

Bill as Introduced

1130
mm
9/8

NHSFA
Sticks by NH's Students



HOUSE BILL **537**

AN ACT relative to background checks for firearms purchases.

SPONSORS: Rep. Pepino, Hills 40; Rep. Hunter, Hills 7; Rep. Tholl, Coos 5; Rep. Dickinson, Carr 2; Rep. Varrell, Rock 9; Sen. Cohen, Dist 24; Sen. D'Allesandro, Dist 20

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

The bill authorizes the department of safety to perform criminal history, protective order, and national instant criminal background checks for firearms purchases in accordance with the Brady Act. If the department performs such checks, the source of funding for such checks shall be federal grants or funds within the department's existing budget.

The bill also requires that information provided to the department by prospective firearms purchasers be kept confidential by the department.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

9/8
11:30
LOB 102

Calder
OTP -

\$700 fee to applicant (repealed? or sunset provision?)

~~FEDS (FBI)~~
~~NH DOS~~

1995 -

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT relative to background checks for firearms purchases.

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

1 1 New Chapter; Sale of Firearms; Criminal Background Checks. Amend RSA by inserting after
2 chapter 159-C the following new chapter:

3 CHAPTER 159-D

4 CRIMINAL BACKGROUND CHECKS

5 159-D:1 Sale of Firearms; Criminal History Record and Protective Order Check. The
6 department of safety may become the point of contact for the federal government for the purposes of
7 the national instant criminal background check (NICS).

8 159-D:2 Confidentiality.

9 I. If the department of safety conducts criminal background checks under RSA 159-D:1 any,
10 records containing information pertaining to a potential buyer or transferee who is not found to be
11 prohibited from receipt or transfer of a firearm by reason of state or federal law which are created by
12 the department of safety to conduct the criminal background check shall be confidential and may not
13 be disclosed by the department or any officers or employees to any person or to another agency. The
14 department shall destroy any such records after it communicates the corresponding approval
15 number to the licensee and, in any event, such records shall be destroyed within one day after the
16 day of the receipt of the licensee's request.

17 II. The department shall retain records containing any information pertaining to a potential
18 buyer or transferee who is prohibited from receipt or transfer of a firearm for 3 years.

19 III. Notwithstanding the provisions of this section, the department may maintain only a log
20 of dates of requests for criminal background checks and unique approval numbers corresponding to
21 such dates for an indefinite period.

22 IV. Nothing in this section shall be construed to allow the department to maintain records
23 containing the names of licensees who receive unique approval numbers or to maintain records of
24 firearm transactions, including the names or other identification of licensees and potential buyers or
25 transferees, including persons not otherwise prohibited by law from the receipt or possession of
26 firearms.

27 2 Funding. If the department of safety conducts criminal background checks as authorized in
28 RSA 159-D, as inserted by section 1 of this act, the source of funding for such checks shall be federal
29 grants or funds within the department's existing budget.

30 3 Effective Date. This act shall take effect upon its passage.

Committee Minutes

Date: September 8, 1999
Time: 11:30 a.m.
Room: Room 102, LOB

The Senate Committee on Judiciary held a hearing on the following:

HB537 relative to background checks for firearms purchases

Members of Committee: Senator Pignatelli
 Senator Gordon
 Senator Brown
 Senator Cohen
 Senator Fernald
 Senator Squires
 Senator Trombly
 Senator Wheeler

The Chair, Senator Pignatelli, opened the hearing on HB 537.

Assistant Commissioner John Stephen: Thank you, Mr. Chairman and members of the Committee. My name is Assistant Commissioner from the Department of Safety, John Stephen.

I would just speak to you today and tell you that the Department is in favor of basically performing the function that the legislature would ask it to do in terms of the Brady background checks for firearms purchases. The federal law is already on the books and these purchases involve federal firearm dealers to contact the Department of Safety. Right now, as an agent of the federal government, we have to check to see if individuals possess either a felony record, domestic violence order, prohibition, or some other prohibition under Brady, and then we would either approve or deny the request. It is all done through a phone line and we have people working daily, seven days a week, at the Department of Safety on this issue.

Prior to this bill, or during the drafting of this bill, the issue came up about the continuation of our services. We are now doing, we are in the budget. There are two employees there. I think there are actually two and a half, we consider it half an employee, on the weekends. But, we have people there already doing the checks and it has been in the budget and it has been approved in the last session. This bill will basically give us statutory authorization to continue to do that. Right now, we are acting as the agent of the federal government in terms of the Brady checks.

