

***COMBATING CRIME GUNS***

***A SUPPLY-SIDE  
APPROACH***



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# EXECUTIVE SUMMARY

This report is intended to help state and local elected officials better understand:

- The issue of crime guns
- The “supply-side” approach to gun violence prevention
- The various ways a supply-side approach may be implemented at the local level

This report can also be used by members of the community and media as a guide to hold their elected officials responsible for enacting a comprehensive supply-side approach.

Crime guns are guns recovered by law enforcement. Nearly every crime gun starts as a legal sale from a licensed dealer. Irresponsible, negligent, or reckless gun dealers are the source of many crime guns, and a scourge on local communities. These dealers either willfully engage in illegal or corrupt behavior, selling guns that they know will soon be trafficked, or have such lax business practices that guns regularly end up in the wrong hands.

A supply-side approach is focused on the supply of crime guns and encourages elected officials, community members, and law enforcement to address not just ‘the shooter’, but also the source of the gun. By using a behavior change approach that holds accountable the guns dealers, in addition to existing intervention and prevention efforts, local communities could experience a reduction in homicide and shooting rates in even the most impacted neighborhoods. In other words, a supply-side strategy is a critical aspect of a comprehensive public health approach to reducing gun violence.

According to the most recently available data, the retail gun dealers responsible for selling the majority of crime guns are a fraction of the total gun industry: about 90% of guns recovered by law enforcement are traced back to just five percent of licensed firearms dealers.<sup>1</sup> Gun tracing enables law enforcement to identify the gun dealers with poor business practices responsible for diverting guns from the regulated market to the criminal market.

However, the federal government’s oversight of these dealers is limited. From October 2016 to October 2017, federal agents inspected only 11,000 of the more than 130,000 federal firearms licensees (“FFLs”) in the United States — and cited over half the inspected FFLs for violations — yet revoked the licenses of less than one percent of them.<sup>2</sup> **The key takeaway: The federal government does not adequately ensure that the country’s hundreds of thousands of FFLs sell guns lawfully and appropriately.** Significant progress against gun trafficking and gun crime will be made only if local and state officials take action. This report outlines various supply-side strategies officials should explore.

In states where local regulations have not been preempted by state law, localities may have an opportunity to enact significant regulations on dealers operating in their communities. This report offers many examples of effective supply-side state and local laws, policies, and regulations that could be adopted in other jurisdictions.

In states with strong firearm preemption laws, municipalities may not be able to enact new policies to regulate gun dealers. However, local officials can analyze existing local regulations for ways to hold dealers more accountable, which may include:

- Expanding and strengthening existing regulations or licensing requirements on resellers of “secondhand goods” (includes gun dealers who sell used guns) to require the use of and training on responsible business practices to prevent risky or problematic sales;
- In some states, using local zoning restrictions to regulate individual firearms dealers’ business practices; and/or
- Requiring secure storage of dangerous items such as firearms.

As major purchasers of firearms and ammunition, local governments can also use the power of the purse to incentivize better industry business practices by:

- Adopting a policy to survey firearm and ammunition vendors about their business practices; and
- Sourcing all government procurements, purchases, or range rentals only from dealers who adhere to specific practices that prevent problematic sales.<sup>3</sup>

In addition, local officials should share information about the business practices of gun dealers in their jurisdictions. Because communication and transparency are key to disrupting illegal gun supply chains, law enforcement agencies should:

- Publicize aggregate gun trace data;
- Share case-level gun trace data with other jurisdictions (via the Bureau of Alcohol, Tobacco, Firearms, and Explosive’s [ATF] Collective Data Sharing program) and information about problematic dealers that cross jurisdictions; and
- Develop a regional task force on gun trafficking, to include dedicated crime gun investigators and prosecutorial units.

This report was written to assist state and local officials in their efforts to prevent gun violence using supply-side strategies. For more information about any of the strategies examined in this report, or assistance enacting these policies, [please contact Brady](#).

*Brady would like to thank Giffords Law Center for their expertise and assistance in writing “Combating Crime Guns: A Supply-side Approach”.*

# INTRODUCTION

## WHAT IS A SUPPLY-SIDE APPROACH?

Most efforts to prevent gun violence focus on the perpetrators of violence with guns. These “demand side” efforts, whether public policy, criminal justice laws, or social service programs are necessary to save lives. But, alone, they are not sufficient to end America’s epidemic of gun violence. A comprehensive approach necessarily addresses both individual gun users and the gun industry.

A comprehensive, supply-side approach implements strategies aimed at changing behavior at a population level by changing social norms.<sup>4</sup> The campaign to end drunk driving is a good example of a public health approach that has changed social norms on the supply-side. In addition to advocating for better enforcement of traffic laws and raising public awareness about the impacts of drunk driving, the campaign also targets employees of bars, restaurants, nightclubs, and taverns to take responsibility for their role in the problem. The supplier-focused methods, including greater enforcement of laws prohibiting service to intoxicated patrons, training servers to intervene before intoxicated patrons leave, and asking establishments to implement designated driver programs effectively reduce incidents of driving under impairment and save lives.<sup>5</sup>

Similarly, a supply-side approach of stronger enforcement of dealer regulations and better training of gun shop employees is likely to change gun supplier behavior, which would result in fewer gun sales to gun traffickers and straw purchasers. Straw purchasers are those who buy guns on behalf of others who cannot legally do so themselves.

Despite the success of a supply-side approach in other areas, most policies and interventions of gun violence continue to focus on the shooters, as does much gun violence media coverage. A recent study found that 80% of news articles about community gun violence appear in the news because of an event in the criminal justice system, such as an arrest, a trial, or the discovery of a body by police. This focus on the shooter and the shooter’s interaction with the criminal justice system obscures the fact that gun violence is the result of both demand and supply.<sup>6</sup> One analysis of gun violence reporting over the course of a year across 41 newspapers in California found zero mentions of the gun industry in stories about community violence.<sup>7</sup>

The lack of reporting about the supply-side of gun violence, coupled with state and federal policymakers’ focus on the demand side, means that local officials looking to take a supply-side approach will need to educate their constituents about the issue and the role of the gun industry in preventing gun violence.

# PART I

## UNDERSTANDING THE SUPPLY-SIDE OF THE GUN VIOLENCE EQUATION

### A PUBLIC HEALTH APPROACH

Prevention is the most effective means of treating a problem. Therefore, diversion before a gun enters the illegal market is a more efficient use of limited local law enforcement resources. Yet it is important to note that gun violence is increasingly seen to be as much a public health issue as a criminal justice issue. Policymakers at all levels are urged by health care practitioners and others to employ a public health approach to reducing gun violence. The public health approach to gun violence demands a comprehensive set of strategies, including supply-side strategies.

