

# Commonsense Solutions:

State Laws to Reduce Gun Trafficking

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THE **COMMONSENSE**  
GUN LAWS PARTNERSHIP

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## EXECUTIVE SUMMARY

Every year, tens of thousands of guns end up in the wrong hands through secondary “gray market” transfers.<sup>1</sup> These transfers allow guns to move from the legal market into the hands of people who shouldn’t have them. These guns are then used in murders and other violent crimes in alarming proportions. In 2014 alone, 10,945 homicides were committed with firearms, according to the CDC.<sup>2</sup> According to the FBI, firearms were also used to commit 119,754 robberies and 150,574 aggravated assaults in that year.<sup>3</sup>

Many of these crimes could be prevented through stronger laws against gun trafficking. This toolkit presents three proposals for states to help reduce this problem. States should:

- **Enact strong laws prohibiting straw purchases, which involve one person buying a gun on behalf of another, with an exception for gifts**
- **Prohibit gun trafficking itself, defined to include all gun transfers that a person should know are likely to put guns in the hands of people who are likely to misuse them**
- **Require gun dealers to use responsible business practices to ensure that they do not contribute to gun trafficking**
- **Require gun owners whose guns are lost or stolen to report this fact to law enforcement**

This toolkit provides a list of the features that make up a strong law on each of these topics. It also provides arguments in support of these laws, along with the legal and factual background for each proposal. It is our hope that we provide a resource for legislators and advocates who want to move forward with these proposals.

## INTRODUCTION

**G**un violence is exacting a terrible toll on our communities. Too many families have been devastated because someone provided a gun to someone else who was willing to misuse it. It is clearly too easy for dangerous people to obtain access to firearms.

Virtually every illegal firearm in the US starts as a legal firearm. The legal market for guns involves gun stores, which are licensed by ATF as “firearms dealers” and conduct background checks on gun buyers. Most gun stores operate responsibly and most gun buyers are lawfully exercising their Second Amendment rights.

Nevertheless, gun traffickers divert guns from the legal market to the illegal market all too often. Gun traffickers do this through certain common methods, described below.

### **UNLICENSED SALES: “NO BACKGROUND CHECK REQUIRED”**

Sometimes people who have bought guns from licensed firearms dealers then choose to sell these guns on the secondary market. These sales may occur at gun shows, over the internet, or in other unlicensed transactions across the country. Federal law does not generally require a background check for these secondary sales. The lack of a background check requirement for unlicensed sales is the biggest loophole in our nation’s gun laws, as detailed in our December 2014 report *Commonsense Solutions: State Laws to Expand Background Checks for Unlicensed Gun Sales*. Except in states that have closed this loophole by requiring background checks on all gun sales, convicted felons, domestic abusers, and dangerously mentally ill individuals can easily obtain guns through these secondary sales.

Gun traffickers may also take advantage of this loophole by obtaining guns from unlicensed sellers, or by buying guns from licensed dealers specifically for resale without background checks. The best way to stop this kind of gun trafficking is by requiring a background check before every sale of a gun, as described in our December 2014 report.

## **STRAW PURCHASES: “BUY A GUN FOR ME?”**

In addition to unlicensed sales, guns travel from the legal to illegal market through straw purchases. A “straw purchase” occurs when the actual buyer of a firearm uses another person, a “straw purchaser,” to execute the paperwork and undergo the background check necessary to purchase a firearm from a federally licensed firearms dealer. Straw purchases are prohibited by federal law, but are still very common. A straw purchaser transfers a gun or guns to the person who requested the purchase, who then reimburses the straw purchaser and often pays him or her an additional fee. In some cases, the person who receives the gun from the straw purchaser is the end user. In other cases, the straw purchaser transfers guns to the leader of an organized gun trafficking ring.

*Strong background check laws drastically reduce opportunities for gun trafficking.*

## **LAX GUN STORES: “WE’LL SKIP THE PAPERWORK”**

Straw purchasers often target gun stores that are known to openly collude with gun traffickers or to sell guns without asking too many questions. A gun store employee may allow a straw purchase to occur despite clear evidence that the individual buying the gun intends to transfer it to someone else.

Alternatively, corrupt gun store employees may agree to illegally sell guns “off the books,” meaning that no background check takes place and no record is made of the sale. Worse yet, a gun store employee might steal guns from the store.

## **GUN TRAFFICKING RINGS: “GUNS FOR SALE”**

After receiving guns from straw purchasers or through other methods, a member of a gun trafficking ring then transfers the guns (or uses other accomplices to transfer the guns) either directly or indirectly to the end users. In some cases, a gun trafficker may hold onto a gun for many years before transferring it to someone else; in other cases, the member transfers a gun soon after he or she acquires it.<sup>4</sup> Both actions constitute gun trafficking.

The leader of the gun trafficking ring or his or her accomplices conduct these sales or transfers as unlicensed sellers so that they are not required to conduct background checks on purchasers or maintain records of the transfers. In some cases, the gun trafficker sells the guns for a profit. In other cases, the gun trafficker belongs to a group involved in various criminal activities beyond gun trafficking and makes the guns available for use by other members of the group without reimbursement.

