

THE ENFORCEMENT GAP

Federal Gun Laws Ignored





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**A Study of Federal Gun Prosecutions from FY2000–FY2002
by Americans for Gun Safety Foundation**

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Executive Summary

In the last decade, the idea of “enforcing the gun laws on the books” has become the most often repeated slogan in the gun debate, as well as the dominant policy prescription to address the nation’s 350,000 annual violent gun crimes and 9,000 gun homicides.

President Clinton issued a formal directive to the Departments of Justice and Treasury in 1999, ordering them to commit greater resources to “investigating and prosecuting firearms violations.”¹ Governor Bush made tougher enforcement the cornerstone of his presidential campaign’s gun policy, castigating the Clinton Administration for failing to enforce the law.² And President Bush has since pledged that his Administration would “enforce the gun laws which exist on the books.”³

This report is the first to measure whether “enforcing the gun laws on the books” is political rhetoric or actual public policy. Using raw data on prosecutions of gun crimes obtained from the U.S. Department of Justice through the Freedom of Information Act, Americans for Gun Safety Foundation (AGSF) has analyzed the 22 major federal gun statutes and calculated the number of federal prosecutions for each jurisdiction. The 22 federal statutes cover 97% of all federal firearm prosecutions over the past three years, and they include such criminal activity as firearm theft, possession of a gun with an obliterated serial number, illegal possession of a firearm, illegal sale of a firearm to a minor or other prohibited buyer, possession of a firearm in a school zone, the use of a firearm in the commission of a federal drug crime, and laws pertaining to corrupt firearms dealers. The data cover all federal gun cases filed by prosecutors during the fiscal years 2000, 2001, and 2002 (October 1, 1999 to September 30, 2002).⁴

“This nation must enforce the gun laws which exist on the books.”

– President George W. Bush, May 14, 2001

[1] *Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy*, at 2.

[2] See, e.g., George W. Bush on *Larry King Live* (March 14, 2000) (“I do believe the administration has been – has failed in not enforcing gun laws.”) (from CNN transcript No. 00031400V22).

[3] “Remarks of the President on Project Safe Neighborhoods,” White House press release, May 14, 2001

[4] Other data used in this report come from a variety of sources, including the Federal Bureau of Investigations, Bureau of Justice Statistics, and Bureau of Alcohol, Tobacco and Firearms.

The data paint a bleak picture of federal gun law enforcement and lead to three major conclusions and eight specific findings:

Conclusion #1 – There is a vast enforcement gap between the level of federal gun crimes and the number of federal prosecutions.

Over the past three fiscal years, prosecutors have filed 25,002 federal gun crime cases. During the same period:

- More than 330,000 guns used in violent gun crimes showed telltale signs of black market trafficking;
- 420,000 firearms were stolen;
- 450,000 individuals lied on the federal background check form used to determine eligibility for a gun;
- 93,000 gun crimes were committed by those under the age of 18; and
- Thousands of guns with obliterated serial numbers were recovered by law enforcement.

It is a violation of federal law to traffic in firearms, steal guns, lie on the background check form, sell to minors, and obliterate serial numbers. This translates into well over a million crimes where it is likely or certain that a federal law was broken. The 25,002 prosecutions represent a ratio of about 2 federal prosecutions for every 100 federal gun crimes.

Conclusion #2 – Twenty of twenty-two of the major federal gun statutes are rarely enforced.

Of the 25,002 federal firearms cases over the past three years, 85% of the prosecutions were for violations of just two federal statutes: the illegal possession of a firearm by a felon or other prohibited buyer, and the possession of a firearm while in the commission of a violent or drug-related federal crime. During both the Clinton and Bush Administrations, the other twenty statutes went virtually unenforced. For example, only 2% of prosecutions were for crimes associated with illegal gun trafficking and less than 1% for illegally selling a gun to a minor.

There are two significant concerns with both the Clinton and Bush Administrations' narrow focus on these two statutes. First, these two statutes involve crimes that are almost always prosecuted at the local level, and while there is a benefit to enhanced federal sentencing, most of the statutes that are not enforced can only be prosecuted under the purview of

federal authorities: interstate gun trafficking, corrupt gun dealers, lying on the background check form, and obliterated serial numbers. Second, the paucity of prosecutions under the other twenty statutes mean that the federal government is doing little or nothing to break up the vast black market in illegal guns.

Conclusion #3 – While the Bush Administration has made progress enforcing two gun statutes, they have made little or no progress closing the enforcement gap for the other twenty major federal gun laws.

While the number of federal prosecutions has increased under President Bush (from 7,124 in FY2000 to 9,803 in FY2002), 94% of the increase is due to aggressive enforcement of the two statutes mentioned above. The current Administration has not displayed anywhere near the same aggressiveness with the other 20 major federal firearms laws, even though enforcement of most of these laws could greatly reduce gun violence.

Prosecutions for 11 of the remaining 20 major federal gun laws were either the same or lower in 2002 than 2000. For example, the number of corrupt gun store prosecutions dropped from 36 to 27. The number of prosecutions for illegally selling to a minor stayed at 7. The number of federal prosecutions for lying on the background check form did increase – from 501 to 587 cases – but that still means that 99.6% of violators were not prosecuted in FY2002, compared to 99.7% in FY 2000.

During the first full fiscal year of the Bush Administration, the proportion of federal cases devoted to the two most frequently prosecuted statutes actually increased from 83% to 86% of total federal prosecutions. Crimes associated with corrupt gun stores, illegal firearms traffickers, straw purchasers, gun thieves, those who obliterate firearm serial numbers, sell to minors, bring guns to schools, and lie on a background check form to obtain a firearm were barely enforced under President Clinton and are still barely enforced under President Bush.

Today in America, in nearly all federal jurisdictions, for nearly all federal crimes, the phrase “enforce the laws on the books” is little more than a political slogan.

Findings in Brief

Finding #1 – Overall prosecutions for violations of federal gun laws do not in any way reflect the number of federal gun crimes committed.