Prior law has been repealed. I don't know if you knew that, but 159-B, I think it was, the statute was repealed last year. But, we had been asked at that point by the Governor's Office to continue to do the checks as an agent of the federal government and the federal government asked us to continue to do it and we have been doing it.

I am just generalizing now, I've got some figures if you want them, but it is something like 15,000 checks a year on handguns. Denials run in the 200 range. We approve most of them and the approvals are deleted. There are no names kept at our Department on approvals and this bill will basically say that we have to delete them within twenty-four hours and we don't have a problem with that because we don't want to keep the names of anyone that has been approved firearm owner anyways. That is not something that we want to do. We feel that there is a issue of confidentiality and we want people to know that we are going to do whatever we can to make sure that this is run the way I think the legislature wants it to be run. If you pass this bill, we will be able to comply with it.

There is no fee in here, so your question, I think is the \$7 fee. The licensed dealers have to pay \$7 to Safety for each check. This bill does not seek a fee and we are not here to seek a fee. We have already been appropriated funds in the budget. So, you know, we are here to say we will continue to do this if that is what the legislature intends at this point with this bill.

Senator Debora B. Pignatelli, D. 13: Thank you very much. Senator Fernald?

Senator Mark Fernald, D. 11: If we didn't pass this bill, what would happen?

Assistant Commissioner Stephen: Well, if we didn't pass this bill, Senator, I think that we could still, if the legislature gave us the intention that we still want you to run this, but for some reason this bill wasn't passed and we still get the funds to do the checks, I know it would seem inconsistent, but the executive branch has made a decision for their Department of Safety executive function to act as an agent of the federal government. So, we would then want, we would actually want to know from the legislature, I think we would want to know and we would probably ask for an opinion of the Attorney General, what to do at that point. Should we continue or should we just let the federal government do all of the checks?

We could stop the checks and there is still going to be a check though, Senator. It is just going to go through Washington. The phone is going to go right to Washington immediately. The only reason why I think you want the State to do it, when it is being done anyway, is because we feel that our database is a much better database.

What I mean by that is, if you look at, the FBI will not accept records of conviction where there are no fingerprints. So, the fingerprints data that is on the database, those cases are not going to be shown as felonies. But, the State of New Hampshire has a separate New Hampshire criminal record that we supervise and keep at Safety. There are times in the past, numerous times, where someone would go to purchase a weapon and they would have passed the federal check, but we have been able to prevent them from purchasing a weapon, handgun, because we were able to see that there is a domestic violence petition that wasn't filed federally or there is a state felony record and maybe fingerprints weren't taken. Believe it or not, in some felonies, still some of the local police don't take fingerprints and if you don't have any fingerprints, you are not going to have a federal record.

So, there was a real interest for us at the time this was repealed to keep doing this and this new study that showed about 40 to 50% of the denials that we denied, the FBI would have

cleared. So, there was a wave of support for us to continue doing it and that is why we basically had done it as an executive function.

Senator Debora B. Pignatelli, D. 13: Senator Fernald?

Senator Mark Fernald, D. 11: Why does the \$7 fee go away? Did you obtain state funding?

Assistant Commissioner Stephen: I'm not sure why it went away and I think you would have to ask Representative Welch that. I think that, in the drafting of the legislation, it appeared that there would be lack of support for the bill and that some of the federal firearms dealers didn't feel that they should be paying. And I think there is a federal issue, too. Because something happened federally where, Senator Bob Smith, or some federal issue, where there was legislation brought to not have to charge dealers. If the federal government wanted to do these checks, then they felt the federal government should pay for them. I don't know the whole history, but I know that in drafting, the Criminal Justice Committee decided not to put the fee in. We are not here proposing a fee.

Senator Mark Fernald, D. 11: Has there been a specific appropriation to the Department of Safety to cover the costs?

Assistant Commissioner Stephen: Yes, there has been. The appropriation is roughly in the vicinity of \$70,000 to cover the two and one half employees. When we were receiving the money for the fee, we were still absorbing a loss. The fee generated only around \$40,000 to \$50,000 a year. So, at this point, the State is paying for all of it, but it is in the budget until the next budget session anyway.

Senator Mark Fernald, D. 11: What happens to the two hundred so denials? Have they violated any law by trying to purchase a firearm?

