



## Strong gun laws are not enough: The need for improved enforcement of secondhand gun transfer laws in Massachusetts



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### ABSTRACT

**Objective.** Research suggests that an overwhelming majority of crime guns were transferred by private sellers before recovery by law enforcement. Unfortunately, most states do not regulate these transactions. This study examines whether analyses of state-level private transfer data could be used to develop interventions to reduce the supply of handguns to violent criminals.

**Methods.** Traced Boston crime handguns first sold at Massachusetts license dealers were matched to state secondhand gun transfer data. Logistic regression and descriptive statistics were used to analyze the characteristics of recovered crime guns and in-state primary and secondary market transaction patterns.

**Results.** For crime handguns with records of secondary market transactions in Massachusetts, many rapidly move from private transfer to recovery by the police. Unfortunately, important transaction data on the in-state sources of nearly 63% of recovered handguns were not readily available to law enforcement agencies.

**Conclusions.** Data on private transfers of guns could be used to prevent violent injuries by reducing criminal access. However, the passage of strong private transfer gun laws needs to be accompanied by investments in the vigorous enforcement of reporting requirements.

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### Introduction

In 2011, there were over 11,000 gun homicide victims and some 467,300 victims of non-fatal firearm crime in the United States (Planty and Truman, 2013). Guns are frequently used in crime in the United States partly because they are so easy to acquire. This ease of access is partly attributable to the fact that there are two systems of gun commerce in this country, one involving licensed gun retailers and the other based on secondhand gun transactions by private-party gun sellers, and only the first of these systems is regulated under federal law. Federal firearm laws requiring licensed dealers to complete criminal background checks of prospective buyers and to maintain records of firearm transactions, including the manufacturer and serial number of firearms, purchaser identification, sale date, and other information, do not apply to private sales. Moreover, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) gun tracing is limited to capturing the first retail sale at licensed dealers (Braga et al., 2002). As such, it is not surprising that criminals seem to prefer acquiring secondhand firearms. Some 85% of all guns used in crimes and then recovered by law-enforcement agencies have been sold at least once by private parties (Wintemute et al., 2010).

Gun control advocates suggest that gun deaths and injuries could be reduced by the universal adoption of federal and state laws requiring criminal background checks and transaction recordkeeping for all firearm sales (see, e.g., Bloomberg, 2013). Massachusetts is one of a relatively small number of states that currently extend firearm transaction recordkeeping requirements to sales by private, unlicensed sellers (Webster et al., 2013). Massachusetts state law requires its citizens to record and report all firearm sales, transfers, inheritances, and losses. In this article, we examine the prospects of reducing the flow of secondhand guns to criminals by analyzing ATF trace data and Massachusetts gun ownership transfer data for successfully-traced handguns recovered by the Boston Police Department (BPD). We find that computerized data on sales of secondhand firearms hold great potential for understanding and shutting down illicit secondary market sources of guns to criminals. However, we also find the available computerized gun records to be surprisingly incomplete, suggesting a lack of investments made in regulating and enforcing state gun commerce laws in Massachusetts.

### Literature review

Federal law establishes a minimum set of restrictions on the acquisition and possession of guns (Zimring, 1975). Some states enact more stringent firearm laws that exceed the minimum standards set by federal law. Legal firearm commerce is composed of transactions made in the

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primary firearm market and in the largely unregulated secondary firearm market. Transactions of new and secondhand firearms conducted through Federal Firearms Licensees (FFLs) form the primary market for firearms (Cook et al., 1995). Retail gun stores sell both new and secondhand firearms and, in this regard, resemble automobile sales lots. Once a gun is in private hands, it can be transferred in a wide variety of ways such as through classified ads in newspapers and gun magazines, online sales, and at gun shows (which include both licensed and unlicensed dealers). Transfers of secondhand firearms by unlicensed individuals form the secondary market, where no records are kept in most states and criminal background checks are not required (Cook et al., 1995). About 30–40% of all gun transactions occur on the secondary market (Cook and Ludwig, 1996).

The secondary gun market, sometimes called the private-party or informal gun market, has long been recognized as a leading source of guns used in crimes (Wintemute et al., 2010). Although secondary market sales are primarily a convenience for the law-abiding, such sales are also the principal option when the prospective purchaser is a felon, domestic violence offender, or other person prohibited by law from owning a gun. Secondary market sales facilitate the diversion of guns from legal commerce into criminals' hands: although it is always illegal for prohibited persons to buy a gun, it is only illegal to sell a gun to such people if the seller knows or has reasonable cause to believe that he or she is doing so. Unscrupulous private sellers may simply avoid asking questions that would lead to such revelations (Wintemute, 2009).

