

**Guns
Q&A
March 15, 2000**

Q: It has been reported that the House Republican Leadership is considering stripping the controversial gun provisions from the stalled Juvenile Justice bill. Since the gun show provision is the most contentious issue, would you be willing to compromise and sign a bill that includes some, but not all, of your gun proposals?

A: Congress should pass the common sense measures passed by the Senate. We should do everything in our power to keep guns out of the hands of criminals and children. As the President has said before, passing common sense gun legislation is not about politics – it is about public safety. We are not going to speculate on the particulars of a proposal we haven't seen yet. However, you can be certain that the President will not sign a bill that fails to address the most pressing crime problem facing our youth today – gun violence. Each day, another dozen children are killed by gunfire. The latest string of tragic shooting deaths these past weeks are an all too painful reminder that we must do more to keep guns out of the wrong hands. When six-year-olds start killing six-year-olds with guns they find under blankets, Congress should respond to the American people – not the gun lobby. There is no reason why this Congress shouldn't pass meaningful gun safety legislation that can keep our families safer and save lives without delay.

Q: Is there any chance of getting your plan through Congress this year?

A: It's always tough to break the stranglehold the gun lobby has on the leaders of this Congress. But we've taken on the gun lobby before and won – and it has made a tremendous difference for the American people. The Brady Law is a great example. People thought it would never pass. But we passed it, and it has prevented gun sales to over half a million felons, fugitives and domestic abusers. So the President is willing to take the gun lobby on to pass common-sense gun legislation this year.

Just weeks ago, the President met with Congressional leaders to help them break the logjam on this stalled legislation and encourage members to meet, work out their differences and pass this lifesaving legislation. In response to the President good faith efforts, it is our hope that Congress will stand up to the gun lobby and pass the motion being offered by Rep. Zoe Lofgren on the House floor today to have the conferees meet and get to work on passing this common sense gun safety legislation within two weeks, it's a first step. When six-year-olds start killing six-year-olds with firearms, Congress needs to respond to the will of the American people to do something about gun violence, not the NRA.

DRAFT

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ERIC LIU

SUBJECT: GUN MEETING WITH CONFERENCE LEADERS

This memo is to provide background on proposed gun legislation that has remained stalled in the conference committee for the juvenile crime bill since last summer, as well as proposed compromises floated by House Republican and Democratic Committee Leadership.

SUMMARY OF SENATE AND HOUSE GUN PROVISIONS

Senate Gun Provisions

As you know, the Senate passed a number of Administration gun provisions to its juvenile crime legislation. Key provisions include:

Requiring background checks at gun shows. In general, the Lautenberg amendment requires all unlicensed sellers at gun shows to run sales through a federally-licensed firearms dealer (FFL) at the show. As provided under current law, most checks would be completed instantly, but law enforcement would have up to three business days to complete checks if there were any questions regarding a purchaser's prohibited status. Since many guns sold at gun shows are used firearms (which are difficult for law enforcement to trace), FFLs would be required to submit limited gun tracing information on all firearms sold at gun shows to the Secretary of the Treasury. This information would specifically exclude information on the purchaser, but would allow crime gun tracing, a top priority for the Treasury Department. An event where 50 or more firearms are sold would qualify as a gun show.

Requiring child safety devices for handguns. The Senate passed a Boxer-Kohl amendment to require all FFLs to provide a child safety device, such as a trigger lock or a safe storage device, with every handgun they sell.

Banning the importation of large capacity ammunition magazines. The Senate passed a Feinstein amendment to ban the import of all large capacity ammunition clips – ending the grandfather established in the assault weapons ban for imported clips manufactured prior to 1994. Domestically manufactured pre-ban clips would continue to be exempted.

Banning violent juveniles from owning guns. The Senate bill contains a version of our "Juvenile Brady" provision to bar juveniles found guilty in juvenile court for serious violent offenses from owning guns as adults. The provision is significantly weaker than the Administration proposal because it would apply only to adjudications occurring after the Attorney General certifies that juvenile records are "routinely available" to the NICS – an

eventuality far into the future.

Juvenile assault weapons ban. The Senate passed a provision to bar juveniles from owning semiautomatic assault rifles and large capacity ammunition clips. The Administration proposed a stronger version that would raise the age of possession of such firearms as well as handguns to 21.

