

# 3-D Gun Enforcement for the 21st Century: Dealing, Data, and Design



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After the tragedy at Sandy Hook, many policymakers—including those who have spurned gun safety measures in the past—have now voiced their support for two high-profile and important improvements to our laws: reestablishing the Assault Weapons Ban and closing the Gun Show Loophole. We strongly support those crucial measures to decrease the lethality of guns and keep them out of the hands of those who could not pass a background check. However, there are other changes to our gun laws that would protect the Second Amendment rights of law-abiding citizens while making it harder for criminals, terrorists, and those who are mentally incapacitated to obtain deadly weapons they aim to use against innocents.

These policies fall into three categories (dealing, data, and design) and would help to bring our outdated gun policies up to modern standards.

## DEALING: Cracking Down on Gun Trafficking and Illegal Sales

According to FBI trace data, in nine out of 10 gun crimes, the person using the gun in the crime is not the original purchaser of the firearm. In one of 3 gun crimes, the firearm was bought in one state and the crime committed in another.<sup>1</sup> These two facts, based on more than one million crime gun traces, indicate that criminals obtain their firearms through a network of trafficking sources—some interstate, some intrastate. There are several policy changes that could drastically improve law enforcement's ability to stop this trafficking and the gun crime that comes with it.

## **1) There is no federal law against gun trafficking.**

Selling a firearm out of the back of one's car, in a dark alley, for cash, to a complete stranger, who does not show ID, and who has a felony record is not a violation of federal gun laws — unless prosecutors can prove you knew the person was a felon. The law that comes closest to covering this sale is the statute that says anyone “in the business” of selling firearms must be a federally licensed gun dealer.<sup>2</sup> This statute is so onerous and riddled with exceptions that it was used only 515 times over a recent three year period.<sup>3</sup> And even though 34,000 juveniles were arrested for weapons violations in the most recent year for which data is available, the number of cases brought up on the federal charge of selling firearms to minors usually numbers in the single digits.<sup>4</sup>

*Solution: Make it easier to prosecute gun trafficking. Make it illegal for any private individual to sell or transfer a firearm to anyone who is currently barred from owning a firearm under the “Gun Control Act” of 1968 (as amended) unless you can show that the person cleared a background check. Make it against the law for any individual to sell an illegal firearm to any person—without requiring law enforcement to prove that the person knew the firearm was illegal. This would include stolen firearms and those with obliterated serial numbers.*

## **2) Federal law makes it difficult to prosecute or stop “straw purchasers” (people who are buying guns for prohibited buyers).**

Straw purchasers are people who go into a gun store and pass a background check in order to obtain a firearm for someone else—generally someone who cannot pass a background check either because of their age or criminal history. This is a common method for criminals and gang members to obtain firearms. They often employ a girlfriend, relatives, or even homeless people to make the purchase and pass the check.

Although there are laws against lying on background check applications by obscuring the true intended buyer, they are weak and have not stopped this practice.<sup>5</sup> For example, once the straw buyer has completed the initial purchase, he or she may give or sell the gun to another person legally without a background check. At that point, current law says that a straw purchaser cannot be punished unless the prosecutor can prove that the straw purchaser *knew* the person to whom he or she transferred the gun was a felon, minor, or other category on the list of prohibited buyers (a very high standard).<sup>6</sup>

*Solution: Require everyone in attendance at a gun sale to undergo a background check (similar to what many stores do in requiring identification for the sale of alcohol). Pass new legislation making a gun owner an accessory to a crime committed by his or her gun unless he or she reported it stolen or can show evidence of a sale through a licensed firearms dealer. Add those who have been convicted of or are being prosecuted for any crime related to illegal gun sales (not just felonies) to the prohibited buyers list.*

### **3) Federally licensed gun dealers are a protected class that has little to fear if they operate outside of the law.**

There are nearly 60,000 licensed gun dealers in America, known as federal firearms licensees, or FFLs.<sup>7</sup> That means there are nearly 5 gun dealers in the U.S. for every McDonalds.<sup>8</sup> Roughly 1% of the nation's federally licensed gun dealers are the source of nearly 60% of the nation's guns traced to crime.<sup>9</sup> Since it is illegal to sell guns to people who live out of state, this statistic cannot be explained by sheer volume of gun sales. While some gun stores may sell a high volume of crime guns simply because of proximity to high-crime areas, others are clearly dirty.

But federally licensed gun dealers receive a multitude of protections that any industry would cherish. They have laws shielding them from liability for crimes committed with their products (the "Protection of Lawful Commerce in Arms

Act”).<sup>10</sup> They cannot be the subject of a sting by law enforcement at any level.<sup>11</sup> Under the 1986 “Firearm Owners’ Protection Act,” gun dealers cannot be audited more than once a year. It is difficult to revoke their license to operate. And on the rare occasion that a revocation occurs, it is easy to transfer that operating license to a relative.

