



Testimony before the 2022 Public Protection Joint Legislative Budget Hearings of
The Brady Campaign to Prevent Gun Violence

Brady, on behalf of its 60,000 members and supporters in the state of New York, thanks the members of the Joint Budget Subcommittee on Public Protection for the opportunity to submit written testimony regarding gun violence prevention initiatives included in the 2022-2023 Fiscal Year executive budget proposal and our 2022 legislative priorities. Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America's gun violence epidemic. Our organization today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence.

Brady applauds the thoughtful work and legislative efforts of this body to prevent and end gun violence throughout the state. Tragically, despite these efforts and some of the strongest gun laws in the nation, over 5,800 New Yorkers have died from gun violence over the last five years, and over 2,500 of those deaths were firearm homicides.¹ In New York City alone, homicides once again increased in 2021, outpacing pre-pandemic levels by 52 percent.² The dual epidemics of gun violence and COVID-19 require an increase in investment in public health strategies to meaningfully tackle these crises.

The Brady Campaign to Prevent Gun Violence wishes to convey support for three main policies to be included in the Fiscal Year 2023 budget: 1. The establishment of an office of gun violence

¹ CDC WISQARS, 2013-2019, the most recent five years of available data.

² Thomas Tracy, "NYC Homicide and Shooting Surge Continue in Pandemic-Stricken 2021," New York Daily News, Jan. 1, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-nyc-ends-2021-with-uptick-in-homicides-shootings-20220101-mhzph6fdlje4daawc3kjuqnr4-story.html>.

prevention³; 2. Funding to implement A.837, a regulatory and inspection process for licensed gun dealer security and training protocols to decrease firearms theft and sales to straw purchasers/gun traffickers; and 3. Necessary appropriations for S.2844/A.930 to authorize the New York State Police Department to complete NICS background checks for firearms purchases and implement a system responsible for conducting these checks.

Promulgate the Office of Gun Violence Prevention

While not many details have been released, Brady supports the concept of a centralized Office of Gun Violence Prevention in the state of New York to coordinate a strategic response to emerging trends in gun violence. Approaching the complex epidemic of gun violence from a public health lens - through data collection and analysis - is critical to reducing the rates of shootings and homicides through the state. This office would help accomplish that goal by using proven strategies like data analysis to deploy resources to areas experiencing highest rates of gun violence. Working in tandem with other agencies, educational institutions, healthcare providers, law enforcement, and violence prevention and intervention organizations can help ensure the Office of Gun Violence Prevention optimizes the best tools, data, and policies to bring New York's gun violence epidemic to an end.

Implementation of Gun Dealer Regulation and Inspection of Business Practices/Security Protocols (A.837)

This legislation will bring much-needed reforms to gun dealers in the state of New York. According to the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF") there are currently over 2,200 federally licensed firearms dealers ("FFLs") operating in New York.⁴ Nationwide, less than 5 percent of gun dealers are inspected yearly by the ATF, despite the fact that FFLs are the number one line of defense to prevent prohibited individuals from obtaining firearms and to prevent the diversion of firearms to the illegal market. This legislation would create a process by which FFLs would be regulated and inspected by New York State to ensure they are following a comprehensive set of responsible business practices and have implemented common sense security measures to prevent the diversion of legal firearms to the illegal firearms marketplace.

While the ATF is the sole federal agency with the authority to oversee FFLs in the United States, the agency is systematically underfunded and legally restricted in its inspection authority, creating a dangerous regulatory gap through which thousands of firearms are stolen, sold to prohibited individuals, disappear off the books, or take various other paths to become trafficked firearms. A 2013 report by the Department of Justice Office of Inspector General found that dealers are

³ As included in the FY 2023 Executive Budget Briefing Book, page 98, <https://www.budget.ny.gov/pubs/archive/fy23/ex/book/briefingbook.pdf>.

⁴ U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives, Federal Firearms Listings, (input 2021 + Dec + New York, to receive a total of 2,209 current licensees), data available at <https://www.atf.gov/firearms/listing-federal-firearms-licensees>.

typically inspected an average of only once every 11 years.⁵ Moreover, when inspections do occur and violations are found, little or no corrective action is taken. Even in cases where there are indications that FFLs have repeatedly violated federal law, a comprehensive analysis by the *New York Times* showed that recommended license revocations or major actions were repeatedly downgraded, allowing dealers to continue to disregard federal law for years at a time.⁶

These regulatory failures put all New Yorkers at risk and speak to the urgent need for New York to require that FFLs within their state boundaries engage in safe business practices and institute comprehensive security measures that prevent guns from being diverted to the criminal market through straw purchases, trafficking, firearms loss, or theft. Codifying these recognized practices and minimum security standards provides needed incentives for gun dealers to reduce trafficking and sales of firearms that disproportionately impacts Black communities. As part of a comprehensive approach to gun violence prevention, there must be a focus on the upstream sources of crime guns infiltrating these communities. As Dr. Shani Buggs from the University of California Gun Violence Research Center notes: “The diversion of firearms to the illicit market has the greatest impact on Black and Brown communities across the U.S. This impact has been felt among the youth and families in those communities for decades. According to CDC data, Black males ages 15-34 die by gun violence at a rate that is at least 16 times of the overall U.S. population and have since the 1990s. This tragic and preventable loss of thousands of lives each year has continued for over 20 years.”