The opioid crisis provides a model for a public health approach. Just as physicians, drug manufacturers, and local officials have taken steps to reduce unnecessary access to prescription pain medications as a strategy to end the opioid epidemic, so must gun dealers, gun manufacturers, and local officials take steps to ensure local firearms sales are not contributing to the gun violence epidemic. In fact, many of the key supply-side measures to prevent opioid deaths and addiction, e.g., avoiding overprescribing, reducing diversion into the illegal market, and discouraging misuse through changes in drug formulations, can be directly translated to supply-side measures to prevent gun deaths and injuries.<sup>8</sup> Recently, states have sued pharmaceutical companies to recover the government's costs of addressing the opioid epidemic, an argument that has succeeded in the Oklahoma courts (note, however, that unlike the pharmaceutical industry, the firearm industry enjoys special protections from civil liability, due to a federal law called the Protection of Lawful Commerce in Arms Act, or PLCAA).<sup>9</sup>

A public health-informed supply-side approach to

reducing gun deaths and injuries will require robust enforcement of existing dealer regulations and holding dealers accountable to local, state, and federal laws; reducing diversion into the illegal market by preventing straw purchases and gun trafficking; and deterring misuse through changes in the ways guns are marketed and sold.

### SHIFTING THE PREVENTION BURDEN

In recent years, cities known for their high incidents of shootings and homicides have celebrated a drop in gun violence. Observers from around the country look to Oakland, California, and its Ceasefire program to understand how their communities might replicate Oakland's success of reducing its homicide number from 126 in 2012 to 68 in 2018.<sup>10</sup> Similarly, Chicago has touted its 10% decrease in homicide rates since 2016<sup>11</sup> and, according to The Journal Sentinel, in 2018, Milwaukee recorded its lowest number of homicides since 2014.<sup>12</sup> However, residents of these and other impacted communities continue to experience loss at an unacceptable rate. Too often, community-based programs are expected to solve the issue of gun violence, despite the depleted resources within these communities. With this in mind, an advantage of a supply-side approach is that it shifts the burden of crime prevention, which has been resting heavily on the residents of impacted communities, to include the gun suppliers and gun industry.

Ultimately, a supply-side approach encourages elected officials, community members, and law enforcement to look beyond the shooter. A supply-side approach uses data to identify and address the most persistent sources of crime guns. By using a behavior change approach focused on the source of guns, in addition

to their existing intervention and prevention efforts, local communities could experience an even greater reduction in the homicide and shooting rates of the most impacted neighborhoods.

## MEASURING GUN SUPPLY AND DIVERSION TO THE ILLEGAL MARKET

Tracing crime guns back to the dealers who supply them to the criminal market is critical to solving supply-side gun trafficking. According to the latest national data, the dealers to whom the vast majority of crime guns are traced are a fraction of the total gun industry: about 90% of guns recovered by law enforcement were traced back to just five percent of licensed firearms dealers.<sup>13</sup> Thus, by focusing on these problematic dealers, there is potential for a dramatic reduction in the gun trafficking that results in crime guns on our streets.

Gun tracing is a method for identifying a gun's sequence of ownership from manufacturer to first retail purchaser. When law enforcement recovers a firearm used in a crime, or suspected of having been used in a crime, it sends the gun's serial number and other identifying information to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), which uses a system called eTrace to identify the retail seller and the first buyer. According to ATF, crime gun tracing information is used:<sup>14</sup>

- To link a suspect with a firearm in a criminal investigation;
- To identify potential traffickers, whether licensed or unlicensed sellers of firearms; and/or
- To detect in-state and interstate patterns in the sources and kinds of crime guns.

Trace data can also be used to understand the dealer's role in the supply chain to the illegal market in two ways:

- Time-to-crime, or the amount of time between the retail sale of a firearm by a FFL and its recovery by law enforcement. ATF has noted that a time-to-crime of less than three years is a potential indicator of trafficking.<sup>15</sup>

## AN ATF STUDY FOUND...

- Gun dealers who had a high number of guns recovered in crimes within three years after sale had “significantly higher rates” of federal gun law violations
- Dealers whose lax business practices result in the sale of guns to straw purchasers are supplying guns to the criminal market
- A “secret shopper” survey of California handgun retailers found more than a quarter of licensed dealers expressed willingness to participate in straw sales

- Total number of crime guns traced back to a particular FFL, as “sales volume alone does not account for the disproportionately large number of traces associated with these firearms dealers.”<sup>16</sup>

While trace data is a tool that can help identify the dealers most responsible for crime guns, the ATF, due to insufficient staff and resources, has been unable to meet its goals of regular dealer inspections and enforcement. From October 2016 to October 2017, ATF inspected only 11,000 of the more than 130,000 FFLs in the United States. ATF cited nearly 6,000 of these federally licensed dealers, yet revoked the licenses of less than one percent of them.<sup>17</sup>

Therefore, it is up to state and local law enforcement to conduct the necessary oversight. Communities can make substantial progress towards eradicating gun trafficking and gun crime when gun trace data are carefully analyzed by law enforcement agencies, while local and regional jurisdictions also collaborate in investigations and enforcement actions.

## LIMITATIONS ON USE OF TRACE DATA

Since 2003, due to the efforts of the gun lobby, Congress has included a provision in the ATF section of its appropriations bills known as the “Tiahrt Rider” or “Tiahrt Amendment.”<sup>18</sup> This amendment, which has evolved over time, has been read by ATF to limit public disclosure of gun trace data and certain records that FFLs are legally required to keep. It also seeks to restrict the use of gun trace data as evidence in civil lawsuits. The Tiahrt Amendment is often cited as a barrier to broadly disseminating trace data reports and other information about the supply-side of crime guns. It is not, however, as restrictive as it is often portrayed to be.

Importantly, the Tiahrt Amendment contains a number of key exceptions. For example, by its own terms, the Tiahrt Amendment its non-disclosure provisions from the release of “statistical aggregate data regarding firearms traffickers and trafficking channels, or firearms misuse, felons, and trafficking investigations.” This statistical aggregate data exception should be read broadly to allow for public disclosure of important aggregated data points, such as time-to-crime and numbers of traces back to particular FFLs.<sup>19</sup> Tiahrt also permits the sharing of trace data among law enforcement agencies and is not intended to be a barrier that keeps law enforcement from analyzing and interpreting such data.

The Tiahrt Amendment must also be properly read in the context of the appropriation bill in which appears. In funding the federal government, Congress imposes certain limitations on what ATF — a federal agency — can and cannot do with the funds appropriated to it. Local and state officials are simply not bound by Tiahrt in the same manner as ATF, and data that belong to local and state officials are outside the reach of Tiahrt. Although ATF often has Memoranda of Understanding (MOUs) with law enforcement agencies regarding trace data, the content, enforceability, and scope of these MOUs must be carefully scrutinized before concluding such an agreement precludes disclosure of trace data. In short, there are instances when local agencies have the ability to publicize aggregated trace data.

## SUPPLY-SIDE DYNAMICS

There is one thing nearly all guns used in crime have in common: Virtually every firearm originally came from a firearm manufacturer. Firearms obtained in illegal markets most often originated with a legal purchase by a retailer from a manufacturer or distributor. Knowing the ways in which a firearm may subsequently find its way into the hands of a criminal is vital for understanding a supply-side approach to preventing gun violence.

