

The NRA's Harmful Gun Trafficking Bill

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On first glance, 18 USC 922(d) looks like a good law. It is the provision in the federal code that makes it illegal for private individuals to sell or transfer a gun to criminals and others who are prohibited by law from having them. But this federal law is prosecuted only about 75 times per year, or roughly once or twice per year per state. That's not the fault of the federal prosecutors appointed by Presidents Clinton, Bush, and Obama. Rather, it's because the standard of proof to convict criminals under this law was set unreasonably high. And this is just one of many federal gun laws that were written for minimal practical impact. In nearly all of these cases, the hand of the NRA can be seen in the drafting of these toothless bills.

That brings us to the substitute gun trafficking legislation currently being circulated by the NRA. This is a new, weakened version of the gun trafficking measure approved by the Senate Judiciary Committee last month. The NRA proposal is another in a string of impotent gun laws cleverly written to accomplish practically nothing. It includes the same intentional flaw as all the rest: a standard of proof so stringent that a jury would have to have the ability to read minds to find a perpetrator guilty. In fact, this bill goes one step further: instead of requiring the prosecutor to prove the defendant knew or *had reasonable cause to believe* the gun recipient would use the gun in a crime, the prosecutor would have to prove actual knowledge of that fact. In other words, the buyer would have to essentially tell the seller that the gun is intended to be used in a crime.

This memo lays out the two major flaws in the NRA's gun trafficking proposal: 1) it would dismantle the straw purchaser provisions at the heart of the legislation passed by the Judiciary Committee; and 2) its standard of proof is so high that it would be impossible to prosecute. The NRA

gambit is simply an attempt to distract the Senate from supporting the much stronger measure approved by Judiciary. The Chairman's bill would staunch the flow of guns into the illegal market and keep them out of the hands of criminals. That is the one the Senate should consider, and Senators should reject the NRA's underhanded attempt to further water-down the law.

The NRA bill eliminates the prohibition on straw purchasers.

Under current law, the main method of prosecuting straw purchasers—people who buy guns for someone else because that person can't pass a background check—is addressed in the statute that prohibits giving false statements to federally licensed gun dealers. This is essentially a paperwork violation. By contrast, the trafficking legislation passed on a bipartisan vote out of the Senate Judiciary Committee would crack down on straw purchasers by making it a crime to buy a gun for another person from a gun dealer (with reasonable exceptions), punishable by up to 15 years in prison. It would also increase penalties for purchasing a gun from either a licensed dealer or an individual when that purchase is for another person whom the buyer knows is prohibited from owning one.

The NRA's trafficking proposal would retain the weak provisions of current law by eliminating the straw purchasing section of the bill. That means prosecutors would still be forced to rely on attenuated paperwork violations to try to stop straw purchasers from funneling guns into the illegal market through trafficking rings. And since straw purchasers by definition have clean records (that's how they pass the background checks), they tend to receive very light punishments for these paperwork violations, creating little or no deterrent to straw purchasing. This is the very problem a gun trafficking bill must solve. This bill does nothing to solve it.

The NRA's proposed standard of proof is impossibly high.

When it comes to the standard of proof, the NRA bill goes even farther. Their proposal would actually take steps backwards and make our already watered-down trafficking laws much weaker.

Currently, to prosecute the most dangerous traffickers and straw purchasers—those who intentionally supply guns for use in crime—prosecutors must prove that the seller knew or had reasonable cause to believe that the buyer would use it in a crime. That’s already a high standard. The NRA proposal would raise the standard to make the law unenforceable.

Under their proposal, prosecutors would have to prove the trafficker had *actual knowledge* that the buyer would use the gun in a crime. Knowing that the buyer is wearing a ski mask outside a jewelry store and has a penchant for both armed robbery and dangly earrings would arguably not be sufficient. Instead, a prosecutor would have to prove beyond a reasonable doubt that the supplier *actually knew* the buyer would use the gun in a crime. Thus, the buyer would have to tell the seller of his plan (“I need this gun to rob that liquor store”), or prosecutors would have to prove that not a single other possible conclusion could be drawn from the facts. With a standard of proof like that, trafficking prosecutions will inevitably plummet from their already dismal levels.

Conclusion

“Enforce the laws already on the books.”

That’s the core of the argument against passing any new gun laws. But there are 22 major federal gun laws on the books, and most of them are enforced so rarely that they might as well not exist. It’s not the fault of prosecutors; it’s the fault of Congress for passing laws that don’t have a ghost of a chance to succeed.

The NRA’s substitute trafficking measure, should it pass, may serve a public relations purpose. But do not be fooled—it would make our existing puny trafficking laws even weaker and allow some who would have gone to jail to stay free.

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