



# Grass Roots North Carolina

*Armatissimi e liberissimi*

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To: Eddie Caldwell, Executive Director, North Carolina Sheriffs' Association  
From: F. Paul Valone, President, Grass Roots North Carolina  
Re: NCSA position on House Bill 562, "Second Amendment Affirmation Act"

Dear Eddie:

Once again, we seem to be at loggerheads over the archaic, Jim crow-era pistol purchase law – a law which still enables sheriffs to reject applicants whom they arbitrarily decide are not, as the statute states, of "good moral character." In 2013, you objected to flaws in North Carolina reporting of involuntary commitments to the National Instant Background Check System (NICS) as your rationale for opposing the law. But your objections seem to be a moving target: Once that was addressed, you now point to what you claim is superiority of sheriff background checks over the FBI's NICS.

If superiority of sheriff background checks over NICS is truly your objection, below I offer an alternative which satisfies your needs. Unfortunately, however, I suspect your rationale camouflages sheriff's real objectives: Money and the power to deny handgun purchases for any reason they wish. Accordingly, I expect you to reject my proposal. Please feel free to prove me wrong. Meanwhile, please allow me to address your claims.

**NCSA claim:** "A NICS check does not access information about many crimes and conditions that, under federal law, prohibit a person from possessing firearms, whereas this information is available to a sheriff when evaluating an applicant for a pistol purchase permit."

**Truth:** According to the Federal Bureau of Investigation<sup>1</sup>, the National Instant Background Check System (NICS) is good enough for 36 U.S. states and territories to use it as the single and only point of contact for gun sales. Why is it good enough for states with stringent gun laws such as New York and Massachusetts, but not for North Carolina?

**NCSA claim:** "Local sheriffs currently issue pistol purchase permits, conduct background checks, and have access to all of the data and information needed to make a determination about whether or not an individual is prohibited from possessing firearms under the federal Gun Control Act. Sheriffs also have access to additional information from the sheriff's office's own records, calls for law enforcement service, transportation of mental commitments, court records, and State criminal history records. The pistol purchase permitting process in North Carolina is currently far superior to a NICS check and provides increased public safety for our citizens."

**Truth:** Much of this "information" used by sheriffs to deny issuing permits is not disqualifying under federal law and is, instead, arbitrary and often unfair. For decades, sheriffs have approved or denied permits as political favors, or based on personal relationships and even the race of the applicant. Consider the following small sample of abuses experienced by purchase permit applicants:

- Under Sheriff [Chris Shew](#), a Wilkes County citizen, now age 45, is being denied pistol purchase permits due to an "Other than Honorable" (not "Dishonorable") discharge from the military at the age of 21 for the "crime" of trying to find his errant wife.
- Under Sheriff [Ed McMahon](#), a law-abiding New Hanover County woman discovered from Identity Guard that it listed her as having a New Hanover County criminal record. Her inquiry revealed that hundreds of New Hanover residents were listed as having criminal records because they had received criminal background checks conducted not by the FBI, but by the New Hanover County Sheriff.
- Under [Sheriff BJ Barnes](#), many Guilford County residents denied purchase permits due to pending (and not even overdue) traffic tickets. (This sheriff has also illegally "held" a concealed handgun permit pending disposition of a fishing violation – an infraction not disqualifying for a permit).

**NCSA claim:** "Because of the limited criminal history information provided to NICS and the limited involuntary mental health commitment information provided to NICS, there are numerous categories of persons prohibited by federal law from possessing firearms who will not be discovered if only a NICS check is performed."

