

**BLUEPRINTS FOR CHANGE:  
CRIMINAL JUSTICE POLICY ISSUES IN VIRGINIA**

**PARTICIPANTS**

**Mr. Allen Bareford**

*Public Defender, City of Fredericksburg*

**Ms. Victoria Cochran**

*Deputy Secretary of Public Safety and Homeland Security*

**Ms. Francine Ecker**

*Director, Virginia Department of Criminal Justice Services*

**The Honorable Eileen Filler-Corn**

*Member, Virginia House of Delegates, 41<sup>st</sup> District*

**Colonel W. Stephen Flaherty**

*Superintendent, Virginia State Police*

**The Honorable John Gardner**

*Sheriff, Carroll County*

**Ms. Lori Haas**

*Virginia State Director, Educational Fund to Stop Gun Violence*

**The Honorable Michael Herring**

*Commonwealth's Attorney, City of Richmond*

**Mr. John Jones**

*Executive Director, Virginia Sheriffs' Association*

**Lt. Colonel Robert Kemmler**

*Virginia State Police*

**The Honorable Brian Moran**

*Secretary of Public Safety and Homeland Security*

**Ms. Dana Schrad**

*Executive Director, Virginia Association of Chiefs of Police*

**The Honorable Marcus Simon**

*Member, Virginia House of Delegates, 53<sup>rd</sup> District*

**Ms. Eileen Smith**

*Staff Attorney, Office of the Executive Secretary,  
Supreme Court of Virginia*

**Ms. Tonya Vincent**

*Deputy Secretary of Public Safety and Homeland Security*

**Mr. Steven Witmer**

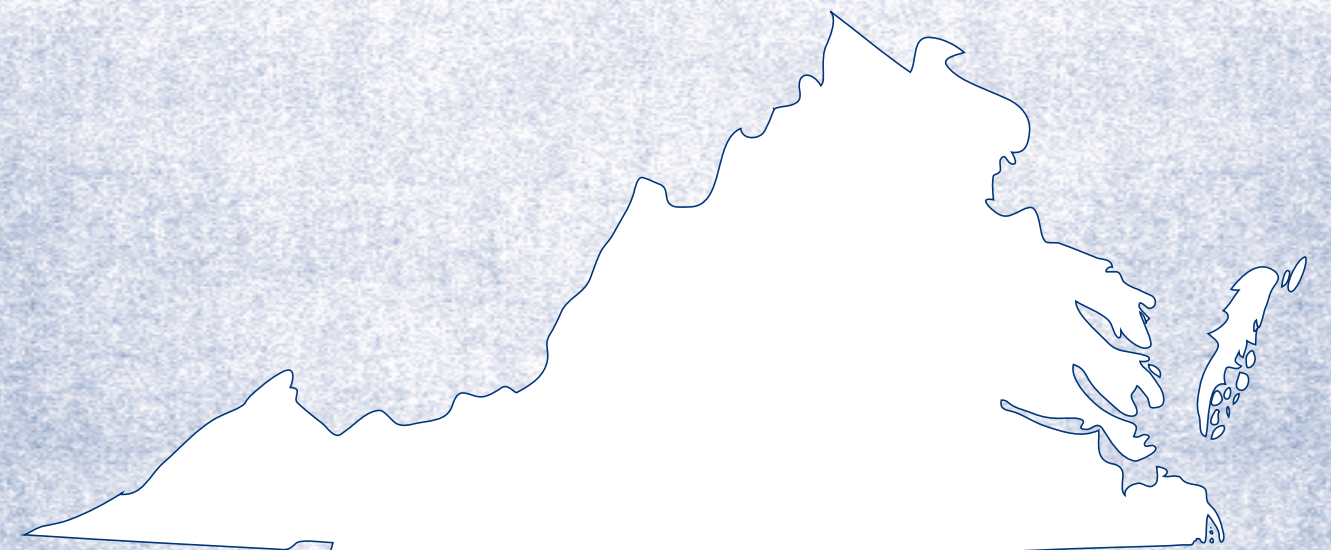
*Senior Assistant Attorney, Office of the Attorney General*