Further, current law makes violations of firearms recordkeeping laws misdemeanor offenses, making them much less likely to be pursued by busy federal prosecutors.<sup>12</sup> This means that if an inspection by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) found hundreds of guns “missing” from a gun store, the owner could be prosecuted only for a misdemeanor—if at all. And to be clear, when audits discover “missing” firearms, what really happened is that they were sold out the back door to someone who either couldn’t pass a background check or did not want any record of the sale. (For example, the gun used by the DC snipers originated with a dirty FFL, who sold it to a prohibited buyer and then claimed that the 4-foot long, \$1,000 firearm had been “shoplifted.”)

*Solution: Untie the hands of law enforcement by enabling federal, state, and local law enforcement officers to conduct sting operations on unscrupulous gun dealers. Make gross violations of FFL recordkeeping laws felony crimes, punishable by prison. Ban a person whose FFL status has been revoked from ever reapplying. Increase penalties for FFLs who do not cooperate with gun tracing and law enforcement requests. Eliminate any prohibition on the number of audits that can occur for each gun store.*

#### **4) The ATF is strong enough to live, but weak enough to be pushed around.**

Can you imagine the FBI without a permanent director for six years? It would never happen because they are big, strong, and feared. The ATF is none of those things. Because of consistent defunding efforts by the NRA, the ATF is intentionally understaffed, to the point where an Inspector General report found that “it would take the ATF more than

22 years to inspect all FFLs." <sup>13</sup> In the past, the NRA sought to abolish the ATF, until they realized that the enforcement powers would then have fallen under the FBI. So the NRA sought to keep the ATF as a free-standing agency, where the organization could use its influence to keep the ATF permanently malnourished. <sup>14</sup>

***Solution:** Change structure of the ATF to put the "F" (firearms) back into the FBI. Due to the ATF's consistent lack of funding and inability to enforce gun laws on the books, give gun law enforcement authority over to those who know how to use it. At the very least, undo the counterproductive limitations of the "Firearm Owners' Protection Act" and require the ATF to release data on FFLs they have identified as violating the law and what actions the agency took against those lawbreakers.*

## **DATA: Understanding and Preventing Gun Crime**

Licensing of gun owners and the registration of handguns at the federal level is a pipe-dream, and something that is specifically prohibited by current law. <sup>15</sup> But there are a variety of modest measures that could have a huge impact on crime simply by making sure that data is complete and in the right hands.

### **1) NICS is better but not at its best.**

The linchpin of most modern gun laws is the National Instant Criminal Background Check System (NICS), and NICS is only as good as the records in the system. Over the past ten years, it has gotten much better: millions of records of prohibited buyers have been added to the database, and 92% of checks are concluded within minutes. <sup>16</sup> But there are three fixable problems:

- People who are potentially dangerous enough to make the no-fly list can still legally buy guns. <sup>17</sup>
- The system relies on data from states, much of which is incomplete or still only available in hard copy. <sup>18</sup>

- Under current law, if a background check cannot be completed in three business days, the sale is allowed to move forward (known as a “default proceed”) and the person may take possession of the gun.<sup>19</sup>

*Solution: Add persons on the no-fly list to the list of those prohibited from purchasing firearms. Increase funding or incentives to help states update and automate their records, as suggested by a DOJ report last year. Eliminate “default proceeds” by changing the law to require that a check is totally complete and the buyer cleared before a gun sale may go forward.*

## **2) The Tiahrt Amendments have made us all collectively dumber about gun crime.**

Former congressman Todd Tiahrt authored a series of riders regularly included in Commerce, Justice, Science Appropriations bills (that he admitted he hadn’t read) that currently block law enforcement from collecting and using the data they need to prevent gun crime.<sup>20</sup>

- Background check records must be destroyed within 24 hours, making it impossible for law enforcement to determine whether guns have been improperly sold to prohibited persons and retrieve those firearms as outlined by law. It also makes it impossible to ensure the background check system is working properly, harder to identify “straw purchasers” (people who are buying guns for prohibited buyers), and harder to track dealers who are falsifying their records.
- The ATF cannot require dealers to check their inventory to determine whether any guns have been lost or stolen. Currently, dealers are supposed to notify the ATF if guns are stolen, but unscrupulous dealers can conveniently fail to notice “disappearing” merchandise.
- The ATF is limited in its ability to release gun trace data to the public, and while state and local law enforcement can access the data, they are limited on how they can use it.