## WHAT ARE THE TIAHRT AMENDMENTS?

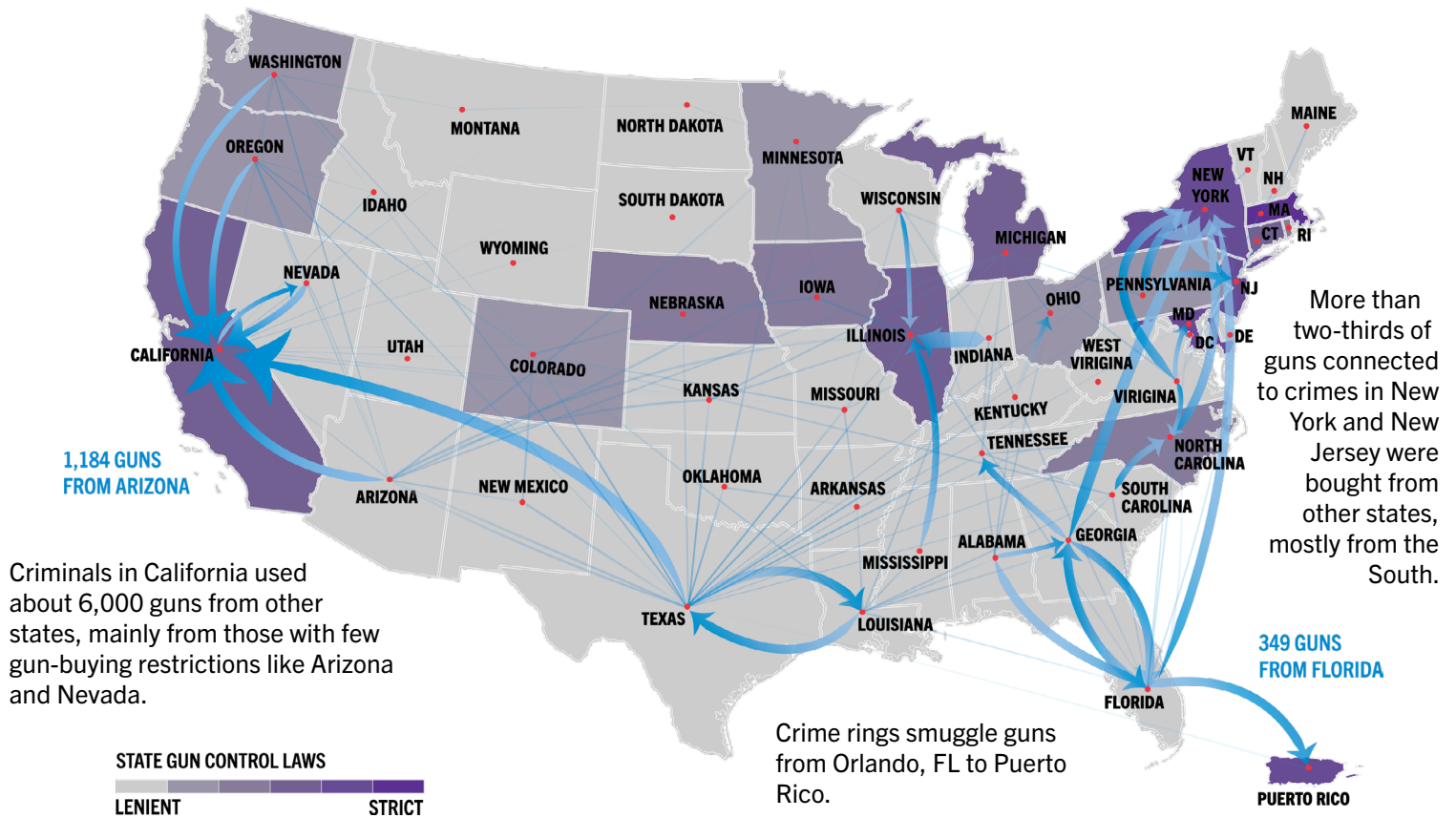
The Tiahrt Amendment refers to a series of amendments to federal appropriation bills that fund the ATF by former Representative Todd Tiahrt (R-KS-4) at the urging of the gun lobby. The ATF has interpreted this amendment as limiting public disclosure of gun trace data and certain records that federal firearms licensees are legally required to keep. It also seeks to restrict the use of gun trace data as evidence in civil lawsuits, however, there are a number of key exceptions including:

- Statistical aggregate data regarding gun trafficking or firearm misuse
- Sharing of trace data among law enforcement agencies
- A limitation to other federal agencies to which it applies, and not to local and state officials



## WHERE GUNS USED IN CRIMES CAME FROM

Arrow sizes show the number of guns traced to other states in 2014.



*Understanding the flow of crime guns from states with lax gun laws to states with stronger gun laws is one way to reduce gun-related crime.<sup>20</sup>*

When a firearm is either found at a crime scene, associated with a crime scene, or associated with a suspect, law enforcement agencies have the ability to trace that firearm and follow the path from legal manufacture or importation to the wholesaler, the distributor, a federally licensed firearms dealer, and finally, to the firearm's first retail purchaser. However, at any point in this firearm commerce flow from manufacturer/importer to a retail firearm purchase, firearms can be diverted from the legal commerce flow towards the illegal firearm market:

- Firearm dealers can mark guns as lost, stolen, or “misplaced” at any point in this commerce flow.
- Firearms can be purchased by individuals who are legally prohibited from possessing firearms, due to a mistake or omission by either the dealer or the National Instant Criminal Background Check System (NICS) and divert them to the illegal market.
- Firearms can be purchased by an individual in a straw purchase for transfer or sale to someone prohibited from possessing a firearm.
- A purchaser who makes frequent retail buys or who buys large numbers of firearms in order to sell or transfer to private buyers can also be a point of entry into the illegal firearms market; this is one aspect of gun trafficking.



A recent 2019 University of Chicago study found approximately seven percent of individuals surveyed while incarcerated for a gun-related crime acquired their guns by theft.<sup>21</sup> The majority of individuals surveyed in the University of Chicago study, 58%, acquired their gun from a friend or acquaintance. The study differentiates between “friend or acquaintance” and “gang member,” with the latter acting as a source for only 13% of the respondents.<sup>22</sup> A Bureau of Justice Statistics report found a stolen gun rate of six percent among the 287,400 incarcerated individuals surveyed in 2016.<sup>23</sup> However, these findings reveal only that the gun was not stolen by the person who was convicted of the crime; the gun may have been stolen earlier in the chain of possession.

In the most recent study conducted by ATF on the source of illegally trafficked guns, “nearly 14% of those cases involved guns stolen from licensed gun dealers and another 10% involved guns stolen from private residences,” which means roughly one in four guns allegedly used in a crime are stolen.<sup>24</sup> The data analyzed for the ATF report is from July 1996 to December 1998.<sup>25</sup> ATF has failed to release up-to-date information about the source of crime guns. This lack of information has created a gap in the public’s understanding about the flow of guns into impacted communities. In the absence of data, community members and elected officials are left to grapple with a variety of hypotheses about the primary source of crime guns and the conversation often shifts to stolen guns.

