



STATEMENT FOR THE RECORD

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PRESIDENT
MAJOR CITIES CHIEFS ASSOCIATION**

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

**“CONSTITUTIONAL AND COMMON
SENSE STEPS TO REDUCE GUN
VIOLENCE”**

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Introduction

Chairman Durbin, Ranking Member Grassley, and distinguished members of the Senate Judiciary Committee, thank you for the opportunity to submit this statement and provide the local law enforcement perspective on the epidemic of gun violence currently plaguing our Nation. In addition to being Chief of the Houston Police Department, I also serve as the President of the Major Cities Chiefs Association (MCCA). The MCCA is a professional organization of police executives representing the 79 largest cities in the United States and Canada. The mission of the MCCA is to provide a forum for police executives from large population centers to address the challenges and issues of policing, influence national and international policy that affects police services, enhance the development of current and future police leaders, and encourage and sponsor research that advances this mission.

Rise in Violent Crime

For the past few years, communities across the country have contended with a rise in violent crime. For example, the MCCA's most recent violent crime survey showed a 37% increase in homicides and a 15% increase in aggravated assaults nationwide over the last year.¹ This rise can in part be attributed to an increase in gun violence. MCCA members have reported increases in fatal, non-fatal, and non-hit shootings in their cities and continue to recover an unprecedented number of firearms during law enforcement operations.

MCCA Firearms Violence Policy

The MCCA has long been an advocate for sensible firearms policy. Police chiefs see the horror of gun violence every day, and we suffer with the victims of these heinous crimes. The MCCA has repeatedly called on our elected representatives to take the necessary steps to address this threat.

As a leader in the law enforcement profession, the MCCA membership adopted a Firearms Violence Policy in 2018. The policy includes several common-sense reforms that would help law enforcement and other stakeholders mitigate the threat gun violence poses to our communities. While this statement will only touch on a few proposals in our Firearms Violence Policy, the MCCA continues to urge Congress and the Administration to enact all of the reforms included in the policy as expeditiously as possible.²

Universal Background Checks

The MCCA supports establishing a strong system for universal background checks to cover all firearms purchases. This is an essential step, as it will close two of the most significant loopholes in our current system—the “Internet sale” and “gun show” loopholes. Dangerous criminals and other individuals who represent a threat to public safety have repeatedly exploited these loopholes to acquire firearms without undergoing a background check. It will be challenging to truly address the gun violence threat without closing these loopholes since guns will continue to be sold to those who are not permitted under the law to possess one.

¹ “Violent Crime Survey—National Totals: Year End Comparison,” *Major Cities Chiefs Association*, February 21, 2021. <<https://majorcitieschiefs.com/wp-content/uploads/2021/02/MCCA-Violent-Crime-Report-2020-and-2019-Year-End-Final.pdf>>

² The MCCA's Firearms Violence Policy can be found here: https://majorcitieschiefs.com/wp-content/uploads/2021/01/mcca_gun_policy_revised_2018_copy.pdf

By requiring unlicensed private persons who sell firearms to other private persons or at gun shows, the *Bipartisan Background Checks Act of 2021* (H.R. 8) and the *Background Check Expansion Act* (S. 529) would close these loopholes. The MCCA has endorsed both H.R. 8 and S. 529 and was pleased to see H.R. 8 pass the House last week. We encourage the Senate to take up and pass this critical piece of legislation immediately.

Strengthening NICS

Federal law requires Federal Firearms Licensee (FFL) to perform a background check before selling someone a firearm. The FBI's National Instant Criminal Background Check System (NICS) is used to perform these checks. There are several challenges with NICS that must be addressed to ensure the system is working as Congress intended. While legislation like Sen. Cornyn's *FIX NICS Act* is a good first step, more needs to be done to strengthen NICS.

Default Proceeds

While most NICS checks are completed instantly (89% in 2019), there are circumstances where the background check is forwarded to the FBI for additional investigation.³ If the FBI cannot make a final determination within three business days, the FFL is permitted to sell the firearm. When coupled with some of the other challenges facing NICS, this has created a loophole where prohibited purchasers can obtain guns. For example, in 2019, nearly 3000 individuals who were later determined to be banned under the law from possessing a firearm received one via a default proceed.⁴

This has become known as the "Charleston loophole" because the perpetrator of the tragic mass shooting at Emanuel African Methodist Episcopal Church in Charleston, S.C., obtained his firearms via a default proceed despite being a prohibited purchaser. The House recently passed the *Enhanced Background Checks Act of 2021* (H.R. 1446), which the MCCA supports, to close this loophole. This bill would expand the timeframe for completing a NICS background check from three to ten days. Gun sales have spiked over the past year, which will only put more stress on an already overburdened NICS system. FBI Director Wray recently testified in front of this Committee that the FBI needs additional resources to keep pace with the increase in required NICS checks.⁵ Expanding the timeframe for NICS background checks can help alleviate some of the strain on the current system and reduce the probability that a prohibited purchaser obtains a firearm due to a default proceed.

