

# Why We Need a Federal Gun Trafficking Law



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It's nighttime and a van pulls into an alleyway. The driver jumps out and opens the back hatch as a guy smoking a cigarette comes from beneath a fire escape. A dozen guns are in the back. The guy with the cigarette sizes up the guns. They talk. He peels off several hundred dollar bills, takes a Glock 9mm from the back of the van, shoves it in his waistband, tosses his cigarette on the pavement, and heads out onto the street as another man walks up to the van to peruse the wares.

What crime was committed here? Littering.

There is no federal law that makes that gun sale—a sale that is replicated every day in America—illegal. There is no gun trafficking statute on the books. There is no law that says the buyer must submit to a background check. There is no law that says an ID is required. There is no law about

selling to a felon, a person with a restraining order, or a mentally ill person...*unless* the prosecutor can prove that the seller *knew* the buyer was in one of those prohibited categories.<sup>1</sup> That's a very, very high bar. In fact, it is such a high bar that in a typical year, a person is only slightly more likely to be prosecuted for selling a gun to a prohibited person than they are to be attacked by an alligator.<sup>2</sup>

Don't blame prosecutors. Don't blame the Obama, Bush, or Clinton Administrations. It's not that our gun laws just aren't being enforced—they are unenforceable. We must pass a federal gun trafficking law in order to give law enforcement the tools they need to keep guns out of the wrong hands.

## **How Do We Know Gun Trafficking is a Problem?**

There are roughly 500,000 gun crimes every year in the United States.<sup>3</sup> In 9 of 10 gun crimes where the gun has been successfully traced, the person who originally bought it is not the person who used it in the crime.<sup>4</sup> The typical age of someone who commits a weapons violation is 19, followed by 20, followed by 18.<sup>5</sup> Yet the legal age to purchase a handgun is 21.<sup>6</sup> One in three crime guns has crossed state lines.<sup>7</sup> Crime guns traced in New York, New Jersey, and Maryland often come from Virginia, Pennsylvania, North Carolina, Georgia, and Florida.<sup>8</sup> In Illinois, they come from Indiana, Mississippi, Wisconsin, Kentucky, and Ohio. And Texas is a major supplier for much of the country. Yet it is illegal to sell guns to someone who lives outside your state.<sup>9</sup>

Taken together, these facts indicate a massive web of illegal gun trafficking in America that is funneling guns to criminals and others who are prohibited from purchasing firearms. Guns are purchased in the legal market and then move into the illegal market, either through long trips—from states with lenient guns laws to those whose laws are more strict—or short trips from a girlfriend to a boyfriend. Gun trafficking and straw purchasing (purchasing a gun for another person) are the pipelines that deliver guns into the hands of criminals. And without addressing them, we won't staunch that flow.

## **What are the Current Laws that Apply to Traffickers?**

Right now, there is no direct federal law that prohibits gun trafficking or straw purchasing. So prosecutors have tried to use other federal gun laws to pick up the slack. But each of these existing laws has limitations—especially when they are being used as the primary way to crack down on gun traffickers.

- It is illegal to engage “in the business” of selling guns without a license—but the definition of “in the business” is so narrow and riddled with exceptions that this prohibition is nearly impossible to prosecute.<sup>10</sup> For example, there is no limit to the number of guns a person can sell without being considered “in the business” of gun sales. In fact, this law is so hard to enforce as written that it is used roughly 4 times per year per state.
- It is illegal to sell a gun to a felon, a juvenile, or someone with a restraining order against them, but *only* if the prosecutor can prove the seller *knew* the person belonged to one of those prohibited classes of people.<sup>11</sup> So in the scenario described above, where a stranger buys guns out of the trunk, the seller can credibly claim he didn’t *know* the person was a felon. And if the buyer uses multiple middlemen, as many sophisticated trafficking outfits now do, law enforcement has an even harder time proving that any one of them had the level of knowledge required to prosecute. That means that typically this statute is used about once per year per state.
- It is illegal to sell stolen guns, but again, only if the government can prove you knew the guns were stolen, creating the same problem as the law against selling to a prohibited person.<sup>12</sup>
- It is illegal to sell a gun to someone if you have reason to believe they will use it in a crime of violence.<sup>13</sup> But proving that knowledge would often require the prosecutor, judge, and jury to be mind-readers.
- It is illegal to sell guns to someone from another state, or to bring guns from other states into your own,<sup>14</sup> so often prosecutors try to prove that a gun trafficker traveled through several states (thereby focusing their time and energy on proving the path he traveled, not the fact that he sold guns to criminals).
- It is illegal to lie on the background check form (form 4473) used to purchase a firearm—and this paperwork violation is the closest thing law enforcement has to a law against straw purchasing.<sup>15</sup> But a paperwork violation is not likely to scare a seasoned gun trafficker. By definition, a straw purchaser must be a person without a criminal record (in order to pass the background check), so their sentence if convicted would be lenient and not sufficient to use as leverage to get them to reveal higher-ups in the crime chain. Finally, this law only applies to purchases from federally licensed dealers. If a straw purchaser goes to a gun show where there is no background check and hence no paperwork, there is no federal law that can be used to prosecute them.