Assistant Commissioner Stephen: Good question. I was just speaking to (inaudible) about this. I think they do commit a crime and the crime is the attempt. It is a federal crime.

Senator Mark Fernald, D. 11: Is it a state crime?

Assistant Commissioner Stephen: In my opinion, it is, and it is an attempt to purchase, a felon in possession of a weapon is an attempt to be a felon in possession of a weapon. The Attorney General's Office is looking into that issue or has someone reviewing that to see if there can be charges. What I think we need to look at and what I think we may not have a law on is, what happens to the domestic violence people that decide to go and purchase a weapon. I don't think that is a criminal offense; that is just my general reading of the criminal statutes. I don't think we have that as an offense and I think we should look into that. If it is an offense already, that would be something new to me. But, not many of these people get charged and that is something I think the AG is looking at.

Senator Mark Fernald, D. 11: Thank you.

Senator Debora B. Pignatelli, D. 13: Thank you very much, John.

Assistant Commissioner Stephen: Thank you.

Senator Debora B. Pignatelli, D. 13: Representative Leo Pepino? How are you?

Representative Leo Pepino: How are you, Senator?

Senator Debora B. Pignatelli, D. 13: I'm fine, thank you. How are you?

Representative Pepino: I'm pretty good. My balance has come back.

I can't add much to this and what John Stephen said. The \$7 fee. When the bill came out of the House originally, it came, there was an 800 number attached to it and there was a pre-charge, and the Senate is the one that put the \$7 fee on back five or six years ago. That is where that came from.

I can't add nothing to it that John didn't say. I would say the same thing over again. I wouldn't have spoke at all, but you asked the question about the fee.

Senator Mark Fernald, D. 11: Let me make sure I understand the history. There has been a previous bill four or five years ago on this issue with the \$7 fee in it?

Representative Pepino: When the bill came through the House, there was no fee on it. It had a toll free number, an 800 number.

Senator Mark Fernald, D. 11: You mean this bill or a previous bill?

Representative Pepino: Previous bill. And, when it came to the Senate, they put the \$7 charge on it figuring it would cover the cost and that is where the money comes from now and that is where the fee came from.

Senator Mark Fernald, D. 11: Are they still charging the fee now?

Representative Pepino: Yes, just for handguns.

Unidentified speaker: There's no fee.

Representative Pepino: When did this stop?

Unidentified speaker: When the law was changed.

Senator Debora B. Pignatelli, D. 13: We will hear from Representative Welch and Representative Tholl. You're not sure right now. You think there is.

Representative Pepino: I'll tell you, Senator, this morning, like most people with this bill, this is another for instance right now. There is all kinds of information I found out that happened over the past six months and I wasn't informed and I was very disturbed. That is another thing that came up this morning that I was never informed on until right now. That's all I've got to say. Thank you.

Senator Mark Fernald, D. 11: Thank you.

Senator Debora B. Pignatelli, D. 13: Thank you very much, Leo. I hope you continue to feel better. Representative David Welch?

Representative David Welch: It seems like I just left. Good afternoon. For the record, my name is David A. Welch. I represent Rockingham District #18 and I am the Chairman of the Criminal Justice Committee, which produced what you see before you.

The reason for this is that the instant check program that was initiated originally was in response to the Brady Bill, the original Brady Act. The State program for criminal record background checks eliminated the need for a five-day waiting period to purchase and secure a handgun. A clause in that earlier legislation repealed the state program whenever the federal government was capable of performing those checks themselves, and that is where the fee went. The fee was in the original legislation and when it was automatically repealed, the provision for a fee went with it.

Brady II became effective on, I think it was November 1st of last year, and a repeal process was implemented. Brady II now requires a background check for the purchase of handguns as well as long guns, rifles and shotguns. The FBI is responsible for doing those checks and has currently contracted with a civilian agency in Virginia for that purpose. The State of New Hampshire has continued to enforce the handgun portion of Brady II with existing Department personnel and funds, as John Stephen talked about. The question of authority for the Department of Safety to become the POC or the point of contact for the purpose of handgun background checks became an issue last year and, at a meeting with the AG and the Governor, Speaker and the Senate President, and I was present at this, it was agreed that the process ought to continue under an executive order. Now, I am not absolutely positive that an executive order was issued, but I assume from what John said, that likely that was the case.