## **THE END RESULT OF TRAFFICKED GUNS: “SORRY, I LOST IT”**

Trafficked guns are frequently used in crimes. If law enforcement is able to recover guns after they are used in crimes, the guns can often be traced through the original store of purchase (which is required to keep a record of the sale) to straw purchasers. But the straw purchasers may then falsely claim that the guns they purchased were lost or stolen. In states that do not require gun owners to inform law enforcement when their guns are lost or stolen, straw purchasers can make this false claim with impunity after the gun has been used in a crime. This claim often allows the straw purchasers to hide the identity of individuals involved in the gun trafficking ring and to hide their own involvement in trafficking the guns. It may also prevent law enforcement officers from identifying the ultimate user of a gun. The end result is that law enforcement is unable to catch not only the gun traffickers, but also the murderers and other violent criminals who used the trafficked guns.

The good news is that strong state laws can deter much of the behavior described above. State laws to prevent straw purchasing are discussed in the first section of this report, while the next discusses state laws that define and prohibit gun trafficking generally. Following that, the report focuses on state regulation of licensed gun dealers to ensure they do not play a role in gun trafficking. Finally, the report discusses state laws that require gun owners to report lost or stolen firearms—an important requirement shown to deter gun trafficking.

## PROHIBITING STRAW PURCHASING

**S**traw purchases are a common way for guns to be transferred into the illegal market. While federal law prohibits straw purchases, this behavior is often treated as a mere paperwork violation and left unchecked. States should therefore enact their own laws to help deter straw purchases.

### THE PROBLEM

On January 26, 2015, 31 members of the New Hope, MI, police department, their relatives, and city employees were gathered at the New Hope City Hall for a swearing-in and award ceremony. Officer Beau Schoenhard, whose wife and 15-month-old son were nearby, was the first officer to notice a man with a shotgun approach the crowd. The man lifted the gun and began shooting. The attack landed Schoenhard and fellow officer Joshua Eernisse in the hospital, and the man with the gun, 68-year-old Raymond Kmetz, was killed by police. The New Hope Police Chief later said the scene resembled “a warzone.”<sup>5</sup>

The shooter Raymond Kmetz had been formally committed to a mental institution twice before and had been found incompetent to stand trial for a previous crime. He was nevertheless able to obtain the shotgun he used in the shooting and two other shotguns that the police later found in his car through an online auction. Although he was the highest bidder for these guns, the auction house required the transactions to be processed at a gun store. Kmetz knew that he could not pass a background check, so he asked his friend Michael Ronald Garant to go to the gun store and buy the guns on his behalf.

The paperwork at the gun store asked Garant if he was the actual buyer of the guns and not purchasing them for another individual. Garant lied in response to this question, answering “yes” even though he was buying the guns for Kmetz. Garant also falsely told the gun store owner that he had used the alias “Raymond Kmetz” in the online auction to hide his true identity.



Although Garant later admitted to purchasing the guns for Kmetz, local law enforcement officers soon released him. “The evidence provided by law enforcement was insufficient to bring felony charges under state law so justice required that he be released,” according to a statement from the Hennepin County attorney’s office. The case was then forwarded to federal prosecutors.<sup>6</sup>

People like Michael Garant, who are willing to buy guns on behalf of ineligible people, are known as “straw purchasers.” Straw purchasers execute the paperwork necessary to purchase a firearm from a federally licensed firearms dealer, although they are not themselves the actual buyers of the guns.

According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), straw purchasers “represent a significant overall crime and public safety problem.”<sup>7</sup> A study published in 2013 based on a survey of licensed gun dealers estimated that dealers witnessed over 33,000 attempted straw purchases of guns in a single year.<sup>8</sup>

By intentionally buying firearms for someone else, straw purchasers and those who obtain guns through straw purchases thwart the background check requirement and allow firearms to be funneled to criminals, domestic abusers and other people who shouldn’t have them.<sup>9</sup> Consequently, **straw purchases are a major source of trafficked guns.** The last time ATF published a report detailing the behavior of gun traffickers (in the year 2000), it found that straw purchasing accounted for almost one-half (46%) of all ATF investigations and was associated with nearly 26,000 illegally trafficked firearms.<sup>10</sup> Subsequent ATF investigations at gun shows from 2004 to 2006 also uncovered “widespread” straw purchasing from firearms dealers, with guns diverted to “convicted felons and local and international gangs.”<sup>11</sup>



A 2008 report from Mayors Against Illegal Guns also detailed how gun traffickers use straw purchasers to obtain firearms. According to the report, gun traffickers often recruit relatives, girlfriends, or drug addicts to act as straw purchasers. Sometimes, gun traffickers pay straw purchasers with drugs, and they often resell straw purchased guns in states with stronger gun laws for large profits.<sup>12</sup>

## **FEDERAL AND STATE LAWS REGARDING STRAW PURCHASING**

Straw purchases are sometimes known as “lying for the other guy.” Straw purchases are illegal because federal law requires a gun purchaser to attest that he or she is the “actual transferee/buyer of the firearm(s)” and makes it a crime to lie to a dealer while buying a gun.<sup>13</sup> A straw purchaser therefore commits a federal crime by falsely stating that he or she is the actual gun buyer. The US Supreme Court recently affirmed that straw purchases are in fact a crime, regardless of whether the actual buyer of the gun is legally eligible to purchase it him- or herself.<sup>14</sup>

Unfortunately, courts and prosecutors often treat straw purchases as mere paperwork violations, and the sentences imposed for these violations are typically low. Based on data compiled between 2004 and 2009, the sentences imposed averaged between 12 and 14 months. In many of these cases, convicted straw purchasers receive nothing more than probation.<sup>15</sup>

Some states have enacted their own laws to prevent straw purchasing. Maryland explicitly prohibits any person from knowingly or willfully participating in a “straw purchase” of a handgun or assault weapon. Maryland law defines “straw purchase” as a sale in which a person uses another individual, known as the straw purchaser, to:

1. Complete the application to purchase.
2. Take initial possession of the firearm.
3. Subsequently transfer the firearm to the person.