For additional information, please visit the  
Virginia Department of Criminal Justice Services website at:  
[www.dcjs.virginia.gov/blueprints](http://www.dcjs.virginia.gov/blueprints)

**2014**  
**Blueprints for Change:**  
**Criminal Justice Policy Issues in Virginia**

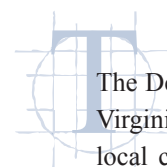
**FIREARMS IN VIRGINIA 1:  
ADDRESSING THEIR  
SALE AND TRANSFER**



Virginia Department of Criminal Justice Services  
[www.dcjs.virginia.gov](http://www.dcjs.virginia.gov)

January 2015

## BLUEPRINTS FOR CHANGE: CRIMINAL JUSTICE POLICY ISSUES IN VIRGINIA



The Department of Criminal Justice Services (DCJS) is the state criminal justice planning agency in Virginia and is responsible for administering state and federal funds dedicated to improving state and local criminal justice practices, preventing crime and delinquency, and ensuring services to crime victims.

At the request of the Secretary of Public Safety and Homeland Security, the Department convened two leading-edge policy sessions on firearms in September and October, 2014. Each session began with expert research and data on firearms violence presented to a multi-disciplinary group of executive-level participants who were selected because of their knowledge of the issues and their ability to advance the discussion of public safety policy related to these issues.

This is the first of two papers in which the discussions in these sessions, and the recommendations that emerged, are recorded.

In publishing these papers, DCJS hopes that the evidence-based recommendations will stimulate further discussions by state and local decision-makers and provide useful guidance for making substantive statutory change where necessary, as well as for decisions on funding, and policy and program development.



## CONCLUSIONS AND RECOMMENDATIONS

The session ended with a consensus among participants that Virginia should take action to expand background checks on persons who purchase or otherwise receive firearms. At the same time, the participants recognized that this has to be done in a way that will balance the rights of persons to obtain and possess firearms with the need for keeping them out of the hands of persons who present a risk to public safety. Participants also recognized that some approaches to doing this are more feasible than others, given fiscal, legislative and constitutional constraints.

Consensus was reached on the following points:

- There is ample evidence that certain prohibited persons are, in some circumstances, at an increased risk of committing violent acts. Virginia's current firearms background check process contains "loopholes" that allow these persons to purchase firearms.
- To reduce the ability of persons who are prohibited from possessing firearms from obtaining them, Virginia should take steps to ensure that background checks are performed for at least some private firearms transfers. Ideally, Virginia should require universal background checks for the purchase or transfer of firearms (with a few limited exceptions, such as transfers between certain immediate family members).

- If a universal background check policy is not adopted, an incremental approach should be pursued and may be more readily accepted. Incremental steps could include the following:
  - Voluntary, rather than mandatory, background checks for private purchases and transfers
  - Requiring a background check for handguns
  - Requiring background checks for private transactions at gun shows only.
- If a universal background check system is considered, it will be necessary to examine the logistical and financial impact of increased numbers of background checks on the Virginia State Police Firearms Transaction Program.
- If some type of voluntary background check is implemented, it would be useful to accompany it with a "know your buyer" public awareness campaign to encourage firearms sellers to use the system.
- The effectiveness of any improvement in background check requirements would be increased if the quality and completeness of the records themselves were improved, particularly regarding information related to prohibitions based on mental health issues.

- such checks (some states require licensed dealers to provide such checks, and charge a small fee for doing so). Participants noted that one issue with this approach is determining who would pay for the costs of such a system.
- Require background checks for handguns, but not long guns. Although participants noted that most firearms crimes are committed with a handgun, and that other states place more restrictions on handgun transfers than on long gun transfers, many noted that long guns are increasingly being used in violent crimes. Several participants felt very strongly about including background checks for long gun transfers.
- Require background checks for private transactions at gun shows only, and not for other types of private transfers. A large number of such transfers occur at gun shows and there are already mechanisms in place for monitoring sales and conducting background checks. One issue raised regarding this approach was defining a ‘gun show’ for this purpose, and how this might work at events such as flea markets, where guns might be sold but are not the main sale items at the event. Others pointed out this requirement might just push private firearms sales to other venues where there may be even less monitoring and ability to perform checks than there is now at gun shows.

