

Firearm Seller Accountability Measures and the Diversion of Guns to Criminals

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Perpetrators of gun violence are often proscribed from possessing a firearm,¹ but many obtain firearms through the illicit market or theft.² Surveys of incarcerated offenders indicate that most criminals obtain their firearms directly from a friend, family member, or “on the street.”⁶

Because deterring such transactions is difficult, it is prudent to focus on how firearms are initially diverted from the legal to illegal market. A study of federal gun trafficking investigations found that corrupt retail gun dealers accounted for more guns diverted into the illegal market than any other single trafficking channel.³ Data from crime gun traces suggest that a very small proportion of gun dealers sell the majority of guns traced to crime.⁴ Yet a national phone survey of retail gun dealers found that half of the gun dealers indicated a willingness to make illegal gun sales.⁵

These dangerous business practices may result from weaknesses in current federal laws regulating firearms dealers and in the enforcement of those laws. Only one compliance inspection per dealer per year is permitted.⁶ Penalties for gun sales law violations are weak while the standards of evidence required for license revocation or criminal prosecutions of dealers are very high. As a result, license revocations and criminal prosecutions of firearm retailers are rare. A 2004 U.S. Department of Justice’s Inspector General report found the ATF’s inspections of gun dealers were infrequent and of inconsistent quality, and sanctions were inconsistently applied even when violations were numerous and serious.⁷ ATF has conducted more compliance inspections in recent years.⁸

Within the past decade, Congress has passed new laws to further protect gun dealers including making dealers immune from most lawsuits. The so-called Tiahrt amendments, first implemented in 2003, prevent the release and use of crime gun data which had previously been used to identify gun dealers who sell the most guns later recovered in crimes, prohibit ATF from requiring gun dealers to do a physical inventory of their firearms as part of a compliance inspection, require the FBI to destroy data from background checks for firearm purchase applications within 24 hours and thus limiting law enforcement’s ability to investigate the legality of gun sales.

I led a study that used crime gun trace data obtained through Milwaukee Police Department. We found that the diversion of guns to criminals shortly after retail sale by a retail gun shop that was notorious for the large number of guns it sells that are subsequently recovered in crimes, increased by 203% immediately after the Tiahrt amendments became law.⁹ Our ability to determine the effects of the Tiahrt amendments beyond Milwaukee are hindered by the law’s restrictions on the crime gun trace data.

State regulation of firearm dealers, when coupled with regular compliance inspections, appears to curtail intra-state diversion of guns to criminals.¹⁰ This finding is consistent with other research showing that when firearm retailers are vulnerable to undercover stings, lawsuits for making illegal sales, or even bad publicity, the flow of guns to criminals decreases significantly.^{11, 12, 13}

Federal firearms laws allow private sellers to transfer firearms with no background check or other paperwork. This is a crucial omission. Eighty-five percent of guns traced to crime were recovered from someone who was not the original retail purchaser.¹⁴ Studies which I have led show that state laws which close the private sale loophole deter both intra- and interstate diversion of guns to criminals.^{9,15}

Research Cited

- ¹ Cook PJ, Ludwig J, Braga AA. Criminal records of homicide offenders. *JAMA* 2005; 294:598-601.
- ² Harlow CW. Firearm Use by Offenders: Survey of Inmates in State and Federal Correctional Facilities. Bureau of Justice Statistics Special Report. NCJ 189369. Washington, DC: U.S. Department of Justice, November 2001. Revised February 2002.
- ³ Bureau of Alcohol, Tobacco and Firearms. *Commerce in Firearms in the United States*. Washington, DC: U.S. Department of the Treasury, 2000.
- ⁴ Bureau of Alcohol, Tobacco and Firearms (ATF). *Crime Gun Trace Reports (2000): The Youth Gun Interdiction Initiative*. Washington, DC: U.S. Department of the Treasury, 2002.
- ⁵ Sorenson SB, Vittes KA. Buying a handgun for someone else: Firearm dealers' willingness to sell. *Injury Prevention*. 2003; 9:147-150.
- ⁶ Firearm Owners Protection Act, codified at 18 U.S.C. § 923(g)(1)(B)(ii).
- ⁷ Inspector General of the United States Department of Justice. Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Report I-2004-2005. Washington, DC, July 2004.
- ⁸ Bureau of Alcohol, Tobacco, Firearms and Explosives. FFL Compliance Inspections: Fact Sheet. December 2011.
- ⁹ Webster DW, Vernick JS, Bulzacchelli MT, Vittes KA. Recent federal gun laws, gun dealer accountability and the diversion of guns to criminals in Milwaukee. *J Urban Health*, epub 2012.
- ¹⁰ Webster DW, Vernick JS, Bulzacchelli MT. Effects of state-level firearm seller accountability policies on firearms trafficking. *Journal of Urban Health* 2009;86:525-537.
- ¹¹ Webster DW, Bulzacchelli MT, Zeoli AM, Vernick JS. Effects of undercover police stings of gun dealers on the supply of new guns to criminals. *Injury Preention*. 2006; 12:225-230.
- ¹² Webster DW. Supplemental Expert Report: City of New York v. A1 Jewelry & Pawn et al., 06 CV 2233, City of New York v. Bob Moat's Sports Shop, Inc., et al., 06 CV 6504, 2009.
- ¹³ Webster DW, Vernick JS, Bulzacchelli MT. Effects of a gun dealer's change in sales practices on the supply of guns to criminals. *J Urban Health* 2006; 83:778-787.
- ¹⁴ Bureau of Alcohol, Tobacco and Firearms (ATF). *Crime Gun Trace Reports (2000): The Youth Gun Interdiction Initiative*. Washington, DC: U.S. Department of the Treasury, 2002.
- ¹⁵ Webster DW. State Gun Laws and the Diversion of Guns for Criminals: Intrastate and Interstate Effects. Presented at the American Society of Criminology, Washington, DC, November 2011.