AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON GUN VIOLENCE
CRIMINAL JUSTICE SECTION
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
COMMISSION ON DOMESTIC & SEXUAL VIOLENCE

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that:

1. Require any person seeking to acquire a designated firearm to apply for a permit from a designated law enforcement or public safety agency;
2. Require, at a minimum, the applicant to apply in person, be fingerprinted, and be subject to a background and criminal records check; and
3. Prohibit the sale, delivery or transfer of a firearm to anyone who does not possess a valid permit.
I. Introduction

Among the most popular, broadly bi-partisan policies to prevent gun violence are those that seek to prevent dangerous persons from possessing firearms. They are also among the most proven, evidence-based policies in this area. One such policy, supported by this Resolution and today enacted in 11 states, and the District of Columbia, requires a prospective gun buyer to first obtain a permit. These are commonly referred to as “permit to purchase” laws.

II. Short History of Federal Background Checks.

The federal Gun Control Act of 1968 first identified categories of persons who are prohibited from buying guns, such as fugitives, those convicted of crimes punishable by a prison sentence of one year or more, substance abusers, and people convicted of certain domestic violence crimes. Over the years the Act has been amended to add to the list of prohibited purchasers. Today the list includes (1) convicted felons, (2) fugitives, (3) any persons who are unlawful users of or addicted to any controlled substance, (4) any person adjudicated as a mental defective or who has been committed to a mental institution, (5) illegal aliens, (6) persons dishonorably discharged from the Armed Forces, (7) U.S. citizens who have renounced their U.S. citizenship, (8) persons subject to a domestic violence restraint order that was entered after due notice, and (9) persons convicted of misdemeanor domestic violence.\(^1\)

The Gun Control Act of 1968 further required that retailers and individuals selling firearms obtain a Federal Firearm License (FFL). In 1993 the Brady Handgun Violence Prevention Act (Pub. L. 103-159) added a new requirement. All Federal Firearm Licensees must run background checks of any prospective gun purchaser through the National Instant Crime Background Check System (NICS) - specially created for this purpose. These are often called point of purchase laws. At the time of purchase the buyer completes an on-line application which the seller runs through the NICS system. The FBI has three days to respond – if a response is not made, then by default the sale can be completed. This has been referred to as the Charleston Loophole. Troublesomely, the background checks that might take the longest to complete involve the most suspect purchasers with long criminal records and red flags. If someone has a clean record, the response can typically be made in minutes.

Over the years, gaps in the federal background check system have allowed many otherwise prohibited purchasers to acquire firearms. By one recent estimate, 22% of recent gun owners acquired their most recent firearm without a background check.\(^2\)

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1 18 U.S.C. Sec. 922(g). This law was in part motivated by the assassination of President Kennedy. Lee Harvey Oswald had used a mail-order gun to murder the President.

Perhaps the most glaring shortfall is what has become known as the private-sale loophole. Under federal law, persons are free to purchase firearms from non-licensed dealers and individuals, including private sellers, at gun shows, and online. Such purchases can be done without the benefit of a background check, allowing obtainment of firearms by persons who, for example, are domestic abusers, have violent criminal records, or are otherwise dangerous to themselves or others.

Another weakness in the federal background system is the NICS system itself. While the federal law gives financial incentives to states to cooperate with this system it remains voluntary. As a result, the NICS records are far from complete and often of poor quality, and the timeliness of state reporting of this information is erratic. Indeed, the ABA in 2011 passed policy urging “applicable governmental agencies to take all appropriate measures to ensure that the National Instant Crime Background Check System is as complete as possible, so that [prohibited gun purchasers] are included in the NICS system.” 11A10A. More recently, the ABA went as far as to support allowing individuals who fear they may inflict harm on themselves or others to voluntarily enter their names in the NICS system, on a temporary basis. 19M106B.

