

SB 141-FN - AS INTRODUCED

2021 SESSION

21-0955
04/10

SENATE BILL ***141-FN***

AN ACT relative to the procedure for conducting firearm background checks.

SPONSORS: Sen. Giuda, Dist 2; Sen. Avard, Dist 12; Rep. Burt, Hills. 39; Rep. Edwards, Rock. 4; Rep. Rhodes, Ches. 15; Rep. Gorski, Hills. 7; Rep. Kelsey, Hills. 7

COMMITTEE: Judiciary

ANALYSIS

This bill authorizes the FBI to conduct all National Instant Criminal Background Check System (NICS) searches concerning the purchase, sale, and transfer of firearms through Federal Firearm Licensees operating in New Hampshire; abolishes the "gun line" in the division of state police; repeals the state's partial point of contact system for handguns, allowing the authority to remain exclusively with the FBI; and authorizes county sheriffs to conduct background searches using NICS for the purpose of approving or denying the return of firearms to individuals who are subject to a protective order for domestic violence or stalking.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

21-0955
04/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the procedure for conducting firearm background checks.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds that:

I. The New Hampshire gun line, in the department of safety, permits and licensing unit, currently performs all background checks in relation to the store purchase of handguns. It also performs background checks regarding the transfer of firearms from law enforcement agencies back to individual owners in relation to restraining order and criminal proceedings. The gun line uses the National Instant Criminal Background Check System ("NICS") to perform these tasks, serving as the partial "Point of Contact" system for the FBI.

II. The gun line's inefficiencies have created significant delays in the orderly processing of firearm- related background checks. Courts and Federal Firearm Licensed Dealers have faced incredible backlogs of pending background checks that are intended to be "instant." Many background checks have remained pending for several

months. This has come at a great cost to the economic wellbeing of dealers and the constitutional rights of firearm owners and purchasers. Additionally, the gun line has, on multiple occasions, failed to timely deny firearm transfers to prohibited individuals.

III. This bill allows the FBI to conduct all National Instant Criminal Background Check System (“NICS”) searches concerning the purchase, sale and transfer of firearms through Federal Firearm Licensed Dealers operating in the state of New Hampshire. This bill effectively repeals the state’s partial Point of Contact system for handguns, allowing the authority to remain exclusively with the FBI. The FBI is federally funded to perform this task and has a long history of accuracy and efficiency with its use of NICS. The FBI provides faster responses in regard to approving the background checks of nonprohibited purchasers, while simultaneously issuing faster denials of attempted purchases by prohibited individuals. This bill saves state tax dollars while producing better results, protecting the rights of law-abiding citizens and protecting the safety of domestic violence victims. Also, this bill provides the sheriff’s office for each county with the authority and obligation to conduct background searches using NICS for the purpose of approving or denying the return of firearms to individuals who have been the subject of restraining order proceedings or criminal proceedings

2 Criminal Background Checks; Sale of Firearms. RSA 159-D:1 and 159-D:2 are repealed and reenacted to read as follows:

159-D:1 Sale of Firearms; Criminal History Record and Protective Order Check.

I.(a) The Federal Bureau of Investigation (“FBI”) shall have the exclusive authority and jurisdiction to conduct background checks in relation to the sale or transfer of firearms involving Federal Firearms Licensed Dealers (“FFL”) in New Hampshire. This provision and the FBI’s exclusive jurisdiction pertain to all firearms, as defined by federal law pursuant to 18 U.S.C. section 921(a)(3), regardless of caliber, barrel length, or firearm type.

(b) No state agency or political subdivision shall access the National Instant Criminal Background Check System (“NICS”) unless specifically authorized by this chapter.

(c) Nothing in this chapter shall be construed to limit, prevent, or impose background check requirements on the private transfer of firearms as otherwise not prohibited by RSA 159 or federal law.

II. For the purpose of determining whether an individual is prohibited by federal or state statute from firearm possession or ownership in relation to a motion or requested return of firearms in connection with a restraining order under RSA 173-B or RSA 633:3-a, or criminal proceeding in any state court of competent jurisdiction, the sheriff’s office for the county in which the court is situated shall access NICS to perform a background check. The following conditions, process and time constraints shall apply to all such background checks:

(a) The county sheriff’s office shall initiate the NICS background check within 10 business days of the date of filing of the motion or other pleading requesting the return of firearms.

(b) Within 15 business days of the date of filing of the motion or other pleading requesting the return of firearms, the county sheriff’s office shall provide a conclusive decision to the court stating either “proceed” or “deny.” This decision will be based solely on whether or not the individual is prohibited from possessing or owning a firearm according to state or federal statute. Should the NICS background check fail to demonstrate that the petitioner is prohibited from firearm possession within the 15-business-day time period stated in this chapter, the sheriff’s office shall provide a “proceed” decision to the court.

(c) If the county sheriff’s office determines that an individual is prohibited from owning or possessing a firearm, a specific citation to statute, such as one of the prohibited categories listed under 18 U.S.C. section 922(g), and the

specific facts relied upon for finding that the individual is a prohibited person must be supplied in a narration with the “deny” response. The narration supporting a deny response shall be held in a confidential record with the court and only accessible to court staff, the individual seeking the return of firearms and his or her designated legal counsel.