It is vital that local law enforcement trace crime guns via the ATF eTrace system to determine the origins of the crime gun, act on the information, and share that information with the public. However, the limited jurisdiction of most local law enforcement agencies can inhibit an agency’s investigation of the origins of crime guns. Most local law enforcement agencies have limited resources and are either prohibited or discouraged from conducting investigations outside their jurisdiction. Since crime guns tend to have originated outside the jurisdiction where the firearm is recovered, many crime gun investigations will go beyond the local law enforcement agency’s jurisdiction, frequently to other

states. But these limitations should not preclude local authorities from taking meaningful supply-side actions to reduce gun violence.

# PART 2

## EFFECTIVE, RESEARCH-BASED STATE AND FEDERAL SUPPLY-SIDE POLICIES

### FEDERAL LAWS TO ADDRESS SUPPLY-SIDE TRAFFICKING AND OTHER TYPES OF DIVERSION

Current federal laws intended to prevent supply-side trafficking are minimal and weak. For example, while it is unlawful for any person to sell or otherwise dispose of a firearm to a person if the seller has “reasonable cause to believe” the buyer is prohibited from purchasing a gun, it can be hard to prove what a dealer knew or had reasonable cause to believe.<sup>26</sup>

Overall, federal regulation of gun dealers themselves is minimal. Dealers must get a federal license if they are “engaged in the business” of selling guns, defined as “a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”<sup>27</sup>

In 1993 and 1994, Congress adopted laws to strengthen the licensing system by increasing the barriers to entry. Previously, unscrupulous dealers found it all too easy to obtain a federal license. The 1993 Brady Handgun Violence Prevention Act increased the license fee from \$10 annually to \$200 for the first three years and \$90 for each additional three-year period. That law also required applicants to certify that they had informed local law enforcement of their intent to apply for a license.<sup>28</sup> The Violent Crime Control and Law Enforcement Act of 1994 — most notable for requiring dealers to perform background checks on prospective firearm purchasers for the first time — also required applicants for dealer

licenses to submit photographs and fingerprints, and to certify that their business was not prohibited by state or local laws, and would, within 30 days, comply with such laws.<sup>29</sup> These modest regulations led to a drastic reduction in the number of FFLs.<sup>30</sup>

Today under federal law, dealers must:

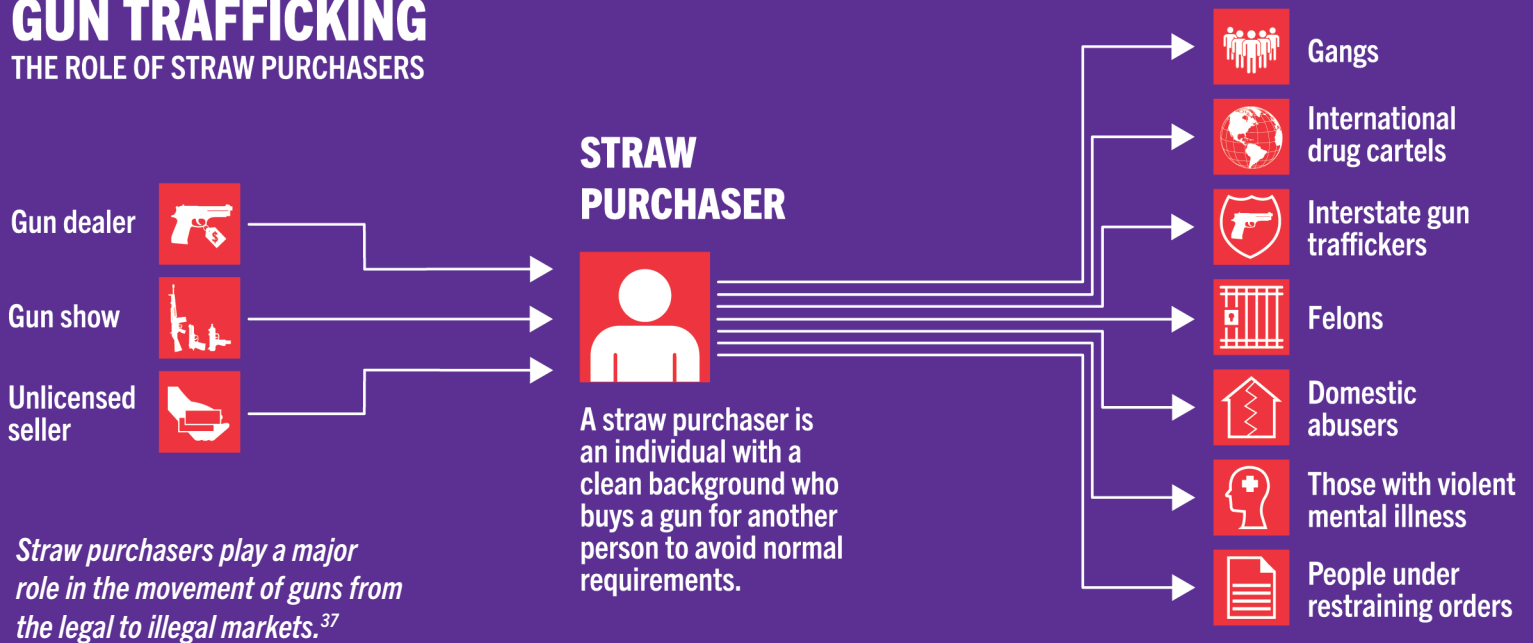
- Initiate background checks on unlicensed firearm purchasers.<sup>31</sup>
- Maintain records of the acquisition and sale of firearms.<sup>32</sup>
- Report multiple sales of handguns to ATF (i.e., the sale of two or more pistols or revolvers to the same person within any five consecutive business days).<sup>33</sup>

### **STRAW PURCHASING**

There is no federal crime of straw purchasing; federal law makes straw purchases illegal only because of the purchaser’s and dealer’s obligations to not make or retain false statements about material facts on the ATF form 4473, the form that must be filled out when a firearm is purchased from a licensed dealer. Form 4473 asks the purchaser to confirm that he or she is the “actual transferee/buyer of the firearm(s)” and states, “You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person.”<sup>36</sup>

# GUN TRAFFICKING

## THE ROLE OF STRAW PURCHASERS



*Straw purchasers play a major role in the movement of guns from the legal to illegal markets.<sup>37</sup>*

- If a licensed dealer in the border states of California, Arizona, New Mexico, or Texas report to ATF the sale of two or more of certain semi-automatic rifles to the same person within any five consecutive business days.<sup>34</sup>
- Report to ATF and local authorities the theft or loss of a firearm within 48 hours after the theft or loss is discovered.<sup>35</sup>

Unfortunately, these requirements are inadequate to effectively prevent gun trafficking.

## STATE LAWS TO ADDRESS SUPPLY-SIDE TRAFFICKING AND OTHER TYPES OF DIVERSION

In the face of weak federal regulations, many states and local governments have enacted their own laws to combat the diversion of guns into the illegal market.