III. States Enhance Background Checks System with Broad Public Support

Under our federal system, states are free to implement their own gun violence prevention laws, provided they do not conflict with the Second Amendment or federal law, which set out their own requirements for the regulation of firearm acquisition. Among measures states have taken to expand upon the federal scheme are (1) expanding the list of categories of prohibited gun purchasers, (2) extending the time period, beyond three days in the federal law, before a gun may be purchased by default, (3) requiring a license for some kinds of firearm possession, and (4) expanding the scope of a background check.

As the nation struggles with the scourge of gun violence, mass shootings, urban shootings, suicides and negligent homicides, reasonable regulation of firearm acquisition, to keep weapons out of the hands of dangerous and unfit persons, and reduce negligent homicides and suicides, has grown in public support. Germane to this Resolution, most notably, is support for closing the “private sale loophole,” through universal background checks. In some surveys, this support is well over 80% and cuts across all party and demographic lines, including race, sex, and gun ownership.3

IV. States Enact Permit-to-Purchase Laws

A growing expansion of the federal background check system is reflected in state permit-to-purchase laws. Under these laws, a prospective gun purchaser, before going to buy a gun, must first apply for and obtain a permit. Usually this requires an in-person application at the local law enforcement agency allowing for a more direct engagement...

by the police who may know the applicant and have access to information beyond that contained in the NICS system. While the details of these laws vary, at a minimum they require the prospective purchaser to go to the designated law enforcement agency, apply for a permit, and be subject to a background check. No gun seller, whether federally licensed or not, can sell certain firearms if the purchaser does not present a valid permit, thus effectively closing the private-sale loophole and reducing other risks.

Today permit-to-purchase laws exist in 11 states, and the District of Columbia,\(^4\) and are being considered by several others.\(^5\) These laws are instructive and provide legislators with a menu of options to consider if they wish to exceed the federal regulatory floor. Among the more common options are:

**Definition of Firearm**

State permit-to-purchase laws vary as to which firearms are covered. All states with such laws, at a minimum, cover handguns, which account for 85-90 percent of all gun violence. Some states cover long guns and a few states include ammunition.

**Duration and Effect**

States vary as to how long a permit is valid, ranging from 10 days for a handgun in Hawaii and Michigan, to 10 years in Illinois.\(^6\) Five years appears to be the most common length of time. As long as the permit is still valid, and there have been no intervening disqualifying facts or revocation of the permit for good cause, a purchaser may purchase specified firearms. Some states with short durations such as 10 days limit the permit to a single purchase.

**Scope of Background and Timeliness**

An advantage of state permit-to-purchase laws is they may discover more background information than normally contained in the NICS system, and the authorities have more than three days to approve or disapprove a permit. States vary as to what information they collect or what is included in an application.\(^7\) For example, some states require photo identification, fingerprints, and or waivers of certain types of information such as institutional and mental health records.

**Safety Training**

In many states, to receive a permit to purchase, the applicant must first complete a gun safety program.

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\(^4\) Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, New York, and North Carolina.


Fees

States charge some fees for a permit application, and renewal. These tend to be set to cover the administrative costs associated with the permitting process.

V. Efficacy of Permit to Purchase Laws

In the past decade, large-scale empirical studies have been made of permit to purchase laws. Every study has reported that these laws significantly reduce the rates of both homicide and suicide. By adding requirements such as in-person application, fingerprinting, mandatory gun-safety certification (education and training), and more extensive background checks, persons will be dissuaded from impulsive buying – common in suicide situations – or from buying firearms for a third party who may be a prohibited purchaser, commonly referred to as straw purchases. Guns obtained illegally through a straw purchase are known to disproportionately be involved in criminal activity. It also provides law enforcement with critical information as to whether firearms are potentially present when they are responding to a call, including, for example, in domestic violence situations.

Connecticut Study

In 1995, Connecticut enacted a permit to purchase statute, giving researchers the ability to compare gun violence in Connecticut before and after the law. Looking at the first ten years of the law in effect, researchers found that the enactment of Connecticut’s licensing laws was associated with a 40% reduction in firearm homicide and a 15% reduction in firearm suicide.