#### Other Issues Discussed

Representatives from the VSP noted that, with any proposal for increasing the number of background checks, it would be necessary to examine the logistical and financial impacts of increased background checks by the Virginia State Police Firearms Transaction Program (FTP). VSP could not estimate the impact on the FTP without a more detailed proposal on the type and degree of expanded background check being considered. The potential number of increased background checks required would vary tremendously depending on whether the system was mandatory or voluntary, applied only to gun shows or all private transfers, or applied to only handguns instead of all guns.

Would commercial firearms dealers support requiring background checks for private transfers of firearms? Some participants noted that licensed firearms dealers may support a universal background check requirement because it might ‘level the playing field’ between commercial and private firearms sellers. Licensed dealers, who must conduct background checks for every transfer or sale, are at a disadvantage compared to private sellers who do not have to do checks. This might be an incentive for gun show operators to make background check services voluntarily available to non-commercial sellers at gun shows.

If a voluntary background check system was implemented, it might be accompanied by some type of public information campaign such as “know your buyer.”

Participants also noted that any restrictions on firearms possession need to consider the impact of the 2008 Supreme Court ruling in the case of *District of Columbia v. Heller*. In this case, the Supreme Court ruled that the Second Amendment guarantees an individual the right to possess firearms, independent of whether the individual serves in a state militia, and the right to use firearms for traditionally lawful purposes, including self-defense within the home.

Two other related issues were discussed:

The need to improve the records that are used to perform the background checks, in particular records related to mental health disqualifiers. A participant from the Virginia Association of Chiefs of Police pointed out that Virginia needs to consider what types of mental health issues would be considered serious enough to prohibit possessing a firearm.

What can or should be done about persons who already possess firearms, but who later become prohibited due to a felony conviction or a mental health issue? A background check at purchase will not address this issue. This may be a particular concern for situations in which persons that possess a firearm and become involved in domestic violence.

## Firearms in Virginia: Addressing Their Sale and Transfer



Although crimes involving firearms have declined in Virginia and nationally over the last decade, firearms remain a major crime problem in Virginia. In 2013, firearms were involved in nearly 4,500 violent crimes reported to law enforcement. In 2013, firearms were used in 64% of Virginia homicides, 51% of robberies, and 19% of aggravated assaults. Firearms were also involved in three-quarters of the weapons law violations in Virginia.

In 1989, Virginia established the nation’s first timely, point-of-sale automated background check for prospective firearms purchasers. The Virginia Firearms Transaction Program, operated by the Virginia State Police (VSP), allows licensed firearms dealers to request criminal history record checks via the Internet from 8:00 AM to 10:00 PM, seven days a week on every day of the year except December 25<sup>th</sup>. These checks are designed to identify people who are legally prohibited from purchasing or possessing firearms due to reasons including prior felony convictions, drug abuse or mental health commitments, or being the subject of an arrest warrant or protective order. Since 1989, the Firearms Transaction Program has processed nearly 5.7 million transactions.

An overwhelming majority of these background checks reveal no prohibitions, and transactions are approved to proceed. In 2013, out of 479,253 transactions, 2,412 (about 0.5%) were denied. The most frequent reasons for denials were felony convictions, drug and mental health related prohibitions, and arrest warrants or domestic violence. The Firearms Transaction Program is successfully blocking several thousand prohibited individuals from purchasing firearms each year, while allowing lawfully eligible citizens to make their purchases.

One of the most difficult challenges in keeping firearms from prohibited persons is unregulated firearms sales occurring between private citizens. Because these sales do not involve licensed firearms dealers, they do not require background checks for purchasers. This is a particular problem at gun shows, where many such “don’t ask, don’t tell” firearms transactions occur. It is common knowledge that private sellers attend these shows advertising “no paperwork involved” sales in which a prohibited individual could buy a firearm. Furthermore, private sellers, unlike licensed dealers, are not required to maintain records of their firearms transfers, making it even more difficult for law enforcement

to trace or account for weapons which may later be used in crimes, or to track purchases by prohibited persons.