### 1. STATE LAWS THAT REGULATE DEALERS' BUSINESS OPERATIONS TO DETER OR FLUSH OUT IRRESPONSIBLE DEALERS

None of the federal licensure requirements noted above directly address potential trafficking by dealers. Additional state and local (in states where local licensing

of gun dealers is not preempted) regulations can and do go much further to ensure that only reputable dealers are selling guns; sixteen states and D.C. require state and/or local licensing of gun dealers. State and local laws that require dealers to obtain a state and/or local license improve oversight by local law enforcement and, when enforced, help them deter illegal activity. Local dealer licensing is recommended by the International Association of Chiefs of Police,<sup>38</sup> and a 2014 study found that state dealer licensing laws reduced gun homicides by reducing gun trafficking.<sup>39</sup>

State and local governments may impose numerous additional requirements on gun dealers as a condition of licensure or as stand-alone regulations.<sup>40</sup>

#### A. REPORTING REQUIREMENTS AND RECORDS AND PREMISES INSPECTIONS BY LOCAL LAW ENFORCEMENT (23 STATES ALLOW)

Accountability under the federal dealer licensing law was purposely limited by Congress:

- ATF may conduct only one unannounced inspection of each dealer per year.<sup>41</sup>
- The burden of proof for prosecution and license revocation are extremely high.
- Serious violations of firearms laws have been classified as misdemeanors rather than felonies.<sup>42</sup>

In addition, as discussed above, ATF has historically been grossly underfunded and understaffed and, therefore, unable to consistently inspect gun dealers.

Although only 62% of FFLs inspected in 2011 were found to be in compliance with federal gun laws, ATF rarely revokes the licenses of dealers found to be violating the law. In fact, in that year ATF took administrative action against 4,056 FFLs, but only revoked or denied the renewal of 71 licenses.<sup>43</sup> A 2010 Washington Post report found, “Criminal prosecutions of corrupt dealers are even more rare [than license revocations], about 15 in a typical year.”<sup>44</sup> In 2018, a New York Times investigation found that “Senior officials at the [ATF] regularly overrule their own inspectors, allowing gun dealers who fail inspections to keep their licenses even after they were previously warned to follow the rules.”<sup>45</sup>

Given the federal government’s inability to hold dealers consistently accountable, state and local oversight of dealers is critical. A September 2010 report by Mayors Against Illegal Guns concluded that routine inspections of gun dealers 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.” The report presented data showing that states that do not permit or require inspections of gun dealers are the sources of crime guns recovered in other states at a rate that is 50% greater than states that do permit or require such inspections.<sup>46</sup>

Similarly, a 2009 study found that cities in states that comprehensively regulate retail firearms dealers and cities where these businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities.<sup>47</sup> **The International Association of Chiefs of Police recommends that state and local governments enact their own dealer licensing requirements because they can respond to specific community concerns, and because state and local oversight of licensees helps reduce the number of corrupt dealers.**<sup>48</sup> Local jurisdictions can require periodic inspections by law enforcement as a condition

of licensure. Such inspections can help uncover FFLs who are violating laws. Local governments can revoke local licenses of dealers who are non-compliant and report non-compliance to the state and ATF. While a local government cannot revoke a federal license, engagement by local law enforcement can improve the ATF’s ability to revoke federal licenses and prosecute FFLs who violate laws.

## **B. EMPLOYEE BACKGROUND CHECKS (7 STATES REQUIRE)**

Background checks are extremely effective at preventing dangerous and prohibited individuals from buying guns through otherwise legal means. In fact, since the Brady Handgun Violence Prevention Act requiring federal background checks was adopted in 1994, over 3.5 million people legally prohibited from possessing a gun have been stopped from purchasing a gun or denied a permit to purchase.<sup>49</sup> More than 35% of these denials involved people convicted of felony offenses.<sup>50</sup>

Given the effectiveness of background checks to prevent people from having illegal access to guns, it is even more surprising that no federal law requires gun dealers, who have access to large quantities of guns, to conduct background checks on their employees. The difficulties of obtaining data on supply-side trafficking has contributed to a failure to examine the relationship between the lack of gun dealer employee background checks and gun dealer trafficking, but common-sense, and the evidence that background checks are effective, dictates that employee background checks should be a local condition of licensure.

## **C. VIDEOTAPING GUN SALES (1 STATE)**

Videotaping surveillance is a security measure frequently employed by retail businesses in every industry, yet no federal law requires businesses selling guns to videotape these transactions. Videotaping gun sales provides law enforcement with the evidence they need to solve certain gun crimes such as straw purchases and robberies. Videotaping sales also deters illegal activity at gun stores. Laws requiring videotaping are popular with the

public. Walmart, the nation’s largest gun seller, began voluntarily videotaping gun sales in 2008. As of 2021, Illinois will become the first state in the nation to require that gun dealers videotape critical areas of the business, including areas where guns are sold and transferred.<sup>51</sup> In the absence of state law, local governments can make videotaping gun sales a condition of licensure; at least five localities in California require videotaping of gun sales.

#### **D. THEFT PREVENTION AND PREMISES SECURITY (9 STATES)**

Federal law does not require that FFLs secure their inventory or their premises, despite firearms dealers being a high-value target for break-ins, theft, and destruction of property. ATF reports that from 2017 through 2018 there were over 1,000 burglaries from federally licensed dealers, resulting in over 13,493 firearms stolen. Stolen firearms are likely to enter the illegal market and be used in subsequent crimes.<sup>52</sup> An in-depth, 18-month investigation by the Tampa Bay Times completed in November 2017 found that “[w]eak security practices at many gun stores have made commercial burglaries an increasingly significant source of weapons for criminals in Florida and beyond.” The investigation found that thefts from gun dealers “are fueling a black market of firearms for people who cannot get them legally. They can resurface in violent crimes or end up in the hands of convicted felons.”<sup>53</sup>

This public safety regulatory gap at the federal level has been filled in by states in several ways. Six states and D.C. prevent dealers from advertising and/or displaying firearms or ammunition so that they cannot readily be seen from the outside by the public.<sup>54</sup> Seven states and D.C. require premises hardening to prevent break-ins and thefts, such as storing firearms in a specified manner after business hours to prevent thefts; having burglar alarms that are connected directly to the local police department; or installing a state-approved security system.<sup>55</sup>

In the D.C., firearms dealers must keep all firearms and ammunition “in a securely locked place affixed to the premises except when being shown to a customer, being

repaired, or otherwise being worked on.”<sup>56</sup>

Licensed dealers in Illinois are required to develop and submit a plan for safe storage of firearms and ammunition to the Department of State Police, which may reject the plan as inadequate. The safe storage plan must supplement security features including “adequate locks, exterior lighting, surveillance cameras, alarm systems, and other anti-theft measures and practices” and comply with rules established by the Department of State Police.<sup>57</sup>

In states like California where localities can impose tougher requirements on gun dealers, local governments can require additional security measures to prevent break-ins and thefts. Thirty-four communities in California have made strong premise security a condition of local licensure. Please see the [Giffords Law Center website](#) for more information about local laws in California.



