

July 26, 2006

Representative Kim Thatcher
House District 25
PO Box 9111
Salem, OR 97305

Representative Thatcher,

This is in response to your email dated July 6, 2006 regarding Firearm Sale Background Checks. Without specifics regarding the complaints noted in your message, the following information is provided in hope of answering your questions.

There has been no change in law or administrative rule regarding background checks for firearms purchases. However in late 2004 during a training session of the National Instant Check System (NICS) conducted by FBI, NICS representatives noted that the Oregon Firearms Instant Check System (FICS) check did not include the appropriate research into misdemeanor crimes of domestic violence when there is no indicator regarding domestic involvement. Oregon was notified that in order to comply with federal law we must begin research for this category of crime to ensure the charges are not domestic in nature. Due to discrepancies between Oregon law and federal law the Attorney General was contacted and advised that Oregon FICS checks must follow the federal guideline regarding this issue. The FICS unit began researching any crime within this category when noted while conducting a background check.

Oregon has no statutes specifically for domestic violence and it is only recently that law enforcement has started making a notation to designate that the offense is domestic in nature. However this additional information is strictly voluntary and not a standard practice. Therefore records nationwide largely do not have any domestic indicator and these crimes must have additional research conducted through the arresting and/or court agencies to determine if the crime meets the federal criteria under the Lautenberg Amendment. This additional research requirement along with an increasing yearly volume of firearm sales transactions may contribute to the concerns recently brought to your attention.

For a statewide view of the program, you may find the following statistics helpful regarding firearm purchases within Oregon.

- In 2005 the FICS unit processed 139,797 total firearm sale transactions. (866,785 total since June 1996 when the unit started)
- Approval rate is 98%.
- Average phone response time is 3 minutes. Dealer receives either an approval number or notice that the sale is denied while on the phone. Approval occurs when there is either no record found or the record found does not disqualify the sale based on Oregon and Federal law. Denial occurs when there is a disqualifying item noted within the background check. (These "instant checks" make up approx. 96% of the monthly calls received.)

- Average "pending" transactions is 4%. Pend status occurs due to a potentially disqualifying charge for which research must be done due to information available being incomplete for determining if the sale can be lawfully approved. This is the part of the process for which the timeliness of the response depends greatly on the circumstances of the record found and where the record resides. Records are not always complete or easily accessible making the research very time intensive.

ORS 166.412 - 3(b) *If the department is unable to determine if the purchaser is qualified or disqualified from completing the transfer within 30 minutes, the department shall notify the dealer and provide the dealer with an estimate of the time when the department will provide the requested information. (c) If the department fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close of the gun dealer's next business day following the request by the dealer for a criminal history record check, the dealer may deliver the handgun to the purchaser.*

Our staff makes the best determination based on their experience as to how long they can expect a reply to take from the agency holding the record; however it is only an estimate. Many are resolved before the time projected and some are extended beyond the initial projected time due to lack of response from the agency holding the record information needed. In these instances, it is not possible for the background check to be "instant" and still ensure the purchaser can lawfully take possession of the firearm. As referenced in 166.412(c), the dealer may release the firearm to the purchaser after the specified period. Our work continues however, until the check has been completed.

I hope this helps to explain some of the realities within the process set out by law, while at the same time showing that the vast majority of checks are completed very quickly.

Our Firearms Unit is open daily from 8:00am-10:00pm (except Christmas and Thanksgiving). Please do not hesitate to call me at 503-378-3725, ext. 4102, if we can provide further assistance. You may also contact Marie Severson, FICS Unit Manager 503-373-1808 ext. 418 or Patricia Whitfield, Identification Services Section Director 503-373-1808 ext. 226.

Sincerely,

Peter W. Spirup, Major
Support Services Bureau

c: Lt. Colonel Willeford, Superintendent's Office
David Yandell, Director, Information Management Services