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## Firearms Regulations: *Closing Loopholes*

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**ABSTRACT**

This paper will explore the history of regulatory and enforcement policies pertaining to firearms at the state and federal in order to provide policy suggestions that have, in the past, been effective at keeping guns out of the hands of persons who society cannot trust to possess them. By comparing different state laws, this research will provide an explanation as to which policies curtail the possession of firearms to these individuals, including former felons, violent persons, and the mentally ill. This research is intended to serve as a guide to current and future policymakers to reduce violent crime with firearms, specifically homicides. The changes in regulatory policies that have been offered below are not dramatic, however, they are simple, responsible steps that have been effectively implemented in geographies inside the United States.

## **EXECUTIVE SUMMARY**

This research breaks down the history of regulatory policy pertaining to firearms at the state and federal level to provide an understanding of how these regulatory policies affect the ability of criminals to acquire firearms. Specifically looking at Virginia, Illinois, Colorado and Texas to provide an argument as to which state laws have been effective in curbing violent crime outcomes. Colorado and Virginia have effectively kept guns out of the hands of untrustworthy persons by expanding background checks and database sharing. In Illinois, police have effectively targeted criminals on the street, confiscating over 20,000 guns per year on average. Texas is an example of a general lack of regulation; Texas does not restrict the disposition of firearms further than federal policy.

## **INTRODUCTION**

Gun culture in America is a culture unique to America. No other people in the world have had the right of owning and possessing firearms since the founding of their nation. An early example of this belief in gun ownership importance comes from Thomas Jefferson, arguably one of the most influential founding fathers. In drafting the Virginia Constitution in 1776, he pushed for the inclusion of the passage “No free man shall ever be debarred the use of arms.” This sentiment can also be found in the writings of many other founding fathers, including George Washington, John Adams, George Mason and Samuel Adams. Because of this, the right to bear arms has been well protected in recent Supreme Court decisions. Still in the United States, this right comes with responsibility and public safety concerns, even though gun violence in America has been a trend since the expansion westward into the Louisiana Territory; to the mobsters of the 1920’s and the current mass shooting trend.

Recent solutions to put an end to the violent acts have been few and far between due to the current partisan nature of American politics. In order to curb the violence, America needs a solution that actually works; a solution that will bring people together and is reasonable and fair to everyone. This work will address regulatory and enforcement problems pertaining to the private sale of firearms between individuals. Using previous publications and data along with a comparison of different state laws and enforcement policies to conclude what must be done to keep firearms out of the hands of criminals and those who do not responsibly use firearms.

The paper will proceed by providing a historical background of regulatory and enforcement policies at the federal and state levels. Then, examine flaws in the current policies to pinpoint public policy failures. After pinpointing the policy failures at both the state and federal level, the paper will offer plausible solutions that would reduce the likelihood of dangerous individuals acquiring firearms.

## **PROBLEM DEFINITION**

Since at least 1980, the United States has consistently seen the highest homicide rate in the developed world (Humanosphere, 2015). In 2014, it was 4.5 per 100,000 people, (down from 7 per 100,000 people in 1993), which is exponentially higher than other developed nation in the world (FBI, 2014). For example, Israel, the U.K, Canada, Australia, Norway and Japan all have homicide rates less than 1.5 per 100,000 people. Of the homicides that take place in the U.S annually, around 70 percent of the homicides involve the use of firearms. Current estimates suggest there are between 280 and 300 million guns in the hands of American citizens (Goldberg, 2012).

These firearms (with the exception of machine guns) are not registered, thus, there are no records of firearms dispositions held by the government. This lack of information makes tracking crime guns extremely difficult and time consuming (ATF, 2000). Currently, the only way for government authorities to trace firearms is by tracing the firearm serial number to the federal firearm licensee that sold the firearm. Tracing the serial number to the licensee that last sold the firearm only allows authorities to retain information on the first individual that purchased the firearm. Once the firearm is in the purchaser's hands, it can, in the majority of states, be sold, gifted or lent to another individual without any record keeping making it virtually impossible for authorities to make the original owner accountable for the firearm falling into the hands of a prohibited person.

## **METHODOLOGY**

To study this problem, this research will rely on a mixture of primary and secondary sources to evaluate how these firearms continue to fall into the hands of criminals. This involves the study of current federal and state laws, survey data, research publications and crime statistics to address policy failures pertaining to firearms regulations.