Missouri Study

In 2007 Missouri repealed a handgun purchaser license law that had dated back to the 1920s. This allowed researchers to look at the impact of the law’s repeal. Among the key findings, there was a significant increase in the share of guns that were recovered in crime shortly after an in-state retail transfer (i.e., the gun was originally sold in Missouri and was recovered within one year of retail transfer, which is a strong indicator of criminal diversion). In addition to being strongly associated with increases in diversion (indicating the law was protecting against diversion prior to repeal), research has found that removing the requirement for purchasers to obtain a license is associated with significant increases in firearm homicide of 17-27% through 2017. Significantly,

Missouri’s firearm homicide rate increased abruptly in 2008 relative to other Midwest states and the U.S., and this troubling statistic has been sustained through 2017. In addition, the repeal of Missouri’s licensing law was associated with a 16% increase in firearm suicide through 2012, exceeding the rate of increase of firearm suicide nationally.

V. Firearm Permit-to-Purchase Requirements are Constitutional.

While various firearm permitting laws have been subjected to constitutional challenges, courts have uniformly rejected these challenges and found that permitting laws meet constitutional muster.

The Supreme Court, in District of Columbia v. Heller,11 ruled that the Second Amendment protects an individual right, unrelated to militia service, to keep a handgun in one’s home for self-defense. But the Court noted that the Second Amendment, like other constitutional rights, was not absolute and was subject to certain restrictions and regulations. Among the firearm regulations the Court explicitly identified as presumptively constitutional are “longstanding prohibitions on the possession of firearms by felons and the mentally ill” and “laws imposing conditions and qualification on the commercial sale of arms”12

On their face, permit-to-purchase requirements fall into the latter category and help to ensure that the former are effectively enforced. And, indeed, several courts have found that state laws that require licensure to possess a handgun, and that are not arbitrary or capricious, withstand constitutional scrutiny.13 Likewise, a number of cases have upheld fees on possession licenses or background checks required on gun purchases.14

Simply put, there are no legal or constitutional impediments to requiring a permit to purchase a firearm.

12 Id at 626-627and footnote 26 (“these presumptively lawful regulatory measures [are identified] only as examples; our list does not purport to be exhaustive.”)
14 See, e.g., Kwong v. Bloomberg, 723 F.3d 160 (2d Cir. 2013) (upholding $340 fee); see also Bauer v. Becerra, 858 F.3d 1216 (9th Cir. 2017) (upholding law requiring all firearm purchasers to pay a $19 background check fee, when a portion of the fee goes to maintaining a database to track prohibited persons who have purchased firearms); Commonwealth v. Cassidy, 81 N.E.3d 822 (Mass. App. Ct. 2017) (summary decision) (rejecting argument that firearm license fee is an “excise tax on [the] fundamental right” of “private gun ownership”), aff’d, 479 Mass. 527 (2018).
VI. Permit to purchase laws are consistent with and build upon existing ABA policy.

Over the past 50 years, the American Bar Association has enacted a range of policies aimed at curbing gun violence. This resolution is a natural extension of these policies. It seeks to keep weapons out the hands of dangerous and unfit individuals by strengthening systems to identify them at the front end, rather than lament tragic shootings at the backend by someone who fell through the cracks. In addition, it will have an impact on negligent homicides and suicides, which have also been the focus of ABA gun violence prevention resolutions.

As early as 1965 the ABA called “legislation amending the Federal Firearms Act of 1934 to, ... prohibit sales to felons, fugitives, persons under indictment, adjudicated mental incompetents and minors; ... Reaffirmed in Policy 94M8D. In 1994 the ABA supported the expansion of the list of prohibited purchasers to include “persons convicted of violent misdemeanors; persons convicted of spousal abuse or child abuse; and persons subject to a protective order.” 94A10E.

The ABA has supported different gun licensure requirements. The most recent was in 2011, when the ABA supported granting law enforcement agencies greater discretion in giving concealed carry licenses in those states where they are required, in part making up for gaps in criminal background data systems. 11A115. In 1994 the ABA adopted policy 94A10E to “Require persons to obtain and maintain a current handgun license, with background check, age, residency, safety training and insurance requirements, in order to buy or otherwise receive transfer of any handgun or handgun ammunition.” 15

The ABA has also supported “enactment of legislation encouraging gun safety education programs”, a key element in some permit to purchase statutes. The ABA has also called for the strengthening of the NICS system so that it as complete and accurate as possible, so that all persons properly categorized as prohibited from buying firearms are included in the NICS system. 11A10A.