Consistent with the Republicans' message of tougher enforcement, the Senate bill also includes a Project Exile-type provision. The provision, Criminal Use of Firearms by Felons (CUFF), requires the establishment of agreements between the Justice Department and state and local law enforcement for the referral of gun offenders for federal prosecution. The Senate bill also requires that U.S. Attorneys charge referred individuals with the most serious federal firearms offense possible. The Justice Department has serious concerns with the proposal, which could require them to assume all gun violations for prosecution in federal districts, and would mandate prosecutorial charging decisions by U.S. Attorneys. The Department instead would embrace required coordination with state and local authorities in the prosecution of gun offenders, with federal prosecutions focused on the most dangerous violent offenders.

The Senate passed a number of other gun provisions including penalty increases, many of which were adopted in similar fashion by the House. Those provisions are detailed below.

B. House Gun Provisions

As you recall, the House ultimately defeated a gun bill that included a flawed gun show provision and some other gun provisions similar to those the Senate passed. In addition, the House adopted a juvenile crime bill contains a number of additional firearms provisions that were included in the underlying bill. Those provisions include: requiring background checks for the purchase of explosives; expanding the list of individuals prohibited from possessing explosives (including youth under 21); increasing from 37 to 75 the number of cities participating in the Administration's youth crime gun tracing initiative; and raising penalties for licensed and unlicensed dealers who illegally sell firearms, illegally traffic over 50 firearms, or illegally transfer firearms to juveniles and for offenses for stolen guns. We support these provisions.

Similar to the Senate, the House bill authorizes \$50 million for the "Armed Criminal Apprehension Program" intended to increase federal prosecution of gun crimes. The Justice Department has similar concerns with this program as they do with the Senate CUFF provisions. The bill also establishes new mandatory minimum sentences for youth-related gun crimes -- including tough penalties for adults who illegally transfer guns to juveniles that are later used in a school zone or to commit a violent crime.

SUMMARY OF PROPOSED COMPROMISES

It is possible that many of the Senate and House gun proposals could be accepted by the House Republicans. The key sticking point, however, is the gun show proposal. To date, the conferees

on the juvenile crime bill have officially only met once, and compromise discussions on gun shows have been primarily limited to Chairman Hyde and Representative Conyers. Chairman Hatch and Senator Leahy had remained quiet until two weeks ago when Hatch floated the idea of dropping all gun provisions from the conference in order to get a vote on the underlying juvenile crime legislation. This idea was reportedly rejected by House and Senate leaders.

The starting point for House Republican leaders has been the Dingell amendment. The Dingell amendment would have required all background checks at gun shows to be completed within 24 hours, weakening current law for FFLs. The Dingell amendment does not contain any provisions, such as the Lautenberg tracing records requirement to assist law enforcement with tracing crime guns purchased at gun shows. Additionally, the Dingell amendment contained troubling language that would have weakened current laws regulating the interstate shipment of firearms, and that would have required the FBI to immediately destroy records of NICS transactions. Currently, the FBI maintains such records for up to 180 days to conduct audits to ensure that the NICS is not used for unauthorized or illegal purposes, but has recently proposed limiting this retention period to 90 days instead. The retention of records for at least 90 days is a priority for the Department.

Hyde proposal

Between last September through November, Hyde floated gun show compromises to Conyers that indicated some movement, but fell short of Lautenberg in a number of ways. This provides a summary of the last version of Hyde's compromise:

Time for background checks. Under Hyde, background checks at gun shows would be completed within 24 hours unless more time was needed to determine the disposition of arrest records, in which case up to three business days would be permitted. While arrest dispositions comprise the vast majority of cases where law enforcement needs the three days, the Hyde proposal would not permit additional time for completing inquiries regarding other records related to federal prohibitions such as restraining orders, mental health, or other restrictions.

Instant check registrants. The Hyde proposal would create a new bureaucracy of "instant check registrants," non-FFLs who could get access to the NICS and run background checks at gun shows but would be immunized from liability from wrongdoing. The limited registrant recordkeeping would have no law enforcement utility.

Tracing records. The Hyde proposal entirely eliminates the Lautenberg tracing record provisions which would assist law enforcement with tracing guns sold at gun shows. As the Lautenberg provision is the only provision that would assist law enforcement with tracing crime guns sold at gun shows, this is a critical loophole.

Gun show definition. The proposed compromise limits the definition of gun shows only to events "fostered" for a purpose related to firearms – effectively exempting flea markets, swap meets and other similar events from the background check requirements.

Roving vendors. The proposal would create a “roving vendor” loophole by only regulating vendors who sell at a fixed location at a gun show. Roving vendors are a common sight at gun shows.

