring the firearm, the seller must complete all of the questions in Section D.
12. Additional firearms purchases by the same buyer may not be added to the form after the seller has signed and dated it. A buyer who wishes to purchase additional firearms after the seller has signed and dated the form must complete a new ATF Form 4473. The seller must conduct a new NICS check.
13. In addition to completing this form, the seller must report any multiple sale or other disposition of pistols or revolvers on ATF Form 3310.4. (See 27 CFR § 478.126a).
14. If more than three firearms are involved in a transaction, the information required by Section D, questions 26-30, must be provided for the additional firearms on a separate sheet of paper, which must be attached to the ATF Form 4473 covering the transaction.

15. If the transfer occurs at a gun show or other qualifying event sponsored by any national, State, or local organization as authorized by 27 CFR § 478.100, the seller must record the location of the sale in question 19.
16. After the seller has completed the firearms transaction, he or she must make the completed, original ATF Form 4473 (*which includes the Important Notices, Instructions, and Definitions*), and any supporting documents, part of his or her permanent records. Such Forms 4473 must be retained for at least 20 years. Filing may be chronological (*by date*), alphabetical (*by name*), or numerical (*by transaction serial number*), as long as all of the seller's completed Forms 4473 are filed in the same manner. **FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED:** If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer does not go through after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his or her records for at least 5 years. Forms 4473 with respect to which a sale, delivery or transfer did not take place shall be separately retained in alphabetical (*by name*) or chronological (*by date of transferee's certification*) order.
17. You may include any other information on this form that is relevant to the transaction.
18. If you or the buyer discover an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and you or the buyer wish to make a record of your discovery, photocopy the inaccurate form. Make any necessary additions or revisions to the photocopy. You only should make changes to Sections B and D. The buyer only should make changes to Sections A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of your permanent records.

Definitions

1. **Over-the-counter Transaction:** The sale or other disposition of a firearm by a seller to a buyer, at the seller's licensed premises. This includes the sale or other disposition of a rifle or shotgun to a nonresident buyer on such premises.
2. **State Laws and Published Ordinances:** The publication (ATF P 5300.5) of State firearms laws and local ordinances ATF distributes to licensees.
3. **Under Indictment or Information or Convicted in any Court:** An indictment, information, or conviction in any Federal, State, or local court.
4. **Misdemeanor Crime of Domestic Violence:** A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon (*e.g., assault and battery*), if the offense is committed by one of the defined parties.
5. **Adjudicated as a Mental Defective:** (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or to others; or (2) Lacks the mental capacity to contract or manage his own affairs. (b) This term shall include - (1) A finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.
6. **Committed to a Mental Institution:** A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Paperwork Reduction Act Notice

7. **State of Residence:** The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is a member of the Armed Forces on active duty, his or her State of residence also is the State in which his or her permanent duty station is located. An alien who is legally in the United States is a resident of a State only if the alien is residing in the State and has resided in the State continuously for at least 90 days immediately prior to the date of sale or delivery of a firearm.

8. **Nonimmigrant Alien:** An alien in the United States in a nonimmigrant classification. The definition includes, in large part, persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers. The definition does NOT include permanent resident aliens.

Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. § 923(g). Disclosure of the individual's social security number is voluntary. The number may be used to verify the individual's identity.

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. §§ 922 and 923.

The estimated average burden associated with this collection is 25 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

ATF Form 4473 (5300.9) Part I
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