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WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Labor, Elections and Urban Affairs (SC-LEUA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

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SB 104
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**IMPROVING WISCONSIN'S
CRIMINAL BACKGROUND CHECK SYSTEM
FOR FIREARM TRANSACTIONS**

WAVE Educational Fund

414.351.9283

www.WaveEdFund.org

*I*magine that airports offered two security options. One required passengers to show proof of identification, undergo x-ray screening, and have their luggage searched, and the second required no screening, no identification, no searching—nothing. Now imagine that, before boarding the very same plane, passengers were allowed to choose which option they preferred. Believing that such a security system would have any chance of preventing terrorists from boarding an aircraft would be foolish and illogical. Especially since September 11, 2001, the risks associated with an optional screening system are just too high for Americans to tolerate.

Like most people who board airliners, most individuals who seek to buy firearms are law abiding. Unfortunately, some are not. Therefore, for the sake of security, all gun purchasers are screened, and high-risk individuals are prohibited from purchasing a firearm. At least that's what should happen. What really happens is that *gun purchasers choose whether to be screened or not*. They can buy a gun from a federally licensed firearm dealer, in which case they show identification and undergo a criminal background check, or they can choose to avoid the security screening by purchasing from a private seller, in which case the sale proceeds anonymously, with no background check, no identification, no questions asked.

Not surprisingly, there is a well-documented and undeniable connection between the unregulated gun market and criminal activity. Felons and others prohibited from purchasing a gun relish and, in fact, depend on the unregulated segment of the gun market. The rest of us suffer the chilling consequences of having an optional security system for gun purchases. Since 2001, approximately 150,000 American men, women and children have been killed with guns.

The double standard that exists for gun sales by licensed gun dealers versus those by unlicensed sellers is just as irrational and dangerous as optional screening at an airport would be. Purchasing a gun with no background check and no questions asked should simply no longer be an option.

The Current Criminal Background Check System

Sales and transfers by licensed gun dealers in the “primary” gun market

- In the regulated, primary gun market, prospective purchasers are required to show identification and undergo a criminal background check. The licensed dealer must, among other things, maintain records of the acquisition and sale of firearms.

Sales and transfers by unlicensed sellers in the “secondary” gun market

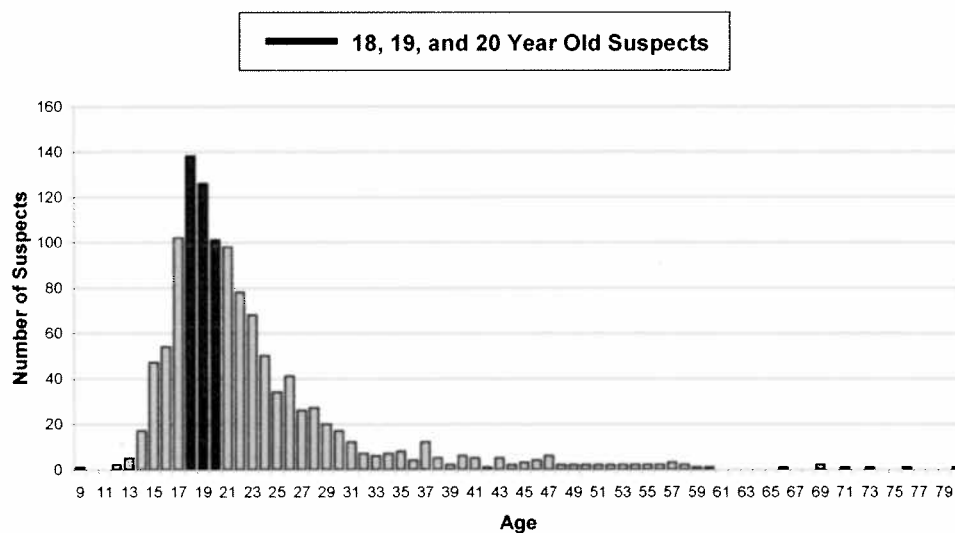
- Loopholes in current law have created an enormous unregulated gun market, where private gun transactions occur with no background check, no identification, no paperwork, no questions asked. These anonymous transactions *legally* take place in streets and alleys, at kitchen tables, through classified ads, out of the trunks of cars, at gun shows, over the Internet and elsewhere.
 - ◆ Nationwide, an estimated 40% of guns are sold without a criminal background check in the secondary market.¹
 - ◆ A 1999 report from ATF suggests that between 25% and 50% of sellers at gun shows, for example, are unlicensed and, therefore, sell guns with no background checks.² A more recent study found that the percentage of unlicensed sellers may be even higher.³ Often these sellers use their unlicensed status as a marketing tool, posting signs such as, “No Background Check Here,” “No Taxes,” or “Private Sale: No Paperwork.”⁴
- Unregulated sales create a source of guns for criminals.
 - ◆ In Milwaukee, very few crime gun possessors purchase their gun directly from a licensed gun dealer; 84% of crime guns recovered in Milwaukee changed hands at least once after they were first purchased.⁵



