

# LEGISLATIVE RESOURCE SHEET | 2018 SESSION

Minnesota Chiefs of Police Association

## ISSUE/LEGISLATION: CRIMINAL BACKGROUND CHECKS

The MCPA supports preventing individuals who are not legally able to purchase a gun from doing so without background checks at gun shows, online or in private transactions.

## PROPOSAL STATUS

MCPA will actively support this proposal as part of its 2018 Legislative Agenda

## BACKGROUND

Every day in Minnesota guns are sold by unlicensed sellers without first conducting a criminal background check to ensure that the buyer is not a prohibited purchaser. This proposal would close the online, gun show and individual sale loopholes by requiring all sales to at least have a criminal background check at the point of sale at an FFL before a transaction is legally allowed to occur.

The federal Gun Control Act of 1968 stipulates that individuals “engaged in the business” of selling firearms must possess a Federal Firearms License (FFL). Holders of FFLs are required to conduct background checks and maintain a record of all their firearm sales. Certain gun sales and transfers between private individuals, however, are exempt from this requirement. Those who would fail a background check can access firearms through these sources. Unlike an FFL, the seller is not required to conduct a background check to determine whether the purchaser is prohibited from purchasing and possessing a gun. Federal, state, local and tribal laws should be enacted to close these loopholes. If all gun sales proceed through an FFL, a single, consistent system for conducting gun sales, including background checks, will be established.

The laws we have in place to ensure gun purchasers go through FFLs are undermined by oversights in the law that allow individuals prohibited from owning firearms to obtain weapons at events such as gun shows without undergoing a background check. The IACP calls on Congress to act swiftly to close these loopholes and preserve the effectiveness of the laws in place.

## SUMMARY OF FEDERAL LAW

**Federal law imposes various duties on federally licensed firearms dealers. Firearms dealers must, among other things:**

- Perform background checks on prospective firearm purchasers.
- Maintain records of all gun sales.
- Make those records available to law enforcement for inspection.
- Report certain multiple sales.
- Report the theft or loss of a firearm from the licensee's inventory.<sup>33</sup> Federal law imposes none of these requirements on *unlicensed* sellers, however.
- Significantly, however, the term dealer was defined to exclude 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"

## SUMMARY OF STATE LAW (SOURCE: GIFFORDS LAW CENTER)

Minnesota is not a point of contact state for firearm purchaser background checks. In Minnesota, firearms dealers must initiate the background check required by federal law by contacting the FBI directly.<sup>1</sup> State law requires local law enforcement to perform an additional background check in certain situations. With certain exceptions, if a person wishes to acquire a handgun or semiautomatic military-style assault weapon from a federally licensed dealer but does not have a [transferee permit](#) or a [permit to carry a handgun](#), state law requires the dealer to file a report with the local police chief or sheriff, who then performs a background check.<sup>2</sup> Note that a transferee permit or permit to carry a handgun does not exempt the holder from the background check required by federal law, according to [the Bureau of Alcohol, Tobacco, Firearms and Explosives \(ATF\) chart](#) that outlines those permits that qualify as alternatives to the Brady Act.

Local law enforcement also must conduct a background check whenever a person applies for a transferee permit or a permit to carry a handgun.<sup>3</sup>

When performing a background check for any of these purposes, the chief of police or sheriff is required to check criminal histories, records and warrant information relating to the applicant through the Minnesota Crime Information System and any national criminal record repository (including NICS), and commitment information through the state Commissioner of Human Services.<sup>4</sup>

Minnesota does not require private sellers (sellers who are not licensed dealers) to initiate a background check when transferring a firearm.