Taking needed steps in adopting this legislation and fully funding the regulation, regular inspection, and accountability measures for FFLs in New York will have an outsized impact on the crime guns flooding into communities in the state. According to Brady’s Gun Store Transparency Project, there are at least 23 gun stores that were cited during ATF inspections for violations of federal law - all but two received just a warning letter or warning conference, and were allowed to continue operating despite findings of major violations including selling to individuals who were prohibited from legally purchasing firearms, and transfers to people who did not indicate they were the actual buyer.⁷ It’s impossible to overstate the potential risks and consequences of each of these firearms flowing into the community.

The required practices, training, and security standards in this legislation coupled with the meaningful oversight and mechanisms of accountability of gun dealers in the state of New York will cut down on the number of lives lost to a bullet or trauma of living in a community impacted by gun violence.

⁵ U.S. Department of Justice Office of the Inspector General Evaluation and Inspections Division, “Review of ATF’s Federal Firearms Licensee Inspection Program,” April 2013, <https://oig.justice.gov/reports/2013/e1305.pdf>.

⁶ Ali Watkins, “When Guns Are Sold Illegally, ATF is Lenient on Punishment,” *NY Times*, June 3, 2018, <https://www.nytimes.com/2018/06/03/us/atf-gun-store-violations.html>.

⁷ Brady, Gun Store Transparency Project, <https://gunstoretransparency.org/?state=NY&table-page=1>.

Appropriations to Support NY State Police Conducting Firearms Background Checks (S.2844/A.930)

Legislation to implement a system under which the New York State Police Department would be responsible for conducting firearms background checks would help to ensure that background checks are being processed thoroughly and in a timely manner for potential purchases. This process would make New York what's known as a "point of contact" state, or one that conducts firearms background checks via state or local agencies. Currently, federally licensed gun stores contact the National Instant Criminal Background Check System ("NICS") while processing a firearms sales transaction to determine if a purchaser is eligible to purchase a firearm.⁸ Operated by the FBI, NICS currently provides full service to FFLs in 30 states and D.C., and partial service to seven other states.⁹ Thirteen states are point of contact states - these states have the distinct advantage of using their own records and databases in addition to the federal databases that are used for a standard NICS check. New York has the opportunity to join these states that conduct more thorough and complete background checks, a proven strategy to decrease gun violence.

Studies have proven that local-level background checks can substantially decrease both suicide and homicide rates – one survey found that local checks reduce suicide rate by 27% and homicide rate by 22% in adults.¹⁰ This is due to the fact that state and local databases include important records that are too frequently missing from or inaccessible to federal ones - things like "outstanding felony warrants, mental health records, domestic violence restraining orders, and final disposition records (records that show whether an arrest resulted in an acquittal or a conviction."¹¹ These records are critical to an accurate determination of whether an individual is prohibited from purchasing a firearm and are frequently readily available in state databases.

While multiple failures were together responsible for the shooting at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina in 2015, the criminal history records of the shooter was a complicating factor in the eventual firearms purchase. The FBI examiner who was assigned the shooter's background check had difficulty reaching the correct individuals at local law enforcement agencies to determine whether his criminal records were indeed disqualifying.¹² While the federal policy under which FFLs may transfer a firearm to a purchaser if they have not received a final determination within three business days was ultimately the reason why the shooter was able to leave the store with a firearm, the bureaucratic delays and confusion

⁸ FBI, National Instant Criminal Background Check System ("NICS"), <https://www.fbi.gov/services/cjis/nics>

⁹ *Id.*

¹⁰ Steven Sumner, Peter Layde, & Clare Guse, "Firearm Death Rates and Association with Level of Firearm Purchase Background Check," May 16, 2008, available at [https://www.ajpmonline.org/article/S0749-3797\(08\)00310-3/fulltext](https://www.ajpmonline.org/article/S0749-3797(08)00310-3/fulltext).

¹¹ Giffords, NICS & Reporting Procedures, https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/nics-reporting-procedures/#footnote_4_5613.

¹² Carrie Johnson, "FBI Says Background Check Error Let Charleston Shooting Suspect Buy Gun," NPR, July 10, 2015, available at <https://www.npr.org/sections/thetwo-way/2015/07/10/421789047/fbi-says-background-check-error-let-charleston-shooting-suspect-buy-gun>.

over records hindered the background check process from working properly. Local and state agencies are frequently able to access final court records and obtain clarity from courts or law enforcement where incomplete records do exist, thus ensuring that each background check provides the most accurate outcome possible.