Photo Courtesy of Dr. Garen Wintemute, © University of California

- ◆ Nationwide, in 88% of crime gun traces, the person in possession of the gun used in a crime is not the same as the person who purchased that gun in the last known retail sale.⁶
 - ◆ In a 1997 survey of state and federal inmates, it was shown that, of the inmates who had been in possession of a gun during the offense that brought them to prison, approximately 80% got their guns from secondary market sources, including gun shows, street buys, illegal sources, family or friends.⁷
 - ◆ An ATF analysis of more than 1,500 firearms trafficking investigations found that unlicensed sellers were involved in about one-fifth of the investigations and associated with more than one-fourth of the guns diverted from legal to illegal commerce.⁸
- Unregulated sales create a source of guns for young people.
- ◆ Current Wisconsin law allows 18, 19, and 20 year olds to purchase handguns from unlicensed sellers, even though they are prohibited from buying handguns from licensed firearm dealers. These are particularly high risk years for criminal behavior.
 - For example, in southeastern Wisconsin, 18, 19, and 20 year olds accounted for more than 30% of all of the handgun homicide suspects.⁹

**Handgun Homicide Suspects
Southeastern Wisconsin, 1994-2002**



- Similarly, nationwide crime gun possession peaks at ages 18 - 21.¹⁰ Also, the number of persons arrested for murder, rape, robbery, and aggravated assault is highest at ages 18 or 19.¹¹

An Improved Criminal Background Check System

Extend the current system for sales by licensed gun dealers to all gun transactions

- An individual who wishes to sell or transfer a gun would simply conduct the transaction through a licensed gun dealer.
- Dealers would require identification of the buyer, initiate a background check, maintain paperwork and charge a nominal fee to cover their expenses, just as they do now for their own gun sales.
- Conducting private transactions through licensed gun dealers will not be inconvenient for sellers and purchasers.
 - ◆ Finding a licensed gun dealer to conduct the sale should not be difficult: There are more than 1,500 licensed gun dealers in Wisconsin.¹² For comparison, there are just over 1,300 grocery and convenience stores in the state.¹³
 - ◆ Background checks are completed very quickly—the vast majority in less than two minutes.^{14,15}

Enhance the law enforcement utility of the system by retaining transfer records to be used for crime gun tracing

- Under the current system, once guns have entered the secondary market they are difficult, if not impossible, for law enforcement to trace.
 - ◆ Catherine Hanaway, the U.S. Attorney for the Eastern District of Missouri, recently stated, “The sale of firearms by unlicensed dealers who fail to record the buyer information hampers or impedes law enforcement’s ability to trace firearms used in violent crime.”¹⁶
 - ◆ An ATF report of trafficked firearms found that, “Almost 60 percent of the investigations involved secondhand guns, which are very difficult to trace

because unlicensed sellers are not required to keep any transfer records, and there is no effective way to track a gun beyond the first retail sale.” This report also noted that, under current conditions, tracing a gun beyond the first retail sale “requires a substantial commitment of investigative effort by the tracing law enforcement agency, a commitment that is often not feasible.”¹⁷

