

Commentary for Model Legislation to Remove Barriers to Completing Enhanced Background Checks

September 26, 2024

The Bipartisan Safer Communities Act of 2022 (BSCA) makes it illegal under federal law for any person to sell or dispose of a firearm or ammunition to someone, if they know or have reasonable cause to believe that the prospective recipient is prohibited from receiving or possessing the firearm due to one of the disqualifying events set forth in 18 U.S.C. § 922(d)¹, even if that event occurred as a juvenile. BSCA also establishes an enhanced background check process for someone under the age of 21 seeking to purchase a firearm from a federal firearms licensee. In an enhanced background check, the Federal Bureau of Investigation (FBI) is required by BSCA to contact: (1) the state criminal history repository or juvenile justice information system, (2) the state custodian of mental health adjudication records, and (3) the local law enforcement agency of the jurisdiction in which the person resides, to determine if there is any disqualifying event that would prevent the transaction from proceeding. As reflected in the White House Office of Gun Violence Prevention’s [Safer States Agenda](#), the enhanced background check process for individuals under the age of 21 has proven valuable and has resulted in a significant number of denials based upon records that otherwise would not have been available as part of the normal NICS check.

However, as part of established juvenile justice and mental health systems, some states and territories have laws in place which restrict the sharing of juvenile mental health and/or criminal history records. As a consequence, these jurisdictions may not be able to provide the FBI with

¹ Pursuant to 18 U.S.C. § 922(d), it is “unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person, including as a juvenile,” is prohibited from receiving or possessing the firearm due to one of the following “disqualifying events:”

- 1) “is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- 2) is a fugitive from justice;
- 3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- 4) has been adjudicated as a mental defective or has been committed to any mental institution at 16 years of age or older;
- 5) who, being an alien—
 - A. is illegally or unlawfully in the United States; or
 - B. except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
- 6) who has been discharged from the Armed Forces under dishonorable conditions;
- 7) who, having been a citizen of the United States, has renounced his citizenship;
- 8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child [subject to the limited exceptions set forth in further detail in 18 U.S.C. § 922(d)(8)],
- 9) has been convicted in any court of a misdemeanor crime of domestic violence;
- 10) intends to sell or otherwise dispose of the firearm or ammunition in furtherance of a felony, a Federal crime of terrorism, or a drug trafficking offense (as such terms are defined in section 932(a)); or
- 11) intends to sell or otherwise dispose of the firearm or ammunition to a person described in any of paragraphs (1) through (10).”

potentially disqualifying juvenile records when an enhanced background check is conducted. To address this concern, since the passage of BSCA, some states (*e.g.*, Connecticut[\[i\]](#), Kentucky[\[iii\]](#), Vermont[\[iii\]](#)) have enacted reforms to ensure that they can provide juvenile criminal history records in response to enhanced background checks and at least one state (Texas[\[iv\]](#)) changed its laws to allow for the sharing juvenile mental health records. These reforms are appropriately and narrowly crafted, permitting information-sharing for the sole purpose of responding to a federal enhanced background check, thereby advancing public safety. And, as noted in the [Safer States Agenda](#), states “can implement such reforms and still maintain the confidentiality of juvenile records for purposes other than responding to the enhanced background check, including for the vast majority of young people not attempting to purchase a firearm or whose juvenile records do not disqualify them from doing so.”

The model legislation below provides a framework for state legislators and officials to consider as they determine whether and how to craft laws which amend their current juvenile justice and mental health systems with respect to enhanced background checks. This model legislation draws upon state statutes that have already been adopted (*e.g.*, Kentucky[\[v\]](#); Texas[\[vi\]](#); Vermont[\[vii\]](#); Connecticut[\[viii\]](#)) and is designed to identify the main features of these statutes.

The model legislation is not intended to impinge on a state’s prerogative to decide how to handle its juvenile records within its juvenile justice and mental health systems, and the Department is not endorsing any particular formulation of a statute meant to permit record-sharing for enhanced background checks. Rather, should a state determine that its laws are to be amended for purposes of implementing BSCA, this model legislation identifies key provisions that may be helpful to ensure fair and effective implementation of such a law. In drafting its own legislation, each state must account for its own policy, legal, administrative, and operational considerations and requirements.

The elements of the model legislation are as follows:

Exception to State Prohibition on Disclosure

The model legislation creates an exception to an existing state prohibition on the sharing of juvenile records, to authorize the disclosure of these records to law enforcement who are conducting background checks, and to thereby allow law enforcement to identify potentially disqualifying juvenile records that would prevent the transfer of a firearm or ammunition. Several states (*e.g.*, Kentucky[\[ix\]](#); Texas[\[x\]](#); Vermont[\[xi\]](#); Connecticut[\[xii\]](#)) have included similar exceptions in their statutes.

Limitation on Use

The model legislation provides that records disclosed pursuant to this exception are for “official use only” and not to be disclosed publicly, thus maintaining the confidentiality of juvenile records for purposes other than conducting background checks. At least one state (Kentucky[\[xiii\]](#)) has adopted a similar limitation.

- [\[i\]](#) Conn. Gen. Stat. § 46b-124(d)
- [\[ii\]](#) Ky. Rev. Stat. § 610.340(6)
- [\[iii\]](#) Vt. Stat. § 5117(d)(2)
- [\[iv\]](#) Tex. Fam. Code § 58.007(a)(4)
- [\[v\]](#) Ky. Rev. Stat. § 610.340(6)
- [\[vi\]](#) Tex. Fam. Code § 58.007(a)(4)
- [\[vii\]](#) Vt. Stat. § 5117(d)(2)
- [\[viii\]](#) Conn. Gen. Stat. § 46b-124(d)
- [\[ix\]](#) Ky. Rev. Stat. § 610.340(6)
- [\[x\]](#) Tex. Fam. Code § 58.007(a)(4)
- [\[xi\]](#) Vt. Stat. § 5117(d)(2)
- [\[xii\]](#) Conn. Gen. Stat. § 46b-124(d)
- [\[xiii\]](#) Ky. Rev. Stat. § 610.340(6)

**MODEL LEGISLATION TO REMOVE BARRIERS TO
COMPLETING ENHANCED BACKGROUND CHECKS**

[Insert name of state statute prohibiting disclosure of juvenile records] is amended by inserting the following [insert location in state statute]:

(x) EXCEPTION.— The provisions of this section shall not apply to the reporting or providing of juvenile records that potentially disqualify the applicant under 18 U.S.C. § 922(d) to employees of [insert appropriate state, local, and/or Tribal law enforcement agencies] or the Federal Bureau of Investigation for the sole purpose of conducting background checks through the National Instant Criminal Background Check System. Any record obtained pursuant to this subsection shall be used for official use only, not be disclosed publicly, and be exempt from disclosure under the [insert relevant state, local, and/or Tribal open/public records act(s)].