- Between FY2000 and FY2002, federal prosecutors filed 25,002 firearms cases, while more than one million federal gun crimes were committed in America.
- Of the twenty-two major gun statutes, 85% of federal prosecutions involved two specific laws: using a firearm in the commission of a federal crime of violence or drug trafficking and catching felons in possession of a firearm.
- While the number of federal prosecutions has increased from 7,124 cases in FY2000 to 9,803 in FY2002, 94% of the increase came from the same two statutes referenced above.
- Federal prosecutions vary widely by state, with some states – including most of the leading crime gun exporting states – virtually absent in the war on illegal guns.

Finding #2 – Despite a massive black market in crime guns, the five major federal laws designed to combat gun trafficking are being virtually ignored.

- Though more than 300,000 gun crimes showed telltale signs of gun trafficking, the five statutes designed to prohibit gun trafficking cases were almost never used – a total of just 515 cases during fiscal years 2000 to 2002 (constituting only 2% of all federal firearm prosecutions).
- One-fifth of all federal gun trafficking cases were brought in New York State.
- Among states that are known as gun trafficking sources, there was very little prosecution activity – Ohio (10 cases), Indiana (5), Mississippi (3), Texas (18), Florida (24), Georgia (26), and California (26).
- The number of trafficking cases has increased from 141 in 2000 to 177 in 2001 and to 197 in 2002.

Finding #3 – Corrupt gun dealers are rarely prosecuted.

- Although corrupt licensed gun dealers are the biggest source of illegal firearms recovered in gun trafficking operations, between FY2000 and FY2002 federal prosecutors brought only 88 charges under the three statutes that deal with corrupt gun stores.
- Prosecutors in twenty-two states, home to 29,418 licensed gun stores, filed no cases at all against dirty dealers.
- The number of gun store prosecutions decreased from 36 in 2000 to 25 in 2001 and back up to 27 in 2002.

Finding #4 – Federal laws designed to keep guns out of the hands of kids and away from schools are almost never enforced.

- From 2000 to 2002, youths age 17 and under committed an estimated 93,000 violent gun crimes, yet between FY2000 and FY2002, federal prosecutors brought only 24 cases for illegally selling firearms to a minor.
- Prosecutors in 38 states did not file a single charge for selling firearms to a minor during this time period.
- The number of federal prosecutions for illegally selling to minors went from 7 in 2000 to 10 in 2001 and back to 7 in 2002.
- In the 1999-2000 school year, 2,837 students were caught with a gun in school, yet between FY2000 and FY2002, federal prosecutors filed only 40 cases against those who brought a gun onto school property.
- The number of federal prosecutions for illegally bringing a gun to school went from 11 in 2000 to 17 in 2001 and back to 12 in 2002.

Finding #5 – There is one federal prosecution for every 1,000 stolen firearms.

- Between 2000 and 2002, approximately 420,000 firearms were reported stolen to police and recorded on a national list that includes the make, model and serial number of the gun.
- During that same period, federal prosecutors brought only 524 charges under the five federal statutes that deal with stealing a gun or possessing, selling or transferring a stolen firearm.
- Federal prosecutors in the five states with the highest per capita firearm theft rates filed only 47 cases during those three years – Alaska (2), Alabama (23), Arkansas (5), Mississippi (11), and New Mexico (6).
- The number of stolen gun cases increased from 148 in 2000 to 174 in 2001 and 202 in 2002.

Finding #6 – Individuals who lie on the criminal background check form are rarely punished.

- From 2000 to 2002, roughly 450,000 prospective gun buyers were rejected from purchasing a firearm after signing the ATF form certifying that they had no record that would deny them a gun.
- In that same period, federal prosecutors brought only 1,594 cases against those 450,000 individuals. This means that for every 1,000 offenses, prosecutors filed less than four cases.
- In FY2002, 99.6% of potential cases of lying on the background check form went unenforced, compared to 99.7% in FY2000.
- The number of cases against those who lied on the background check form increased from 501 in 2000 to 515 in 2001 and 578 in 2002.

Finding #7 – Although police routinely recover crime guns with obliterated serial numbers, federal prosecutions are rare.

- In 2000 alone, police in just seven cities recovered more than 2,500 guns with obliterated serial number, yet between FY2000 and FY2002, federal prosecutors throughout the nation filed only 259 cases against individuals in possession of a gun with an obliterated serial number.
- Federal prosecutors in 17 states brought two or fewer prosecutions for possessing a firearm with an obliterated serial number during that period.
- The number of obliterated serial number cases increased from 76 in 2000 to 85 in 2001 and 98 in 2002.

Finding #8 – Nearly all federal prosecutions involve those with previous criminal histories in possession of a firearm or for the use of a firearm in a federal crime of violence or drugs.

- 85% of the total federal prosecutions under the federal firearms statutes were for catching a felon in possession of a gun or for the use of a gun in the commission of certain federal crimes.
- 20% of the federal prosecutions under these statutes came from three states – Texas (1,856), Virginia (1,299) and North Carolina (1,033).
- Only 850 cases were filed in California, 141 in Arkansas, 473 in Illinois, and 353 in Ohio despite relatively high numbers of gun crimes.
- The number of federal prosecutions for these crimes increased from 5,908 in 2000 to 6,875 in 2001 and to 8,434 in 2002.
- These two statutes represented 83% of federal prosecutions in 2000, rising to 86% in 2002.

Overall prosecutions for violations of federal gun laws do not in any way reflect the number of federal gun crimes committed.

// We don't have a gun problem in America, we have an enforcement problem.⁵ //

– Wayne LaPierre, National Rifle Association.

During 2000 to 2002 there were approximately 1.1 million violent crimes* committed in America with a firearm.⁶ Over the same period, federal prosecutors filed charges under the various federal firearm statutes only 25,002 times.⁷ That means that for every forty-five violent gun crimes committed in America, federal prosecutors file only one case using federal firearm laws.

It is not because federal firearm laws are not routinely broken. Indeed, virtually all of the twenty-two major federal gun laws were violated tens of thousands of times. For example, yearly reports by the Bureau of Alcohol, Tobacco and Firearms (ATF) show conclusively that there is a massive black market in crime guns.

- An ATF analysis of crime gun traces in 1999 found that 89% of the time a gun was used in a crime, the gun changed hands at least once before being recovered by police. In addition, 34% of all traced

crime guns were less than three years old.⁸ Taken together, this indicates a vast and rapidly churning black market, where guns go from licensed firearms dealers to straw buyers to criminals.