Improve the effectiveness of the screening system by disqualifying other well-defined high-risk individuals, such as violent misdemeanants, from purchasing guns

- In Wisconsin, people who have been convicted of violent misdemeanors, including those involving weapons, can still legally purchase guns.
- Compared to handgun purchasers who have no prior criminal history, those who have been previously convicted of a misdemeanor offense are more than 7 times as likely to be charged with a new offense after purchasing their guns.¹⁸
- A study of violent felons in large urban counties found that approximately 1 in 5 had a prior misdemeanor conviction. Of those currently convicted of murder, nearly 1 in 6 had a prior misdemeanor conviction. Overall, seventy percent of violent felons had a prior arrest record.¹⁹

An Expanded Background Check System Will Work

The background check system applied to transactions conducted by licensed gun dealers has worked in preventing high-risk individuals from acquiring guns

- Since the 1994 Brady Law required licensed gun dealers to conduct background checks, an estimated 1.4 million felons and other prohibited persons have been detected and their purchases denied.²⁰

Maintaining a record of all transactions at the state level has provided law enforcement with an important crime-fighting tool

- Using both ATF trace data and state Department of Justice records of handgun sales, a 2004 study found that the sales records could be helpful in converting

“cold cases” to “hot cases” by providing new seller or purchaser information related to gun transactions that occurred in the secondary gun market.²¹

Prohibiting other high-risk individuals from purchasing guns has proven effective

- Compared to violent misdemeanants who attempted to purchase a handgun but were denied, violent misdemeanants who were allowed to purchase a handgun were 29% more likely to be arrested for a new gun and/or violent crime.²²

Under an expanded system, individuals prohibited from purchasing a gun from a licensed gun dealer will no longer find an unregulated, secondary market ready to aid and abet them

- Robyn Anderson, who purchased the guns used by Eric Harris and Dylan Klebold in the massacre at Columbine, stated, “...Eric and Dylan kept asking sellers if they were private or licensed. They wanted to buy their guns from someone who was private—and not licensed—because then there would be no paperwork or background check...I would not have bought a gun for Eric and Dylan if I had had to give any personal information or submit to any kind of check at all.”²³

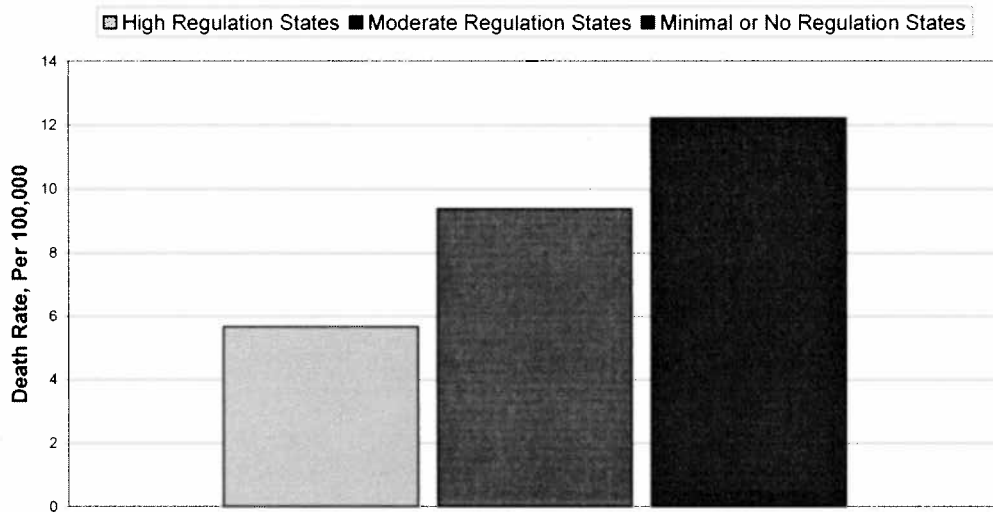
States that have expanded their background check systems are linked to lower firearm death rates and lower firearm homicide rates.