Prosecutors cobble together a handful of cases each year under these current statutes, but without new laws directly addressing the two biggest ways that guns get into the hands of criminals—gun trafficking and straw purchasing—they will not be able to improve those numbers and truly make a dent in the illegal gun market.

## How Can We Stop Trafficking?

So what additional laws do we need to help law enforcement stop gun trafficking? What components should go into a federal gun trafficking law? Bipartisan legislation has been introduced in the Senate by Senators Leahy (D-VT), Gillibrand (D-NY), Blumenthal (D-CT), Collins (R-ME), King (I-ME), Durbin (D-IL), and Kirk (R-IL), and there is a bipartisan bill in the House as well, championed by Representatives Meehan (R-PA), Rigell (R-VA), Maloney (D-NY), and Cummings (D-MD). The Senate bill, which was passed out of the Judiciary Committee with a bipartisan vote of 11 to 7, would crack down on trafficking with these policies:

- **Straw Purchasing:** making it a crime—punishable by 15 years in prison—to buy a gun for another person from a licensed firearms dealer, regardless of whether you know that person is a criminal, and stiffening penalties for purchasing a gun (from anyone) to give to a person you know is, or have reason to believe is, prohibited from having a gun;
- **Gunrunning:** making it a crime punishable by 15 years in prison to sell or receive 2 or more guns in violation of federal or state law;
- **Conspiracy:** making conspiracy to traffic guns punishable in the same way as actually selling them;
- **Gangs of Gunrunners:** enhancing punishments to 25 years in prison for those who lead or organize 5 or more people to illegally sell firearms;
- **Chain Transfers:** making it a crime not only to transfer a gun to a person you know or have reason to believe is prohibited from buying one, but also to transfer a gun to someone you know or have reason to believe will then transfer it to another person they know or have reason to believe is prohibited from purchasing it; and
- **Exporting Guns:** making it a crime to bring guns out of the U.S. just as it is to import them into the country now (which is important along the Southwest border, where guns are usually flowing out of the country, not in) and raising the penalty for both importing and exporting to 15 years in prison from 10.

## Isn't a Universal Background Check Law Enough?

The fact that anyone who isn't a licensed gun dealer can currently sell a gun to anyone else without a background check is the lubricant that makes this trade in illegal guns so easy. It allows people to conveniently, and often legally, skirt the edges of criminal law and take guns from the legal market into the shadow market. Thus, passing a universal background check law is a crucial component in undercutting gun trafficking in this country. However, such a law alone is not sufficient to stop gunrunning. For those who are required to conduct a background check under current law, the penalty for not doing so is often a misdemeanor punishable by less than a year in jail or a fine.<sup>16</sup>

Extending that requirement and threat of punishment to private sellers would greatly cut down on the number of guns flowing into the wrong hands, and likely make it harder for gun traffickers to get their inventory in the first place, but it wouldn't be likely to dissuade those traffickers from selling their wares.

In order to enable law enforcement to catch and prosecute these hardened gunrunners, we need to give them new legal tools beyond a background check requirement. They need to be able to threaten harsh sentences to gun traffickers, especially if they hope to flip lower-level criminals to deliver the trafficking kingpins. If we are able to pass both a universal background check law and a federal gun trafficking statute, we can seriously diminish the flow of guns into the illegal market at both the point of entry and the point of distribution.

## **What Should I Say To Gun Owners?**

*I take a backseat to no one in protecting our Second Amendment rights. But those rights don't extend to criminals and terrorists. I don't know a single gun owner who thinks it is fine to drive guns into an alley and sell them to thugs out of the trunk of a car. That should be a crime, and it should be prosecuted.*

## **Conclusion**

Current law ties the hands of law enforcement in going after those who supply criminals with guns. A federal gun trafficking law would fix that problem and allow prosecutors to take down the straw purchasers and gunrunners who arm criminals. Without it, we cannot expect the flow of guns into the illegal market to be staunched. The best way to protect the Second Amendment rights of law-abiding gun owners is to pass laws that are enforceable and give law enforcement every tool possible to keep guns out of the wrong hands.

### TOPICS

**GUNS** 137

## ENDNOTES

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