



Written by [Raven Clabough](#) on April 4, 2013

ACLU Raises Concerns Over Sen. Reid's Gun Bill

Senator Harry Reid's (D-Nev.) gun control bill, which includes provisions to perform required universal background checks, has piqued the American Civil Liberties Union. The bill, which includes language from earlier bills introduced by Senators Chuck Schumer (D-N.Y.) and Barbara Boxer (D-Calif.), has been the subject of criticism from pro-gun advocates, but is also drawing fire from civil liberties groups who recognize the potential for privacy and civil liberties [violations](#).



In an exclusive [interview](#) with the *Daily Caller*, the ACLU's Chris Calabrese stated that the call for universal background checks "raises two significant concerns."

"The first is that it treats the records for private purchases very differently than purchases made through licensed sellers. Under existing law, most information regarding an approved purchase is destroyed within 24 hours when a licensed seller does a [National Instant Criminal Background Check System] check now," Calabrese said, "and almost all of it is destroyed within 90 days."

"Contrast this with what the existing [Reid] legislation says, which is simply that a record has to be kept of a private transfer," Calabrese continues, "and it doesn't have any of the protections that we have in current law for existing licensees."

Such provisions could lead to the creation of a new government database, observes Calabrese, databases which may potentially exist in violation of existing Privacy Act provisions.

"And they come to use databases for all sorts of different purposes," Calabrese said. "For example, the National Counterterrorism Center recently gave itself the authority to collect all kinds of existing federal databases and performed terrorism related searches regarding those databases. They essentially exempted themselves from a lot of existing Privacy Act protections.... So you just worry that you're going to see searches of the databases and an expansion for purposes that were not intended when the information was collected."

While Calabrese does not wish to go as far as call the legislation's record-keeping provision a "national gun registry," he contends that a gun registry may potentially be the next logical step.

The creation of a federal gun registry would be in direct violation of language found within the Public Law regarding the National Instant Criminal Background Check System, which states:

No department, agency, officer, or employee of the United States may —

- (1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or
- (2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons,



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prohibited by section 922(g) or (n) of title 18, United States Code, or State law, from receiving a firearm.

But Calabrese notes that Reid's bill could create a slippery slope.

"[U]nfortunately, we have seen in the past that the creation of these types of records leads sometimes to the creation of government databases and collections of personal information on all of us," Calabrese warned. "That's not an inevitable result, but we have seen that happen in the past, certainly."

Calabrese went on to address what the ACLU considers to be "privacy best practices" regarding the use of the databases.

"And existing law also bars the use of those records for other purposes," Calabrese said referring to the Privacy Act. "We think those are privacy best practices...[and] almost all government databases should operate that way." "Once you no longer need the information, you should destroy it. Information collected for one purpose shouldn't be used for another purpose," he said.

Unfortunately, Reid's gun bill does not include those "best practices."

The bill clearly indicates that records of American gun purchases will certainly be kept.

"Regulations ... shall include a provision requiring a record of transaction of any transfer that occurred between an unlicensed transferor and unlicensed transferee," the bill reads.

But Reid's bill does not specifically outline who would be responsible for maintaining the records of American gun purchases.

In addition to the record-keeping, the ACLU also raises concerns over the broad definition of the term "transfer" found within Reid's bill, which could complicate criminal law and inadvertently create criminals out of law-abiding Americans.

Calabrese told the *Daily Caller*, "They don't intend to transfer a gun or they don't think that's what they're doing, but under the law they can be defined as making a transfer. We think it's important that anything that is tied to a criminal sanction be easy to understand and avoid allowing too much prosecutorial discretion."

"For example, different gun ranges are treated differently," Calabrese explains. "You're firing a firearm in one geographic location, you're OK, but in another, you're not. And those kind of things, it's going to be hard for your average consumer to really internalize and figure out the difference. Criminal sanctions shouldn't hinge on those kinds of differences," he said.

Further concerns are raised by the inclusion of a provision in Reid's bill taken from Sen. Boxer's legislation that includes school tip lines for the reporting of "potentially dangerous students."

The provision does not include proper guidance for who should be included and how the system should be operated in such a way as to not violate privacy rights or civil liberties.

Calabrese opines, "We think we already have a phone number for reporting dangerous situations — it's called 9-1-1."

What's worse is that Reid's bill, which commits privacy and civil rights violations in the name of gun safety, may in fact make it easier for criminals to obtain guns, thereby creating unintended consequences and undermining the bill's very purpose.

The Heritage Foundation notes that Reid's bill mandates that the Attorney General publish on publicly



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accessible websites a report that ranks states by the number of records submitted by each state.

Simply stated, the Attorney General will be publishing an annual list of states that are failing to adequately submit their criminal records to the NICS, a convenient list for a criminal who is interested in purchasing a gun.

The Blaze [concludes](#) that a criminal can simply “peruse the Attorney General’s list of states to know whether he has a good chance in his state of passing a background check so that he can buy a firearm in violation of federal law.”

In other words, the American people are being asked to allow their civil rights to be infringed upon for the sake of public safety, even as public safety is being undermined by the bill intended to improve public safety.

Photo of Sen. Harry Reid (D-Nev.): AP Images



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