- States that already regulate some or most private gun transactions include: California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Rhode Island. In addition, unlicensed sellers in Delaware and Nevada may voluntarily request a background check.^{24,25} Other states, such as Washington and Illinois, are considering legislation to regulate or further regulate private sales.^{26, 27}
- On average, the overall firearm death rate is lower in states that regulate the private gun market.²⁸
 - ◆ In the six states that make the greatest effort to regulate private gun sales, the average firearm death rate is 5.66 per 100,000.

- ◆ The 11 states that regulate at least some private sales have a firearm death rate of 9.37 per 100,000.
- ◆ In the remaining 33 states that do little or nothing to regulate private gun sales, the firearm death rate is 12.21 per 100,000.

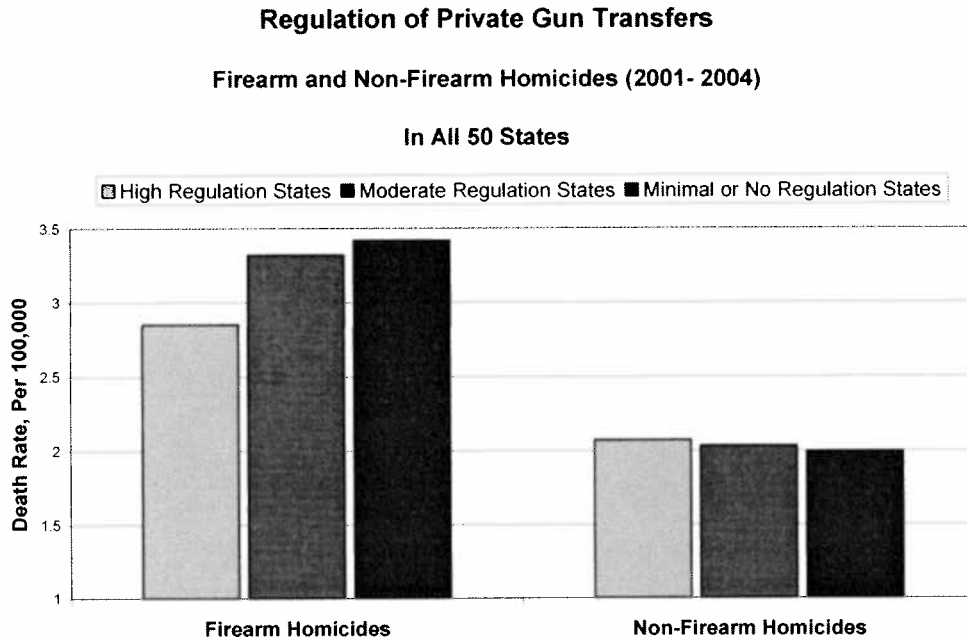
Regulation of Private Gun Transfers

All Firearm Deaths (2001 - 2004)



- On average, the firearm homicide rate is lower in states that regulate private gun sales, while the non-firearm homicide rate is virtually the same across all three groups. That is, the association between regulation and homicide rates is limited to firearm homicides, which is what would be expected if the regulations were having an impact.²⁹
 - ◆ In the six states that make the greatest effort to regulate private gun sales the average firearm homicide rate is 2.85 and the non-firearm homicide rate is 2.07 per 100,000.
 - ◆ The 11 states that regulate at least some private sales have a firearm homicide rate of 3.32 and a non-firearm homicide rate of 2.03 per 100,000.

- ◆ In the remaining 33 states, the firearm homicide rate is 3.42 and the non-firearm homicide rate is 1.99 per 100,000.

