



An Overview of the Background Check System

One of the most important protections citizens have against gun violence is the framework of laws that ensures guns do not get into the hands of the [individuals most likely to do harm](#). Background checks serve the purpose of identifying at the point of sale whether a prospective gun purchaser has a criminal history, mental incapacity or other condition that [prohibits the individual from possessing a gun](#). This list covers some, [though not all](#), categories of individuals that research tells us are most likely to cause harm to themselves or others.

The laws governing these checks vary widely. Federal law does not treat all sales alike in terms of background check requirements, and state laws vary considerably. Texas Gun Sense supports the adoption of common sense measures on both the federal and state level to prevent more tragedies from striking our communities.

Licensed Dealers: Federal Requirements

Federal background check requirements focus on transactions between purchasers and [licensed firearm importers, manufacturers,](#)

Components of NICS:

The NICS system utilizes [four data sources](#) in its search -- the **Interstate Identification Index**, which contains state criminal records; the **National Crime Information Center** records of deported felons and individuals who are wanted or subject to a restraining or protective order; the **NICS Index** of individuals prohibited from owning a gun; and for non-U.S. citizens, the **Department of Homeland Security's U.S. Immigration and Customs Enforcement databases**.

[and dealers](#). [Federal law](#) defines a dealer as (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The law, however, provides a broad exception in that it also states that dealers requiring federal licensure do not include a person who 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 personal collection of firearms. These dealers for whom licensure is not required are generally considered private dealers.

There were 1,059,166 Texas NICS firearm background checks performed in 2015.
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Federal law requires these licensed dealers to perform background checks on individuals making a gun purchase. The checks can take place in one of two ways, depending on the law of that state. Federal law allows states either to have the Department of Justice's Federal Bureau of Investigation (FBI) perform the check using the [National Instant Criminal Background Check System](#) (NICS) or states can perform their own background checks using federal *and* state records.

Federal background checks are hampered in their effectiveness in various ways. States are not federally required to submit information to NICS. States vary greatly in the information they collect due to variances in state law and inconsistencies in practice. Even when the information is collected by the state, due to [inconsistent state reporting practices](#), federal databases [often do not receive all records](#) maintained by the state. Additionally, the federal check system is also hampered in its thoroughness by the fact that the review [must be completed in three days](#). By and large, the system is able to process within this timeframe. In 2014, NICS was able to provide an immediate determination for [91% of all inquiries](#) it received. But while often this is [sufficient time](#), there are instances where issues arise and additional time may be required for verification by federal agents. Current practice by federal agents is to continue the check for [up to 90 days](#), but federal law states that the sale may proceed in three days even if the check is not complete.

The Myriad of Agencies Involved in NICS: The background check system is only possible through the collaboration of a multitude of agencies. This multi-layered partnership adds further complexity to the system. Some of the agencies that play a role in completion of Texas background checks include: ***local arresting agencies; local prosecuting authorities; district and county clerks; Texas Department of Public Safety; Texas Department of Criminal Justice; Texas Department of State Health Services; the FBI; the Bureau of Alcohol, Tobacco, Firearms and Explosives; and the Department of Homeland Security.***

Licensed Dealers: Texas Requirements

Texas has not adopted its own laws requiring gun dealers to perform background checks. Therefore, Texas gun dealers are only subject to federal background check requirements on gun sales. A licensed Texas gun dealer, importer or manufacturer, must, under federal law, as discussed above, perform a background check using the FBI NICS system. No additional search of state records is required to ensure that the buyer is not within a prohibited category of purchaser.

Texas Federal Firearm License Holders
Approximately 7,400 Texans hold a federal firearms license.