After evaluating current federal government regulations, the main focus is a comparative look at the state-level, using Colorado, Illinois, Virginia and Texas to recommend policy suggestions to curb criminal access to firearms and those who cannot be trusted to responsibly use firearms (such as the mentally ill). These specific states have been selected for comparison because of their political culture, location, and the current status of firearms regulation in each state. Traditionally, Colorado and Virginia have been pro-gun states, however recently, because of a series of mass shootings, both state's policy makers passed a series of new regulations. Texas, perhaps the most pro-gun state in the union has not passed any major gun legislation in recent history. Illinois has faced a huge crime wave, particularly in Chicago, which prompted state policy makers to pass some of the most stringent firearms laws in any state in the union.

Finally, it should be noted the survey data used in the work is a sample from state prison inmates, which could pose question of the survey's validity (Cook, Harris, Ludwig, Pollack, 2015). However, this survey allows me to have at least some understanding on how criminals acquire firearms. The word criminal itself lowers the validity of the source, however, without at least attempting to understand the root cause of the problem, one could not provide a valid argument as to how to fix the current problem.

## **HISTORY OF FEDERAL REGULATION**

The U.S government operates under a federal system firearms policy and regulation has been divided between the federal, state, and local governments. Prior to the Gun Control Act (GCA) of 1968, firearms manufacturing, commerce, and sales were not regulated by the federal government. The Gun Control Act mandated license requirements for firearms dealers, collectors, and manufacturers known as Federal Firearms License (FFL). The GCA also regulated interstate and foreign commerce making it illegal for businesses to manufacture, import or sell firearms without the FFL. The GCA created new penalties for crimes involving firearms and restricted sales of firearms and ammunitions to felons and other “prohibited persons”(ATF, 2014). Prior to the GCA, any U.S citizen could purchase a rifle or shotgun at the age of 18 or a handgun at the age of 21 by proving their age.

Congress delegated the enforcement of the GCA to the Alcohol and Tobacco Tax Division (ATTD) which in 1972 became the Bureau of Alcohol, Tobacco, Firearms and Explosives, also known as the ATF. In 1973, the ATF had a budget of 74 million and 3,829 employees; in this same year, there were 158,753 FFL’s of with only 10 percent faced inspection (ATF, 2014). The rate of inspected licensees fell to only .8 percent in 1982 because of a Senate report that declared the bureau abused its policing power and targeted law-abiding (ATF Hearing, 1979). Numerous instances of agents illegally seizing firearms without charges filed were reported. It was also found that agents were intentionally damaging firearms while they were confiscated from licensees awaiting trial.

The Senate investigation concluded that the ATF was guilty of illegal law enforcement practices targeting FFL’s for violating parts of the GCA. Prior to the committee hearing, Mr. Acree, a former Commissioner of Customs, was hired by the National Rifle Association (NRA) to investigate the allegations of the abuse of power. Acree investigated cases from ATF offices in Baltimore, Maryland and Richmond, Virginia. During his testimony, Acree stated 75 to 80 percent of the ATF prosecutions from these ATF offices were “aimed at ordinary citizens who had neither criminal intent nor knowledge, but were enticed by agents into unknowing technical violations (ATF hearing, 1979).”

Testimonies from licensees during the committee hearing were consistent with the findings of Acree. A licensee, Mr. Earl of Tucson, Arizona, was the subject of an ATF investigation. Earl had a Class 1 and Class 2 FFL, which allowed Earl to deal standard firearms as well as machine guns and short-barreled rifles. Earl was known to be compliant with routine inspections by the ATF; he had been inspected twice in the year prior to the raid on his business. During the raid on Earl’s business, at his home, ATF agents handed Earl a search warrant but did not arrest him or read him his Miranda Rights. Of the 1,000+ guns found in Earl’s safe, ATF agents illegally confiscated 43 firearms from Earl on June 10<sup>th</sup> 1977 (ATF hearing, 1979).

The Senate investigation prompted Congress to pass the Firearm Owners Protection Act (FOPA) which was signed into law by President Reagan in 1986. FOPA addressed the

abuse of power on the part of the ATF by mandating the compliance inspections for FFL holders could only be done once per year. FOPA also mandated the ATF could only conduct an investigation if the licensee was found to have multiple record keeping violations (ATF, 2000). Along with the restrictions put upon the ATF, FOPA also accomplished other pro-gun initiatives. FOPA reopened interstate sales of long guns, legalized shipping of ammunition through the U.S postal service, deregulated record keeping on the sale of non-armor piercing ammunition, and provided federal protection to gun owners transporting guns across state lines where it would otherwise be illegal. FOPA also outlawed the manufacturing and importation of “machine guns” (any firearm that fires multiple rounds of ammunition with the single pull of the trigger) into the U.S. It is still lawful for machine guns to be bought and sold by civilians, however, they are highly regulated. In order for a civilian to acquire a machine gun, he must file an application with the ATF, which the transformer and the transferee must complete, pass a full criminal background check, be fingerprinted, photographed, as well as pay a 200 dollar transfer tax to the ATF (ATF, 2014)

