

Posted 7/2/22

## GOOD LAW / BAD LAW

*When it comes to gun laws, it's all in the eyes of the beholder*



*For Police Issues by Julius (Jay) Wachtel.* On June 23rd, President Joe Biden [signaled deep frustration](#) with a brand-new Supreme Court ruling that threw out a long-standing New York State law requiring that persons who wish to carry guns demonstrate a special need ([New York State v. Bruen](#), no. 20-843):

...This ruling contradicts both common sense and the Constitution, and should deeply trouble us all....In the wake of the horrific attacks in Buffalo and Uvalde, as well as the daily acts of gun violence that do not make national headlines, we must do more as a society – not less – to protect our fellow Americans....

In the Court's words, the gun-carry rights of "law-abiding citizens with ordinary self-defense needs" – meaning, most of us – are protected by the Second and Fourteenth Amendments. And while it's expected that licensing requirements, age restrictions and (reasonable) limits on the places where firearms can be taken will remain in effect, citizens must otherwise be allowed to "pack" at will.

Only two days later, Joe had cause to celebrate. That's when he signed the "[Bipartisan Safer Communities Act](#)." While conceding that it didn't include everything he wished, he nonetheless called the legislation a "[historic achievement](#)" and the most significant Federal gun law passed in thirty years:



"While this bill doesn't do everything I want, it does include actions I've long called for that are going to save lives. It funds crisis intervention, including red-flag laws. It keeps guns out of the hands of people who are a danger to themselves and to others. And it finally closes what is

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known as the ‘boyfriend loophole.’ So if you assault your boyfriend or girlfriend, you can’t buy a gun or own a gun.”

Unanimous support from the “Blues” meant that passage in the House, where they enjoy a 220/210 majority, was certain. (Fourteen “Red” members of that chamber actually signed on.) Yet even as it came on the heels of two soul-crushing massacres, the Act’s prospects in the evenly-split Senate were uncertain. Fifteen “Reds” – five more than what’s necessary to shut down a filibuster – wound up voting “aye.” So Joe got to pick up that pen.

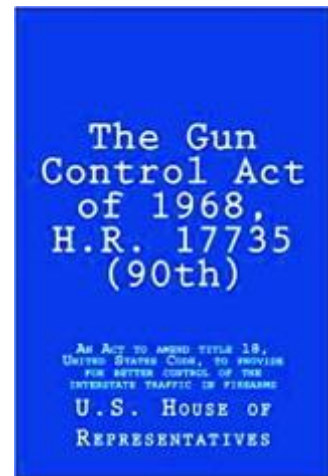
What did he sign?

## Gun possession

Federal law forbids gun acquisition and possession by [a wide assortment of characters](#). The list includes felons, individuals under felony indictment, fugitives, illegal drug users, persons who have been adjudicated as mentally defective or committed to a mental institution, domestic abusers, and illegal aliens ([18 USC 922 \[g\] and \[n\]](#)). Under the Act, these prohibitions explicitly include juveniles who were at least sixteen when the disqualifying event took place ([Sec. 12001](#)).

The Gun Control Act defined a “domestic abuser” as someone who was convicted of committing a “misdemeanor crime of violence” ([18 USC 922 \[g\]\[9\]](#)) against a spouse or co-parent ([18 USC 921\[a\]\[33\]](#)). Expanding the roster of potential lawbreakers, the Act relaxes the required link between victim and assailant to include a “continuing serious relationship of a romantic or intimate nature.” Meaning, serious dating ([Sec. 12005](#)).

Firearms dealers are required to process prospective purchasers through the National Insta-Check System ([NICS](#)) to determine whether the intended buyer has suffered any disabling criminal convictions. Results are usually returned within moments, but if not, licensees must delay delivering a gun for up to three days. Background checks are not required for private gun transfers, and that’s unaffected by the Act. But now that criminal convictions and mental health issues predating adulthood have come into play, the waiting period was stretched to a maximum of ten day when the buyer is under twenty-one ([sec. 12001](#)).



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## Gun sale and transfer

Current law forbids anyone – dealer or not – from giving a gun to a prohibited person ([18 USC 922\[d\]](#)). Individuals who “deal” in firearms must also be Federally licensed ([18 USC 922\[a\]\[1\]](#)). So, just *what* is a “dealer”?

...a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby... ([18 USC 921\[a\]\[21\]](#))

Problem is, guns are frequently purchased from unlicensed persons who offer their wares at gun shows or, literally, from their “kitchen tables.” As long as they’re “hobbyists” or just getting rid of “personal” guns, they need not keep records or perform background checks. In practice, this freedom is often abused, and the consequences are all-too predictable (see “[Sources of Crime Guns](#)” and “[Gun Show and Tell](#)”).

Because unlicensed persons are a major problem, the new Act broadens the definition of “dealer.” In the past, that’s meant someone whose “principal objective” was “livelihood and profit.” It’s now sufficient if the predominant purpose is to “earn a profit.” What’s more, no such proof is required for individuals who engage “in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism” ([sec. 12002](#)). (Note the “regular and repetitive”.)

To avoid snaring ordinary folks, and likely for reasons of politics and ideology, Federal gun laws have always trod a narrow path. Penalties were also limited: five years for unlicensed dealing ([18 USC 924\[a\]](#)) and ten for furnishing guns to a felon ([18 USC 922\[g\]\[1\]](#)). That’s where the new Act seems at its strongest. “Straw purchase” and “trafficking” – neither was mentioned in the old laws – aren’t just “mentioned”: they’ve become their own crimes ([sec. 12004](#)):

Straw purchase. An accused acquires guns “at the request or demand of any other person, knowing or having reasonable cause to believe that such other person” is forbidden from having a gun, intends to use it to commit a crime, or “intends to sell or otherwise dispose of the firearm” to a prohibited person.

