



**WEST VIRGINIA  
PROSECUTING ATTORNEYS ASSOCIATION**

**WV Fraternal Order of Police, WV Chiefs of Police, WV State Troopers Association,  
WV Sheriff's Association and WV Prosecuting Attorneys Association  
Talking Points for 2<sup>nd</sup> Amendment Rights Bill**

**Action Alert**

While the bill's intentions are noteworthy, there are a number of unintended consequences that will have a substantial negative impact on law enforcement and communities within our State. **FALSE (see below)**

Many officers around the State are dual-designated federal officers. This is particularly true in Drug Task Forces. For example, in Monongalia County approximately seven years ago the task force was built into a federal-state-county-municipal task force, as many communities have done. In that task force there are state agents designated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Drug Enforcement Administration (DEA). The feds "pay the bills" for those guys. Additionally, this federal-state-county-municipal arrangement allows us to become High Intensity Drug Trafficking Area (HIDTA) designated, which brings more federal money and support. This bill would eliminate this collaboration. **FALSE**

**§61-7B-3.(b)** Notwithstanding the limitations in subsection (a), this section does not prevent any West Virginia law enforcement agency from doing any of the following that does not violate any policy of the law enforcement agency or any local law or policy of the jurisdiction in which the agency is operating:

**(1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a violation of state law that is detected during an unrelated law enforcement activity.**

**(2) Responding to a request from federal law enforcement authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information, or where otherwise permitted by state law.**

**(3) Conducting enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, so long as the following conditions are met:**

**(A) The primary purpose of the joint law enforcement task force is not federal firearm law enforcement; and**

**(B) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to federal firearm law enforcement.**

Using Monongalia County as an example, the Morgantown Police Department has officers designated as U.S. Marshalls that aid in the apprehension of federal fugitives. In return the U.S. Marshalls will also aid our officers when we are searching for fugitives and need all the "bells and whistles" the feds bring to the table including technology and surveillance techniques to which municipalities have no access. This bill would eliminate this collaboration. **FALSE (see above citation)**

The bill's broad requirement for non-interaction with federal laws pertaining to firearms becomes problematic when issuing the concealed carry weapon permits and the National Instant Criminal Background Check System (NICS) exemption granted by the ATF when purchasing firearms by those who have a Concealed Carry Weapon (CCW) permit that eliminates criminal background checks and 3 day waiting periods may also be lost. Further, the bill may impact nationwide NCIC and WEAPON terminal operations of the State, and severely hamper investigations in a wide variety of violent and drug-related crimes. **FALSE**

The states of Alaska, Arizona, Idaho, Kansas, South Dakota, Utah, and Wyoming have all passed laws that fully nullify federal law and they do not recognize any federal firearms law. Those states has maintained their NICS exemption by the ATF. There is no evidence to support this claim. (For clarity, HR 2694 does not go as far as nullification, only "non-commandeering". Seven states have stood up and taken even stronger steps that what HR 2694 does and have still retained their NICS exemptions.

#### **Following are some additional points of concern:**

1. Prohibited Persons (i.e. drug dealer or criminals) with Guns  
All federal prohibitors are in state code, **plus two additional ones that are expanded to be more restrictive than federal statute 922(g) or (n)**. Additionally WV also has a "firearm in commission of a felony" additional crime, which is a felony.
2. Other than the potential of WV Code Chapter 8 Article 29B-3, there would not be anything Airport police or local law enforcement could do regarding persons having firearms on airport grounds. This would also create much confusion between the relationship between TSA's and Airport police or local law enforcement tasked with airport security.  
Airport security in the secured areas of the airport is the responsibility of TSA, a federal organization. Currently, there are generally no prohibited areas in the non-secured areas of WV airports.
3. Adversely affect federal grant funding  
HR 2694 is modeled after the immigration policy of California. California state law prohibits the interaction with federal immigration officials for the purposes of strictly immigration offences. This law was challenged unsuccessfully by former President Trump. The SCOTUS has upheld every lower court ruling that federal funds may NOT be withheld for the non-compliance of a state with federal laws. (also see Printz v US)
4. Local drug task forces have federally sworn officers that are deputized and defined as Task Force Officers for FBI, DEA, pending for ATF (Wood County / PKB Task Force). It allows those individuals to investigate and prosecute cases (often involving firearms) from a federal perspective, and also gives them resources specifically available from those federal agencies.  
This is a statement. Not a question.
5. Adversely affect a responding officer to address/investigate a dangerous person as it pertains to certain things the bill addresses such as, but not limited to: machine guns, sawed off shotguns (Type II weapons), undetectable guns or guns w/ less than 3.7 oz of metal.  
West Virginia has a machine gun law. In the event an officer discovers a violation of federal firearm law subsequent to an investigation for a non-related offense, there is not a prohibition to prevent the additional charge. If an officer discovers strictly a federal firearm violation, and dependent on departmental policy, they can notify the US District Attorney to have federal law enforcement deal with the issue.
6. Possibly negatively affect the Concealed Carry License's (CCL) reciprocity.  
HR 2694 concerns in state law enforcement policy. There is no evidence to support this conclusion.
7. The National Integrated Ballistic Network (NIBIN) relies on the close coordination of its partner law enforcement agencies at the local, state, federal, tribal and territorial levels to compile their data and share intelligence about violent crimes. NIBIN's success depends on four critical steps:
  - Comprehensive Collection and Entry: Partner agencies must collect and submit all evidence suitable for entry into NIBIN, regardless of the crime. Evidence includes cartridge cases recovered from crime scenes, as well as test fires from recovered crime guns.

- Timely Turnaround: Violent crime investigations can rapidly go cold, so the goal is to enter the evidence into the network as quickly as possible to identify potential NIBIN leads for investigators.
- Investigative Follow-Up and Prosecution: Linking otherwise unassociated crimes gives investigators a better chance to identify and arrest shooters before they reoffend.

This info could be used by federal agencies (ATF) in firearm investigation relating to straw purchases, etc.

The possession of any firearm, by itself, is not a violent crime. If a violent act or crime is committed by an individual using a firearm, then full cooperation with federal law enforcement is allowed by HR 2694. Therefore, this is not a concern.

We are unaware of a conviction for a straw purchase in the northern jurisdiction in the past 19 years.

8. Law Enforcement uses eTrace (Electronic Tracing System)

- eTrace (Electronic Tracing System) is an internet-based system that allows participating law enforcement agencies to submit firearm traces to the ATF National Tracing Center (NTC). Sometimes a federal investigation develops from the info entered or received.
- This info could be used by federal agencies (ATF) in firearm investigation relating to straw purchases, etc.

(See above answer)

**List of Senators to contact regarding - The 2<sup>nd</sup> Amendment Rights Bill**

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