An amendment in the FOPA of 1986, known as the McClure-Volkmer amendment, allowed for the proliferation of firearms shows by allowing FFL’s to buy and sell firearms at firearm shows in the state in which they operate (VCP, 2016). Prior to this amendment FFL’s could not legally buy or sell firearms at firearm shows, however, FFL’s were allowed to attend and exhibit their products. FFL’s were legally only allowed to make firearms transactions in their place of business. This change in regulation was due to complaints from FFL dealers who claimed unlicensed firearm sellers at gun shows were taking their business (VCP, 2016).

The McClure-Volkmer amendment also revised the definition of “engage in the business of” pertaining to individuals involved in firearms commerce. According to the new amendment, an individual is only required to obtain an FFL if he is “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 (ATF, 2014).” This legislation excluded individuals engaged in “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” from having to obtain a FFL. This bland language raised the level of commerce an individual can take part in without having a FFL, thus, increasing the number of off the record firearms sales (VCP, 2016).

With homicide rates increasing in the late 1980’s and into the early 1990’s, Congress once more amended the GCA with the Brady Bill (ATF, 2014). The Brady Bill mandated a 5-day waiting period on handgun sales from FFL’s to citizens until the National Instant Background Check (NICS) was operational. In 1998, the Federal Bureau of Investigations (FBI) implemented NICS, however, NICS checks are only required when a prospective firearms buyer is purchasing a firearm from an FFL. Individuals that do not purchase a firearm from an FFL are not required by federal law to pass a NICS check. Transactions between individuals, known as private sales, account for 40 percent of all

gun sales in the United States annually, many of which take place at firearms shows (Goldberg, 2012).

## STATES

Because of the federal nature of American government, federal law supersedes state law, however, because of interstate commerce firearms, like all other tangible goods, can be transported from state to state. Due to this, it is essential to understand what extent state regulations and enforcement policies actually affect violent crime outcomes. An example of this is Illinois, whom receives a large portion of its crime guns from neighboring Indiana because Indiana does not regulate firearms in the same manner. Illinois could outlaw guns, however, if guns are legally sold in neighboring states, criminals who by definition do not follow laws, would traffic firearms in from neighboring states.

*Virginia:* In 1989 Virginia became the first state to implement a criminal background check system known as the Virginia Firearms Transaction Program or (VFTP). VFTP was developed by the Virginia State Police using the Central Criminal Record Exchange as its information database (VSP, 2009). FFL's are required to register with Virginia State Police and use the VFTP to conduct a background check on the prospective buyer. The mandated use of VFTP is not required for persons acquiring firearms in private sales, including gun shows. In 2005 the Virginia legislature passed bill 54.1-4201 requiring FFL's to keep and store firearm transfer records for at least 2 years after the date of the transaction. Section B of the bill mandated FFL dealers allow state and local law enforcement officer's admission into the business in the case of a bona fide criminal investigation in order to examine and copy records related to firearms commerce (Virginia Law, 2005)

In 1993, the Virginia Legislature passed the first bill in the state regarding firearms shows. The legislation mandated the Virginia State Police provide forms to firearms show promoters which inform state and local police agencies about the location of the event. However, the law also stated that law enforcement agencies not use information to conduct investigations inside firearm shows. In 2005, the bill was amended requiring firearm show promoters give notice to the Virginia State Police 30 days prior to the show. The amendment also required promoters to provide the Virginia State police with a list of the vendors' names and address, business and/or personal, within 5 days of the event (Virginia State Police, 2016).

*Illinois:* The Illinois legislature passed the Firearms Owners Identification Act in 1968 requiring all firearms owners to obtain a license before acquiring any type of firearm. Until 2014 the law only applied to sales by an FFL, however, it was amended to include sales between individuals with the exception of persons gifting firearms to family members (NRAILA, 2016). To conduct sales, FFL dealers are required to use the dial up system developed by the Department of State Police which acts as a point of contact to the FBI who conducts an NICS check. The 2014 amendment required persons engaging in private sales to validate the prospective buyers FOID card by contacting the Illinois State Police. The transferor of the firearm is also required to keep record of the transfer for at least 10 years after the date of the transaction including the firearm serial numbers, the buyer's name, and transfer number given to the transferor by DSP upon approval (Illinois General Assembly, 2016).