While any straw purchase is a crime under Maryland law, a higher penalty may apply if the actual buyer is a minor or a person prohibited by law from possessing the firearm.<sup>16</sup> Maryland’s law gives state and local law enforcement in Maryland the power to enforce the federal law but also recognizes that straw purchasing is not a mere paperwork violation.

Unlike Maryland, a large number of states have enacted straw purchasing laws that mirror the federal law by focusing on lying on the form. Some of these states go beyond federal law by explicitly prohibiting a straw purchase, but only if the straw purchaser knows that the actual buyer of the gun is legally prohibited from possessing guns.

Minnesota enacted a law of this type in 2015.<sup>17</sup> Some state laws are slightly stronger, explicitly prohibiting straw purchasing when the person filling out the paperwork “reasonably should know” that the person on whose behalf he or she is buying the gun is legally prohibited. Nevada enacted a law of this type in 2015.<sup>18</sup>

While these states should be applauded for attempting to address this problem, gaps in these laws make it difficult to prosecute straw purchasers. They send the message that it is acceptable to buy a gun for another person and allow him or her to skirt the background check requirement, so long as the straw purchaser can feign ignorance about the actual buyer’s legal status and intentions. States should consider strengthening these laws to mirror Maryland’s law.

## **FEATURES OF A STRONG LAW TO PREVENT STRAW PURCHASING**

A strong law against straw purchases includes the following features:

### ***Straw Purchases***

The law should prohibit a person from acquiring a firearm on behalf of, or at the request or demand of, another person.

### ***Gift Exception***

A person should be allowed to buy or obtain a gun as a gift, provided that the gift-giver has no reason to know the intended recipient of the gift is legally prohibited from possessing guns or intends to use the gun unlawfully. Gifts should be distinguished from purchases made with funds provided by the actual recipient of the gun.

### ***Graduated Penalties***

Although all straw purchases should be prohibited, the length of the sentences imposed for straw purchasing should depend on the straw purchaser’s awareness of the actual purchaser’s legal status and intent.

Higher penalties should apply if the straw purchaser reasonably should have known that the person on whose behalf he or she bought the gun was legally ineligible to possess firearms or intended to use the gun in a crime.

The highest penalties should be reserved for a person who acquired a firearm on behalf of a person knowing that this person was legally ineligible to possess firearms or intended to use the gun in a crime.

### ***Accomplices and Conspirators***

The law should prohibit a person from conspiring with, soliciting, encouraging, or coercing another person to engage in straw purchases. A person who knowingly directs, promotes, or facilitates straw purchases should be subject to penalties at least as strong as the straw purchasers themselves, if not stronger.

### ***An Exception for Law Enforcement***

Law enforcement agencies and private security companies sometimes buy guns in bulk for the use of individual officers or agents. Provided that these individuals are properly vetted beforehand, the law should be clear that these purchases are not prohibited.

### **CONCLUSION**

Straw purchases account for a considerable number of trafficked firearms and present a clear danger to public safety. States can and should enact strong laws to deter straw purchases.

## PROHIBITING GUN TRAFFICKING

**G**un traffickers exploit loopholes in our nation’s gun laws for profit and to assist other criminal activity. Sometimes gun traffickers use elaborate schemes—other times they are simply willing to sell or transfer a gun when they shouldn’t. State laws can help prevent this behavior.

### THE PROBLEM

In early October 2015, eight people were arrested and charged with running a gun trafficking ring uncovered by the New York City Police Department. According to a press release issued by the city, the alleged mastermind of the trafficking ring, Michael Bassier, enlisted at least five other people to purchase guns on his behalf in Atlanta and Pittsburgh. These people transferred the guns to Bassier, who reimbursed them for the cost of these guns and paid each of them an additional fee of \$50 per gun. Bassier then transported the guns to New York City, where he sold the guns illegally with the help of two other accomplices.

In the course of the NYPD investigation, Bassier was caught on tape stating how he was taking advantage of lax gun laws outside of New York to bring firearms into the city, where gun laws are stronger. “I’m selling them the right way and the wrong way. When I’m out of state, like in Atlanta and Georgia and all that, it’s all legal, but in New York, it’s completely illegal. So when I bring [expletive] up here and sell it up here, that’s illegal.”<sup>19</sup>

Gun laws differ greatly among states. Some states require a person to obtain a permit before purchasing a gun, others don’t. Some states require a background check for the purchase of a gun, others don’t. Some states monitor gun dealers, others don’t. These variations mean that it is significantly easier to buy a gun in certain states than in others.