Primary and secondary firearm markets are closely linked because many buyers move from one to the other depending on relative prices and other terms of the transaction (Cook and Leitzel, 1996). As regulations tighten in the primary market, Cook et al. (1995) suggest that the unregulated secondary market will become increasingly attractive. For instance, implemented in February 1994, the Brady Handgun Violence Prevention Act required licensed dealers to conduct a background check on all handgun buyers and mandated a one-week waiting period before transferring the gun to the purchaser. In November 1998, waiting periods for background checks were eliminated for a National Instant Check System (NICS). Maintained by the Federal Bureau of Investigation, NICS is used by FFLs to determine whether a prospective gun buyer doesn't have a criminal record or isn't otherwise ineligible to make a purchase. Over a five-year period (1994–1999), 13 million Brady criminal background checks were conducted for prospective handgun purchasers (BJS, 1999). Nearly 320,000 requests were denied, of which 220,000 were due to prior felony convictions or pending indictments (BJS, 1999). Nevertheless, it seems easy enough for criminals to circumvent the provisions of the Brady Act by acquiring guns through the unregulated secondary market (Jacobs and Potter, 1995). An evaluation of the Brady Act found no discernible impact on homicide trends and suggested that criminals acquiring firearms from the unregulated secondary market may have undermined the effectiveness of the Brady Act in preventing homicide (Ludwig and Cook, 2000).

States vary greatly in the nature of their gun purchase laws and gun dealer regulation policies and procedures (Vernick et al., 2006). Vernick and Hepburn's (2003) examination of state gun laws classified states as having no purchase and registration laws, purchase only laws, registration only laws, or both. Firearm purchase laws require prospective gun buyers to first obtain a license or permit before purchasing a firearm. Registration laws mandate permanent records of each gun sale that are kept by states in centralized locations. Some states do not have permit-to-purchase laws but do have laws requiring background checks for private sales. A growing body of empirical evidence suggests that more restrictive state-level firearm sales laws may reduce the illegal diversion of guns from lawful commerce to criminals (Webster et al., 2013). Further, Pierce et al. (2015) found that California enforcement of state laws and regulations through routine dealer inspections and the ongoing

analysis of automated records on firearm transactions for suspicious sales and purchase patterns made it more difficult for prohibited persons to acquire guns from in-state dealers where all private-party transfers must be routed through a license retailer.

## Data and analytical framework

The Gun Control Act of 1968 (GCA) established a set of requirements that allows any given firearm to be traced from its manufacture or import to its first sale by a retail dealer (Zimring, 1975; Cook and Braga, 2001). The GCA mandates that each new firearm, whether manufactured in the United States or abroad, must be marked with a serial number. In addition, the GCA requires all FFLs, including manufacturers, importers, distributors, and retail dealers, to maintain records of all firearm transactions. Firearm traces can be unsuccessful for a variety of reasons such as the following: local police incorrectly completed the trace request form, the firearm was too old to trace (pre-1968 manufacture), or the gun had obliterated serial numbers. ATF trace data can provide policy-relevant insights on illegal gun market dynamics when conclusions are based on careful analyses that are coupled with clear acknowledgments of the data limitations (Cook and Braga, 2001; Wellford et al., 2005). The BPD has been comprehensively submitting all recovered firearms to ATF for tracing since 1991 (Kennedy et al., 1996; Braga and Pierce, 2005). Between 2007 and 2013, the BPD recovered 3764 firearms. This research analyzed trace data for the  $N = 3202$  handguns recovered by the BPD during this time period (85.1% of 3764).

Massachusetts General Laws Chapter 140, Sections 128A and 128B, requires all individuals who sell, transfer, inherit, or lose a firearm to report the sale, transfer, inheritance, or loss of the firearms to the Firearms Records Bureau (FRB) of the Massachusetts Department of Criminal Justice Information Service (<http://www.mass.gov/eopss/firearms-reg-and-laws/frb/>). The state form required for private gun transfer is known as an FA10 form (replacing the "blue cards" previously used for private sales). Private transactions can be completed electronically by using the Massachusetts Firearms Registration and Transfer System. Alternatively, a paper FA10 form can be obtained from any police department. The seller must fill out the form and forward it to the Firearms Record Bureau (FRB) within seven days of the transaction. As will be described further below, the manufacturers and serial numbers of Massachusetts-sourced traced handguns not recovered in the hands of the first retail purchasers were run through the computerized Massachusetts firearm purchase and sales database to determine whether there was a record of a subsequent transfer of ownership via a secondhand sale. These same Massachusetts-sourced handguns that were not recovered in the hands of the first retail purchasers were then run through the online National Crime Information Center stolen gun file to determine whether owners had reported their handguns as stolen during the time period between the first retail sale and recovery by the BPD.

ATF and academic analyses of firearm trace data typically focus on a critical dimension of the illegal firearms market: the time between a firearm's first sale at retail and its subsequent recovery by a law enforcement agency, most often in connection with a crime ("time-to-crime"). Law enforcement investigators consider a traced firearm with short time-to-crime, defined as recovery within 3 years of first retail sale, as possibly having been recently and illegally diverted from a retail outlet (ATF, 2002). Research has also identified a number of gun trafficking indicators associated with short time-to-crime, such as multiple low-quality semiautomatic pistols purchased at an FFL in a loose-control state recovered from prohibited possessors in a tight control state that were not the original retail purchasers (Pierce et al., 2004; Braga et al., 2012). Selected gun trafficking indicators relevant to private transfers, such as different purchaser and possessor information and the time between the last known sale and recovery by the BPD, were created to

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