Amendments to the FOIA also affected regulation of firearms shows in Illinois. First, firearm show promoters must fill out and submit a notice of the show to Illinois State Police 30 days prior to the date of the event. Second, amendments mandated background checks for all transactions at firearm shows. In the case of a private sale at a firearms show, the transferor is required to contact the DSP prior to the transaction and keep the transaction records for a minimum of 10 years. Prior to the completion of the transfer, the DSP provide the seller with a sale identification number which the seller must keep along with the firearms serial number and the buyer's name (Illinois General Assembly, 2016).

*Colorado:* In 1994, the Colorado Bureau of Investigation (CBI) implemented the state's background check system known as Instacheck. Instacheck utilizes seven federal, state and local databases to confirm the eligibility of a prospective firearm buyer (CBI, 2009). Instacheck was mandated for the disposition of firearms from an FFL dealer and its use was not required in the case of a private sale until 2001. In 1999, two high school students, Eric Harris and Dylan Klebold, carried out one of the most deadly mass shootings in U.S. history killing 12 classmates and wounding 23 more. The 4 firearms used in the shooting were bought by the boys' friend, Robyn Anderson, who was 18 years old; the boys could not buy firearms because they were the age of 18. Anderson acquired 3 of the 4 firearms used in the massacre at a Colorado firearms show. Harris and Klebold instructed Anderson to buy the firearms from private sellers instead of a licensed dealer to remain undetected (UCDMC). This horrific shooting prompted a ballot initiative in the year 2000 requiring background checks on all sales at gun shows known as amendment 22 (Smartgunlaws, 2014).

Amendment 22 required all transfers taking place at any firearms show be processed by an FFL dealer. The FFL dealer transferring the firearm can charge up to 10 dollars for his service. The FFL dealer transferring the firearm must keep and record all handgun sales. Amendment 22 also mandated the firearm show promoter to post notice of mandatory background checks inside the event itself and arrange for more than one licensed gun dealer to conduct the state required Instacheck (CBI, 2016). In 2013 House Bill 1229 further amended the existing legislation to expand Instacheck for every firearms transaction within the state (CBI, 2016).

*Texas:* Unlike Colorado, Illinois and Virginia, Texas does not have a state run background check system. Because of this, FFL dealers operating in Texas are required to conduct background checks through the FBI operated NICS system. After the September 11<sup>th</sup> terrorist attack, in order to further criminal information sharing, the Texas Department of Safety developed the Texas Data Exchange or TDE (TDPS, 16). TDE is the way in which Texas transfers local, county, and state records to the FBI's National Data Exchange program.

At this point in time, Texas law does not require background checks for prospective buyers involved in private sale, however, there is legislation in place prohibiting transfer to felons and mentally ill persons (Texas Penal Code, 2016). Persons found guilty of

“knowingly” transferring a firearm to person fitting this criteria face a class A misdemeanor. In Texas, class A misdemeanors are punishable by a fine of less than 4000 dollars and/or no more than one year in jail (Texas Penal Code, 2016).

Texas State law has never regulated firearm shows. Regulation of firearm shows has been left to legislation in the GCA. In 2014, several attempts to begin regulating firearm shows were struck down by Republican controlled legislature. Senate Bill 258 proposed several changes in conduct at firearm shows. First, requiring background checks for all transactions at firearm shows using FFL dealers to conduct NICS checks. To accomplish this, promoters would be required to provide FFL dealers able to conduct NICS checks for transfers between unlicensed individuals (Texas Legislature, 2015). Promoters would also be required to notify local law enforcement no less than 30 days prior to a firearm show.

## FINDINGS

The regulations currently on hand at the federal and state level have had a direct effect on the policy failures that have been addressed throughout the paper. In order to prove how regulation affect outcomes the following section will provide evidence as to how individuals that society cannot trust to own or possess a firearm acquire them. To understand the failures, the section below is broken down at the federal level and then at each state individually.

*Federal failures:* In 1999 the ATF published “Gun Shows: Brady Checks and Crime Traces.” The publication addressed regulatory policy failures and provided policy suggestions. The report revealed major gaps in legal framework regarding firearm shows arguing such events provide “a forum for illegal firearms sales and trafficking (ATF, 1999)”. The report cited 314 recent ATF investigations which involved firearm shows in some capacity. The 314 investigations involved 54,000 firearms of which a large number were sold at firearm shows. The report concluded that more than half of the investigations pursued by the ATF during this time period were instances of “persons engaging in the business of” without an FFL. The report also stated that 20 percent of the investigations were instances of FFL’s engaging in “off the books” sales that did not document the transfer (ATF, 1999).