Conyers’ Compromise

Representative Conyers provided a written counter-offer to the Hyde proposal. First, Conyers would have accepted the Hyde “24 -hour” proposal but would add restraining orders, mental health records, and all other restrictions to the three business days allowed for law enforcement to complete checks (essentially conforming the provision to current law). Second, he would have permitted the creation of “instant check registrants” to conduct checks, but required them to be former law enforcement officers. With regard to the gun show definition, Conyers would be willing to increase the number of gun vendors required to classify an event as a gun show to five (Lautenberg would not require any minimum number), but would keep Lautenberg’s requirement that at least 50 firearms be exhibited for sale or transfer. Conyers has also considered compromising on tracing records by requiring that the Lautenberg tracing records data to be sent to gun manufacturers, instead of Treasury/ATF. Hyde has effectively rejected Conyers’ counteroffer.

Potential Areas for Agreement

With regard to gun shows, the Democrats want to stay strongly united behind the Lautenberg-passed provision, or its functional equivalent. In particular, they will be sensitive to any changes that would shorten the amount of time permitted for checks at gun shows from what is currently permitted of FFLs – up to 3 business days.

There has been considerable focus on the supposed “waiting periods” of the varying proposals: Dingell’s 24 hours and Lautenberg’s 3 business days. But it is critical to remember that these are not true waiting periods but are instead time limits for law enforcement to complete checks. In fact, the full 3 days are rarely needed since the vast majority of checks – 95 percent—are completed by the NICS within 2 hours, and most (73 percent) are completed within minutes. More importantly, there is a strong law enforcement rationale for keeping the 3 business day time limit permitted under current law intact: individuals whose checks are not completed within 24 hours are almost 20 times more likely to be prohibited under the law from owning a gun than the average prospective buyer. Moreover, allowing at least 3 business days for law enforcement is consistent with our position to create an actual mandatory Brady waiting period of 3 days for handgun sales.

Aside from gun shows, the Republicans would be likely to agree to certain gun provisions. Based on previous votes and recent comments, they should be willing to support provisions on child safety locks, banning violent juveniles from owning guns, and banning juveniles from assault weapons possession. They also may be willing to support the import ban on large capacity ammunition clips, although Hyde compromise language on this provision maintains a flawed definition which would render the ban a virtual nullity. They will also probably insist on passing some form of “Project Exile” authorization.

During the meeting, you should also take the opportunity to push the Administration's Child Access Prevention (CAP) proposal, originally proposed in our omnibus gun bill last year. The proposal would impose federal felony penalties on adults who knowingly or recklessly allow a child to have unlawful access to an unlocked gun that is later used to cause death or serious injury. Such adults could be imprisoned for up to three years, fined up to \$250,000, or both. Sixteen states already have similar laws. While neither the House nor the Senate voted on this proposal, the Genesee County Prosecutor handling the recent Michigan shooting, Arthur Busch, and the NRA recently voiced support for our proposal.

I. Overview of Senate and House Gun Provisions

A. Senate Provisions

As you know, the Senate passed a number of Administration gun provisions as part of its juvenile crime legislation, and we have used these provisions as a benchmark:

Requiring background checks at gun shows. The Lautenberg amendment requires all unlicensed sellers at gun shows to run sales through a federally-licensed firearms dealer (FFL) at the show. Most checks would be completed instantly, but law enforcement would have up to three business days to complete checks if any questions arose regarding a purchaser's prohibited status. Since many guns sold at gun shows are used (and thus difficult for law enforcement to trace), FFLs would be required to submit to Treasury limited gun tracing information on all firearms sold at gun shows. Any event where 50 or more firearms are sold would qualify as a gun show.

Requiring child safety devices for handguns. The Senate passed a Boxer-Kohl amendment to require all FFLs to provide a child safety device, such as a trigger lock, with every handgun sold.

Banning the importation of large capacity ammunition magazines. The Senate passed a Feinstein amendment to ban the import of all large capacity ammunition clips – ending the grandfather clause in the assault weapons ban for imported clips manufactured prior to 1994.

Banning violent juveniles from owning guns. The Senate bill contains a provision to bar juveniles guilty of serious violent offenses from owning guns as adults. This provision is significantly weaker than our proposal because it would apply only when the Attorney General is able to certify that juvenile records are “routinely available” to the NICS, which they are not.

Juvenile assault weapons ban. The Senate bill bars juveniles from owning semiautomatic assault rifles and large capacity ammunition clips. The Administration proposed a stronger version that would raise the age of possession of such firearms, as well as handguns, to 21.

Enforcement. The Senate bill also includes a Project Exile-type provision that requires the establishment of agreements between the Justice Department and state and local law enforcement on the referral of gun offenders for federal prosecution. It also requires that U.S. Attorneys charge referred individuals with the most serious federal firearms offenses possible. Justice has concerns with the proposal, which could federalize all gun violations in federal districts, and would infringe upon the prosecutorial discretion of U.S. Attorneys.