## E. PROHIBITING GUN DEALERS FROM OPERATING AS A HOME-BASED BUSINESS (1 STATE)

Federal law does not require gun dealers to operate out of a commercial storefront or prohibit dealers from selling out of homes and residential zones. However, gun dealers who operate out of homes rather than commercial storefronts are more able to evade detection of illegal activity. Homes are also less likely to have the robust security necessary to ensure that dealers are not susceptible to burglaries and robberies. As discussed earlier, a small percentage of gun dealers are willing to and do engage in illegal gun sales and trafficking. When such dealers are operating out of homes, away from community and law enforcement oversight, and attracting dangerous buyers into neighborhoods where children and families live, public safety is jeopardized.

According to a federal Bureau of Justice Statistics study published in 2012, about 1.4 million guns, or an annual average of 232,400, were stolen during household burglaries and other property crimes in the six-year period from 2005 through 2010.<sup>58</sup> Massachusetts is the only state to prohibit home-based dealers.

## F. STATE AND LOCAL LAWS REQUIRING DEALERS TO REPORT LOST AND STOLEN FIREARMS (4 STATES)

One way unscrupulous gun dealers traffic firearms is by selling them illegally and declaring the trafficked firearms lost or stolen. Federal law requires gun dealers to report lost or stolen firearms to ATF and “appropriate local authorities.”<sup>59</sup> However, as noted above, ATF is underfunded and is unable to adequately investigate all reported thefts and losses.

State laws that require gun dealers to report losses and thefts to specific state agencies and local law enforcement within a short time frame can help law enforcement solve these crimes and/or prevent guns from entering the criminal marketplace. In addition, state and local law enforcement can use reports of losses and thefts to uncover patterns among local dealers and investigate possible trafficking. The requirement to report to local law enforcement can be an additional deterrent to false claims of lost or stolen firearms.

## 2. STATE LAWS PENALIZING DEALERS FOR TRAFFICKING

There is no comprehensive federal anti-gun trafficking law. Seven states have laws that may facilitate prosecution of individuals who transfer firearms to traffickers under certain circumstances.



**Maryland** prohibits any person from transferring a handgun or assault weapon to a transferee that the transferor has reasonable cause to believe is a participant in a straw purchase.<sup>60</sup>



**California** prohibits a person from transferring a firearm to any person he or she has cause to believe is not the actual transferee of the firearm, provided he or she knows that the firearm is to be subsequently transferred illegally.<sup>61</sup> California also prohibits people from supplying ammunition to any person they know or reasonably should know is prohibited from possessing ammunition.<sup>62</sup> In addition, it is illegal in California for a person to supply ammunition to a straw purchaser with knowledge or cause to believe that the straw purchaser would subsequently provide that ammunition to a prohibited person.<sup>63</sup>



**Rhode Island** prohibits any person from selling a handgun to someone whom he or she has reasonable cause to believe is providing false information.<sup>64</sup> Minnesota has a similar law that applies to handguns and assault weapons.<sup>65</sup>



**Pennsylvania** penalizes any seller who knowingly or intentionally sells, delivers, or transfers a firearm “under circumstances intended to provide a firearm to” any person who is ineligible to possess a firearm under Pennsylvania law.<sup>66</sup>



**Connecticut** law prohibits a person from directly or indirectly causing a firearm to come into the possession of another individual that the transferor knows or has reason to believe is prohibited from possessing a firearm under state or federal law.<sup>67</sup>





**New Jersey** prohibits a licensed dealer from selling or transferring a firearm to a person knowing that the person intends to sell, transfer, assign, or otherwise dispose of that firearm to a person who is disqualified from possessing a firearm under state or federal law.<sup>68</sup>

In addition, although federal law requires licensed dealers to conduct background checks, ATF does not have the resources to fully enforce this requirement. As a result, state laws that mirror the federal background check requirements enable state prosecution of dealers who sell firearms “off the books” to ineligible individuals.

### **3. STATE LAWS TO AID ENFORCEMENT AGENCIES IN ANTI-TRAFFICKING EFFORTS**

Connecticut has created a statewide firearms trafficking task force for the “effective cooperative enforcement” of state laws concerning the distribution and possession of firearms. This task force, composed of municipal and state law enforcement officers, is tasked with identifying and prosecuting traffickers, tracking, and removing illegally possessed firearms, and coordinating with other law enforcement agencies within and without the state.<sup>69</sup>

### **4. TRACING TO ADDRESS SUPPLY-SIDE TRAFFICKING**

In 2013, President Obama released a memorandum to federal agencies requiring them to submit any firearm taken into their custody to the National Tracing Center to be traced; however, federal law cannot require state or local law enforcement to trace recovered firearms.<sup>70</sup> Nine states have laws requiring local law enforcement to use tracing information to identify the source of a recovered firearm.<sup>71</sup>

California has been the leader on this issue, requiring law enforcement to enter guns recovered from crime scenes or elsewhere into a state database, the Automated Firearms System (AFS), within seven days of recovering a firearm.<sup>72</sup> AFS connects with eTrace, ATF’s tracing center, making data input easier because there is only one entry. In other states, law enforcement officers have to enter gun identification data into their system, the state system, and then the federal system. As a result,

California has conducted a much greater number of traces than other states.

The New York Attorney General’s Target on Trafficking Project issues a public report and hosts an interactive Tracing Analytics Platform on the web to better understand gun trafficking patterns and assess the efficacy of laws in combating illegal guns in New York State. The goal is to allow local law enforcement to use data to determine how best to address crime guns in their areas.<sup>73</sup>

While Pennsylvania requires law enforcement to trace crime guns via eTrace (no state system like in California), there have been issues with compliance. In July 2019, the Pennsylvania Attorney General unveiled a project, Track + Trace,<sup>74</sup> that has the following goals:

- Ensure crime guns are uploaded efficiently into shared law enforcement databases in accordance with Pennsylvania law.
- Facilitate conversations with local police departments to ensure data input is occurring across Pennsylvania.
- Form a Track + Trace Working group—a top-tier, collaborative partnership of federal, state, and local law enforcement that will focus on increasing information sharing and identifying trends.
- Work with gun retailers to increase the use of electronic records of sale, moving away from current slow-moving paper records, to allow law enforcement to quickly trace crime guns.
- Educate Pennsylvania consumers on the consequences of serious crimes like straw purchases and illegal transfers.

### **5. BALLISTICS IDENTIFICATION TO ADDRESS SUPPLY-SIDE TRAFFICKING**

The National Integrated Ballistics Identification Network (NIBIN) is the ATF database that contains ballistics info for shell casings recovered by law enforcement. Ballistics can help law enforcement connect crimes in which the same gun was used, which can ultimately help lead law enforcement to the gun (that can then be traced).