- At a minimum, these data show that of the 1.1 million violent gun crimes committed over the past three years, at least 330,000 of the guns used demonstrate telltale signs of trafficking.** Knowingly selling or transferring a firearm to a prohibited buyer, such as a criminal, is a federal crime.
- The ATF's latest youth crime gun reports show that about 8.5% of violent gun crime is committed by youths age 17 or under.⁹ That means roughly 93,000 violent gun crimes were committed by youths. Selling or transferring a firearm to a minor is a federal crime.
- 420,000 firearms were stolen from people's homes, cars, and places of business over the past three years.¹⁰ And 10% of state

[5] Wayne LaPierre, *Guns, Freedom and Terrorism*, WND Books, 2003.

* "Violent crimes" includes murder, non-negligent manslaughter, forcible rape, robbery and aggravated assault.

[6] U.S. Department of Justice, *Crime in the United States 2000 and 2001*, October 2001 and October 2002 (year 2002 data based on estimate from previous years).

[7] Department of Justice, *Criminal Caseload Statistics on Title 18 USC 922 and 924*, FY2000-2002 (from freedom of information request).

[8] Bureau of Alcohol, Tobacco and Firearms, *Crime Gun Trace Reports (1999)*, November 2000.

** 330,000 is a conservative estimate that is calculated by multiplying 1.1 million violent gun crimes by the 89% that changed hands and the 34% of guns less than three years old.

[9] Ibid.

[10] Federal Bureau of Investigations, *Stolen Gun File Registry*.

and federal prison inmates in jail for gun crimes say that the gun they used in the crime that put them in prison was stolen.¹¹ Possessing, selling, or transferring a stolen gun is a federal crime.

- ATF was unable to trace 2,379 crime guns recovered in 2000 in Philadelphia, New York, Baltimore, Chicago, and Detroit because the serial number on the gun was defaced.¹² Possessing, selling, or transferring a firearm with an obliterated serial number is a federal crime.

Yet only 1,312 federal firearm cases were filed between 2000 and 2002 involving illegal gun trafficking, selling to minors, possessing or selling stolen firearms, or possessing or selling guns with an obliterated serial number. Instead, 85% of the 25,002 federal gun cases concerned only two federal statutes: Use of a firearm in the commission of a federal crime like drug dealing, and felons in possession of a firearm.

Over the past three years, the number of federal firearm cases has increased by 37.6%, from 7,124 cases in 2000 to 9,803 in 2002. 94.4% of that increase is due to an upsurge in the two statutes concerning felons in possession of a firearm and the use of a gun in the commission of certain federal crimes – two statutes that are used to target end-users of guns often after a violent crime has been committed, but

that have little impact on the black market that supplies guns to criminals.

Federal Firearm Prosecutions and Violent Gun Crime (2000-2002)

	Federal Gun Cases ¹³	Violent Gun Crime ^{14*}
2000	7,124	364,924
2001	8,075	376,392
2002	9,803	372,082
Total	25,002	1,113,398

The states with the most federal firearm prosecutions over the past three years are Texas (2,057), Virginia (1,410), New York (1,296), North Carolina (1,122), and Florida (1,055). The states with the fewest federal firearm prosecutions are New Hampshire (42), Hawaii (53), Alaska (65), Rhode Island (73) and Idaho (79).¹⁵

On a per capita basis, the District of Columbia has by far the largest number of federal firearm cases (100.9 cases per 100,000 population). The District is a special case because of its unique status as a federal district. The states with the most prosecutions per capita are Utah (22.8 cases per 100,000 population), Virginia (19.9), Wyoming (19.8), Missouri (18.6), and Tennessee (17.6). The states

[11] Department of Justice, *Firearm Use by Offenders*, November 2001.

[12] ATF, *Crime Gun Trace Reports (2000)*, July 2002.

[13] DoJ, *Criminal Caseload Statistics, FY2000-FY2002*.

[14] U.S. Department of Justice, *Crime in the United States, 2000 and 2001*, October 2001 and October 2002.

[*] The 2002 violent gun crime figure is an estimate.

[**] Figures include tallies from 22 separate federal firearm statutes representing 97.0% of all federal cases.

with the fewest prosecutions per capita are Minnesota (2.8 cases per 100,000 population), California (2.9), New Jersey

(2.9), Massachusetts (3.0), and New Hampshire (3.4). The national average is 8.6 cases per 100,000 in population.

State-by-State Prosecutions of Federal Gun Laws by Number and Rate Per 100,000 in Population (FY2000 – FY2002)^{15a}

Statute ^b	Traf	Oblt	Minor	Stolen	Felon	FFLs	School	Lying	All	Pop ^c	Rate ^d
State											
Alabama	4	6	0	23	657	0	6	12	708	4447	15.9
Alaska	2	1	0	2	56	0	1	3	65	627	10.4
Arizona	8	4	7	19	406	4	1	19	468	5131	9.1
Arkansas	4	2	0	5	141	0	0	21	173	2673	6.5
California	26	10	1	11	850	3	0	74	975	33872	2.9
Colorado	4	6	0	4	283	4	0	40	341	4301	7.9
Conn.	8	0	0	4	151	0	0	0	163	3406	4.8
Delaware	2	0	0	1	83	0	1	14	101	784	12.9
Florida	24	6	0	21	879	13	0	113	1056	15982	6.6
Georgia	26	8	0	13	674	2	0	69	792	8186	9.7
Hawaii	1	2	0	0	50	0	0	0	53	1212	4.4
Idaho	0	4	0	1	70	0	0	4	79	1294	6.1
Illinois	16	11	0	11	473	2	0	30	543	12419	4.4
Indiana	5	5	0	9	374	2	0	90	485	6080	8.0
Iowa	2	1	0	16	332	0	0	12	363	2926	12.4
Kansas	5	2	0	6	323	1	0	13	350	2688	13.0
Kentucky	32	3	0	22	426	5	0	46	534	4042	13.2
Louisiana	3	6	0	13	454	0	0	51	527	4469	11.8
Maine	2	1	1	4	118	2	0	27	155	1275	12.2

continued on next page

[15] Department of Justice, Criminal Caseload Statistics FY2000-FY2002.