**Because of these discrepancies, gun traffickers often transport guns from states with weak laws to states with strong laws.**<sup>20</sup> In 2014, 29% of guns that were used in crimes and could be traced had originated from another state.<sup>21</sup>

Certain local jurisdictions have suffered more than others from guns trafficked in from other jurisdictions. In 2011, 90% of guns recovered after use in a crime in New York City came from out of state, most often Virginia or the Carolinas.<sup>22</sup> In 2013, 60% of crime guns recovered in Chicago came from outside Illinois.<sup>23</sup> That same year, 78% of crime guns recovered in New Jersey originated outside New Jersey.<sup>24</sup>

*In 2014, 29% of guns that were used in crimes and could be traced had originated from another state.*

Not all trafficked guns cross state lines, however. In many cases, gun traffickers profit from transferring a gun within a state because they are willing to assume a risk that other people are not: that the recipient of that gun will use it in a crime and the gun will be traced back to them. In these cases, the traffickers may have a

strong reason to know that the buyer is legally ineligible to possess the gun—perhaps the buyer is underage or has a criminal record. Alternatively, the traffickers may have a good reason to know that the buyer is likely to use the gun in a crime. Gun traffickers are willing to make the sale despite these facts.<sup>25</sup>

The unfortunate result is that it is far too easy for people with bad intentions to get guns.

## **FEDERAL AND STATE LAWS REGARDING GUN TRAFFICKING**

No clear and effective federal statute makes gun trafficking a distinct federal crime.

Federal law:

- Makes certain people, such as convicted felons, ineligible to purchase or possess firearms.
- Makes it unlawful for any person to sell or otherwise dispose of a firearm to a person he or she has a “reasonable cause to believe” falls within one of these prohibited categories.
- Places special restrictions on selling guns across state lines.
- Prohibits straw purchases (discussed above).
- Prohibits a person from being “engaged in the business” of selling firearms without a federal firearms license and requires licensed dealers to conduct background checks on purchasers.<sup>26</sup>

Federal law does not require a background check when a gun is sold by an unlicensed seller, and the statutory definition of “engaged in the business” provides little guidance as to the parameters of the license requirement.<sup>27</sup> This has made prosecuting violations of this law difficult. According to a report from Everytown for Gun Safety:

- When law enforcement officers refer suspects to federal prosecutors and the lead charge is dealing in firearms without a license, charges are brought only about half the time. In contrast, referrals for drug trafficking result in charges about three-quarters of the time.
- One-third of defendants charged with selling guns without a license are ultimately not convicted.
- Seven of the 94 federal judicial districts accounted for 48% of the cases brought against individuals for engaging in the business without a license, strongly suggesting that this law is inconsistently applied across jurisdictions.<sup>28</sup>

Because these cases are difficult to prosecute and often yield low sentences, few cases have made it to trial.

**As a result, many gun traffickers remain unpunished.** The risk of prosecution for gun trafficking is low and the potential profit is high. It is simply too easy to purchase guns for resale. People who are willing to accept the risk of prosecution in exchange for the perceived payoff become gun traffickers, enabling dangerous people to obtain easy access to guns.

President Obama recently took executive action that will partially address this problem by clarifying who can be prosecuted for engaging in the business of selling firearms without a federal firearms license. According to these actions, if an individual acts like a business—accepting credit cards, reselling guns quickly after purchase, printing business cards, or reselling guns in their original packaging, for example—they are likely engaged in the business and require a license.<sup>29</sup>

A small number of states have acted to address this problem in a more direct fashion. California law, for example, prohibits a person from acquiring a firearm for the purpose of selling, loaning, or transferring it in violation of the state law requiring gun purchasers to undergo a background check.<sup>30</sup> Similarly, Massachusetts law prohibits any person from using any of the state’s gun licenses for the purpose of purchasing a firearm for resale or to give it to an unlicensed person.<sup>31</sup> Other states have narrower laws.

## FEATURES OF A STRONG STATE LAW AGAINST GUN TRAFFICKING

A comprehensive approach to gun trafficking must penalize every person who participates at any stage in the process, from the kingpins who coerce others to buy guns on their behalf to the accomplices who conduct the final sales to the criminals who use the guns maliciously.

Consequently, a strong law to prevent gun trafficking should include all the following features:

### ***Defining and Prohibiting Gun Trafficking***

Gun trafficking should be defined so that a person is guilty of the crime if:

1. He or she knowingly participated in a gun transfer when he or she had reasonable cause to believe that, after the initial transfer, the gun would be:
  - Used in a violent crime.
  - Transferred again, and this second transfer would occur in an illegal manner.
  - Transferred again, and this second transfer would occur without a background check (with an exception for gifts, as described below).
2. He or she has knowingly arranged or facilitated<sup>32</sup> a transfer of a firearm:
  - (a) that he or she had reasonable cause to believe would occur in an illegal manner or without a background check; or
  - (b) when he or she had reasonable cause to believe the firearm would subsequently be used in a violent crime.

### ***What It Means to Participate in a Gun Transfer***

The law should specify that a person is considered to be participating in a gun transfer within the meaning of the law if he or she is providing another person with access to a firearm or if he or she is taking possession of a firearm from someone else, even temporarily.