This legislation gives the Department of Safety the authority to become the point of contact for the federal Brady Act. It has the affect of the legislature instructing the Department of Safety that we feel that they ought to continue doing it.

Roman I in section 1 directs the Department to destroy the names of law abiding citizens who have successfully passed the check and purchased a handgun within a twenty-four period, thus addressing the confidentiality matter. That was an issue with some people.

Roman II allows retention of names of those who have failed the check for a period of up to three years. These records could be available for prosecution, if needed in certain cases. You raised a question, Senator, I think what you are really asking, has there been any enforcement of the federal law and the question is answered in the negative. There is very little enforcement of the federal law and that is because the feds have to enforce that. There is almost no federal prosecution taking place.

Section 2 is the all-important issue of funding, and we in the House agree that the Department does an excellent and extremely thorough job on these background checks. But, and it is a big but, Brady is a federal law and while our data base was created by the State using federal funds, the enforcement remains a federal duty. If New Hampshire is to enforce federal laws, the feds ought to pay the freight. And that is our message to the feds. They currently fund civilians in Virginia and they could route some of that money to the Department of Safety. I think that, if we are going to be under a federal mandate, just like we do in the State, I think that the people who mandate ought to pay. That was our feeling and that is why the language here says the Department of Safety may become a point of contact. For instance, they are reluctant to do long guns at the present time because it would require more personnel.

The figure of 16,000 handgun checks was raised. The ratio of long guns to handguns is about two to one, so you are talking a large number of people; you are talking about three times the effort that they currently do now and it is unlikely that, with the existing personnel, that they could do that. It would require a larger effort and if that larger effort is required, we feel as though the feds should pay for that. That is why, in a sense, we have given the

Department of Safety the direction that we think they ought to do it, but if they are not willing to pay for it, only do what you are getting paid to do. We have chosen to fund handgun checks. The feds currently do the long gun checks.

I think this is an important issue because, it was a couple of years ago, Representative Pepino and I came before you with a bill that would have added long guns to the checks when the federal government required it and would have changed the legislation and the bill died at the time. But, had that been effect at the time, Barbara Lussiere in Nashua would be alive today, or at least would have been warned that someone who was under a restraining order had purchased a shotgun after being refused twice for a handgun.

What is missing in our laws is, and I don't know if we can do this or not, but we have to consider whether or not we would create the crime of attempting to purchase a handgun when you are under a court order saying you can't. Right now, it is unclear and that is what the Attorney General is looking at, whether or not that is in fact a crime or something that could be prosecutable. My feeling is that, if you are under a court order that says thou shalt not do something, there ought to be a penalty for it. Right now, I am not sure that there is and I am not sure that there has been any enforcement in that direction. So, we are waiting to find out what is and what ought to be.

That concludes my testimony.

Senator Debora B. Pignatelli, D. 13: Is cost the only thing that is stopping us from including long guns in this legislation? It seems to me that people who are out to commit crimes...

Representative Welch: Currently, Senator, handguns and long guns are included in the legislation, but it is federal. We have no legislation governing that at all in the State, because it all repealed, all the instant check legislation repealed last year.

Senator Debora B. Pignatelli, D. 13: I know, but now we are only instituting in this bill, if it passes, handguns and what I am saying is that, if you are going to commit a crime and you know you can't purchase a handgun, you just go out and purchase a long gun like the person did in Nashua against Barbara Lussiere.

Representative Welch: This doesn't cover this, Senator. All this does is, the federal law covers all that, and all this does is directs the State to handle the handgun portion of it. Long guns are checked and they are checked against the protective orders.

I think what John Stephen was referring to is that there may be an occasion where a protective order doesn't get filed into the federal database. That is what the courts do and so far as I know, they have been very good at it since they got up and running. It is done electronically. When we first started this process, it was done by fax machines. Now we are in the electronic data entry and it is all done automatically from the courts so that when these petitions are filed, it is usually within a very short period of time that they get entered into the system and they are covered under the federal check.

Senator Debora B. Pignatelli, D. 13: Well, let me ask you something else, then. If the federal check is working fine and people are caught in a federal check, why do we need to have a state check in addition to the federal check, or a state check on handguns and a federal check on long guns?

Representative Welch: The answer to that is that the New Hampshire check is more thorough; we have a broader data base, as John Stephen talked about. Those cases that are not accompanied with fingerprints don't get entered into the federal system because there is no crosscheck without the fingerprints. At some point in the near future, in the system that they are using over there will, and they encourage training and the local police departments to take the fingerprints and include those records. Over a period of time, that will become the case and the federal government will have access to the same amount of information that New Hampshire has. We just happen to have more information and better access to it. That is changing over time.