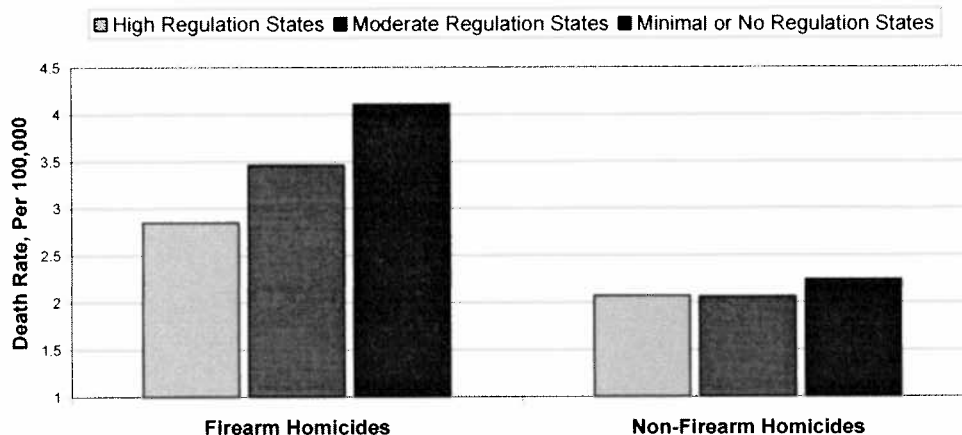


- Because homicide is predominately an urban problem, we also analyzed the homicide rates in just those states that have at least one city with a population of 150,000. In these states, the difference in firearm homicide rates is even more pronounced. Once again, non-firearm homicide rates are very similar across all three groups.
 - ◆ In the six states that make the greatest effort to regulate private gun sales the average firearm homicide rate is 2.85 and the non-firearm homicide rate is 2.07 per 100,000.
 - ◆ The 10 states that regulate at least some private sales have a firearm homicide rate of 3.46 and a non-firearm homicide rate of 2.06 per 100,000.
 - ◆ In the remaining 23 states that regulate private sales minimally, if at all, the firearm homicide rate is 4.11, and the non-firearm homicide rate is 2.24 per 100,000.

Regulation of Private Gun Transfers

Firearm and Non-Firearm Homicides (2001- 2004)

In 39 States
(At Least One City with a Population of 150,000 or More)



Widespread Support

Both in Wisconsin and across the country, people are in favor of regulating the private gun market

- A nationwide poll conducted in January of 2007 found that 92% of Americans, including 91% of gun owners, are in favor of criminal background checks for all gun purchases.³⁰
- Mike Beatovic, co-owner of Badger Outdoors, a major Milwaukee-area gun store, said that background checks should be required for all gun sales: "Anyone in their right mind should not be against it - and that comes from a gun owner and NRA member."³¹
- In Wisconsin, 98% of respondents agreed that, "No one should be allowed to buy a handgun without a check to make sure they have no criminal record."³²
- During the third presidential debate on October 13, 2004, President George W. Bush stated, "I believe law-abiding citizens ought to be able to own a gun. I believe in background checks at gun shows or anywhere to make sure that guns don't get in the hands of people that shouldn't have them."³³

At a Glance

- Under current federal law, loopholes in the background check system have created an enormous unregulated, secondary gun market: An estimated 40% of gun transactions legally occur with no background check, no identification and no record of the sale.
- This unregulated market is a key source of guns for criminals. A study found that 80% of inmates got their guns from secondary market sources. Nearly 90% of traced crime guns changed hands at least once after the last known retail sale.
- The secondary market is a source of guns for other high-risk individuals, such as young people. In Southeastern Wisconsin, 18, 19, and 20 year olds accounted for more than 30% of all the handgun homicide suspects. This high-risk group can legally acquire guns in the secondary market, even though they are prohibited from doing so in the primary gun market.
- The current background check system can easily be extended to all gun transfers. Transactions between private parties can be conducted by licensed gun dealers, who can require identification, initiate a background check and maintain paperwork, just as they do now for their own sales.
- The background check system could be made even more effective by prohibiting additional high-risk individuals from purchasing guns and by maintaining a record of all gun transfers, which would give law enforcement a powerful crime-fighting tool.
- Some states have already improved their systems by regulating some or all private gun sales. On average, the states that have done the most to regulate private gun sales appear to have lower firearm death rates and lower firearm homicide rates.
- 92% of all Americans, including 91% of gun owners, are in favor of criminal background checks for all gun purchases.

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–Jeri Bonavia

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