Mental Health Records

Under federal law, individuals who a court determines are a danger to themselves or others, or individuals who have been involuntarily hospitalized or committed to a treatment facility due to their mental illness, are ineligible from possessing a firearm. In many instances, however, mental health records in NICS are inadequate, inconsistent, or incomplete. This has allowed individuals experiencing severe mental health crises to obtain firearms and commit acts of violence. For example, the perpetrators of the mass shootings in Aurora, Tucson, Virginia Tech, Newtown, and

³ NICS Section: 2019 Operations Report, *Federal Bureau of Investigation*. <<https://www.fbi.gov/file-repository/2019-nics-operations-report.pdf/view>>

⁴ *Ibid.*

⁵ FBI Director Christopher Wray, Testimony Before the Senate Judiciary Committee, "Oversight of the Federal Bureau of Investigation: the January 6 Insurrection, Domestic, Terrorism, and Other Threats," March 2, 2021. <<https://www.judiciary.senate.gov/meetings/oversight-of-the-federal-bureau-of-investigation-the-january-6-insurrection-domestic-terrorism-and-other-threats>>

Jacksonville all had documented and lengthy histories of severe mental health challenges. Congress must continue to provide state and local governments with assistance to help increase the availability of all relevant records for NICS checks. It should also consider expanding the types of mental health records that need to be reported to the FBI.

Boyfriend Loophole

The MCCA's Firearms Violence Policy calls for strengthening the definitions of prohibited purchasers related to domestic violence cases. Current law prohibits individuals under a restraining order or convicted of a crime of domestic violence against their current or former spouse, cohabitant, or an individual with whom they share a child from possessing a firearm. This has created a "boyfriend loophole," where individuals who are perpetrators of domestic violence are still eligible to purchase a firearm because their victim did not fall into one of the categories described earlier. Unfortunately, there have been far too many cases where these offenders used these firearms to commit further violence against their victims or others. The MCCA strongly supports closing the "boyfriend loophole," which must also include strict judicial procedures for appeal and reinstatement. We stand ready to work with Congress and other stakeholders to enact these reforms as part of a bipartisan reauthorization of the *Violence Against Women Act*.

Extreme Risk Protection Orders

Extreme Risk Protection Orders (ERPOs) allow law enforcement agencies, under a court order, to confiscate guns from individuals determined to be a threat to themselves or others. While there are currently no federal ERPO laws, several states have instituted their own regulations. Nineteen states and Washington DC now have ERPO laws.⁶ Many MCCA members also have well-established programs to get guns out of volatile and dangerous settings.

If law enforcement knows someone is struggling with their mental health and is a threat to themselves or others, it currently cannot do anything to stop them from buying or possessing a firearm unless the state has adopted ERPO laws. The MCCA supports ERPOs and believes using them to temporarily take an individual's gun, with strong due process protections and a straightforward process to reinstate, should be part of our national policy. We encourage Congress to introduce and advance legislation focused on ERPOs.

Banning Assault Weapons and High-Capacity Magazines

The MCCA supports banning assault weapons and high-capacity magazines. These weapons and magazines were banned in the United States as part of the *Violent Crime and Law Enforcement Act of 1994*, but the ban had a ten-year sunset provision, and Congress has not acted to renew it. Many MCCA members, and other law enforcement officials, have closely studied assault weapons and firearms with high-capacity magazines and have determined they have no reasonable sporting or hunting purpose. These firearms are weapons of war that give the user military-like capabilities and should stay on the battlefield.

This is yet another issue where state and local jurisdictions have been leaders. Seven states and Washington DC have enacted laws banning assault weapons, and nine states and Washington DC

⁶ "Extreme Risk Protection Orders," *Giffords Law Center to Prevent Gun Violence*.