Senator Debora B. Pignatelli, D. 13: I guess I didn't get an answer to my original question about, if we have more information in the State and if people are purchasing handguns and people are purchasing long guns because the federal government doesn't have that information...

Representative Welch: Well, that is not why, Senator. Excuse me for interrupting, but that is not the reason. The checks are roughly comparable. The problem is, say I was an individual, say yourself, you are going down to buy a long gun for whatever purpose and you get turned down. In order to figure out why you got turned down, you have to deal with the FBI, whereas, with a handgun purchase, which is more concealable if you are into that particular issue, and you get turned down, all you have to do is pick up the phone and call the Department of Safety and it can be straightened out. If there is a problem with your record that is not supposed to be there, it can be straightened out in a relatively short period of time. Local bureaucracy is much better than federal bureaucracy. And, this does not direct the Department of Safety to do anything, it only allows them to, if the federal funds are forthcoming. And, we understand there are some federal grants out there that have been applied for. It's not a direct answer, but I really don't have a direct answer. I'm sorry.

Senator Debora B. Pignatelli, D. 13: Thank you very much. Senator Fernald has a question for you, Representative Welch.

Senator Mark Fernald, D. 11: Did you say that we have twice as many long gun sales in New Hampshire than handguns?

Representative Welch: That is an approximation, but it appears to be about that.

Senator Mark Fernald, D. 11: I think you said that this bill only applies to handguns and not to long guns, but I didn't see that in the bill.

Representative Welch: It only applies to handguns in the sense that the Department of Safety is only willing to do that because that is all the personnel that they have. If the federal government were to come across with some funds and ask them to do both handguns and long guns, it would require additional personnel and they could do that, if they had the money available. The only thing that restricts them is the amount of funding.

Senator Mark Fernald, D. 11: You mentioned the repeal of the previous law.

Representative Welch: Sunset provision.

Senator Mark Fernald, D. 11: Was that repeal or a sunset provision in state law or did the federal law in effect repeal the state law?

Representative Welch: Uh, no. Let me clarify that. When Brady I came out, it required a purchaser of a handgun to either undergo a criminal record background check or wait five days for the purchase to be complete. Our feeling was, waiting five days doesn't really do much. So, you wait five days and you buy your gun. What was more important was to implement the instant check.

Representative Pepino and I inquired if this was a possibility to do, because they had initiated it already in Virginia and they did it through a grant from the federal government to create the data base, the electronic data base that these calls would be checked against. I think it was about \$485,000 they gave them for the creation of that database. That bill had a sunset provision in there so that when Brady II came in, which would require a broader check, in other words, handguns and long guns, ours would disappear so that we would not have two laws to comply with. We wouldn't have to comply with the federal law and also a state law. So, there wouldn't be two operating laws governing this operation and we thought that was the simplest way to do that. So, on November 1st, when Brady II became effective, our statute just disappeared.

The issue then became a request from the federal government, would the State of New Hampshire be willing to do the handguns because they are having some problems, and they agreed to do that. Having agreed to do that, the question came up, under what authority are you doing it, and that is when we had the meeting with the Governor and convinced the Governor that it ought to continue, and the executive order went out and they have been operating under that executive order.

But, I think Commissioner Flynn would agree that he would rather operate under the direction of the legislature in this particular instance and know that we agree that this ought to happen. Therefore, this legislation was created to give them the authority to do that under two criteria – that it is funded and they are responding to the request. They are authorized to become that point of contact, but they are not directed to. In other words, we are not forcing them to do this check, only to do it if it is paid.

Senator Mark Fernald, D. 11: Is there a reason why we don't want to charge the fee so the Department of Safety can get those monies so they can do the long guns checks, too?

Representative Welch: I think so. I think it is irresponsible to charge a legitimate purchaser something that the criminals aren't assessed. What we are doing is performing a public service. We don't charge a lot of individuals for a lot of the services that police departments do that protect us as a society and it doesn't make sense to charge one segment of society. Because the person happens to have firearms doesn't make him any less a citizen than anyone else, unless he is felon. So, why are we assessing the checks on law abiding firearms owners when the criminals steal them or buy them off the streets in the black market? It doesn't make sense to me and it doesn't make sense for an awful lot of sportsmen.