Trafficking. An accused knowingly transfers guns to a prohibited person.

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Punishment is also stiff. Gun trafficking and simple straw buying can draw up to fifteen years, and straw buyers who know or reasonably believe that their guns will be used to commit felonies or terrorism can get up to twenty-five ([sec. 1204 / 932 & 933](#)).

## Other provisions

Most of the Act's content isn't about guns. Adult and pediatric mental health are addressed with grants and demonstration projects. Funding is allotted for State mental health courts, drug courts, veterans courts and local extreme risk protection order ("Red Flag") efforts. An elaborately conceived school safety initiative aims to create a national "clearinghouse" and set out best practices. And so forth.

[According to the legislation's key sponsor](#), Senator Christopher Murphy (D - Ct), nothing more could have been done, gun-law wise. His "pretty clear sense of what can get 60 votes" ruled out bans on firearms or ammunition or a national Red-Flag law. In fact, it avoids most everything that the Blues have long championed. Such as:

- Reinstating the Federal assault-weapons ban
- Raising the age to buy *any* gun, including rifles and shotguns, to twenty-one
- Mandating background checks for private gun transfers (sales would in effect require that a dealer participate)
- Or better yet, requiring that all gun sales *go* through a dealer
- Extending the waiting period. Presently, if a background check doesn't get done within three days, buyers must be given their guns. Can that have consequences? [According to the FBI](#), there were nearly three-thousand mandatory transfers to persons who turned out to be legally unqualified in 2019 alone (pg. 22).

So what's our takeaway? There is (very) limited cause to celebrate. Defining straw buying and trafficking seems a step forward, and particularly so given the substantial punishments that could theoretically be imposed. But these provisions are yet to be tested on the streets and in Court. Pouring cash into mental health initiatives and "Red Flag" laws (they're presently in effect in nineteen States and D.C.) also seems promising. [Given some very determined opposition](#), though, offering Federal bucks may not substantially expand these laws' reach. And the current lack of centralized record-keeping systems for juvenile offenders could turn extending background checks to sixteen-year-olds a decades-long project.

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Put lawmaking aside. Really, the picture isn't completely bleak. Existing laws and helper statutes such as aiding and abetting and conspiracy have helped corral gun traffickers and their ilk for many years. Check out, for example, a [recent brag memo](#) from the Department of Justice about the unearthing and prosecution of an



Indiana-to-Illinois gunrunning ring. [And another memo](#), about a fourteen-person cabal that got caught trafficking guns from the South to Philadelphia. And for a historical perspective, the many examples mentioned in [your writer's article](#) about illegal gun dealing and gun trafficking, published shortly after his retirement from ATF more than, um, *two decades* ago.

No matter the slaughter, a fraught sociopolitical climate promises that any move that impinges on the free movement of guns will lead to a very tough fight. Pronounced hostility to gun regulation is evident throughout a [2016 GAO report](#). Among other things, our nation's professional nitpickers pointedly reminded ATF that Congressional appropriations forbid converting the records of out-of-business dealers into a machine-searchable format. To this very day, tracing a gun's redistributive history requires that one pore through reams of paper or their corresponding images. To get around this "[nonsensical](#)" restriction, the State of Illinois just established "[The Crime Gun Connect Platform](#)," a computerized registry that helps State agents develop gun trafficking leads by compiling sales information received from ATF into a "real," searchable database.

Could things get worse? Absolutely. Skepticism about gun control has become evident at the highest levels of the Federal judiciary. Consider, for example, the Supreme Court's recent decision invalidating New York State's requirement that applicants for gun-carry permits show "good cause" ([New York State Rifle & Pistol Assn. v. Bruen, no. 20-843.](#)) (Yes, it was 6-3, with the "blue" Justices in the minority.) Or that recent ruling from a Ninth Circuit panel that threw out California's ban on selling semi-auto rifles to persons under twenty-one ([Jones v. Bonta, no. 20-56174.](#)) Such as the eighteen-year-olds who staged massacres in Buffalo and Uvalde using assault rifles they legally purchased in stores.

These decisions have already had consequences. Citing the Supremes, four CCW permit holders in the nation's capital filed a lawsuit demanding they be allowed to pack guns while riding in its transit system ([Angelo et al v. District of Columbia, no. 1:22-cv-01878](#)). While [their complaint](#) allows that certain "narrowly defined sensitive places" may be legitimately off-limits to guns, it disputes including buses and trains on that list. Meanwhile California Attorney General Rob Bonta [conceded that his State's "good](#)

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[cause” requirement](#) for gun carry will have to go. But he insists that the present law’s “assessment of dangerousness”, which draws from “arrests, convictions, restraining orders” and such, will remain in place. Indeed, the law may even be strengthened! [A State Senate bill](#) amending it is in the works.

So far, the core qualifications that gun buyers and possessors must meet don’t seem at risk. Most special requirements such as licensing and training and the places where guns can’t be taken also seem safe. So for jurisdictions that wish to tinker, a few possibilities remain. Meanwhile, ATF and its law enforcement partners will hopefully continue vigorously enforcing the laws that exist. Their efforts, along with whatever tweaks our system may in time accommodate, will have to carry us through the many massacres that regrettably lie ahead.