Provisions in the 1986 FOPA weakened the GCA making it harder for the government to prosecute persons who violate firearms commerce laws (Webster, Wintemute, 2015). First, these provisions required the prosecutor to provide evidence of the violation that occurred as well as proof that the violation was “willful”. Second, the provisions reduced penalties and sentencing for firearms sellers who violate the law. Finally, the provisions also limited firearm dealer’s compliance inspections to once per year. These changes in the GCA allowed illegal and negligent gun dealers to divert guns, sometimes large quantities, to criminals without being held accountable or face any repercussions (Webster, Wintemute, 2015). This regulation of licensed gun dealers is critical, as researchers in the late 1990’s discovered through crime gun trace data, 1 percent of FFL dealers accounted for more than half of all crime gun traces (ATF, 2000).

*Evidence:* In 2004 a national survey of state prison inmates was carried out in an attempt to pinpoint the source of crime guns. The survey found 8 out of 10 inmates imprisoned for gun related crimes obtained their weapon from a family member, friend, or the underground market (Webster, Wintemute, 2015). The evidence gathered in the survey is directly correlated to the weakness in federal law pertaining to private sales. In states that did not close the Brady loophole, such as Texas and Virginia, neither party is required by law to record the transaction; there is no record keeping making it impossible for law enforcement to trace the firearm (Wintemute, 2014). Private sale exceptions also make it impossible for law enforcement officials to hold a transferor accountable for transferring a firearm to an individual who is not eligible to purchase the weapon (Webster, Vernick, 2013).

With 40 percent of all firearms transactions considered to be private sales, the secondary marketplace is a central source of crime guns to criminals. Between July 1996 and December 1998, the ATF discovered 84,000 firearms that had been diverted into the secondary marketplace (Knight, 2011). Firearms diverted into the secondary market are trafficked from states with less strict laws into states with more stringent laws. One trafficker, investigated by the ATF, reported legally buying firearms in Virginia and illegally re-selling them in New York. The trafficker was said to have purchased the firearms in Virginia for between 150-200 dollars and reselling them for 500-600 dollars (Knight, 2011).

In the state of Illinois, traffickers are importing firearms into the state, many of which come from Indiana. Indiana is a border state of Illinois which, like Texas and Virginia, does not regulate the private sale of firearms (Cook, Harris, Ludwig, Pollack, 2015). Of the crime guns recovered in Chicago, Illinois largest concentration of traced crime guns, most were old, the average age being 12.6 years. Firearms that were recovered and traced back to Indiana were predominantly newer than those traced elsewhere suggesting the firearms are trafficked directly (Cook, Harris, Ludwig, Pollack, 2015). The age of crime guns in Chicago compared to those in other locations also suggests that Chicago's policing efforts at the street level and focus on taking firearms off the street has made it more difficult for criminals, particularly gang members, to obtain guns (Cook, Harris, Ludwig, Pollack, 2015).

In Colorado, Instachecks by the CBI have been more effective in curtailing guns to persons not legally allowed to possess them than federal NICS checks (CBI, 2016). Instacheck utilizes 7 different state and federal databases to conduct background investigations, including 3 databases not accessed by the FBI during NICS checks. The databases included are the Department of Motor Vehicles (DMV), the Colorado Crime Information Center (CCIC), and the Colorado State Courts Data Access (PAS). Because of this expansion, Instacheck was able to deny 15,453 person between 2004 and 2012 which would have passed by an NICS check conducted by the FBI (CBI, 2016).

In August of 2013, a 65-year-old felon, Manuel Rodriguez, who had previously served time for illegally selling firearms without a license was arrested once more. Manuel was charged as a felon in possession of a firearm after he allegedly sold a handgun to an undercover officer at a Texas gun show (Associated Press, 2013). The transaction with the undercover ATF agent prompted authorities to obtain a search warrant on Rodriguez's house. Upon searching the house, police found 76 firearms and 15,000 dollars in cash (Associated Press, 2013).

## **RECOMMENDATIONS FOR FUTURE RESEARCH**

To further understand how firearms are diverted into the hands of persons, that as a society, we cannot trust to own firearms it is critical that federal and state agencies better their record keeping. If this is not done, further research will be hindered by the known-unknowns. As the information gap shrinks with advances in technology and the accessibility to information increases, research will become more revealing. To further understand the effects FFL dealers have on providing firearms to secondary, illegal markets, it is critical researchers learn more about knowledge and operational security of licensed dealers.

Furthering research on public opinion pertaining to firearm regulation would also be important in furthering this discussion on public policy. If the electorate does not push the political elite to do anything about this issue, nothing will be done. It is also critical that this research on public opinion be shaped in a way in where it does not appear to be a partisan issue, instead making it a public safety issue. As you can see in almost every back and forth debate between political elites, each side presents fallacious arguments. Although these arguments cannot be considered wrong by definition, they fail to present data that is inconsistent with their beliefs.