Senator Mark Fernald, D. 11: So you think that the burden of the background check should fall on the taxpayers in general rather than the gun owners and the gun purchasers?

Representative Welch: I think so, and I think so in the sense that law enforcement is something that we use for general purposes to protect us as citizens. To pay a fee for what is actually a constitutional right doesn't sit well with an awful lot of people.

Senator Mark Fernald, D. 11: The court and the law and the system that allowed the guy in Nashua to buy a shotgun when he couldn't buy a handgun?

Representative Welch: Well, I was hoping you would ask that. Here's what happened. This individual, I think his name was John Nichols, went to one of the sports shops just south of Manchester, between there and Concord. Went in to buy a handgun and I guess the story goes that he wasn't sure, said he had something on his record that would make it not happen and he just, kind of a test run. They are not supposed to do that, so he agreed to purchase a handgun. The call went in and, of course, the dealer doesn't know why it is turned down. All he knows is that the sale cannot proceed. So, he was turned down.

Now, ordinarily the practice at this particular gun shop is to write the name down of this individual who was just refused and leave it right on the cash register. I don't know if that happened. I don't think it did. It is not a requirement. It is just something that they do.

This individual then waited a couple of days, went to another gun shop to make another attempt to purchase a handgun and was refused again and went off about his business and then, later on, went to a third gun shop, bought a shotgun, went to Nashua, and did his deed.

Now, when that happened, it made the headlines in the papers, as obviously something like that would. I immediately called the Department of Safety and I said, "I thought this wasn't going to happen". It should not have happened because, in the paper, I read about the two attempts to buy a handgun. I said, "What did you people do?" They called the Manchester Police Department and they called the Manchester District Court that issued the restraining order both times. Four phone calls were made - two to the court and two to the police department, and nobody had the common sense to call the victim, the potential victim, which is the person who the restraining order was issued to protect. Nobody called her.

Senator Mark Fernald, D. 11: I'm sorry. Who called the court and who called the police?

Representative Welch: The Department of Safety. When that was done, because they knew it was a protective order that was the reason for that sale not going through they, on their own initiative...

Senator Mark Fernald, D. 11: But, why did that sale go through, the shotgun? (tape turned) This was under Brady I?

Representative Welch: Yup. But see, nobody at the court took the time to pick up the phone and say, "Hey, Ms. Nicholson, the fellow that you have a restraining order against just tried to purchase a handgun. You ought not to be alone. You ought to be aware that something is going on." Nobody at the Manchester Police Department took the initiative to call Ms. Nicholson and say, "Hey, the guy that broke into your apartment committed a Class B felony a couple of months ago and just tried to buy a gun and got turned down". Nobody did that.

How do you legislate stuff like that? I mean, that really bothers me and I know Representative Pepino was as angry as I was over the whole thing. Those things shouldn't happen and it seems inconceivable to me that we have to make a law to govern every action that goes on.

This is fairly simple. We want to continue doing the checks. We would like to have the State do it, but we think because it is a federal law, that they ought to pay for it. We think, when it comes to enforcement of that law, the feds ought to enforce their own laws. Currently they are not. Why do we have these laws if they don't even enforce them? I don't mean to get on a soapbox, but I get kind of passionate...

Senator Mark Fernald, D. 11: Well, by current law, if the fellow was going to buy a handgun, the call goes to the Department of Safety and, if they get turned down because they are a felon or there is a restraining order, and if they try to buy a shotgun or another long gun, the call goes to Virginia and they would still be turned down, assuming the records are complete in Virginia. We have heard that their records aren't quite so good, but restraining orders are filed with Virginia?

Representative Welch: I believe so.

Senator Mark Fernald, D. 11: That's all.

Representative Welch: Essentially, what happens is, the paperwork that they make out is retained by the dealer and if there were a prosecution, they could subpoena those records and that would be evidence that the individual attempted to buy the handgun. That's how it would work in the real world. That is evidence and that is how that works. All we have to do now is find out if they are going to enforce the law.

Senator Mark Fernald, D. 11: Maybe we should have one of our own.

Representative Welch: Well, that may be. Thank you.

Senator Debora B. Pignatelli, D. 13: Representative John Tholl?

Representative John Tholl: Thank you, Madam Chairman. For the record, my name is John Edward Tholl, Jr. I represent Coos District #5 and the Towns of Whitefield and Dalton. I am currently the part-time Chief of Police in Dalton and a retired New Hampshire State Police Sergeant with twenty-three years of service.

