

Gun Control White Paper

Presented by the office of Mayor Beam Furr

What Is Required in Florida and Broward County to Buy a Gun

In Florida, to purchase a gun from a federally licensed gun store, you must pay \$8 and complete the paperwork for a background check. Dealers refer the purchase to the state as a point of contact, who then refer it to the FBI, who conduct a criminal background check. The Firearm Purchase Program (FPP) conducts all background checks for the transfer of firearms by federally licensed gun dealers, manufacturers and importers. If you pass the background check, you get the gun. If the gun is any type of rifle or a shotgun, which includes weapons like the AR-15, you do not have to wait three days to purchase. For a handgun, there is a mandatory three-day “cooling off” period in Florida, with the option for counties to impose a five-day waiting period. You must be 18 years of age to purchase a rifle or handgun, and 21 years of age to purchase a handgun. You can be rejected from purchasing if you have a Felony conviction, Active warrant (felony or misdemeanor), Unlawful user or addicted to any controlled substance, Adjudicated mentally defective or involuntarily committed by a judge (Baker Act), an undocumented immigrant, received a dishonorable discharge from US Armed Forces, if you have renounced United States citizenship, if you have an active protection order (injunction for protection, restraining order, etc.), if you have been convicted of a misdemeanor crime of domestic violence, if you are under indictment or information for a crime punishable by a term exceeding one year in prison., if you were an adjudicated delinquent or received adjudication withheld as a juvenile for a felony charge and person is under the age of 24, or if you had adjudication withheld for any felony or a misdemeanor crime of domestic violence and three years has not yet lapsed since the completion of sentencing provisions. There is no state requirement for a background check in private sales or gun shows (the so-called “gun show loophole”), nor is there a requirement for licensing. Private dealers have the discretion not to sell a gun. In Florida, there is no requirement for background checks at all if you have a concealed carry permit.

In Broward County, Sec 18-96 of the Code of Ordinances imposes a five-day waiting period in connection with the sale of firearms. Sec 18-97 requires private dealers to run a background check through a licensed intermediary. However, there is no mechanism to ensure these background checks are completed, and investigations have found that in counties with ordinances like this, up to 70 percent of sales do not actually have a completed background check. This is because there is no way of knowing who is selling guns without a license. While it is illegal in Florida to create a centralized system for background checks, it could be possible to require reporting of sales to the Sherriff’s Office, have them serve as the intermediary for checks, and have them complete the background check, notifying them of sales.

What Is NOT Required in Florida and Broward County to Buy a Gun

The State of Florida has been judged as having among the laxest gun laws in America, including receiving an F rating from the Giffords Center, the premier non-partisan legal center for gun control information. Florida does not require a state background check, nor does it require a background check prior to the transfer of a firearm between private parties. It does not require firearms dealers to obtain a state license, or private dealers to seek a license of any kind. In Florida, it is illegal to require firearm owners

to license their weapons, and it is illegal to require the registration of firearms. Florida does not in any way regulate assault weapons, 50 caliber rifles, or large capacity ammunition magazines, nor are counties allowed to do so. There is also no way to limit the number of firearms that may be purchased at one time.

Comprehensive Information on Background Checks and Licensing

Federal law requires federally licensed firearms dealers (but not private sellers) to initiate a background check on the purchaser prior to sale of a firearm. Federal law provides states with the option of serving as a state “point of contact” and conducting their own background checks using state, as well as federal, records and databases, or having the checks performed by the FBI using only the **National Instant Criminal Background Check System (“NICS”)** database. Florida is a point of contact state for the NICS. This means that firearms dealers contact the state, who then use the NICS to check criminal background. There are no additional comprehensive records checked beyond requirements of the federal background investigation. Florida law prohibits a licensed dealer from selling or delivering a firearm from his or her inventory at his or her licensed premises to anyone except a licensed dealer, importer, or manufacturer, without obtaining a completed form from the buyer or transferee, and inspecting proper photographic identification, calling the FDLE and requesting a check of the information as reported and reflected in the Florida Crime Information Center and National Crime Information Center systems as of the date of the request, and then receiving a unique approval number from FDLE and recording that number and the date on the form. This does not apply to private sellers. Counties are allowed to require background checks for private dealers, which seven counties do, including Broward County. However, there is no way of enforcing this law since we do not have a registry of who is selling guns privately. Universal Background Checks would require every person who sells a gun in any capacity to conduct a background check.