## **SURVEY METHODS**

The survey tool that has been designed for the second phase of this work targets the operation of FFL licensees. By surveying FFL licensees, researchers would be able to further understand how and why they operate in the manner that they do. This would also provide information on the oversight and regulatory gaps pertaining to the operation of FFL's. Because the ATF has, in the past, done an exceptionally poor job of monitoring licensees, this survey would provide evidence as to how the licensees are diverting firearms into the secondary, underground marketplace which is a one of the major sources of crime guns.

As stated previously in the policy recommendation section, regulating licensees is a critical part of curbing diversion of firearms into illegal marketplaces. Since all new legal firearm sales start with an FFL, it should be understood that the knowledge gained by conducting this survey would lead to further evidence that more regulation and enforcement is necessary to curb the diversion of these firearms to the illegal marketplace and into the hands of individuals that society cannot trust to own or possess weapons.

## CONCLUSION

This research is intended to analyze the current regulatory and enforcement gaps pertaining to private gun sales and provide policy recommendations that have proven to curtail firearms to people society cannot trust. Reducing access to firearms has been proven to lower homicide rates; however, it is critical that we understand the difference between America and other nations. That is, there is almost one gun per person in America compared to with less than .3 per person in all other developed nations. With this information displayed, policymakers should enact mandatory background checks for all firearms dispositions.

Although there are clear information gaps pertaining to the underground gun market in the United States, it is clear increases in regulation and enforcement reduce access of firearms to criminals. Since the implementation of NICS checks over 1 million prohibited persons have been denied access to firearms. Colorado is proof that improving database sharing can help curtail firearms to prohibited persons. In Illinois's murder capital, Chicago, local authorities have been able to curtail the amount of firearms available to criminals on the street. The ATF has been successful in apprehending some violators, however, they are underfunded and lack the authority and resources to adequately police firearms to the extent they should be policed.

| With 280 million firearms in the hands of private citizens, accounting for each would be impossible. Given the current situation it is essential these policies be addressed and new, and old, regulations be enforced in a persistent manner by both state and federal authorities. Although firearms are regulated and policed in large part by federal authorities, recently, states have effectively curtailed the access of firearms to person's society cannot trust with firearms. Comparing these state policies in this way provides evidence as to which state policies could be mirrored by other states and, possibly, at the federal level.

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## **APPENDIX A - SURVEY**

### **FEDERAL FIREARMS LICENSEES SURVEY**

1. Are you a Federal Firearms Licensee? (IF no, end survey, if Yes, Goto Q2)
2. What state do you operate out of?
3. What kind of Federal Firearms License do you have?
4. Have you been subject to an ATF inspection? (IF NO, GOTO Q8, IF YES, GOTO Q5)
5. How long ago was the inspection?
6. Did the inspection lead to a further investigation?
7. If yes, what was the outcome of the investigation?
8. Does the state you operate in allow local and state law enforcement to inspect your business? (IF YES GOTO Q9, IF NO GOTO Q11)
9. If yes, has local or state law enforcement ever conducted an inspection on your business?
10. If yes, did the inspection lead to further investigation?
11. How do you keep track of purchases made through your business?
12. Have you reported missing or stolen guns to authorities within the past 5 years? (If no, GOTO Q14, If YES GOTO Q13)
13. How many and what type of weapons were they?
14. Do you own a personal collection of firearms? (If NO GOTO Q18, If YES GOTO Q15)
15. If yes, how many?
16. Do you buy and sell personal firearms without background checks?
17. If yes, how many firearms have you personally transferred over the past 5 years?
18. Do you attend gun shows? (IF NO, end survey, if YES GOTO Q19)
19. How many gun shows do you attend per year?
20. Do you record firearms transactions at gun shows?
21. If yes, how many firearms did you transfer at gun shows last year?
22. Have you ever been questioned by any law enforcement agency at a gun shows?
23. If yes, when and how frequently?

## **APPENDIX B – POLICY BRIEF**

John Baldwin  
April 20, 2016  
Coastal Carolina University

### **Policy Brief**

#### **Executive Summary**

Gun policy in the United States continues to be a very polarizing policy issue that many Americans feel very strongly about. To better understand this highly politicized issue there needs to be a better understanding of what can be done to further public safety while at the same time respecting our constitutional rights. This paper will discuss regulatory and enforcement policies that have been effective in curbing access to firearms to criminals. There are regulations at both the state and federal level that have been effective in curbing gun violence, however, because of interstate commerce it is critical that these regulations be nationwide. States that continue to pass gun control legislation can only do so much to reduce access of firearms to criminals because they will be trafficked in from states with less restrictive policies.