[a] The figures in this chart reflect actual totals for 22 federal firearm statutes representing 97% of all federal firearm prosecutions during this period.

[b] The categories are for statutes relating to: gun trafficking, obliterated serial numbers, selling to a minor, stolen firearms, felon in possession/use of gun in commission of a federal crime, corrupt gun dealers, guns in school, and lying on the background check form.

[c] Population in 1000s.

[d] Prosecutions per 100,000 in population.

Statute ^a	Traf	Oblt	Minor	Stolen	Felon	FFLs	School	Lying	All	Pop ^b	Rate ^c
Maryland	4	4	0	6	567	0	0	11	592	5296	11.2
Mass.	15	8	0	5	154	0	0	10	192	6349	3.0
Michigan	6	11	0	13	609	0	0	18	657	9938	6.6
Minnesota	3	2	1	6	114	1	0	12	139	4919	2.8
Mississippi	3	7	0	11	263	0	0	19	303	2845	10.7
Missouri	10	10	1	17	980	2	0	20	1040	5595	18.6
Montana	0	1	5	5	127	0	0	3	141	902	15.6
Nebraska	2	2	1	3	176	0	0	14	198	1711	11.6
Nevada	4	2	0	3	300	1	0	10	320	1998	16.0
New Hamp.	0	0	0	3	35	0	0	4	42	1236	3.4
New Jersey	7	3	0	0	227	1	0	2	240	8414	2.9
New Mex.	2	4	1	6	260	1	0	19	293	1819	16.1
New York	105	25	0	19	973	17	0	160	1299	18976	6.8
No. Car.	23	3	0	16	1033	2	0	47	1124	8049	14.0
No. Dak.	1	2	0	14	79	1	0	5	102	642	15.9
Ohio	10	5	1	15	353	3	0	79	466	11353	4.1
Oklahoma	5	0	0	4	312	1	0	15	337	3451	9.8
Oregon	3	0	0	2	312	1	0	27	345	3421	10.1
Penna.	34	6	1	15	789	4	0	136	985	12281	8.0
Rhode Isl.	1	0	0	1	64	0	0	7	73	1048	7.0
So. Car.	4	5	0	8	513	0	1	48	579	4012	14.4
So. Dak.	1	3	0	8	68	0	0	10	90	755	11.9
Tennessee	28	6	1	19	912	4	15	14	999	5689	17.6
Texas	18	11	2	49	1856	4	2	116	2058	20852	9.9
Utah	3	12	0	15	473	0	0	7	510	2233	22.8
Vermont	1	2	0	11	69	0	0	15	98	609	16.1
Virginia	13	14	0	30	1299	2	2	50	1410	7079	19.9
Washington	1	2	0	3	233	2	2	37	280	4822	5.8
W. Virginia	8	2	0	18	248	2	0	21	299	1808	16.5
Wisconsin	9	1	0	1	231	1	1	11	255	5364	4.8
Wyoming	2	5	0	5	80	0	0	6	98	494	19.8
DC	8	0	0	1	560	0	8	0	577	572	100.9
Guam	0	2	1	4	21	0	0	1	29		
N. Mar. Isl.	0	0	0	2	4	0	0	0	6		
Puerto Rico	7	9	0	1	82	0	0	0	99		
Virgin Isl.	0	12	0	0	41	0	0	2	55		
US	515	259	24	524	21217	88	40	1594	24261	281422	8.6

FINDING
2**Despite a massive black market in crime guns, the five major laws to combat gun trafficking are being virtually ignored.**

“The three men are part of an expanding web of college students in the South who have bought more than 800 guns, purportedly for personal use, then shipped them north, where they were sold illegally, federal authorities say.”¹⁶

Since passage of the Brady Law, which requires criminal background checks for all firearm sales from licensed gun dealers, criminals have had to find new ways to acquire firearms. In the ATF’s yearly report through the “Youth Crime Gun Initiative,” it is clear that criminals routinely acquire guns through a secondary, or black market. In its 1999 report, ATF found that 89% of the guns it traced to crimes had changed hands at least once before being recovered by police. The same report found that 34% of all traced crime guns were less than three years old.¹⁷ “To the investigator, the short time from retail sale to crime, known as ‘time-to-crime,’ suggests illegal diversion or criminal intent associated with the retail purchase from the (licensed dealer),” according to ATF.¹⁸ In addition, an analysis of ATF raw data from 2000 indicated that 34% of all traced crime guns crossed state lines before being recovered by police – another trafficking indicator.¹⁹

Taken together, this points to a vast and rapidly churning black market, where guns go from licensed firearms dealers through

straw buyers, traffickers and finally to criminals. At a minimum these data show that of the 1.1 million violent gun crimes committed during the past three years, at least 330,000 of the guns used in those crimes show telltale signs of trafficking.

There are five federal statutes that address the illegal diversion of firearms from legitimate owners to prohibited buyers:

922(a)(1)(A) and 924(n) of Title 18 US Code are the “two most straight forward trafficking offenses,” according to ATF.²⁰ 922(a)(1)(A) prohibits any individual from engaging in the business of selling firearms unless that individual has a federal firearms license. 924(n) bars anyone from crossing state lines to purchase a firearm with the intent to resell. ATF states that “when these two offenses are not available, alternative charges are brought,”²¹ which include 922(d), 924(g), and 924(h), as well as several other statutes that are covered in other parts of this report pertaining to stolen guns, obliterated serial numbers, and the sale of firearms to minors.

[16] *Atlanta Journal-Constitution*, “College Students Risk Future for Gun Trade,” Lateef Mungin, October 10, 2002.

[17] Bureau of Alcohol, Tobacco and Firearms, *Crime Gun Trace Reports (1999)*, November 2000.

[18] *Ibid.*

[19] ATF, raw trace data for crimes committed in 2000.

[20] Bureau of Alcohol, Tobacco and Firearms, *Following the Gun: Enforcing Federal Laws Against Firearms Trafficking*, page 5, June 2000.

[21] *Ibid.*

922(d) prohibits any individual from selling a firearm to a person whom they know or have reason to know is a criminal or other prohibited buyer. 922(d) is the main statute used to prevent straw purchasing – buying a firearm from a licensed dealer with the intention of selling or giving that gun to a prohibited person.