To receive a concealed handgun license (CHL) in Texas, an individual must be eligible to purchase a gun under federal law as well as meet other requirements. At the time of application for a CHL and upon renewal of the license, the Texas Department of Public Safety (DPS) conducts a criminal history record check through its statewide database, the Texas Computerized Criminal History System; seeks additional criminal history and verification of identifying information from local authorities in the area of the purchaser's residence; and sends fingerprints to the FBI for purposes of a national criminal history check. Texas law takes advantage of a NICS search exemption in federal law for certain purchasers, which results in an individual with a valid CHL being allowed to purchase guns without an additional background check at the time of purchase. However, as DPS acknowledges, there are many instances wherein local agencies do not report all arrests and court decisions to DPS, resulting in DPS relying upon incomplete information when performing its CHL checks.

As of August 31, 2015 there are 906,204 active Concealed Handgun License holders.

Federal Background Checks & Mental Health Records

The [Health Insurance Portability and Accountability Act](#) (HIPAA) was enacted in 1996 to improve efficiency within the healthcare system while maintaining individual patient privacy by calling for development of a variety of regulations. The [HIPAA Privacy Rule](#) provides the confidentiality standards required by the law, and the [HIPAA Security Rule](#) provides standards for safeguarding private information. While together these rules call for a number of individual privacy protections in regard to health records, they also allow a means for states to provide mental health records essential for effective background checks.

The HIPAA Privacy Rule applies to [*health plans, health care clearinghouses and health care providers who transmit information electronically*](#) as part of an administrative or financial transaction described in HIPAA. This means only certain entities involved in submitting records to NICS are impacted by HIPAA. Of particular note, courts and law enforcement agencies are not covered by HIPAA. However, hospitals and health departments are covered and cannot disclose private health information without permission. [This permission can exist in the form of state law, as in Texas, that requires these entities to disclose mental health records of high-risk individuals.](#)

Gun Shows and Other Private Sellers

While transactions with licensed firearm dealers are regulated by federal law, sales or transfers of guns through private sales, including those made by private sellers at gun shows, [do not require a background check](#). It is estimated that up to 40 percent of all gun sales are made through private sellers and gun shows, [allowing significant numbers of potentially high-risk individuals to have guns](#). Federal law gives Texas the option to regulate these private sales, but Texas has not opted to do so.

Texas Background Check Policies Compared with Other States

There are two significant ways in which states can ensure community safety through background checks. Along with requiring background checks for all sales of guns that take place

within a state, states can ensure that databases are as robust as possible through participation in NICS. As discussed earlier, Texas is [one of 34 states](#) that does not require background checks for private gun sales or transfers; and, as mentioned, earlier in this report, Texas does not require a background check on additional gun purchases if the buyer holds a CHL.

However Texas is also [one of 39 states](#) that *has* passed laws to both allow and require submission of data by its governmental entities to NICS in some circumstances. Texas has thus greatly increased its participation in the program, making background checks for individuals from Texas more accurate and effective. In 2009, the Texas Legislature passed [HB 3352](#), which [requires district and county clerks](#) to report mental health adjudications and commitments, from September 1, 1989 through the present. [This includes](#): commitments for inpatient mental health services; commitments to a long-term care facility for a person determined to have mental retardation; cases in which the court appoints a guardian for an adult determined to lack the mental capacity to manage his/her affairs; acquittals in criminal cases for reasons of insanity or lack of mental responsibility; and cases in which a person is found to be incompetent to stand trial.

After passage of the law, Texas increased the number of mental health records it submitted from zero to 174,802. As of 2013, Texas ranks ninth among the states in terms of highest number of records submissions relative to population, having [submitted 229,692 records](#). The state-level mandatory reporting requirement also meets the federal threshold for providing express permission to share this information, therefore allowing entities to share records that HIPAA rules would otherwise prohibit.

Common Sense Measures Texas Should Take to Improve the Background Check System

- [Improve the Texas Computerized Criminal History System by requiring or incentivizing local communication and coordination from local arresting agencies, prosecuting agencies and courts to DPS](#). This would ensure that all local information can be reviewed before a gun sale is final, thereby better meeting the public safety intent of current law.
- [Require a background check on all private sales and transfers of firearms, including those that take place at gun shows](#). This would make the state's background check law apply much more widely and fairly and better ensure that individuals acquiring a gun meet legal requirements.