#### **Introduction**

In order to curb gun violence across the U.S it is critical that loopholes in firearms commerce laws are closed. It is also necessary for the ATF and state law enforcement agencies more rigorously police firearms transactions. We protect everything with firearms, from banks to schools to politicians; however, some of these firearms in circulation end up in the hands of criminals. Criminals in the U.S use firearms to commit around 10,000 homicides per year, a rate of 4.5 per 100,000 people (more than any other developed nation). This violence ends up costing the U.S government around 1 billion dollars per year (CDC, 2014). Although firearms are regulated by several previous pieces of legislation at the federal and state levels there are loopholes in firearms commerce laws. Licensed firearms dealers (FFL's) are required to put purchasers through background checks while private sales between two individuals do not. Firearms commerce takes place at gun shops, gun shows, and flea markets and privately between individuals.

#### **Approaches and Results**

To make the conclusion that the distribution of firearms to criminals can be curbed I examined current federal and state regulations on firearms commerce, using Virginia, Texas, Colorado and Illinois. The ATF was started in 1972 and is responsible for regulating alcohol, tobacco and firearms sales, manufacturing and distribution. The first year the ATF oversaw FFL's only 20.7 percent of licensees were inspected. That number is even lower now and in 2013 just 7.6 percent of licensees were inspected. Put into figures that means of the 139,244 licensed dealers only 10,516 of the dealers were inspected (ATF, 2014). With the ATF depended on to do so much, it is very small with a

budget of around \$1.1 billion annually in comparison to other agencies such as the FBI whose budget is \$8.3 billion annually.

In 1979, after a senate committee hearing that concluded the ATF had been illegally and maliciously targeting FFL's Congress passed the Firearm Owners Protection Act known as the FOPA. . FOPA addressed the abuse of power on the part of the ATF by mandating the compliance inspections for FFL holders can only be done once per year. FOPA also mandated that the ATF could only conduct an investigation if the licensee was found to have multiple record keeping violations (ATF, 2000). Because of this change in regulations the ATF had a much harder time prosecuting persons suspected of committing crimes relating to the distribution of firearms.

An amendment included in the FOPA known as the McClure-Volkmer amendment also revised the definition of "engage in the business of" pertaining to individuals involved in firearms commerce. According to the new amendment an individual is only required to obtain an FFL if he is "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 (ATF, 2014)." This legislation excluded individuals that engage in "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" from having to obtain an FFL. This bland language raised the level of commerce an individual can take part in without having an FFL, thus increasing the number of off the record firearms sales (VCP, 2016).

With 40 percent of all firearms transactions considered to be private sales the secondary marketplace is a central source of crime guns to criminals. Between July 1996 and December 1998 the ATF discovered 84,000 firearms that had been diverted into the secondary market place (Knight, 2011). Firearms diverted into the secondary market are trafficked from states with less strict laws into states with more stringent laws. One trafficker investigated by the ATF reported buying firearms in Virginia (legally) and re-selling them (illegally) in New York. The trafficker was said to have purchased the firearms in Virginia for between 150-200 dollars and reselling them for 500-600 dollars (Knight, 2011).

In the state of Illinois, traffickers are importing firearms into the state, many of which come from Indiana. Indiana is a boarder state of Illinois, which like Texas and Virginia does not regulate the private sale of firearms (Cook, Harris, Ludwig, Pollack, 2015). Of the crime guns recovered in Chicago (Illinois largest concentration of traced crime guns), most were old, with the average age 12.6 years. However, firearms that were recovered and traced back to Indiana were predominantly newer than those traced elsewhere, suggesting the firearms are trafficked directly (Cook, Harris, Ludwig, Pollack, 2015). The age of crime guns in Chicago compared to those in other locations also suggests that Chicago's policing efforts at the street level and their focus on taking firearms off the street has made it more difficult for criminals (particularly gang members) to obtain guns (Cook, Harris, Ludwig, Pollack, 2015).

In Colorado, Instachecks by the Colorado Bureau of Investigations (CBI) have been more effective in curtailing guns to persons not legally allowed to possess them than federal NICS checks (CBI, 2016). Instacheck utilizes 7 different state and federal databases to conduct background investigations, including 3 databases not accessed by the FBI during NICS checks. The databases included are the DMV (Department of Motor Vehicles), the CCIC (Colorado Crime Information Center), and the PAS (Colorado State Courts Data Access). Because of this expansion Instacheck was able deny 15,453 person between 2004 and 2012 which would have passed by an NICS check conducted by the FBI (CBI, 2016).