924(g) and 924(h) prohibit the sale or transfer of a firearm to a drug dealer or to an individual whom the seller or transferor should have reason to know will commit a crime. This statute requires the person selling or transferring the firearm to know the state of mind of the buyer.

During fiscal years 2000 through 2002, prosecutors filed only 515 cases under these five federal laws. That is an average of slightly more than three cases per state per year. 384 of the 515 total cases were for violating 922(a)(1)(A) – being engaged in the business of selling firearms without a license.

- One-fifth of all cases filed under these five statutes were prosecuted in New York State. 93 of the 105 cases filed in New York were for dealing in firearms without a license.
- After New York, Pennsylvania (34), Kentucky (32), and Tennessee (28) filed the most cases under these four statutes.

Prosecutors in several states home to high crime rates, large populations and obvious trafficking indicators filed surprisingly few cases under the five statutes.

- 16 cases were filed in Illinois, 18 in Texas, 6 in Michigan, 26 in California, and 3 in Mississippi. Mississippi and Texas are

known to law enforcement as huge gun trafficking source states. Illinois and Michigan have high levels of gun crime and are inundated by out-of-state guns. California is the most populous state in the nation and home to the most extensive gang network in America.

- Not a single 922(a)(1)(A) trafficking case was filed in 9 states over the past three years: Delaware, Hawaii, Idaho, Montana, Nebraska, New Hampshire, South Dakota, Vermont, and Washington.
- Only one 922(a)(1)(A) case was filed in each of nine other states: Alaska, Kansas, Louisiana, Maryland, Maine, North Dakota, Oregon, Rhode Island, and Wyoming.
- Although ATF reports that almost 45% of its gun trafficking investigations involve firearms that are transported across state lines, only ten 924(n) cases were filed during the last three years.²²

Only 68 cases were filed for acquiring, selling, or transferring a firearm by someone involved with illegal drugs who crosses state lines.

- Over the past three years, not a single 924(g) case was filed in 21 states: Alaska, Arizona, Connecticut, Georgia, Hawaii, Idaho, Indiana, Kansas, Maine, Missouri, Montana, North Dakota, New Hampshire, New Mexico, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Washington, and Wyoming.

[22] Ibid.

53 of the other remaining 63 cases were for the two statutes related to supplying guns to someone when the supplier should have reason to know was intent on committing a crime.

Over the past three years, the number of total prosecutions from these five trafficking statutes increased from 141 cases in 2000, to 177 cases in 2001, and to 197 cases in 2002.

But the number of cases does not reflect in any way the number of gun traffickers and straw buyers plying their trade in America.

With the exception of federal prosecutions in New York State, Pennsylvania, Kentucky, and Tennessee, the federal laws designed to prevent the illegal diversion of firearms to criminals are woefully under enforced.

Illegal Firearm Trafficking Statutes ²³																
Statute	2000					2001					2002					
	922a1a	922d	924g	924h	924n	922a1a	922d	924g	924h	924n	922a1a	922d	924g	924h	924n	ALL
State																
Alabama						1	1				2					4
Alaska	1													1		2
Arizona	1					4					3					8
Arkansas											3	1				4
California	5	2		1		9	2				7					26
Colorado	1						2				1					4
Conn.	4					1					3					8
Delaware												2				2
Florida	3	4	2	1		5	1	1	1		4	2				24
Georgia	4			1	1	12					7		1			26
Hawaii							1									1
Idaho																0
Illinois	6	1	1			3	2				3					16
Indiana	1					3			1							5
Iowa											1	1				2
Kansas			3			1		1								5
Kentucky	3				1	18	1	2		1	3	3				32
Louisiana			1			1						1				3
Maine								1			1					2
Maryland	1	2		1												4

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Statute	2000					2001					2002					ALL
	922a1a	922d	924g	924h	924n	922a1a	922d	924g	924h	924n	922a1a	922d	924g	924h	924n	
Mass.	1	2				5	1				5				1	15
Michigan	2	1				2						1				6
Minnesota	2											1				3
Mississippi		1										1	1			3
Missouri	1					2		2		1	4					10
Montana																0
Nebraska												1	1			2
Nevada	1					1						1	1			4
New Hamp.																0
New Jersey	4					1					2					7
N. Mexico						1					1					2
New York	21	1	1	3	1	31	2	1		1	41		1		1	105
No. Car.	4					7	1	2			7	1	1			23
No. Dak.											1					1
Ohio	1		2			1	2	1			3					10
Oklahoma	1	1									2	1				5
Oregon											1		1	1		3
Penna.	12	3	1			4	1				13					34
Rhode Isl.	1															1
So. Car.						2					1				1	4
So. Dak.								1								1
Tennessee	5	1				1					18	3				28
Texas	6		1			5					2		4			18
Utah	1					1						1				3
Vermont							1									1
Virginia	2					2	2		1		5	1				13
Wash.													1			1
W. Virginia						1	1				3	2	1			8
Wisconsin	3					2					1	3				9
Wyoming				1		1										2
DC						2	1		3		2					8
Guam																0
Puerto Rico	1					3				1	2					7
US	99	19	12	8	3	133	22	12	6	4	152	27	13	2	3	515

Corrupt gun dealers are rarely prosecuted.

“After three days of searching a Tacoma gun store, federal agents have found no record to indicate how a rifle used in the Washington, D.C.-area sniper shootings got into the hands of suspect John Allen Muhammad, a spokeswoman said Sunday.

“The .223-caliber Bushmaster arrived at Bull’s Eye Shooter Supply from the manufacturer in June. Agents for the Bureau of Alcohol, Tobacco and Firearms are searching for records showing the rifle was sold. Gun dealers are required to keep such records. ‘We have not found anything to indicate that disposition of the firearm,’ said Martha Tebbenkamp, an ATF spokeswoman in Seattle.

“The Seattle Times reported that ATF agents two years ago could not find sales records for 150 guns at Bull’s Eye, which bills itself as ‘Puget Sound’s Largest Firearms Selection’.”

perform a background check on all firearms purchasers and deny sales to those who fail a background check. Failure to keep these records is a violation of section 922(m) and 924(a)(3). Selling to a person who the dealer has reason to believe will commit a crime, is underage, resides in a different state, or selling an illegal firearm (like a machine gun or sawed off shotgun) is a violation of 922(b).