<https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/>

prohibit high-capacity magazines.⁷ Congress should follow suit and pass legislation to reinstitute a ban on assault weapons and high-capacity magazines.

Prosecution of Prohibited Persons

Holding prohibited persons who either attempt to or successfully acquire a firearm accountable is also an important aspect of protecting our communities against gun violence. More aggressive prosecutions and substantial penalties can serve as a powerful deterrent and make other prohibited persons think twice before attempting to acquire the firearm.

Straw Purchasers

The ability of prohibited purchasers to utilize straw purchasers to obtain firearms illegally is another loophole in our current system that must be closed. Straw purchasers are responsible for putting many guns used in criminal acts into violent offenders' hands. Convicted felons and other dangerous individuals should not be able to easily acquire a firearm by simply paying an intermediary.

The straw purchasing of firearms is currently not a federal crime, which makes it challenging to hold straw purchasers accountable and does little to disincentivize this behavior. The MCCA's Firearms Violence Policy calls for aggressively prosecuting straw purchasers to help address this challenge. Legislation such as Sen. Leahy's *Stop Illegal Trafficking in Firearms Act of 2021* would accomplish this, and the MCCA encourages the Committee to advance this legislation.

Federal, State, and Local Cooperation

The MCCA understands that the federal government does not have the resources or bandwidth to prosecute every prohibited person who attempts to acquire a firearm. For example, in 2019, 103,952 prohibited persons tried to purchase a gun, the vast majority of whom had a previous criminal record, were fugitives from justice, or were under indictment.⁸ Bills such as the bipartisan *NICS Denial Notification Act*, which the MCCA has endorsed, would assist with holding these individuals accountable. This bill requires the FBI to notify state and local law enforcement authorities when a prohibited purchaser "lies and tries" to obtain a firearm. If state and local authorities are aware of the denial, they can take appropriate action, which may include charging the prohibited person under the appropriate state laws.

Adoption of Federal Charges

Despite the rise in violent crime and gun violence occurring in many communities across the country, some local government and activist reform efforts have gone too far and are detrimental to public safety. For example, many MCCA members have experienced challenges with getting their local district attorneys to prosecute serial firearms offenders. Some local district attorneys have also shown a hesitancy to prosecute convicted felons for being a prohibited person in possession of a firearm after law enforcement arrests them for non-firearms related offenses.

Even in circumstances where charges are brought forth against these offenders, they are often not held pre-trial. Many activists and reform-minded judges and prosecutors subscribe to the theory

⁷ "Large Capacity Magazines," *Giffords Law Center to Prevent Gun Violence*. <<https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/large-capacity-magazines/>>

⁸ NICS Section: 2019 Operations Report, *Federal Bureau of Investigation*. <<https://www.fbi.gov/file-repository/2019-nics-operations-report.pdf/view>>

that it is unconstitutional to remand offenders, even violent ones, pre-conviction. The release of these individuals produces more recidivism and reignites street conflicts, resulting in further increases in gun violence. For example, in May 2020, there were 23 people accused of gun-related homicides on pre-trial release in one MCCA member city. Compared with the same period in 2019, there was a 17% increase in the number of shootings and a 31% increase in gun-related homicides in this jurisdiction, supporting the notion that not enough violent firearms offenders are being remanded. Dangerous individuals must be held pre-trial, so they do not have the opportunity to cause further harm and continue to threaten our communities.

Due in part to these challenges, the MCCA's Firearms Violence Policy encourages pursuing federal prosecutions against violent offenders who commit crimes using firearms. Conviction on federal charges typically results in more substantial penalties, which serves as a powerful deterrent. Federal charges can result from joint federal-local task force operations focused on addressing gun violence or by having a US Attorney's office adopt a case after local law enforcement completes its investigation. MCCA members have found pursuing federal charges to be a successful strategy as they continue to work to mitigate the threat of gun violence facing our Nation.

Conclusion

It is clear that gaps and loopholes in the existing system have made it far too easy for criminals and other individuals who are public safety threats to obtain firearms. Before any more lives are needlessly lost to the scourge of gun violence, we must come together as a Nation and institute the reforms that are needed to provide for a more secure America. Implementing the proposals in the MCCA's Firearms Violence Policy is an excellent place to start. Like those of us who wear a badge, Members of Congress share our solemn duty to protect the public. Your leadership is needed now more than ever. The MCCA stands ready to work with you to accomplish our shared goal of protecting our communities from all threats, including gun violence.