My reading of this bill basically doesn't limit the background checks under this bill to pistols; it could be any firearm. That is the way I read the bill.

Part of the problem with the system we have now is, as was said before, the federal background database doesn't contain everything that our database contains. I have heard of at least one case where an FBI instant check approved the weapon, the person bought the weapon and went home, and then the FBI called the Department of Safety and said, "Will you go and pick it up? He shouldn't have it". That shouldn't be happening.

I also have a lot more confidence in the fact that, under the confidentiality concerns of gun owners, that the Department of Safety will in fact destroy the data that comes in as they are supposed to compared to what the federal government may do with whatever data comes into them. I think we can enforce it on a state level a lot better than we can on a federal level.

I am a cowboy shooter. I have a cowboy single action shooting club. We shoot steel silhouette targets with pistol caliber single action handguns, rifles, and shotguns. I went to purchase a replica 1866 Winchester, which is an old lever action. This particular one is made in Italy and is called a yellow where it has a brass frame. I never heard of that particular type of weapon ever being used in a crime. The dealer ordered the weapon and it came in. When it came in, I went to pick it up and he told me I couldn't pick it up because I was on delay. The federal government wasn't able to give him the answers to the records check. I was very fortunate. They called him back on a Saturday afternoon, because he worked out of his house and he got the information and I was able to get the rifle. But, otherwise, I would have had to wait until Wednesday of the next week to get it if it hadn't

been done that way. I think that the State can perform these checks better, faster, and more accurately than the federal government will do it.

I have seen gun dealers make a phone call. The one I deal with mostly is in Whitefield and it is called the Village Gun Store. I have seen him make a phone call to the State for a pistol check and get an answer within fifteen to twenty seconds after he gets the girl on the line. I have seen him immediately hang up and call the FBI number for a check on somebody and, when I left the shop a half an hour later, he still hadn't gotten an answer from FBI. They hadn't called him back. I just think that that is an inconvenience that we can prevent to the legitimate people, people who have the legitimate right to buy and possess firearms.

That is why I am a co-sponsor of the bill.

Senator Debora B. Pignatelli, D. 13: Thank you very much. Jean Crossmall?

Jean Crossmall: Yes, I indicated I didn't want to speak, but I do want to mention a couple of things.

Senator Debora B. Pignatelli, D. 13: I am never sure because, as you saw on the previous hearing, no one signed up to speak, I thought we would have a real short hearing, and it turned out everybody wanted to speak.

Jean Crossmall: For the record, I am the Executive Director of Gun Owners of New Hampshire. I just have a few quick things to mention.

Representative Tholl was speaking about as far as time involved in processing the check. I have spoken to a number of dealers across the State and I am getting a mixed reaction. There are a large number of federally licensed firearms dealers who have contacted the State and the State's response was that they are being pended and therefore, you have to wait until you hear from the State or you wait three days and the person can pick up the firearm. I have heard from dealers that, if they call the federal number themselves, the checks seem to be almost instantaneous, that there is a lot less pending going on when it comes to the federal system. So, some say the federal system seems to be working more smoothly; some say the State system is working more smoothly. I am not exactly sure what the difference is between the two, but there is definitely this discrepancy between which system is more efficient and which system isn't more efficient, depending on who you speak to.

I have also been told that people have been denied through the federal system, but are getting through the state system. So, who is better and who isn't? There doesn't seem to be any way of determining who is better. Both systems seem to have their problems.

The fact that this is an executive order, this particular system was, as Representative Welch had mentioned, sunset back in last year and should have ended the state involvement in this particular program and the federal government would have taken over. Where this executive order came from to totally override the legislature is sort of a scary thing. If they can just override this particular thing, are there other things that are just being sort of swept under the table? Where do they get the authority to override the legislature? The legislature definitely said this will end on this particular date and it has been continued.

Also, it was pointed out earlier that the licensed dealers were paying the \$7 fee, but actually, yes they may be the ones sending the check to the Department of Safety, but it is actually the person who wishes to purchase the firearm who is paying the fee, so that was being tacked onto the price of the particular firearm.