Another dealer selling the Bushmaster rifle, Jason Gilbert of Gilbert’s Gun Shop in Frankfort, Ky., said, ‘The idea that a dealer can ‘lose’ guns and not be reprimanded or disciplined is just ridiculous.’ He said he has never had a missing sales record.²⁴

Federal firearms licensees (FFLs) are required by law to keep and maintain records on all firearm sales, including the name and address of the buyer and the make, model and serial number of the gun. They are also required to

These requirements are not needless paperwork burdens. The records provide the critical link for law enforcement to trace guns recovered in crime back to the original purchasers of the firearms. This information provides the crucial thread in unraveling gun trafficking and

[24] “Tacoma Shop Can’t Account for 340 guns, Including Sniper Rifle” Seattle Times, October 30, 2002.

straw purchasing schemes that fuel the black market in crime guns. These records are also necessary for regulators to determine whether gun stores are conducting business legitimately or dishonestly. For example, the records of guns sold should match the store's inventory. And these records can help determine if gun stores are selling firearms under the table – without performing background checks.

Periodic ATF inspections have revealed that licensed gun stores are routinely found to commit major violations of the law but are rarely prosecuted. Despite being the largest source of firearms recovered in illegal gun trafficking operations²⁵.

Shoddy Records Hinder Law Enforcement:

- In 2000, among the cities participating in the "Youth Crime Gun Initiative," 6,043 of 77,250 crime gun traces could not be completed because dealers lacked the records required by law.²⁶

- Fifty active retail firearm dealers were either entirely non-responsive to a trace request, slow to respond, or gave incorrect information to police who were seeking information necessary to solve criminal cases.²⁷
- During ATF inspections of licensed dealers conducted in 1999, inspectors found over 15,000 inventory errors.²⁸
- A 1998 random sample of inspections of retail firearms dealers showed that "45% of pawnbrokers, and 30% of other retail dealers were in violation of dealer requirements."²⁹

Dirty Gun Stores Supply Black Market:

- Dirty gun stores are the leading source of firearms recovered in illegal firearms trafficking investigations, accounting for 40,365 illegal guns (32.1% of all guns recovered during investigations).³⁰
- In three ATF audits conducted since 1997 of Tacoma firearms

Federal authorities seem to tolerate a certain level of corruption among licensed gun dealers that would not be tolerated in any other regulated industry.

[25] ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, June 2000.

[26] ATF, *Crime Gun Trace Reports (2000)*, July 2002.

[27] *Commerce in Firearms in the United States*, BATF, February 2000, page 25.

[28] *Ibid.*, page 28.

[29] *Ibid.*, page 30.

[30] *Following the Gun: Enforcing Federal Law Against Firearms Traffickers*, BATF, June 2000, page 13.

dealer Bull's Eye Shooters Supply Store, agents discovered a total 238 guns unaccounted for (including the rifle used by DC-area sniper John Mohammed and John Malvo). The store remains open.

- An analysis of crime gun traces between 1996 and 1998 found that nearly 20% of the nation's crime guns came from less than two-tenths of one percent of licensed gun stores.³¹

Corrupt Gun Store Prosecutions Are Practically Non-Existent:

While ATF inspections of FFLs confirm that "inventory errors are occurring at a high rate,"³² prosecutions almost never occur.

- Between FY2000 and FY2002, federal prosecutors filed only 88 cases against licensed gun stores under the three statutes that deal with corrupt FFLs.³³
- The number of prosecutions decreased from 36 in FY2000, to 25 in FY2001, and back to 27 in FY2002.³⁴
- One-third of all federal prosecutions were located in two states – New York

(17) and Florida (13).

- Federal prosecutors in twenty-two states, home to 29,418 licensed gun dealers, did not file a single charge.

Unlike all other major gun enforcement statutes, where sentences range from up to 5 years to 10 years, the penalty for failure to properly maintain records is an anomaly: the maximum penalty is 1 year and a fine. (The penalty for this crime was reduced by the 1986 Firearm Owners' Protection Act.)³⁵ According to William Vizzard, a criminal justice professor at California State University-Sacramento and a former ATF official, the fact that this crime is a misdemeanor makes it unattractive to federal prosecutors. "For all practical purposes, (these cases) are often denied because the U.S. attorney doesn't want to go after misdemeanants," claims Vizzard.

[31] Senator Charles Schumer, "Bad Apple Dealers," from ATF data, 1999.

[32] *Commerce in Firearms in the United States*, BATF, February 2000, page 28.

[33] DoJ, FY2000-FY2002 Caseload Statistics on Title USC 18, Section 922 and 924.

[34] *Ibid.*

[35] *Ibid.*, page 30.

Corrupt Dealers ³⁶										
Statute	2000			2001			2002			ALL
	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	
State										
Alabama										0
Alaska										0
Arizona		2		1				1		4
Arkansas										0
California	1	1			1					3
Colorado		2		1	1					4
Conn.										0
Delaware										0
Florida	1	7	1					4		13
Georgia			1			1				2
Hawaii										0
Idaho										0
Illinois		1			1					2
Indiana		1					1			2
Iowa										0
Kansas			1							1
Kentucky		1			2			2		5
Louisiana										0
Maine				2						2
Maryland										0
Mass.										0
Michigan										0
Minnesota	1									1
Mississippi										0

continued on next page

[36] DoJ, *Criminal Caseload Statistics, FY2000-FY2002*.

Statute	2000			2001			2002			ALL
	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	922(m)	922(b)	924(a)(3)	
Missourri		2								2
Montana										0
Nebraska										0
Nevada			1							1
New Hamp.										0
New Jersey									1	1
New Mex.									1	1
New York			7			8			2	17
No. Car.		1			1					2
No. Dak.									1	1
Ohio					2		1			3
Oklahoma				1						1
Oregon							1			1
Penna.	1	1						2		4
Rhode Isl.										0
So. Car.										0
So. Dak.										0
Tennessee								4		4
Texas						1		1	2	4
Utah										0
Vermont										0
Virginia								2		2
Washington				1				1		2
W. Virginia		1				1				2
Wisconsin		1								1
Wyoming										0
US	4	21	11	6	8	11	3	20	4	88

FINDING
4

Federal laws designed to keep guns out of the hands of kids and away from schools are almost never enforced.