Firearms Transaction Program data for gun show sales by licensed firearms dealers in 2013 show that there were 257 denials out of 43,302 firearms transactions – a denial rate of 0.6%. Although still very low, this is slightly higher than the denial rate at retail gun dealers. However, this is the denial rate for persons who attempt to purchase firearms even when they knew a background check would be conducted. It is reasonable to assume that persons prohibited from having a firearm would seek out an individual willing to sell a firearm without a background check. In these cases, the denial rate among this group – if background checks were done – probably would be higher.

Because there are no records kept on private sales of firearms, it is impossible to know how many such sales occur each year. However, a report by Virginians Against Handgun Violence and the Educational Fund to Stop Gun Violence estimates that, based on observations made at gun shows, 22% to 35% of the guns sold at more than 74 gun shows in Virginia every year are made without obtaining background checks.

Several published research studies have gone farther and examined the links between unregulated gun show purchases and crimes involving firearms. A recent study by the Johns Hopkins Center for Gun Policy and Research examined the effects of Missouri’s 2007 repeal of its permit-to-purchase law, which required all handgun purchasers to obtain licenses verifying that they have passed background checks. The study found an increase in murders committed with firearms in Missouri beginning in the first year after the law was repealed. It also found that the law’s repeal was associated with an additional 49 to 68 murders per year from 2008 to 2012.

Another study by the Violence Prevention Research Program at the University of California compared firearms sales at gun shows in California, which requires background checks for all firearms purchases, with sales at gun shows in Arizona, Florida, Nevada and Texas, which do not require background checks for private purchases. The study found that the California law was associated with a decrease in anonymous, undocumented gun sales and a decrease in illegal “straw purchases,” which occur when non-prohibited persons

knowingly purchase firearms on behalf of prohibited persons. At the same time, the study noted no decrease in attendance at California gun shows due to the law.

Based on evidence such as this, other states have taken steps to require background checks for private gun purchases, including private purchases at gun shows. Currently 11 states require background checks for at least some firearms

purchases that occur at gun shows. Seven states require background checks for all purchases, whether from a licensed firearms dealer or a private individual: California, Colorado, Connecticut, Illinois, New York, Oregon and Rhode Island. An additional four states require background checks for all handgun purchases: Hawaii, Maryland, New Jersey and Pennsylvania.

## POLICY/ RESEARCH ISSUES

1. Certain individuals are prohibited from possessing firearms, such as felons and individuals disqualified due to mental health issues. What actions will help prevent the sale or transfer of firearms to such individuals at gun shows?
2. If commercial dealers of firearms are required to conduct background checks before selling and transferring firearms to buyers, should the same requirement apply to private individuals at gun shows?
3. Should gun show operators be required to make background check services voluntarily available for non-commercial sellers at gun shows? If yes, what incentives should be offered to non-commercial sellers of firearms at gun shows to encourage them to utilize voluntary background checks?
4. What is the potential fiscal impact, if any, on both commercial sellers and non-commercial sellers if non-commercial sellers are required to conduct background checks on buyers at gun shows?

## DISCUSSION

The session began with a presentation by Joshua Horwitz, J.D., Executive Director of the Coalition to Stop Gun Violence. Mr. Horwitz provided the attendees with an overview of the following topics related to firearms violence and sale and transfer of firearms:

- Statistics on firearms death in Virginia
- Persons prohibited from possessing firearms under current Virginia law and federal law
- Research on how persons currently prohibited from possessing firearms are at increased risk of violent behavior
- How current firearms markets, and gun shows in particular, allow guns to be obtained by prohibited persons
- How universal background checks occur in other states, and evidence that these checks reduce gun violence
- Options which Virginia could consider for enhancing firearms purchase background checks.

Following this presentation, session participants participated in a facilitated discussion of the topics above and related

issues. The discussion was moderated by David Steingraber, Senior Policy Adviser with the National Criminal Justice Association. The major points that emerged from the discussion are summarized below.