### ***Graduated Penalties***

The penalties imposed for gun trafficking should be higher if the person not only had “reasonable cause to believe” a violent crime or illegal transfer would result, but actually intended for this subsequent event to happen. For example, a person acquiring a gun with the specific intent to subsequently resell it unlawfully or without a background check should be subject to higher penalties. In addition, a person who commits the acts described above in concert with a group of other people, and who acts as an organizer, leader, supervisor, or manager of these people, should be subject to a higher penalty.

### ***Proving Mental States***

One of the most difficult parts of prosecuting gun traffickers involves demonstrating that the person had the requisite mental state—in other words, that he or she had “reasonable cause to believe” an illegal transfer or crime would result or intended for the illegal transfer or crime to occur. Evidence that may be admitted to show that the person had the requisite mental state may include evidence that:

1. The person knew that a firearm transferred in a similar manner or to the same person in the past ended up being used in a violent crime.
2. The person had transported or transferred another firearm or firearms without background checks or unlawfully in the past.
3. The person transferred the firearms without a background check a short period of time after acquiring them.
4. Any other behavior that is consistent only with an awareness of the high likelihood that firearms will later be transferred unlawfully or without background checks or used in a crime.

### ***Exceptions***

The law should include the following exceptions:

- *Gifts*: A person should be allowed to buy or obtain a gun as a gift without conducting a background check on the intended recipient, provided that the person has no reason to know the recipient of the gift is legally prohibited from possessing guns or intends to use the gun unlawfully. Similarly, a person should be allowed provide a gun to, or transport a gun for, another person who intends to give the gun as a gift, provided that the person has no reason to know the intended recipient of the gift is legally prohibited from possessing guns or intends to use the gun unlawfully.
- *Raffles*: Another exception should allow a person to provide or acquire a gun to be given to a bona fide winner of an organized raffle, contest, or auction conducted in accordance with law and sponsored by a national, state, or local organization or association so long as the transfer occurs with a background check.

### ***Interjurisdictional Trafficking***

A person violates the law if the person has reason to believe a subsequent sale or transfer of the firearm would violate the laws of the state in which it is likely to occur. For example, Indiana could pass a law that would allow Indiana law enforcement to prosecute a person who has bought a gun in Indiana intending to resell it in Illinois in violation of Illinois’s laws, even though gun laws on Indiana and Illinois are not the same.



### ***Forfeiture***

Any proceeds the person obtained, directly or indirectly, as the result of violating these provisions, and any of the person's property used, or intended to be used, in any manner or part, to commit or to facilitate violating these provisions should be subject to forfeiture.

### ***Racketeering***

A significant number of states criminalize "racketeering," defined to mean engaging in a pattern of illegal activities in the manner of a business enterprise. If the state has a law that criminalizes racketeering, gun trafficking (including any illegal sales of firearms) may serve as the underlying crime for a charge of racketeering.

### ***Money Laundering***

Some states criminalize "money laundering," meaning engaging in financial transactions in order to conceal the illegal source of particular funds. If the state has a law that criminalizes money laundering, it should specify that financial transactions involving funds derived from gun trafficking may serve as the basis for a charge of money laundering.

### ***Exception for Law Enforcement***

Undercover operations are often the only way law enforcement can identify and prosecute gun traffickers. These operations may involve, for example, purposefully testing a gun seller to see if he or she will move forward with a transaction despite clear signs that it will be later transferred or used unlawfully. In order to allow law enforcement officers to identify and prosecute gun traffickers, the laws described above must provide an exception to allow law enforcement officers to conduct these kinds of undercover operations.<sup>33</sup>

### ***Penalties Relative to Gun Possession***

The penalties for gun trafficking should be higher than the penalties for illegal possession of a gun. A situation in which penalties for gun trafficking are weaker than penalties for illegal gun possession creates an incentive for guns to be frequently transferred among people legally ineligible to possess them. These transfers enable these guns to be used in additional crimes, and hinder law enforcement's efforts to catch violent criminals by tracing guns used in crimes.

## **CONCLUSION**

Gun traffickers provide many guns used in violent crimes but often go unpunished. Strong state laws can change this dynamic by providing an effective deterrent to this behavior, thus reducing the number of guns available to people who want to do harm. State laws that explicitly address gun trafficking will save lives.

## GUN DEALER REGULATIONS

While most gun dealers operate responsibly, a small number of irresponsible gun dealers are the source of an overwhelming number of crime guns. Gun dealers are required to get a license from ATF, but ATF lacks the resources and authority to oversee all these businesses and shut them down when they are behaving irresponsibly. State laws can make a difference by preventing more guns from moving from the shelves of irresponsible gun dealers into the hands of people who shouldn't have them.

### THE PROBLEM

In May 2008, Mexican law enforcement agents conducted a raid on a house known for drug dealing in Mexico. They were surprised by the amount of firepower they met there. When the day was done, eight agents were dead. One of the firearms recovered at the scene was traced to a gun store in Phoenix, AZ, called X-Caliber Guns.

ATF subsequently identified X-Caliber Guns as the source of over 500 guns smuggled to drug cartels in Mexico. According to ATF investigative reports viewed by the *New York Times*, the smugglers paid X-Caliber Guns in advance for the guns. Straw purchasers later filled out the required paperwork and carried the weapons off.