(d) All records retained by any county sheriff’s office or court concerning a background check conducted pursuant to this chapter shall be destroyed within 24 hours of transmitting a “proceed” determination to the court. Should a “deny” determination be made, all records shall be destroyed by the county sheriff’s office within 24 hours of the later of the following:

(1) The expiration of the deadline for filing a petition or notice of appeal in the trial court; or

(2) The exhaustion or expiration of all appeal rights included in RSA 159-D:2.

(e) For the purpose of carrying out the requirements of this chapter, each county sheriff’s office shall register with NICS and obtain sufficient training so that each office is situated to begin fully fulfilling its limited background check functions required by this chapter by January 1, 2022.

159-D:2 Appeal of Denials.

I. Any person who has received a denial of a motion or other pleading requesting the return of firearms shall have the right to request a further hearing on the matter within 30 days of the date of denial. The request may be made by written or oral motion. Any requested hearing shall occur within 10 business days after the date of the request.

During the hearing, the burden will be placed on the county sheriff, or his or her designee, to prove by clear and convincing evidence that the petitioning party is prohibited from possessing or owning a firearm pursuant to state or federal statute. The court shall issue a decision on the matter within 10 business days after the hearing occurs.

II. Should any person seeking the return of firearms be aggrieved by the ruling made by the trial court regarding a motion or other request for the return of firearms, such individual shall be entitled to appeal and have his or her case heard by the New Hampshire supreme court. In any such case, a transcript of the proceedings and the trial court’s record shall be transmitted to the supreme court in full, without any fee charged to the petitioner.

3 New Paragraph; Protection of Persons From Domestic Violence; Notification. Amend RSA 173-B:8 by inserting after paragraph III the following new paragraph:

IV. Any temporary or final court order requiring the relinquishment of firearms or prohibiting the possession of firearms under RSA 173-B or RSA 633:3-a shall, within 24 hours of issuance, be submitted by the court into the NICS system directly or, alternatively, be transmitted to the New Hampshire department of safety to be added to the NICS system within 24 hours of receipt. Additionally, when any of the following events occur, the court will update the NICS system directly or transmit the updated information to the New Hampshire department of safety to be updated in NICS within 24 hours of receipt:

(a) Any modification or dismissal of a firearm relinquishment

(b) Any modification or dismissal of an order prohibiting firearm possession.

(c) The dismissal of any temporary restraining order.

(d) The dismissal of any final restraining order.

4 New Paragraph; Interference With Freedom; Stalking. Amend RSA 633:3-a by inserting after paragraph III-d the following new paragraph:

III-e. Any temporary or final court order requiring the relinquishment of firearms or prohibiting the possession of firearms under RSA 173-B or RSA 633:3-a shall, within 24 hours of issuance, be submitted by the court into the

NICS system directly or, alternatively, be transmitted to the New Hampshire department of safety to be added to the NICS system within 24 hours of receipt. Additionally, when any of the following events occur, the court will update the NICS system directly or transmit the updated information to the New Hampshire department of safety to be updated in NICS within 24 hours of receipt:

- (a) Any modification or dismissal of a firearm relinquishment
- (b) Any modification or dismissal of an order prohibiting firearm possession.
- (c) The dismissal of any temporary restraining order.
- (d) The dismissal of any final restraining order.

5 Department of Safety; Division of State Police; Permits and Licensing Unit; New Hampshire State Gun Line Abolished. The New Hampshire state gun line, in the permits and licensing unit of the division of state police, department of safety, is hereby abolished.

6 Effective Date. This act shall take effect January 1, 2022.

LBA
21-0955
2/3/21

**SB 141-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the procedure for conducting firearm background checks.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill includes the following:

- Relieves the responsibility of the state for providing National Instant Criminal Background System (NICS) background checks on all commercial sales of handguns sales and return of firearms cases, in the State of New Hampshire.
- Abolishes the State Gun Line within the Department of Safety Division of State Police Permits and Licensing Unit.
- Allows County Sheriffs to utilize the NICS to conduct background checks around returning or denying individuals requesting their firearms back after being subject to a protective order.
- Provides jurisdiction to the County Sheriffs for the county in which the court is situated for the purpose of determining whether an individual is prohibited by federal or state statute from firearm possession or

ownership in relation to a motion or requested return of firearms.

The Department of Safety states the abolishment of the State Gun Line would eliminate one (1) full-time program assistant II and three (3) part-time program assistant I positions. Assuming an effective date of January 1, 2022, this bill would reduce personnel related expenditures in the Permits and Licensing Unit by approximately \$85,000 in FY 2022, \$176,000 in FY 2023, and \$181,000 in FY 2023.

The Judicial Branch states it is currently working with the Department of Safety to determine whether there are records in the possession of the Department of Safety and the Judicial Branch that are not accessible through NICS system, but are searched for locally under the current arrangement. The Branch states there may be an expenditure of funds to identify older records that are not accessible through NICS that are currently searched locally through Gun Line, and to develop a process for uploading that data to NICS to be available for an FBI directed search.

The New Hampshire Association of Counties states it is unsure at this time whether the requirements of this bill would require additional training or personnel and is therefore unable to estimate if there will be an impact on county expenditures.

AGENCIES CONTACTED:

Department of Safety, Judicial Branch, and New Hampshire Association of Counties