There is now federal requirement requiring someone who sells guns at gun shows or privately to become a licensed gun dealer. Florida law prohibits county, via pre-emption, from requiring gun sellers to become licensed. In addition, there is no federal law that requires an individual to go through a process that licenses them to purchase guns. This would be called a permit to purchase. Florida has no such licensing procedure for individuals purchasing firearms, and counties are not allowed to require this under pre-emption. Currently, 13 states and the District of Columbia have some form of permit to purchase laws. A permit to purchase could theoretically include extensive training classes, additional background checks, and tests governing mental fitness.

Comprehensive Information on Database/Registry and Notification

There is no federal law requiring registration of firearms. In addition, federal law currently prohibits a central registry collecting information on gun owners and sales. Florida state law also prohibits a centralized gun registry or collection of this information, and it is expressly prohibited that counties require a registry. Owners are not required to register their firearms in the same way they are required to register their cars or even their pets. There is no comprehensive way of knowing who owns guns in Florida. Registration laws would be effective when combined with laws requiring licensing of firearm owners and purchasers, ensuring that it is both more difficult to own a gun and we know what individuals own a gun. Currently, five states and the District of Columbia require registration of all pre-ban assault weapons. California and Maryland require reporting of firearms, and Hawaii and D.C. require extensive registration of all firearms.

According to federal law, licensed firearms dealers are required to maintain records of the acquisition and sale of firearms indefinitely. The dealer must record the purchase or other acquisition of a firearm no later than the close of the next business day following the purchase or acquisition. The dealer must similarly record the sale or other disposition of a firearm not later than seven days following the date of such transaction and retain Form 4473, the Firearms Transaction Record. A federally licensed firearms dealer must provide information from its records no later than 24 hours after receipt of a request by ATF for use in a criminal investigation. However, federal law explicitly prohibits federal law enforcement agencies from using dealers' records of sales to establish a centralized system for the registration of firearms, firearm owners, or firearm transactions. As a result, with very limited exceptions, records of firearm sales are not maintained at the federal level. Florida does not have any law requiring dealers to maintain sales information for rifles or shotguns, but it does require records to be maintained indefinitely for handguns. This does not apply to private sellers.

Eleven states require sellers to report firearm sales information identifying the purchaser and firearm purchased to law enforcement. Florida is not among them. Since Broward County has an ordinance requiring background checks through a licensed intermediary for all sales on places of public access (the gun show ordinance) it may be possible to establish our own background check agency within the County, where sales would be a matter of public record that can be reported to the Sheriff's office. This would not apply to guns already purchased or licensed dealers.

Firearm Information

The weapon used in Parkland is a semiautomatic rifle called the AR-15, which is the same weapon used in mass murders like Newton, Las Vegas, and Aurora. This gun is legally available for purchase in Florida at any gun store that sells it. There is no restriction on ammunition sales, number of firearms that can be purchased, or modifications to this weapon like bump stocks. There is no waiting period required for purchasing rifles like this. They can be purchased at age 18. There is far less requirement to purchase this type of gun than a handgun. The AR-15 was previously banned from 1994 to 2004 under the Assault Weapons Ban. Similar weapons include REC7, XM-15, and many other models of semiautomatic assault weapons. Florida currently prohibits fully automatic weapons, as most states do, but only if they were manufactured before 1986. These weapons can also be modified to be made almost fully automatic. Powerful .50 caliber rifles are increasingly popular and have no current restriction in Florida because they are deemed a long rifle.

Federally, the Assault Weapons Ban of 1994 prohibited the purchase or sale of any semiautomatic rifles or modified rifles with automatic capacity. This was repealed in 1994, allowing for the sale of weapons like the AR-15 and the purchase of modifications like bump stocks. However, there is still a federal ban on fully automatic rifles if they were manufactured after 1986. Currently, there is still about 400,000 fully automatic rifles in circulation in the United States legally. 25 states have bans on any type of automatic machine gun, which does not include Florida.

Current Legislation to Support and Oppose

For:

SB 1476 (Farmer) – A law that repeals provisions prohibiting collection of sales records and establishment of a registry. This would allow us to establish a Florida/county gun registry.

SB 838 (Farmer) – Establishes a Universal Background Check throughout Florida for private gun sales and gun shows.

SB 196 (Stewart) and HB 219 (Smith) – Assault weapons ban prohibiting the sale of semi-automatic weapons and providing enhanced penalties for crimes committed with these weapons.

Against:

SB 120 (Steube)- Requires businesses that ban guns to pay all damages if a shooting occurs in that establishment.

SB 740 (Stargel) – Add-on to appropriations bill that would grant a concealed carry permit to anybody who requests it within 90 days even if they have not passed a background check.