George Iknadosian was the owner of X-Caliber Guns. In one transaction, Mr. Iknadosian gave advice about how to buy weapons and smuggle them to a person who turned out to be an informant. He told the informant to break the sales up into batches and never to carry more than two weapons in a car. "If you got pulled over, two is no biggie," Mr. Iknadosian is quoted as saying in a transcript. "Four is a question. Fifteen is, 'What are you doing?'"<sup>34</sup>

ATF referred the case against Mr. Iknadosian to the US Attorney's office for prosecution, but both federal and state prosecutors were unable to obtain a conviction.<sup>35</sup>

While the vast majority of licensed firearms dealers operate their businesses responsibly, a small percentage engage in irresponsible business practices that contribute a major portion of trafficked guns. In fact, **90% of guns used in crime are traced to 5% of gun dealers**, according to the Brady Center to Prevent Gun Violence.<sup>36</sup>

These irresponsible gun dealers play a disproportionate role in gun trafficking. According to a 2000 ATF report, gun dealers were involved in less than 10% of gun trafficking investigations, but were associated with nearly half of all trafficked guns.<sup>37</sup>

As described below, ATF lacks the resources and authority to shut down many dealers that are providing these guns. State regulation can help.

## **HOW FEDERAL AND STATE LAWS REGULATE (AND DO NOT REGULATE) FIREARMS DEALERS**

Federal law requires anyone “engaged in the business” of selling guns to obtain a federal gun dealer’s license from ATF.<sup>38</sup> This license allows the dealer to obtain large number of guns in bulk directly from gun manufacturers and importers. Licensed gun dealers therefore have access to vast quantities of guns.

Federal law requires licensed gun dealers to, among other things: (1) conduct a background check on all guns sold from their inventory, (2) keep records of these sales, (3) report sales of multiple handguns, and (4) report firearms that are lost or stolen.<sup>39</sup>

Unfortunately, the Bureau of Alcohol, Tobacco, Firearms, & Explosives has often been unable to enforce these requirements. As described below, federal law specifically limits ATF’s ability to: (1) conduct inspections of gun dealers, (2) require gun dealers to conduct inventories of their merchandise, and (3) revoke the licenses of corrupt gun dealers. Many states have filled these gaps, however, and enacted other regulations to prevent the trafficking of guns from gun dealers.

### ***Inspections***

ATF is prohibited from conducting more than one unannounced inspection of each dealer per year<sup>40</sup>—but even without this restriction, ATF would still lack the resources to conduct sufficient inspections. In fact, a 2013 report by the Office of the Inspector General found that 58% of dealers had not been inspected within the past five years due, in part, to a lack of resources.<sup>41</sup> In total, ATF inspected about 14% of federal firearm licensees in 2013.<sup>42</sup> Only about half of the businesses inspected were found to be in full compliance with federal firearms laws.

Common violations included:

- Missing firearms
- Failure to verify identification
- Failure to conduct background checks
- Failure to stop a sale after a customer indicated that he was prohibited from gun possession
- Failure to properly keep records of acquisitions and dispositions
- Failure to report people who purchased multiple handguns.<sup>43</sup>

The frequency of these violations suggests that many gun businesses do not expect to be held accountable for their compliance with the law. This lack of accountability may be a direct result of the absence of effective monitoring of these businesses.

State laws regulating gun dealers can address this problem. Many states explicitly authorize law enforcement inspections of gun dealer records. In Massachusetts, for example, local law enforcement is required to conduct, and a dealer must submit to, one mandatory records and

inventory inspection per year.<sup>44</sup>

Maryland enacted a law in 2013 that requires the state police to inspect the inventory and records of a licensed dealer at least once every two years.<sup>45</sup>

***Routine inspections provide law enforcement with more opportunities to detect illegal gun activity.***

State regulation of gun dealers is effective. A comparison of states' homicide rates between 1995 and 2010 found lower homicide rates to be associated with state gun dealer license and inspection requirements.<sup>46</sup> Similarly, a September 2010 report by Mayors Against Illegal Guns concluded that routine inspections provide law enforcement with more opportunities to “detect potential indications of illegal gun activity, including improper recordkeeping or a dealer whose gun inventory does not match their sales records.” According to the report, states that do not permit or require inspections of gun dealers are the sources of crime guns recovered in other states at a rate 50% greater than states that do permit or require such inspections.<sup>47</sup>

### **Revocations**

ATF is only authorized to revoke the license of a dealer who has “willfully” violated the law, and ATF’s authority to temporarily suspend a gun dealer’s license is strictly limited.<sup>48</sup> This often means that dealers are allowed to stay in business despite careless or reckless business practices that have allowed criminals access to guns, even after those business practices have come to the attention of law enforcement.

In 2011, ATF took administrative action against 4,056 firearms licensees, but only revoked or denied the renewal of 71 licenses.<sup>49</sup> A 2010 *Washington Post* report found that “criminal prosecutions of corrupt dealers are even more rare [than license revocations], about 15 in a typical year.”<sup>50</sup>

While ATF’s ability to shut down corrupt gun dealers is limited, state authority can be greater. Currently, 15 states require firearms dealers to obtain a state or local license to sell firearms.<sup>51</sup> States that require gun dealers to hold a state or local license to sell firearms are able to shut down corrupt gun dealers by revoking these licenses, consistent with principles of due process.