## **Conclusion**

Although there are clear information gaps pertaining to underground gun market in the United States it is clear that increases in regulation and enforcement reduce access of firearms to criminals. Since the implementation of NICS checks over 1 million prohibited persons have been denied access to firearms. Colorado is proof that improving database sharing can help curtail firearms to prohibited persons. In Illinois's murder capital, Chicago, local authorities have been able to curtail the amount of firearms available to criminals on the street. It is critical to understand that gun violence in an armed society will never be completely and with 280 million firearms in the hands of private citizens accounting for each would be impossible.

## **Implications and Recommendations**

Although states with further restrictions and additional firearms precautions have been successful in curbing some illegal gun trafficking this policy failure needs to be addressed at the federal level. If the federal government does not change the laws regarding the transfer of firearms guns will continue to flow from states with less restrictive laws to states with more restricted laws. All firearms transactions, weather it is from a private individual or a licensed dealer, should have to conduct a background check prior to the transfer. It is also essential that these policies be enforced, without enforcement the regulation would mean little to nothing for potential violators. All FFL dealers should be required to keep transactions records on file for at least 10 years and there should be monetary and criminal penalties for licensees that do not comply with regulations. Private individuals that transfer firearms should also be held accountable for the transfer of the weapon and if found in violation they should face monetary and criminal penalties.

## **APPENDIX C - PRESS RELEASE**

John Baldwin  
Coastal Carolina University  
Dyer Institute for Leadership and Public Policy  
March 31, 2016  
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For Immediate Release: April 20, 2016

### **A bipartisan approach to gun violence in America**

**Conway, SC:** In order to curb gun violence across the U.S, it is critical that loopholes in firearms commerce laws are closed. It is also necessary for the Bureau of Alcohol, Tobacco and Firearms (ATF) and state law enforcement agencies more rigorously police firearms transactions. We protect everything with firearms, from banks to schools to politicians; however, some of these firearms in circulation end up in the hands of criminals. Criminals in the U.S. use firearms to commit around 10,000 homicides per year, a rate of 4.5 per 100,000 people (more than any other developed nation). This violence ends up costing the U.S. government around \$1 billion per year (Center for Disease Control and Prevention, 2014). Although firearms are regulated by several previous pieces of legislation at the federal and state levels, there are loopholes in firearms commerce laws. Licensed firearms dealers (FFLs') are required to put purchasers through background checks while private gun sales between two individuals do not. Firearms commerce takes place at gun shops, gun shows, and flea markets and privately between individuals. Recent estimates show that there are between 200 and 300 million guns in the hands of private citizens in the U.S.

The ATF must regulate federal firearms licensees. The ATF was started in 1972 and is responsible for regulating alcohol, tobacco and firearms sales, manufacturing and distribution. The first year the ATF oversaw FFL's only 20.7 percent of licensees were inspected in 2013, just 7.6 percent of licensees were inspected. That means of the 139,244 licensed dealers, only 10,516 were inspected (ATF, 2014). The ATF does this on a budget of \$1.1 billion annually (compared to the FBI \$ 8.3 billion). After the passage of the Brady Bill (which required background checks for purchases through FFLs' the rate of criminals who obtained guns through FFL's fell from 20.8 percent in 1991 to 13.4 percent in 1997 (ATF, 2014). In this day and age, security is vital for our nation to prosper; security will lead to a more prosperous nation.

This has become a highly politicized issue because many citizens fear a national gun registry; which would force registration of all firearms and put that information into the hands of the government. However, there is a solution that doesn't involve government having direct access to personal information about firearm owners. Making a national instant criminal background check required for all firearms transfers would prevent guns from getting into the hands of persons disqualified from firearm ownership. Those who fail this background check are the most likely to commit a crime with the firearm.

In order to reform the standing system, it is essential to gain the support and commitment from responsible firearms owners nationwide through education and incentives. For this legislation to be politically feasible in today's political environment, the public must understand this will not be a national gun registry. Instead, firearms owners would bring firearms to an FFL for private sales. The FFL would be required to document the seller's and buyer's information and store it safely without a government agency being part of the process. The only way for this data to be accessed by any government agency is in the case of a crime committed with a registered firearm's serial number. Increasing regulatory policy and oversight will have a negative effect on the underground gun market in the U.S. By eliminating loopholes and further policing interstate commerce it is possible to further shrink the underground firearms markets. To address this issue, the media must play their critical role in educating people on this issue without politicizing it.

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