***Solution:** Change the Tiahrt Amendments to require background check records to be kept for at least 90 days, as recommended by the Government Accountability Office, allow law enforcement to ask dealers to check their inventory for lost or stolen guns, and allow the ATF to release more detailed reports from traces on crime guns. Similar riders should be removed that limit the Centers for Disease Control and Prevention’s study of gun violence and restore its funding to undertake that research.<sup>21</sup> Issue an Executive Order requiring that crime gun data be shared with all federal agencies.*

### **3) Criminals are figuring out how to avoid a crime gun trace.**

When a gun is recovered in a crime and is traced, federal law enforcement takes the make, model, and serial number of the gun and contacts the manufacturer. The manufacturer tells the feds which distributor they sold it to, the distributor tells the feds which gun store they delivered it to, and if all goes well, the gun store searches its records and tells the feds the name of the person who bought it. That’s where the trace generally ends on the federal level. Local police may contact this buyer and inquire how it ended up in someone else’s hands as part of a crime.

As noted earlier, 89% of gun crimes are committed someone other than the original purchaser.<sup>22</sup> That indicates that there is generally at least one transfer that must have occurred outside the original sale—and often more than one. Criminals know this, and they know that a way to make it even more difficult to trace a crime gun back to them is to purchase used guns from stores. A gun trace is unlikely to uncover the sale of a used gun because once it is resold the gun is lost to tracing.

***Solution:** Improve the gun tracing system for used firearms. When a gun owner sells a gun back to a licensed dealer, require the dealer to report the next sale back to the manufacturer, so that a trace reveals the most recent buyer from a licensed gun dealer.*

## **DESIGN: Redefining Gun Safety**

For the firearms industry, “gun safety” has meant that a firearm will not go off accidentally, or it will not jam with repeated use or if dropped in the dirt. Unlike most other consumer products which have striven to become safer, the gun industry has done almost nothing to ensure that stolen guns or guns picked up improperly by children cannot be used.

## **1) Stolen guns are often used in crimes.**

Based on a survey of prison inmates, it is estimated that at least 10% of all gun crimes are committed with a stolen weapon.<sup>23</sup> And in some high-profile gun massacres, including the one at Sandy Hook, the guns were taken from their rightful owners without permission by family members.

While technology has enabled plenty of consumer products (like cell phones) to be deactivated when stolen, or locked for use only by the owner, those advancements have not yet been applied in a broad way to guns.

*Solution: Several companies, including TriggerSmart, have developed ways to make it harder to use a gun that isn't yours—for example, making it inoperable unless the user is wearing a special ring, or requiring a snap-in piece to activate the gun. Establish funding and incentives for manufacturers who advance these technologies or develop new ones to make stolen guns inoperable, like biometrically authorized user identification.*

## **2) Guns have become more lethal.**

A trip to a gun store shows that the firepower for sale is much different than it was ten years ago. Semiautomatic assault weapons with military designs are prevalent. The standard handgun has become a semiautomatic that can take a high-capacity magazine.

If we pass the Assault Weapons Ban (even a more stringent one), there will still be thousands (perhaps millions) of these weapons in private hands. In addition, semiautomatic handguns are virtually as lethal as those we seek to ban.



However, the typical criminal makes a calculation when using a gun: how likely is it that I'll get caught? If caught, how much time will I serve? Under current law, possession of a semiautomatic weapon in relation to a crime of violence or drug trafficking is subject to the general five-year mandatory minimum sentence applicable to all gun crimes.<sup>24</sup>

*Solution: Make it riskier for criminals to use these very lethal guns by hiking federal penalties by five years for crimes committed with any semiautomatic weapon. Past programs, including Project Exile in Richmond, Virginia, have shown that similar enhanced penalties can alter criminals' choice of weapons.*

### **3) Criminals obliterate serial numbers to make guns harder to trace.**

Some guns have more easily obscured serial numbers than others.<sup>25</sup> Unlike cars, which now have VIN numbers on many different parts (greatly reducing the incidence of car thieves "chopping up" stolen autos), guns typically only have one serial number stamped in one place.<sup>26</sup>

**Solution:** Require manufacturers to use methods and materials that make serial numbers harder to obliterate and to etch them on multiple places on each gun.

### **4) High-capacity clips abound.**

There are thousands and thousands of high-capacity clips on the market and in people's homes.<sup>27</sup> They vastly increase a criminal's ability to kill and wound many victims—like at Sandy Hook, Aurora, and Virginia Tech.<sup>28</sup> They are unnecessary for self-protection.

*Solution: Ban high-capacity magazines, and require manufacturers to change new gun models so that new firearms don't fit the old clips.*

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