The Standing Committee on Gun Violence is also bringing forward resolutions concerning “ghost” guns and safe storage. This resolution would augment those policy objectives.

There is not one single gun violence prevention measure that by itself will solve the public health crisis that gun violence presents. However, this resolution significantly ties together the focus of many of the resolutions the ABA has already passed, and will save lives.

VII. Conclusion

In 2017, nearly 40,000 Americans died from gun violence -14,542 were murdered with a gun and 23,854 died by firearm suicide. 16 Permit to purchase laws significantly reduce

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15 94A10E references handguns only. This resolution covers all firearms, to include long arms.
the rates of homicide and suicide, are constitutional and are consistent with and help implement existing ABA policies that seek to keep persons deemed dangerous, or otherwise unfit, from possessing firearms. For these reasons the ABA urges federal, state, local, and tribal governmental entities to enact laws requiring persons to obtain permits prior to purchasing a firearm.

Respectfully Submitted,

Joshu Harris,
Chair, ABA Standing Committee on Gun Violence
February 2020
GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Gun Violence
Submitted By: Joshu Harris, Chair

1. Summary of Resolution(s).

Urges federal, state, local, territorial, and tribal governments to enact statues, rules and regulations that would require any person seeking to purchase a firearm to apply for a permit from a designated law enforcement or public safety agency; that, at a minimum, the applicant apply in person, be fingerprinted, and be subject to a background and criminal records check; and prohibit the sale, delivery or transfer of a firearm to anyone who does not possess a valid permit.

2. Approval by Submitting Entity.
   November 12, 2019

3. Has this or a similar resolution been submitted to the House or Board previously? No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

   This resolution would clarify and supplement the previous policy on Licensing of Handguns (94A10E).

5. If this is a late report, what urgency exists which requires action at this meeting of the House? NA

6. Status of Legislation. (If applicable) NA

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

   If adopted this policy can be the basis of advocacy at the federal and state level and possible amicus brief applications. It will also be incorporated into programs that the Standing Committee on Gun Violence offers.

8. Cost to the Association. (Both direct and indirect costs) None

9. Disclosure of Interest. (If applicable) none
10. **Referrals.**

Commission on Youth at Risk  
Government & Public-Sector Lawyers Division  
Health Law Section  
Judicial Division  
Section of Family Law  
Section of Litigation  
Section of State and Local Government Law  
Standing Committee on Pro Bono and Public Service  
Tort Trial & Insurance Practice Section  
Young Lawyers Division

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

   Joshu Harris, Chair  
   Philadelphia, PA 19125-3901  
   (646) 621-4164

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

   Monte E. Frank  
   Pullman & Comley  
   Bridgeport, CT 06604-7006  
   T: 203-330-2000  
   mfrank@pullcom.com
EXECUTIVE SUMMARY

1. Summary of the Resolution

Urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that would require any person seeking to purchase a firearm to apply for a permit from a designated law enforcement or public safety agency; that, at a minimum, the applicant apply in person, be fingerprinted, and be subject to a background and criminal records check; and prohibit the sale, delivery or transfer of a firearm to anyone who does not possess a valid permit.

2. Summary of the Issue that the Resolution Addresses

Over the years, gaps in the federal background check system have allowed many otherwise prohibited purchasers to acquire firearms, including those in private sales and transfers.

3. Please Explain How the Proposed Policy Position Will Address the Issue

A growing expansion of the federal background check system are state permit-to-purchase laws. This resolution would urge legislation to require a prospective gun purchaser, before going to buy a gun, to first apply for and obtain a permit. Usually this requires an in-person application at the local law enforcement agency allowing for a more direct engagement by the police who may know the applicant and have access to information beyond that contained in the NICS system.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.