“Sixty-four local students were arrested for having weapons, usually a gun, on or near school grounds in the 2001-02 school year, according to figures from Pima County Juvenile Court.”³⁷

There are three federal statutes aimed at preventing minors from obtaining firearms and for keeping guns out of schools. Section 922(q) of Title 18 of the U.S. Code makes it illegal to possess or discharge a firearm in a school zone. Section 922(x) prohibits the sale or transfer of a handgun from a private individual to a juvenile. Section 922(b)(1) prohibits licensed gun dealers from selling a handgun to anyone under the age of 21 or long gun to anyone under the age of 18. None of these laws are enforced, despite overwhelming evidence that guns are routinely brought into schools and that gun crimes are often committed by minors.

Guns in Schools (922q)

Academic and government researchers estimate that anywhere between 46,000³⁸ and 845,000³⁹ students a year bring firearms to school. A survey of newspaper articles found that:

- 2,837 students were caught bringing a gun to school in the 1999-2000 school year.⁴⁰

- Police recovered 26 guns on Clark County, Nevada school property during 1999-2000.⁴¹
- 163 gun incidences were reported on public school grounds in Washington state during 1999-2000.⁴²
- 58 gun offenses were reported in South Carolina public schools during 2000-2001.⁴³
- 144 guns were found in North Carolina public schools during the 1998-1999 school year.⁴⁴
- Parish superintendents reported 188 firearms on Louisiana public school campuses during the two school years between 2000 and 2002.⁴⁵
- In the 1999-2000 school year, 510 guns were confiscated from California public schools, according to the state education department.⁴⁶
- Illinois schools had 164 gun-related expulsions from 1999-2001⁴⁷

[37] Associated Press, “Guns at School: ‘Zero Tolerance’ Tolerates More,” Sarah Garrecht Gassen, September 1, 2002.

[38] E-mail correspondence from Gary Kleck to Jim Kessler, 2001.

[39] Youth Risk Behavior Survey, 1997. Center for Disease Control.

[40] Department of Education, “Report on State/Territory Implementation of the Gun-Free Schools Act – 1999-2000,” July 2002.

[41] *Las Vegas Review Journal*, July, 26, 2001.

[42] *Seattle Times*, June 15, 2001, pg. B1.

[43] *The State* (Columbia, SC), December 7, 2001, pg. A18.

[44] *Associated Press*, December 24, 1999.

[45] *Shreveport Times*, April 15, 2003.

[46] *San Jose Mercury Times*, April 29, 2001.

[47] *Chicago Sun-Times*, August 6, 2002.

In 40 states, the federal law prohibiting firearms in a school zone might as well not exist.

But in 40 states, the federal law prohibiting firearms in a school zone might as well not exist.

Despite these high figures, federal prosecutions under this statute are almost non-existent. Only 40 cases were prosecuted for bringing a gun onto school grounds during FY2000-FY2002.

- 23 of 40 922(q) prosecutions occurred in just two places: Tennessee (15) and the District of Columbia (8).
- In 40 states, prosecutors did not charge a single individual under section 922(q). For example, in Nevada, where 26 guns were found in one school district in a single year, not a single charge was filed in the entire state over the last three years.
- The number of 922(q) prosecutions went from 11 in FY2000, to 17 in FY2001, and back to 12 in FY2002.

Minors and Guns [922(b)(1), 922(x)]

According to the two most recent ATF trace reports, 8.5% of the violent gun crimes* committed in the United States are perpetrated by youths under the age of 18.⁴⁸ That translates to 93,000 violent

gun crimes committed by youths between 2000 and 2002.⁴⁹ (Not all of these youths necessarily obtained their guns illegally.)

While youths constitute a sizeable percentage of violent gun crime in America, federal prosecutions for supplying guns to minors almost never occur.

- Between FY2000 and FY2002, prosecutors filed only 24 charges under the two statutes that prevent the sale of guns to minors.
- Seven of the 24 charges were filed in Arizona.
- In thirty-eight states, federal prosecutors did not file a single charge under 922(b)(1) or 922(x) during this time period.
- The number of prosecutions went from 7 in FY2000, to 10 in FY2001, and back to 7 in FY2002.

In total, there were 64 prosecutions over three years among the three statutes aimed specifically at youth, schools and firearms. These laws are almost never enforced and, therefore, provide no deterrent to gun traffickers and straw purchasers who sell to minors.

* Violent crime is defined as murder, non-negligent manslaughter, forcible rape, robbery, and aggravated assault.

[48] U.S. Department of Justice, *Crime in the United States, 2001*, October 2002.

[49] ATF, *Crime Gun Trace Reports (1999) and (2000)*, July 2001 and July 2002.

Guns in Schools and Selling to Minors ⁵⁰										
Statute	2000			2001			2002			ALL
	922(b)(1)	922(x)	922(q)	922(b)(1)	922(x)	922(q)	922(b)(1)	922(x)	922(q)	
State										
Alabama			4					2		6
Alaska			1							1
Arizona		2	1		3			2		8
Arkansas										0
California					1					1
Colorado										0
Conn.										0
Delaware								1		1
Florida										0
Georgia										0
Hawaii										0
Idaho										0
Illinois										0
Indiana										0
Iowa										0
Kansas										0
Kentucky										0
Louisiana										0
Maine		1								1
Maryland										0
Mass.										0
Michigan										0
Minnesota					1					1
Mississippi										0
Missouri	1									1

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Statute	2000			2001			2002			ALL
	922(b)(1)	922(x)	922(q)	922(b)(1)	922(x)	922(q)	922(b)(1)	922(x)	922(q)	
Montana		1			1			3		5
Nebraska					1					1
Nevada										0
New Hamp.										0
New Jersey										0
New Mexico					1					1
New York										0
North Car.										0
North Dak.										0
Ohio				1						1
Oklahoma										0
Oregon										0
Pennsylvania							1			1
Rhode Island										0
South Car.									1	1
South Dak.										0
Tennessee		1				10			5	16
Texas					1	1	1		1	4
Utah										0
Vermont										0
Virginia			1			1				2
Washington			1			1				2
West Virginia										0
Wisconsin						1				1
Wyoming										0
DC			3			3			2	8
Guam	1									1
US	2	5	11	1	9	17	2	5	12	64

FINDING
5

There is one federal prosecution for every 1,000 stolen firearms.