That is all that I wanted to point out. Gun Owners of New Hampshire does oppose this legislation. The federal government is currently doing the checks and, depending on who you talk to, it does seem like the federal government is operational. The federal system should be, if the federal government wishes to do this, obviously the federal system should be paying for it. I have heard that there is a question as to the future of having the State doing the checks as to whether or not gun owners will be asked to pay a fee because there probably won't be money in the budget in the future in order for the State to continue this check and people that I have spoken with in Washington have said that there is no federal money available in the upcoming budget to continue to continue funding the State check.

That is all I have to say.

Senator Debora B. Pignatelli, D. 13: Thank you very much. Thanks for sticking with us. Is there anyone else who would like to testify on HB 537? I'm sorry, Representative Varrell.

Representative Thomas Varrell: Yes, Representative Varrell and I represent Sandown and Danville and I am one of the co-sponsors on this bill.

All I want to do is clarify one very small section. Senator Fernald has mentioned quite a few times many questions on funding. My response is going to be that, on Brady I, as soon as it came out, there were sections of the country which felt that this was a violation of the U.S. Constitution in that it violated the Tenth Amendment of the United States Constitution, which is unfunded mandates.

Sheriff Mack from Arizona and another sheriff, Sheriff Prince, from Montana. I may have these backwards, but the case is Mack and Prince v. the U.S. This went in front of the United States Supreme Court and in a vote of 5 to 4 the United States Supreme Court said in fact that it was a violation of the Tenth Amendment, it was an unfunded mandate. Therefore, the feds could not pass the cost to implement Brady I and it could not force the states or the individuals to pay that. So, there is a precedent on funding for this. This is on Brady I, not Brady II, but I suspect that the Supreme Court would probably make the same decision. The decision was 5 to 4 and it would come out the same way and it would state that the feds, by putting a fee on it, by federal law, would be violating the Tenth Amendment in that it would be an unfunded mandate. And, that is basically all I have. It is the case of Mack and Prince v. the U.S., and it would be available in the law libraries and I am sure that there are attorneys around that have copies of it. I believe Gun Owners of New Hampshire has a copy of the entire case. This is on Brady I. They found out that the \$7 fee was unconstitutional because of the Tenth Amendment. And, that is all I really had to offer.

Senator Debora B. Pignatelli, D. 13: Thank you very much, Representative. Is there anyone else? I am going to close the hearing.

Respectfully submitted,

Recorded by
Transcribed by L. Gail Brown

Speakers

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: **OCTOBER 19, 1999**

THE COMMITTEE ON Judiciary

to which was referred **House Bill 537**

AN ACT

*relative to background checks for
firearms purchases.*

VOTE: 5 / 0

File

[Signature]

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Burt Cohen
For the Committee

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Bill Title: relative to background checks for firearms purchases.

<u>Date</u>	<u>Body</u>	<u>Description</u>
1/28/1999	H	Introduced and ref to Crim Just & PSfty; HJ18, p273
2/9/1999	H	Copy to Chairman on 2/9/1999 due on E f
2/11/1999	H	Hearing Mar 3 1:30 Rm204,LOB
3/4/1999	H	Hearing on Prop Am Mar 17 10:30 Rm204,LOB
3/25/1999	H	Maj Report OTP/AM for Apr 14 (vote 16-1;CC#1)
3/25/1999	H	Prop Comm Am{0527}; HC35, p736-737
4/14/1999	H	Passed with Am and ref to Finance; HJ40, p894-895
6/17/1999	H	Fin Maj Report OTP for June 22 (vote 23-0;CC)
6/22/1999	H	Removed from Consent Cal, req Rep Marple; HJ73, p1868
6/22/1999	H	Passed RC(234-85); HJ73, p1924-1926 + 1932
7/1/1999	S	Introduction and referring to Judiciary; SJ 27, P 801
8/18/1999	S	Hearing, 9/8/99, Room 102, LOB, 11:30 a.m.
10/14/1999	S	Committee Report, Ought to Pass, 10/19/99
10/19/1999	S	Ought to Pass; MA, VV, OT3rdg, MA, VV; SJ 28, P 819
10/22/1999	S	Enrolled Bill Amendment {2148}, MA, VV; SJ 29, P 857
10/22/1999	H	07/01/99 Enrolled Am {2148}, AA; HJ89, p2227
10/28/1999	H	Enrolled; HJ89, p2233
11/3/1999	S	Enrolled; SJ 30, P 860
11/3/1999	H	Signed by the Governor on 11/3/1999 Eff: 11/3/1999 Chap. 0336

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Docket Abbreviations