### **Current Laws and Loopholes**

The Blueprints participants discussed requirements, under Virginia and federal law, on background checks for firearms purchasers. Current law requires that background checks be performed whenever firearms are sold or transferred by a commercial, federally-licensed firearms dealer. However, neither Virginia nor federal law requires background checks when firearms are sold or transferred by private individuals.

One participant noted that the background check exclusion for private firearms transfers originated with federal law in the 1960s, when it was assumed that most such transactions occurred between individuals who knew one another. The idea at the time was that the person selling the firearm would likely know if the person purchasing the weapon was trustworthy and unlikely to use it for criminal purposes. However,

firearms purchases now occur between complete strangers at large gun shows, some of which are part of multi-day events attended by tens of thousands of people. Additionally, purchases can now be arranged by complete strangers over the Internet. In particular, large gun shows are a frequent venue for private individuals seeking to obtain firearms without a background check. Several participants discussed research and experiences detailing observations at gun shows in which persons openly advertised “no checks or paperwork required” firearms sales.

### **Prohibited Persons and Increased Risk for Violence**

Participants then reviewed and discussed research indicating that certain individuals who could obtain firearms through these loopholes are at increased risk for violence. Research shows that at certain times, under certain circumstances, persons with a serious mental illness are at increased risk of violence. Although persons without mental illness have only about a 2% risk of engaging in violence, persons admitted to an emergency department for mental illness have about a 23% risk for violence, and those who are involuntarily committed as inpatients or experience first-episode psychosis have a 36%-37% risk of violence.

Information was also presented indicating that felons and domestic violence offenders are at increased risk of firearms violence. The strongest predictor of future violent behavior is past violent behavior. In domestic violence situations, the presence of a gun increases the homicide risk for women by 500%. More than 6,400 women were shot and killed by an intimate partner in the U.S. between 2001 and 2012.

### **Approaches to Closing the Loopholes**

Improving and expanding background checks prior to the purchase or transfer of firearms are ways to keep firearms away from violent individuals. Data presented from other states showed that background checks are an effective way to reduce firearms violence. In Connecticut, improving the firearms background checks for disqualifying mental health status was followed by a drop in the risk of violent crimes for the seriously mentally ill; in Missouri, conversely, firearms homicides increased by 25% after its background check requirement was repealed in 2007; and, in California, a requirement that background checks be done at gun shows produced no significant drop in either attendance or gun sales at the shows.

Panelists then discussed various approaches to improving the firearms background check process to close some of these loopholes. These approaches ranged from providing for voluntary background checks under some condition to requiring universal background checks for any type of firearms purchase or transfer.

*Permit-to-purchase systems.* In this system, a prospective buyer obtains a background check from a law enforcement agency prior to a firearms purchase. If approved, the person receives an approval permit which must be presented to a firearms dealer to make a purchase. The preapproval permit system has the advantage of placing the burden for obtaining the background check on the buyer, rather than the seller, and may reduce waiting lines for background checks at busy licensed dealers with many customers. A potential disadvantage of the system is that a person could receive a purchase permit, but subsequently become prohibited from purchasing a firearm. Representatives from the Virginia State Police also noted that it may not be possible to obtain record checks through the federal National Instant Criminal Background Check System for preapproval checks (current federal law allows background checks only at the actual time of purchase). Also, at large events there are too many people to conduct background checks on all people who enter.

*Universal background checks for all firearms transactions (with limited exceptions).* Many participants stated that the ‘ideal’ goal should be to require background checks for all firearms transactions. Otherwise, some ‘loopholes’ might be closed, but other large ones could remain. This would be the most effective approach to keeping prohibited persons from purchasing firearms. It was noted that some states have already implemented universal background checks. However, it was also noted that a universal background check requirement is likely to be the most difficult to achieve in Virginia, and may pose the greatest logistical and financial challenges.

*Incremental background checks.* Other participants noted that for logistical, financial and political reasons, it may more feasible to take smaller steps to limit prohibited persons from obtaining firearms. Among the incremental approaches suggested were:

- A voluntary, not mandated, background check system for non-commercial firearms transfers. This might be done by providing background checks at local law enforcement agencies, or by having federally licensed firearms dealers perform