### ***Inventory Records***

Most retail businesses use inventories to maintain control over their merchandise. However, ATF is specifically prohibited from requiring firearms dealers to conduct physical inventories of their businesses.<sup>52</sup> ATF’s lack of authority to ensure that firearms dealers utilize this common business practice means that, absent state or local regulation, dealers are not required to confirm whether firearms have gone missing.

In fact, every year, tens of thousands of guns go missing from gun stores. Between 2004 and 2011, ATF’s compliance inspections revealed almost 175,000 firearms missing from the inventories of federal firearm licensees.<sup>53</sup>

Some of these firearms go missing through undocumented transactions. A study published in 2013 and based on a survey of licensed gun dealers estimated that dealers witnessed over 37,000 attempted undocumented purchases of guns in a single year.<sup>54</sup> These incidents involve purchasers who wish to flout the federal requirement that a gun dealer conduct a background check and keep a record of the sale. Too often gun dealers may be unable to resist the temptation to move forward with these sales.

Other firearms may go missing through burglaries of the gun store or theft by employees. Regardless of the manner in which they leave the store, these guns endanger public safety. According to a study of guns recovered after being used in crimes in Chicago between 2009 and 2013, 5.5% of these guns could be traced no further than the gun store; in other words, the dealer had no record of sale showing how these guns had left the store.<sup>55</sup>

States can require gun dealers to conduct regular inventories of their merchandise. This responsible business practice will deter gun dealers from selling guns “off the books” to criminals and help them maintain control over their inventory.

Currently, 11 states require licensed dealers to maintain records of sales of all firearms.<sup>56</sup> These laws could be strengthened by requiring dealers to periodically reconcile these records with their inventory.

### ***Employee Background Checks***

Gun store employees may have access to hundreds of guns. Consequently, employment in a gun store provides criminals with a huge opportunity. Employee background checks reduce this risk.<sup>57</sup> Federal regulations do not require gun dealers to conduct background checks on employees, but Delaware, New Jersey, Virginia, and Washington have filled this gap. In 2014, Massachusetts also enacted this requirement.<sup>58</sup>

### ***Security Against Theft***

In the year 2015 alone, licensed dealers reported over 8,000 guns as lost and over 6,000 guns as stolen.<sup>59</sup> *For the number of firearms reported lost or stolen by gun dealers in your state in 2015, see ATF's report, 2015 Summary: Firearms Reported Lost and Stolen.*

Federal regulations do not require gun dealers to utilize strong security measures, such as burglar alarms and surveillance cameras, to reduce the risk of theft from their premises or deter other illegal behavior. Several states, including California, Connecticut, Minnesota, and New Jersey, require firearms dealers to utilize specified security measures.

### ***Straw Purchases***

Irresponsible gun dealers often fail to stop straw purchases (gun sales in which a person other than the actual gun buyer fills out the paperwork and undergoes the background check). The worst gun dealers may even openly participate in these illegal sales. In 2009, New York City officials conducted an investigation at gun shows across the US to test whether, among other things, firearms dealers would be willing to sell guns to someone who openly appeared to be a straw purchaser. New York's investigation found that 16 out of 17 (or 94% of) dealers approached by investigators willingly sold to an apparent straw purchaser.<sup>60</sup>

A 2008 report from Mayors Against Illegal Guns detailed the role that gun stores play in straw purchases. According to the report, gun traffickers target certain stores that have a reputation for allowing straw purchases to occur and make repeated visits to those stores. A smart employee at a gun store can often identify straw purchases: frequently, the trafficker who instigated the straw purchase is in the store while the straw purchase is taking place. Questioning a buyer can deter a straw purchase, as straw purchasers often demonstrate that they know little about guns and buy multiple at a time. Some gun store employees are willing to sell guns despite suspicions. Unfortunately, other gun store employees are simply not trained to recognize and deny straw purchases.<sup>61</sup>

Strong state laws can deter gun dealers from participating in straw purchases. Maryland, for example, prohibits anyone, even a licensed gun dealer, from willingly or knowingly participating in the straw purchase of a handgun or assault weapon.<sup>62</sup> Such laws make a difference: one study found that increased regulation of gun dealers to prevent straw purchases was associated with an 84% decrease in the number of guns from those dealers used in crime.<sup>63</sup>

## **FEATURES OF A STATE LAW REGULATING FIREARMS DEALERS**

A strong law to ensure effective monitoring and oversight of gun dealers would start with the following provisions:

### ***License Required***

A license is required to engage in the business of selling guns. The law provides clear parameters to determine what behavior constitutes engaging in the business of selling guns.

### ***Revocations and Suspensions***

Licenses must be revoked for certain violations, and suspended for other violations.

### ***Background Checks***

Dealers must conduct background checks on gun purchasers in accordance with federal law.

### ***Record-Keeping***

Dealers must keep records of acquisitions and dispositions of guns in accordance with federal law.

### ***Inspections***

Dealers must be subject to periodic and random inspections by state and/or local law enforcement.

### ***Inventories***

Dealers must periodically conduct written inventories of their merchandise and must report lost or stolen firearms to state and/or local law enforcement.

### ***Employee Background Checks and Training***

Employees must undergo periodic background checks and be properly trained to identify straw purchasers.

### ***Security Systems***

Dealers must keep guns locked up at all times and utilize security systems, such as surveillance cameras and burglar alarms, to deter thefts and other illegal behavior.