Integrated Ballistic Identification System (IBIS) is software equipment used to compare images of marked cartridge cases found at crime scenes to ballistic images previously entered into the NIBIN database. When a “match” (or “hit”) is found, firearms examiners are able to conclude that the same gun was used in both crimes. If recovered crime guns are also test-fired and their ballistic images entered into the system, law enforcement can often determine whether those guns were used in other crimes as well. A 2004 study of the Boston Police Department showed that the use of NIBIN “was associated with a more than sixfold increase in the monthly number of ballistics matches,” and that the technology allowed law enforcement to make matches that “would not have been possible using traditional ballistics methods.”<sup>75</sup>

Like some states have done with gun tracing, states could mandate NIBIN ballistic entry. The more states or local governments that enact these rules, the more ballistics information will be in NIBIN, leading to more traced guns. For example, Delaware, Nevada, and New Jersey have laws that require law enforcement to submit ballistics information into NIBIN.<sup>76</sup>

# PART 3

## LOCAL SUPPLY-SIDE STRATEGIES

While the states discussed above have adopted supply-side policies, local municipal leaders do not have to wait for their state government to take action in order to implement a supply-side strategy to curb gun violence in their jurisdictions. There are several local approaches that hold promise.

### POLICIES AND REGULATIONS TO HOLD DEALERS ACCOUNTABLE

First, in states with strong firearm preemption laws where municipalities and counties cannot enact comprehensive, firearm-specific policies to regulate gun dealers, local elected officials should analyze their existing local ordinances that regulate local businesses for ways in which firearms retailers can be held more accountable.

Examples might include:

- Expanding and strengthening existing local regulations or licensing requirements on resellers of “second hand goods” (which will likely include gun dealers who sell used guns) to require the use of and training on responsible business practices to prevent risky or problematic sales.
- In some states, using local zoning restrictions to regulate individual firearms dealers’ business practices may be an option.
- Ensuring local occupancy/fire inspections require secure storage of dangerous items such as firearms.

Another strategy involves local inspections of firearms retailers. In the 23 states that allow local law enforcement inspections of gun dealers, only two mandate such inspections. In these other 21 states where local inspections are not mandated, but are

allowed, local elected officials should encourage local law enforcement to inspect dealers regularly.<sup>77</sup>

In states where local regulations have not been preempted by state law, localities could adopt the same robust dealer regulations and/or a local licensing schemes discussed on page 11.

While some municipalities may be able to take regulatory action, in others the best option may be to focus on departmental policies and procedures. For example, local law enforcement agencies might begin to regularly include gun trace results, and the dealer information they reveal, in their weekly internal case reviews. By compiling and analyzing aggregate trace data regularly, real-time patterns of supply and access to firearms may emerge that allow law enforcement to hold dealers accountable.

Similarly, local law enforcement agencies could adopt a policy of informing dealers annually of their total number of appearances in that year’s crime gun traces and how their numbers compare to previous years and to regional averages. Sharing this information may open up a new line of communication between local law enforcement and dealers, encouraging dealers to improve their business practices voluntarily.

### POLICIES AND REGULATIONS TO HOLD STRAW PURCHASERS AND GUN TRAFFICKERS ACCOUNTABLE

In addition to holding dealers accountable, local officials can take action to prevent diversion of guns into crime by holding straw purchasers and gun traffickers accountable.

# CASE STUDY: CHICAGO'S LOCAL SUPPLY-SIDE STRATEGY

One recent example of a local supply-side strategy that focused on dealer accountability is the response to the release of Chicago Police Department firearm trace data. The City of Chicago's partnership with the University of Chicago uses multi-year trace data to identify dealers who have a pattern of supplying crime guns used in Chicago and publishes a report containing this information and more every few years.

In October 2015, after the release of the 2014 Chicago trace report, the Village of Lyons, Illinois, passed an ordinance to regulate gun dealers within its jurisdiction, including Midwest Sporting Goods, the dealer who sold the second-greatest number of recovered crime guns in Chicago from 2009-2013.

The new village ordinance was also the result of a lawsuit filed against the suburb.<sup>79</sup> The suit alleged that insufficient local regulation of suburban gun dealers was violating the civil rights of Chicago residents, who were suffering the harm of gun violence in their communities. As part of the settlement of the lawsuit, the new ordinance requires dealers in Lyons to:

- Keep electronic records of anyone who purchases more than one firearm within a 12-month period.
- Report to authorities the names of anyone who attempts to purchase a gun illegally.
- Turn over all records and documents to local law enforcement within 48 hours if the dealer determines that a potential buyer is not a "valid or lawful" purchaser.
- Maintain a digital "do not sell" list of people who purchased a gun that was later traced to a crime.
- Ensure each gun shop employee holds a valid Illinois Firearm Owners Identification card.
- Audit all inventory and report any loss or discrepancy to the village within 48 hours of discovery.
- Install sufficient exterior lighting, surveillance cameras, cameras recording the point of sale, and alarm systems.

The ordinance also requires local law enforcement, with the help of the Cook County sheriff's office, to conduct two inspections a year at the gun shop.

While Midwest Shooting Sports remains in the number two spot for recovered crime guns in the 2017 Chicago trace data report, the portion of Midwest's recovered crime guns with the shortest time-to-crime—those of less than one year from point of sale to recovery in a crime—dropped by a fifth. In 2015, 44% of the crime guns traced back to Midwest Shooting Sports were recovered within one year of sale (87 of 198 total crime guns). In 2016, just one year after the passage of the new regulations, that percentage had dropped to 35% (62 of 179 total crime guns). In addition, during the first two years under the new regulations, 50 suspicious sales were prevented as a result of the new requirements.<sup>80</sup>

Where not preempted by state law, municipalities should require local law enforcement to be notified when a firearm sale is declined due to a failed background check, attempted straw purchase, attempted fraud, or similar activity. A similar rule at the state level in Washington State—the “lie and try” law—resulted in 669 of the more than 3,200 denied gun transactions in 2017 being referred to law enforcement. Of those, 255 were convicted felons, and 192 had protection orders against them barring them from gun ownership.<sup>78</sup>

Many large cities have created gun hotlines to collect anonymous tips about illegal guns, gun sales, and/or gun trafficking in the community. In some cases, when crime guns are recovered as the result of a hotline tip, prosecutors refrain from pursuing certain lower-level offenses, such as illegal possession.

## USING THE PROCUREMENT PROCESS TO INCENTIVIZE IMPROVED DEALER BUSINESS PRACTICES

Local law enforcement are a major purchaser of firearms and ammunition. Local governments can leverage their power of the purse to incentivize better industry business practices by purchasing only from responsible gun dealers. Local law enforcement agencies should adopt a policy to survey firearm and ammunition vendors and require all procurements, purchases, or range rentals only from dealers who have agreed to, and been trained on, specific business practices that prevent problematic sales.<sup>81</sup>

A new policy of this type in Toledo, Ohio, requires vendors to answer the following questions:<sup>82</sup>

- Do you manufacture assault weapons for civilian use?
- Do you sell assault weapons for civilian use?
- Which firearms does your company agree to not sell to civilians?

- Do you require your dealers to conduct background checks?
- Does your company have a plan in place to invest in gun and ammunition tracing technologies?
- Do you use, at a minimum, industry best practices for inventory control and transactions?

In addition, by offering regular opportunities to dealers and their employees for training on best practices to prevent risky or illegal sales, law enforcement agencies can improve business practices while encouraging more dealers to be eligible to participate in the procurement process.

