

**Prepared Statement by Senator Chuck Grassley of Iowa  
Chairman, Senate Judiciary Committee  
Firearm Accessory Regulation and Enforcing Federal and State Reporting to the National Instant  
Criminal Background Check System (NICS)  
December 6, 2017**

Good morning and thank you for attending today's hearing.

We gather here today in the wake of violent acts by evil men in Las Vegas and Sutherland Springs. Today, with the help of our witnesses, we hope to learn more about how those tragedies might have been prevented. And we will discuss various proposals on preventing similar tragedies in the future.

Before October 1, 2017, few Americans knew what a bump stock was. Then a shooter used bump stocks to fire more than 1,100 rounds into a crowd attending a country music concert. The shooting lasted only ten minutes. But bump stocks enabled him to fire ammunition as fast as if he had used an automatic weapon. 58 people died and more than 500 were wounded. It was the deadliest mass shooting in American history.

Our laws prohibit the manufacture of machineguns and greatly restrict their sale. But during the Obama Administration the ATF determined that bump stocks are legal. A number of members of Congress, led by Senator Heller of Nevada, recently wrote the ATF to ask it to revisit its decision. Two days ago, the ATF announced it was changing its mind and issued an advance notice of proposed rulemaking that would apply the statutory definition of "machinegun" to bump stocks and similar devices.

Publication of this notice will provide the public and the firearms industry an opportunity to submit formal comments to ATF on the proposed rulemaking. We do not have any proposed regulatory text before us today. But I think the Committee deserves to know why the ATF decided that its classification of bump stocks during the Obama administration was incorrect.

It is also important for the Committee to understand how ATF is now proposing to interpret the statutory definition of machinegun. Under current case law, the courts may give deference to the agency's interpretation of the statutes governing firearms. Depending on the ATF's interpretation, Congress might wish to weigh in.

Today we will also discuss the National Instant Criminal Background Check System, commonly referred to as NICS. NICS is the system used by those licensed to sell firearms to quickly determine whether a prospective buyer is eligible. NICS background checks are supposed to prevent prohibited persons like convicted felons, domestic abusers, and those who have been determined to have certain mental health problems from purchasing firearms. Every year, tens of thousands of prohibited persons are turned away from purchasing weapons. But for NICS to keep weapons out of the hands of dangerous individuals, federal and state agencies must swiftly and accurately report information on prohibited persons.

Unfortunately, this does not always happen as it should. The Sutherland Springs shooting was carried out by an individual who should not have been able to purchase a firearm under current law. While in the Air Force, Devin Kelley was court martialled for domestic violence. He served prison time and was discharged from the Air Force for bad conduct. But because his information was not entered into the NICS system as the law required, Kelley was able to purchase four weapons after his release from prison, including the weapon he used in the Sutherland Springs shooting. Kelley killed 26 people attending Sunday services at the First Baptist Church in Sutherland Springs, and wounded 20 more.

In the days following the shooting, the Air Force acknowledged its role in failing to report Kelley's conviction to the FBI. The Air Force's failure to comply with NICS reporting standards is inexcusable. But I appreciate the way the Air Force has moved to accept responsibility for their mistakes. And I look forward to learning more about the steps the Air Force is taking to make sure that every prohibited person is reported to the FBI.

NICS reporting issues are not limited to the Air Force, however. NICS reporting in 1997 and 2015 showed severe reporting problems across the Department of Defense. A report released by the Department of Defense's Inspector General just two days ago shows that from 2015 to 2016 more than 30% of convictions in the Department of Defense were not reported to the FBI.

Other federal agencies and states can also improve their NICS reporting. I was pleased to hear that my former colleague Attorney General Jeff Sessions ordered a federal review of NICS by the FBI and ATF to ensure that all federal agencies are reporting all required information into NICS.

As far as states are concerned, some progress in NICS reporting has been made in recent years, especially in the area of reporting mental health records. But some states, even those represented by members of our own committee such as Rhode Island, Vermont, Hawaii, and Louisiana, continue to lag behind—reporting fewer records to NICS on a per capita basis than most other states. And more improvement can be made in other areas, such as reporting domestic violence offenses. It is clear that this is a systemic problem and that there are many thousands of abusers who are not in the NICS system, but should be. States should also work to ensure that all records submitted to NICS are complete and up to date.

All of us wish that the recent tragedies in Texas and Nevada could have been avoided. Nothing we do today or in the weeks to come will restore the lives of those lost to the senseless violence in Las Vegas or Sutherland Springs. We owe it to the victims of those shootings to seriously consider what we should do as policymakers.

As legislators, one of the most powerful tools we possess is in crafting new legislation. The problem with such a big hammer, however, is that often everything looks like a nail. We must wield our legislative power carefully, particularly where it involves the fundamental liberties of our republic. The Supreme Court has made it clear that laws that concern the Second Amendment right to keep and bear arms are subject to heightened scrutiny. So new laws affecting firearms and firearm accessories must be narrowly tailored to address important government interests.

In addition, we have laws and regulations already on the books that require NICS reporting and that regulate automatic weapons. The ATF has just issued a notice that they intend to promulgate a new regulation about bump stocks based on existing law. Before we pass new laws, we should make sure that our current laws are being effectively followed and enforced. We should also make sure that existing programs designed to ensure NICS reporting compliance are fully funded and effectively run.

I look forward to discussing these issues at today's hearing. I thank our witnesses and Committee members for their preparations.