## **CONCLUSION**

Most gun dealers operate responsibly. However, a small number of gun dealers fail to maintain control over their inventory, allowing guns to end up in the wrong hands. Regulation of gun dealers can prevent this form of gun trafficking, but ATF lacks the authority and resources to effectively monitor all these businesses. State laws can fill this void and save lives.

## REPORTING OF LOST OR STOLEN FIREARMS

**N**o federal law requires gun owners to inform law enforcement when their firearms have been lost or stolen. Consequently, gun traffickers often claim guns that were in their possession were lost or stolen in order to hide their involvement in gun trafficking. Ten states have taken action to prevent this behavior so far.

### THE PROBLEM

Jeffrey Truitt worked at a gun store in Georgia. When his employer asked him why a gun found at a crime scene in Texas was traced back to the store listing him as the last known buyer, he claimed his nephew had stolen it. He said the same thing when ATF agents asked him about the gun.

But Truitt's nephew was in jail at the time when he would have stolen the gun, and several other guns that had been used in crimes had also been traced back to the gun store. Consequently, agents searched Truitt's home and vehicle and found 14 guns, five of which had been stolen from the store where he worked. The store conducted an inventory and discovered that, all together, 57 firearms were missing. Truitt is now serving jail time in connection with the items found in his home.<sup>64</sup>

When a gun is found at a crime scene and traced by law enforcement back to the original purchaser, that individual may falsely claim that the gun was lost or stolen, as Jeffrey Truitt did, to hide his or her involvement in illegally transferring the gun. In Jeffrey Truitt's case, the circumstances allowed law enforcement to seek a search warrant, but in many other cases, the investigation ends there. Unless the person failed to comply with a legal obligation to report the theft or loss, law enforcement officers in this situation are generally forced to accept the person's claim.



Laws that require the reporting of lost or stolen guns deter this behavior. Reporting laws make gun owners more accountable for their weapons and make it easier for law enforcement to investigate and prosecute gun trafficking. Timely reports of gun thefts and losses also put law enforcement on notice of the existence of stolen firearms in their community, enable police to locate lost or stolen firearms and return them to their owners, and make it easier to prosecute users of stolen guns.

Stolen guns supply the market for crime guns. A US Department of the Treasury study revealed that nearly a quarter of ATF gun trafficking investigations involved stolen firearms and were associated with over 11,000 trafficked firearms.<sup>65</sup>

More than 173,000 guns were reported lost or stolen in 2012, according to ATF,<sup>66</sup> but the actual number of guns lost or stolen is likely much higher. Survey research indicates that at least 500,000 firearms are stolen annually.<sup>67</sup>

## HOW STATES CAN FILL THE GAP

No federal law requires gun owners to report lost or stolen firearms. Three states—Delaware, Illinois and Maryland—enacted laws to address this issue in 2013 after the shooting at Sandy Hook Elementary. So far, a total of 10 states have taken this action.<sup>68</sup>

The strongest state laws require gun owners to report lost or stolen firearms within a short time after discovering that they are missing. In New York and Rhode Island, owners must report the loss or theft of any firearm to local law enforcement

within 24 hours of discovery. Connecticut, Illinois, and Maryland require reporting within 72 hours. Massachusetts and Ohio law require reporting “forthwith.”

Another important feature of a strong law is the requirement that owners report a firearm lost or stolen when they discovered *or should have discovered* the firearm went missing, rather than when they made the actual discovery. This approach eliminates the possibility that a gun owner will falsely claim that the lost or stolen firearm was not reported because it was never discovered. Connecticut is the only state with a “should have discovered” provision.

Not surprisingly, laws requiring the reporting of lost and stolen firearms are associated with a reduction in gun trafficking. One study found that states without mandatory lost or stolen reporting laws export two-and-a-half times more crime guns across state lines than jurisdictions with such laws.<sup>69</sup>

*Laws requiring the reporting of lost or stolen firearms are associated with a reduction in gun trafficking.*

A strong state law that requires the reporting of lost or stolen firearms would include the following features:

***Time Period for Reporting***

Firearm owners are required to report the loss or theft of any firearm within a short period after discovery.

***When Time Period for Reporting Starts***

The duty to report is triggered at the time the firearm owner knew or reasonably should have known that the firearm was lost or stolen.

***Types of Firearms***

Reporting requirements should apply to all firearm types.

***State and Federal Databases***

Local law enforcement must forward reports of lost and stolen firearms to state and federal databases.

**CONCLUSION**

Gun traffickers often falsely claim that guns they have purchased were lost or stolen in order to hide their involvement in crime. State laws that require the reporting of lost or stolen guns deter this behavior. States should enact these laws, which also assist law enforcement with gun trafficking investigations and encourage gun owners to behave responsibly.

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## ABOUT US

Led by former Congresswoman Gabrielle Giffords and Navy combat veteran and retired NASA astronaut Captain Mark Kelly, Americans for Responsible Solutions and the Law Center to Prevent Gun Violence are committed to advancing commonsense change that makes communities safer from gun violence.

Operating out of offices in Washington DC and San Francisco, our staff partners with lawmakers and advocates at the federal, state, and local levels to craft and enact smart gun laws that save lives, provide expertise in critical gun violence prevention litigation, and educate the public on the proven solutions that reduce gun violence.

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