## ***GUN DEALER CODES OF CONDUCT***

Best practices for firearms retailers are described in gun dealer codes of conduct or in model gun dealer ordinances — both of which include comprehensive lists of specific responsible business practices and reasonable measures that gun dealers should adopt to prevent straw purchasers, firearms traffickers, or prohibited purchasers from acquiring firearms.

These guidelines are designed to address the foreseeable dangers that arise when firearms dealers engage in negligent business practices that enable access to guns used to injure and kill innocent people, setting forth the appropriate minimum standards to prevent such gun violence. They recognize the important role that firearms dealers have in protecting the public from gun violence while providing firearms to law-abiding, responsible citizens. Because gun dealers control the point on the supply chain where a firearm leaves a federal firearms licensee and enters the general public, gun dealers have the responsibility of acting as responsible

gatekeepers that protect the public safety.

In addition to being utilized as part of a municipal procurement process, dealer best practices can be incorporated into a supply-side approach in many different ways:

- Community-based campaigns can encourage gun dealers in and around the community to adopt best practices and to speak out about why they have done so.
- Private sector actors such as financial institutions, insurance companies, and tech companies can require gun industry clients and customers to adopt best practices as a prerequisite for access to their financial resources, insurance policies, tech platforms, and other products.
- If not preempted by current state law, state and local policymakers may be able to write the code of conduct principles into statutes and/or ordinances, requiring gun dealers to follow best practices.

Brady's Gun Dealer Code of Conduct can be found on the [Brady website](#). To learn more, please contact [darya@bradyunited.org](mailto:darya@bradyunited.org).

## OTHER LOCAL SUPPLY-SIDE POLICIES

Beyond law enforcement and strategies and procurement policies, other local policies can be utilized to improve the supply-side of gun violence prevention.

First, municipalities should enforce existing state and local sales tax rules on any sellers of guns who are not federally licensed. By ensuring firearm vendors at local gun shows are collecting all applicable sales taxes, municipalities can not only recover missing tax revenues, but can also send a signal that these gun sales are of interest to local officials.

In addition, if state law allows, some municipalities may be able to implement a special local sales tax on firearms and ammunition and use the resulting revenue to fund prevention activities. In 2015, Seattle enacted a tax on sales of firearms and ammunition to generate revenue for gun violence research at Harborview Medical Center, a hospital known for treating gunshot victims.<sup>83</sup>

Another strategy is for local or regional public health agencies to collect more robust data around gun homicides, suicide deaths, and non-fatal shootings by including the retail source of the gun as a data point. The data should be aggregated and publicly reported regularly as part of local public health data systems.

## COLLABORATIVE EFFORTS ACROSS JURISDICTIONS

Law enforcement agencies across jurisdictions should be sharing gun trace data (via the ATF's Collective Data Sharing program) and information about problematic dealers with one another. This is especially important in regions in which the most concerning dealers are located in lower-crime areas where the governing law enforcement agencies may not be recovering many guns. Communication between law enforcement agencies is key to disrupting illegal gun supply chains that cross jurisdictions.

A regional law enforcement task force on gun trafficking, including dedicated crime gun investigative and prosecutorial units, is one example of how this information sharing might happen. The International Association of Chiefs of Police has designed a model of state-level crime gun tracing intelligence sharing strategy, as part of the ATF's i-Trafficking project, to help state and local agencies implement a regional data project. This intelligence sharing strategy, which could be adopted at either the local level or the state level, outlines the investigative benefits of crime gun data, important factors to consider in the analysis of the data, and other ATF resources available to investigators.<sup>84</sup>



## LITIGATION STRATEGIES

Civil litigation against irresponsible gun industry businesses is an effective tool to obtain justice for individual victims of gun violence. It is also a means to deter unsafe business practices and to reform bad actors in the crime gun supply chain. Lawsuits against the gun industry serve many purposes. They hold bad industry actors accountable to victims of gun violence for negligent and illegal conduct, and they take the profit out of supplying the criminal market. Such lawsuits also educate and mobilize the public to take action against the gun violence epidemic. Moreover, civil litigation reforms gun industry practices by incentivizing companies to implement safer sales and distribution practices. Individuals who are injured or killed with guns sold illegally by dealers have standing to bring such lawsuits against dealers. In some cases, where municipal employees such as police officers have been killed or injured, a city might have standing to participate in these lawsuits brought by the injured individuals.

Although the gun industry has lobbied for and achieved special immunity from civil lawsuits in Congress and some state legislatures, such immunity is not unlimited. Victims of gun violence and other entities can prevail—and have prevailed—in suits against gun industry actors. There are tried-and-true causes of actions that courts

have repeatedly found to fall within the exceptions to such immunity provisions, as well as creative legal theories that are also likely to succeed.<sup>85</sup>

In some states, municipalities may have a claim under state public nuisance laws, which allow local governments to regulate businesses that negatively impact the public's rights. If the gun retailer's operations create or maintain a public nuisance, a municipality may be able to file a lawsuit to abate the nuisance and/or to recoup damages arising from the nuisance. Although a few federal appeals court decisions have held that knowing violations of certain state public nuisance statutes do not fit within an exception to the Protection of Lawful Commerce in Arms Act ("PLCAA") – which provides special but limited protection to the gun industry from civil lawsuits – these cases do not foreclose the possibility that violations of other state nuisance statutes fit within the exception. For example, in *City of Gary v. Smith & Wesson Corp.*, the Indiana Court of Appeals recently held that violation of Indiana's public nuisance law could fit within an exception to PLCAA and allowed the public nuisance claim to proceed.<sup>86</sup> For more information, [please visit Brady Legal's website](#).

### **BRADY LEGAL AND THE FIREARMS ACCOUNTABILITY COUNSEL TASKFORCE (FACT)**

Brady has represented cities and counties, as well as individuals or their families, in lawsuits against gun dealers and manufacturers whose negligent or illegal sales supplied criminals and caused injuries. In many cases, these suits result in settlement agreements that require the gun dealer to adopt business practices that will help prevent future sales to straw purchasers or gun traffickers. Brady is proud to partner with lawyers from the nation's preeminent law firms as part of the [Firearms Accountability Counsel Taskforce](#) (FACT). FACT utilizes the courts to hold the gun industry accountable and reduce gun violence. For specific cases, visit [Brady's website](#).

# CONCLUSION

A public health-informed supply-side approach to reducing gun deaths and injuries requires holding dealers accountable; reducing diversion into the illegal market by preventing straw purchases and gun trafficking; and deterring firearm misuse through changes in the ways guns are marketed and sold. In the absence of robust federal enforcement of the gun industry, state and local officials looking for effective ways to prevent gun crime will find the supply-side strategies outlined in this report to be tangible and actionable. Yet it is important to note that the opportunities presented here are not a comprehensive menu, nor are they appropriate for all localities.

We encourage officials seeking more information or technical assistance regarding any of these recommended policies or regulations to contact the professionals of [Brady](#) or [Giffords](#).

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