

NEW YORK'S GUN LAWS

UNIVERSAL BACKGROUND CHECKS

What is a background check?

A Background Check is an external history search imposed on an individual trying to purchase a firearm. The search is conducted by the Federal Bureau of Investigation (FBI) through the National Instant Criminal Background Check System (NICS).

New York is one of the 31 states that fully uses the NICS service. The NICS check informs the seller whether the buyer has a criminal record or any other reason which could disqualify the buyer from purchasing the firearm. For more information on background checks, visit the [Federal Bureau of Investigation](#).

Who is prohibited by a NICS check, and what is the background check procedure?

To initiate the NICS process, the seller of the firearm, or, the Federal Firearms Licensee (FFL), requires the buyer to complete a Firearm Transaction Record (ATF Form 4473). After the completion of the ATF Form 4473, the seller then transfers the information to the NICS system for instant processing. During this processing, the FFL will learn whether the buyer has a criminal record or any other history that prohibits the buyer from



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purchasing a firearm in accordance with 18 U.S.C. § 922(g), (n).

Any record appearing in the NICS system disqualifies the buyer from purchasing a firearm. In addition to a criminal history, individuals having been adjudicated for a mental disability or having been committed to a mental institution are also prohibited from purchasing a firearm. Below are a few examples of persons prohibited from purchasing firearms:

- Persons who are fugitives from justice
- Persons who have been dishonorably discharged from the United States Armed Forces
- Persons who are unlawfully in the United States
- Persons who have been convicted in court of a crime punishable by imprisonment for more than one year
- Persons who have been convicted for a state offense classified as a misdemeanor punishable by more than two years

For an entire list of categories of persons prohibited from purchasing firearms, visit the Federal Bureau of Investigation.

There are two ways a buyer can contest the denial by the NICS system. First, the buyer can contact the Office of NICS Appeals if the buyer believes that their inclusion in the NICS system is a result of a factual error. Secondly, if the NICS system denied the buyer due to an involuntary commitment to a mental institution, the buyer can initiate a Certificate of Relief From Disabilities application. The completion and approval of this application does not automatically qualify the buyer to purchase a firearm; rather, the successful submission of this certificate only removes the disability based on the psychiatric commitment in the State of New York. For more information on the appeals process, visit the [Office of NICS Appeals & SAFE Act](#).

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Background Check Requirements for Ammunition Sales or Transfers

The NY Safe Act of 2013 requires retail sellers to run background checks on ammunition sales. However, this requirement has been suspended for the past eight years as it will not be effective until New York State's ammunition database is developed and initiated by the New York State Police. Once set up, this database must be periodically checked by the Division of Criminal Justice Services against criminal convictions, mental health and all other records which could prohibit the sale of ammunition. Additionally, retail sellers must record the transaction details in a record book, including the date, name, age, occupation, residence and the amount of ammunition purchased by the buyer.

Gun Shows and Background Checks

As defined by the State of New York, a “gun show” means “an event sponsored, whether for profit or not, by an individual, national, state or local organization, association or other entity devoted to the collection, competitive use, sporting use, or any other legal use of firearms, rifles or shotguns, or an event at which:

- twenty percent or more of the total number of exhibitors are firearm exhibitors;
- ten or more firearm exhibitors are participating;
- a total of twenty-five or more pistols or revolvers are offered for sale or transfer; or
- a total of fifty or more firearms, rifles or shotguns are offered for sale or transfer.

The term gun show shall include any building, structure or facility where

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firearms, rifles or shotguns are offered for sale or transfer and any grounds used in connection with the event.” N.Y. Gen. Bus. Law § 895(1).

During the event, a NICS background check must be conducted on all firearm sales or transfers. When entering the event, signs must be posted at all entrances notifying buyers of this requirement. N.Y. Gen. Bus. Law § 896(1)(a).

Any person who knowingly violates the gun show laws of the State of New York is guilty of a class A misdemeanor punishable as described in the New York penal law. N.Y. Gen. Bus. Law § 897(3). See N.Y. Penal Law § 55.

Straw Purchasers

“Straw purchasing” is a sale in which a person legally passes a background check and purchases a firearm on behalf of a prohibited person who would not have been able to legally pass a background check themselves. For more information on straw purchasing and unlawful private sales, see N.Y. Penal Law § 265.17(2).

Criminal Penalties for Illegal Trafficking in New York State

New York State has an extensive list of criminal penalties for illegal gun trafficking. Below are the penalties for the criminal sale of a firearm:

- Criminal sale of a firearm in the first degree is a class B felony. N.Y. Penal Law § 265.13.
- Criminal sale of a firearm in the second degree is a class C felony. N.Y. Penal Law § 265.12.

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- Criminal sale of a firearm in the third degree is a class B felony. N.Y. Penal Law § 265.11.
- For a list of the criminal penalties for illegal trafficking in New York State, visit [N.Y. Penal Law § 265](#). For more information on the classifications of criminal penalties, visit [N.Y. Penal Law § 55](#).