HB 6013 (Byrd)- Allows law enforcement to return confiscated guns that have been removed for “breaching the peace.”

HB 621 (Rommel)- Would allow concealed carry users to bring guns onto school grounds.

National and International Solutions:

State:

California: California has seen a massive drop in gun deaths since the early 1990s, with a ban on assault weapons, a limitation on magazine size, and universal background checks.

Connecticut: After Sandy Hook, the state banned all assault weapons, limited magazine size to ten rounds, required registration of existing assault weapons, and established universal background checks. There has been no mass murder event since.

District of Columbia: D.C. has an extensive registration and permit to purchase process.

Hawaii: Hawaii has perhaps the most extensive permit to purchase program in the nation, which includes thorough training and fitness tests. Hawaii ranks near the bottom in gun violence.

Maryland: Maryland has an extensive registration for weapons deemed assault rifles and for handguns. People have credited this for a drop in violence in cities like Baltimore since the 1990s, though there has been a recent spike back up.

New York: In addition to assault weapon bans and registries, requires mental health professionals to alert authorities about at-risk patients who should not be able to buy a gun.

Worldwide:

Australia: After the Port Arthur massacre in 1996, Australia immediately implemented strict gun control laws. The country prohibited automatic and semiautomatic assault rifles, stiffened licensing and ownership rules, required licensees to demonstrate a “genuine need” for a particular type of gun and to take a firearm safety course, and instituted a temporary gun buyback program that took over 600,000 assault weapons out of public circulation.

Canada: Federal regulations require all gun owners, who must be at least 18 years of age, to obtain a license that includes a background check and a public safety course. The country has a “restricted” class of firearms, including semi-automatics, shotguns, and handguns, that require special permission and proof of need to purchase.

Japan: Japan has the lowest gun homicide rate of any large nation on Earth. The only guns permitted are shotguns, air guns, guns that have research or industrial purposes, or those used for competitions. Before access to even these specialty weapons is granted, a person must obtain formal instruction and pass a battery of written, mental, and drug tests and a rigorous background check. Owners must also inform the authorities of how the weapon and ammunition is stored, and provide the firearm for annual inspection.

Norway: After the massacre on an island summer camp in 2011, a commission recommended tightening gun restrictions in a number of ways, including prohibiting pistols and semiautomatic weapons. Norway already has a high-rate of gun ownership and low gun deaths, largely due to extensive training programs and restrictions on the amount of ammunition that can be used.

United Kingdom: The massacre in Dunblane, Scotland, prompted wide-ranging changes that reduced gun deaths in Britain. This includes legislation banning handguns, with few exceptions. The government also instituted a buy-back program, which many credit with taking tens of thousands of illegal or unwanted guns out of supply.

Resolution Proposals

While there is a limited amount we can do at the county level due to pre-emption, this resolution demands immediate action from state and federal authorities and places public pressure on them to act. These five solutions we emphasize in this resolution will best serve to prevent any tragedy like this from happening again:

1. A comprehensive ban on semi-automatic rifles and .50 caliber guns, like the AR-15, which are the primary weapons used in massacres in the United States.
2. A law requiring an individual license to buy a gun, also known as a permit to purchase a firearm, including safety courses and a mental fitness test.
3. A law establishing a state gun registry, requiring owners to license and register their weapons, and both federal and private dealers to immediately report all sales to law enforcement.
4. The establishment of Universal Background Checks and a single, regulated agency for conducting all background checks at the state level.
5. A restriction on the amount of ammunition that can be purchased and the number of firearms an individual can purchase, as well as a restriction on the modification of weapons using trigger guards and bump stocks.

Potential County Legislation

Florida has one of the strictest gun pre-emption laws in the nation. According to the Florida Constitution:

“Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.”

However, we are allowed to regulate zoning laws, establish a five-day waiting period, and require universal background checks for private dealers. As stated, we are already doing the last two solutions. In order to make these laws more efficient, we can potentially:

1. **Create an individual licensing agency and make it the intermediary for background checks:** Since Broward County has an ordinance requiring private dealers to use a licensed intermediary to conduct background checks, we can establish our own licensed agent within the county and require that all private gun owners use this as their intermediary.
2. **Require law enforcement checks at all gun shows:** To make sure that all private gun shows are complying with laws requiring background checks, we can establish a law requiring that all gun shows inform the County of their time and date so law enforcement can be on hand to verify that gun sales are meeting all requirements.
3. **County wide buyback program:** Since buyback programs have worked to varying success in places across the world, there is no restriction on using funds in our budget on having a buyback in Broward County.