**Truth:** Since 2013, clerks of superior court have been required to report all involuntary commitments to NICS within 48 hours. Until 2013, North Carolina law only allowed reporting to NICS those individuals who were reminded to *inpatient* treatment, since those remanded to *outpatient* treatment were, under statutes, declared not a danger to themselves or others, and

therefore not disqualified from owning firearms under federal law. Unfortunately, within House Bill 937 a change was made to include them in reporting to NICS, meaning we are now *over*-reporting to NICS. Under federal law, the only persons disqualified from owning firearms are those convicted of crimes punishable by more than one year in prison, meaning few if any disqualified individuals go unreported. If NICS is really as inadequate as the NCSA claims, why do sheriffs have no problem with the fact that rifles and shotguns are sold by dealers with only a NICS check?

**NCSA claim:** “Repealing the requirement of a pistol purchase permit in North Carolina would severely and adversely impact public safety because the transfer of handguns between private individuals would no longer require a NICS check or any other background check.”

**Truth:** The supposed benefit of requiring purchase permits for private handgun transactions is illusory, since most citizens are unaware of the requirement. Because the system is not only unknown but completely unenforceable, few private transfers presently use purchase permits. Moreover, purchase permits are only required for handguns, not for rifles and shotguns. Yet there is no evidence suggesting that rifles and shotguns in North Carolina are used disproportionately in crimes.

- The claim by Michael Bloomberg’s many shell organizations (e.g. “Moms Demand Action,” “Moms Rising,” “Law Center to Prevent Gun Violence,” “Everytown for Gun Safety” and

- “Mayors Against Illegal Guns”) that “40 percent of gun sales are private transfers” has been disproven as outdated and based on false assumptions. According to Phil Cook and Jens Ludwig, the authors of the study in question: “We’ve been following the give-and-take with some interest because our research is the original source of that 40-percent statistic. Our views may come as a surprise: First, we don’t know the current percentage — nor does anyone else.”

**NCSA claim:** “Under North Carolina’s current pistol purchase permit system, sheriffs have access to and can research the following databases which would disclose all of the above referenced data that is missing from NICS.

1. “National Crime Information Center (NCIC) records.
2. State Bureau of Investigation (SBI) criminal records.
3. Division of Motor Vehicles (DMV) records.
4. Involuntary commitment records and records of incompetency.
5. Administrative Office of the Courts (AOC) criminal records (which include all felonies and misdemeanors).
6. National Instant Criminal Background Check System (NICS).
7. Sheriff’s office’s own records, such as calls for service and transportation of mental commitments.”

**Truth:** Ignoring for a moment that much of the data NCSA claims is “missing” from NICS is not actually disqualifying for gun ownership under federal law, the reality is that sheriffs have neither the time nor resources to check all of the above sources for applicants. In the vast majority of cases, they use only the NICS check they now claim is inadequate.

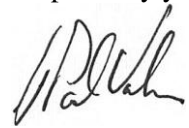
If, in fact, the NCSA is solely concerned about the quality of background checks provided by NICS, Grass Roots North Carolina has an offer: For present purposes, we will accept continuation of the pistol purchase permit system, provided:

1. The arbitrary “good moral character” requirement is removed from G.S. 14-404(a)(2) and all related statutes;
2. Sheriffs be required to check all seven sources listed by the NCSA above; and
3. The applicable background check for a purchase permit is conducted in the same maximum period of time (14 days) as currently required in G.S. 14-404(f).

However, I really don’t expect you to take us up on that offer, not only because sheriffs don’t actually reference the seven sources you list, but also because we both know what your position on HB 562 is about: Money and power.

Given the NCSA position on purchase permit denials, plus the fact that G.S. 14-401(b1) stipulates that sheriffs keep lists of denials for pistol purchase permits, along with the specific reasons for denials, and that the statute requires the list to be public record, GRNC will begin making regular inquiries of sheriffs on reasons for denials. Actually, since the list must be made available to “any member of the public,” sheriffs should be ready to accommodate a great many such inquiries.

Respectfully yours,



F. Paul Valone

#### References:

1. National Instant Criminal Background Check System (NICS) Operations, U.S. Department of Justice, Federal Bureau of Investigation, <http://www.fbi.gov/about-us/cjis/nics/reports/2014-operations-report>