B. House Gun Provisions

As you recall, the House defeated a gun bill that included a flawed gun show provision and several other gun provisions similar to those the Senate passed. The House did, however, adopt a juvenile crime bill containing a number of additional firearms provisions. Those include: requiring background checks for the purchase of explosives; expanding the list of individuals prohibited from possessing explosives; increasing the number of cities participating in the Administration's youth crime gun tracing initiative; and raising penalties for licensed and

unlicensed dealers who illegally sell firearms, illegally traffic over 50 firearms, or illegally transfer firearms to juveniles and for offenses for stolen guns.

II. Overview of Proposed Compromises

To date, the conferees on the juvenile crime bill have met officially only once, and compromise discussions on gun shows have mainly been limited to Hyde and Conyers. Hatch and Leahy had remained quiet until two weeks ago when Hatch reportedly suggested dropping all gun provisions to get a vote on the underlying juvenile crime legislation. This idea was rejected by House and Senate leaders alike.

It is possible that House Republicans could accept many of the proposals outlined above. The key sticking point, however, remains the gun show proposal. The starting point for House GOP leaders has been the Dingell amendment, which would have required all gun show background checks to be completed within 24 hours. Unlike Lautenberg, Dingell did not have any provisions to help law enforcement trace crime guns purchased at gun shows. It also would have weakened current law on interstate shipment of firearms, and would have required FBI to immediately destroy records of NICS transactions. (Currently, the FBI maintains such records for up to 180 days to help ensure that the NICS is not used for unauthorized or illegal purposes). Last fall, Hyde and Conyers traded compromise proposals, but made no progress toward agreement.

There has been considerable focus on the so-called "waiting periods" of the varying proposals: Dingell's 24 hours versus Lautenberg's three business days. But it is critical to remember that these are not waiting periods but are in fact time limits for law enforcement to complete checks. In fact, the full three days are rarely needed since 95 percent of checks are completed by the NICS within two hours, and most 73 percent within minutes. More importantly, there is a strong law enforcement rationale for preserving the three business day time limit: individuals whose checks are not completed within 24 hours are almost 20 times more likely to be prohibited from owning a gun than the average buyer

A. Hyde Compromise Proposal

Between September and November of last year, Hyde floated gun show compromises to Conyers that indicated some movement, but fell short of Lautenberg in a number of ways. This is a summary of the last version of Hyde's gun show compromise:

Time for background checks. Under Hyde's proposal, background checks at gun shows would be completed within 24 hours unless more time were needed to determine the disposition of arrest records or other "official" records, in which case up to three business days would be permitted. This change has major implications. Under current law, FFLs who sell at gun shows must conduct background checks not only to investigate arrest dispositions but also mental health histories and restraining orders. Under Hyde's proposal, restraining orders not yet finalized or communications between courts and law enforcement about mentally disturbed individuals -- as well as other "non-official" records -- could not be used to trigger an extra three business days for review. This essentially creates a new loophole for "non-official" records.

Instant check registrants. The Hyde proposal would create a new bureaucracy of “instant check registrants,” non-FFLs with access to the NICS who could run background checks at gun shows but be immunized from liability. In addition, it would impose limited recordkeeping requirements on registrants that would have no enforcement utility.

Tracing records. The Hyde proposal entirely eliminates the Lautenberg tracing record provisions. Since the Lautenberg provision is the only provision that would assist law enforcement with tracing crime guns sold at gun shows, this would be a critical weakening.

Gun show definition. The proposed compromise limits the definition of gun shows only to events “fostered” for a purpose related to firearms – effectively exempting flea markets, swap meets and other similar events from the background check requirements.

Roving vendors. The proposal would create a loophole by regulating only vendors who sell at a fixed location at a gun show. Roving vendors are a common presence at gun shows.

B. Conyers Counteroffer

Representative Conyers last fall provided a written counteroffer. First, Conyers would accept the Hyde “24 -hour” proposal but would add restraining orders, mental health records, and all other restricted categories to the three business days allowed for law enforcement to complete checks (essentially conforming the provision to current law). Second, he would allow “instant check registrants” to conduct checks, but require them to be former law enforcement officers. With regard to the gun show definition, Conyers would be willing to increase to five the number of gun vendors needed to make an event a gun show (Lautenberg would not require any minimum number), but would keep Lautenberg’s requirement that at least 50 firearms be exhibited for sale or transfer. Conyers also considered compromising on tracing records by requiring that the Lautenberg tracing records data to be sent to gun manufacturers, instead of Treasury/ATF. Hyde did not accept Conyers’ counteroffer or engage further.