“The stolen pistol that blew away an Orlando baby sitter and her employer came from under an invalid’s pillow. The one that killed an Englishman on South Orange Blossom Trail was taken from the glove box of a sport-utility vehicle. A third firearm, used to gun down two bank tellers in Mount Dora, had been stolen from an unlocked shed.”⁵¹

Since enactment of the Brady Law, the black market in stolen firearms has become “an important source”⁵² of trafficked firearms for criminals. According to a 1997 survey of prison inmates, 10% of those in jail on gun-related charges admitted that the firearm they used was stolen.⁵³ Next to cash, few criminals pass up the opportunity to steal a gun, because stolen firearms cannot be traced back to them if recovered at a crime scene.

Section 922(j) of Title 18 U.S. Code makes it illegal for “any person to receive, possess, conceal, store, barter, sell or dispose of any stolen firearms...” The penalty for violating 922(j) can be as severe as 10 years in prison. That is one of five federal statutes that address stolen firearms. During the period covered by this report, approximately 420,000 firearms were reported stolen to police.⁵⁴ During the same period, federal prosecutors brought 524 charges for possession, sale, transporting or shipping of a stolen gun under these five statutes.⁵⁵ All told, for every 1,000 guns stolen during the three years of this study, slightly more than one case was prosecuted.

The Federal Bureau of Investigation maintains a list of the make, model and serial number of every gun reported stolen to police. There are approximately 1.7 million firearms listed in the FBI’s Stolen Gun File Registry from the last ten years alone. It is easy for law enforcement to check each gun recovered in a crime to see if it is stolen. The benefit of stricter enforcement would be to add prison time to criminals caught with stolen guns, to use the threat of prison time to convince criminals to tell law enforcement who sold them the stolen guns, and to return stolen property to the rightful owners. Though this law is easy to enforce, it is almost never utilized:

- While no federal jurisdictions could be characterized as vigorous in prosecuting stolen gun offenses, Texas led the nation with 49 federal prosecutions under the five statutes dealing with stolen guns during FY2000-FY2002. Virginia (30), Alabama (23), Kentucky (22), and Florida (21) round out the top five.
- Federal prosecutors in Hawaii and New Jersey did not file a single case, and only one stolen firearm case was

[51] *The Orlando Sentinel*, “Lax Laws, Loose Guns,” Henry Pierson Curtis, July 14, 2002.

[52] *Following the Gun: Enforcing Federal Laws Against Firearms Trafficking*, BATF, June 2000, page xi.

[53] Bureau of Justice Statistics, “Firearm use by Offenders,” November 2001.

[54] Federal Bureau of Investigations, Stolen Gun File Registry (through August 2002).

[55] Department of Justice, FY2000-FY2002 Caseload Statistics on Title 18 USC 922 and 924.

filed in Delaware, Idaho, Rhode Island and Wisconsin. 9,398 firearms were reported stolen from these six states during that time period.

379 of the 524 stolen gun prosecutions were for violations of 922(j), which makes it “unlawful for any person to receive, possess, conceal, store, barter, sell or dispose of any stolen firearm or stolen ammunition...”⁵⁶

Sixty-one cases were filed for violations of 922(u) – stealing guns from a licensed firearms dealer.

The number of stolen firearms cases has increased from 148 in FY2000, to 174 in FY2001, and to 202 in FY2002. To put that into perspective – prosecutions have increased from an average of three per state per year to four.

Stolen Firearms																
Statute	2000					2001					2002					
	922i	922j	922u	924l	924m	922i	922j	922u	924l	924m	922i	922j	922u	924l	924m	ALL
State																
Alabama	4	1					7					10	1			23
Alaska				1										1		2
Arizona	1	3					5	1		1		6	2			19
Arkansas		1										3		1		5
California		1					2		2			6				11
Colorado		2										1	1			4
Connect.					1		1					2				4
Delaware												1				1
Florida		5				1	5	4		1		4	1			21
Georgia		6						3				2	1	1		13
Hawaii																0
Idaho		1														1
Illinois							1	3				6		1		11
Indiana		1					2					6				9
Iowa	4	1	1				6	4								16
Kansas							2					1	3			6
Kentucky	3	3				2	3	2	2			4	1		2	22
Louisiana		3	1			1	2					6				13
Maine							3								1	4
Maryland		1					4					1				6

continued on next page

[56] ATF, *Federal Firearms Regulations Reference Guide*, 2000.

Statute	2000					2001					2002					ALL
	922i	922j	922u	924l	924m	922i	922j	922u	924l	924m	922i	922j	922u	924l	924m	
Mass.					2					3						5
Michigan		6					2	1				4				13
Minn.		2					1					2	1			6
Miss.		5		2			2			1			1			11
Missourri		3			2		3	2	1			3	1	1	1	17
Montana	1	1							1			2				5
Nebraska		1										2				3
Nevada												3				3
N. Hamp.	3															3
N. Jersey																0
New Mex.	1						2					3				6
New York		4					4			1		5	1	2	2	19
No. Car.	1	4	1			1	3	1				4		1		16
No. Dak.	2	6					2					4				14
Ohio	1	3	4				4					2	1			15
Okla.		1					2		1							4
Oregon		2														2
Penna.		3					7	2				2	1			15
Rhode Is.								1								1
So. Car.	1	1					4					2				8
So. Dak.		3					4					1				8
Tenn.		4					6		3			5		1		19
Texas		13	1		2		8	1				20	3	1		49
Utah		2					8					5				15
Virginia		6					7		3		2	7	1	4		30
Vermont		1	1		1	1	3			2		2				11
Wash.		1	1				1									3
W. Virg.		1					3	2				8	4			18
Wisc.													1			1
Wyoming	1	1											2		1	5
DC											1					1
Guam												3			1	4
N. Mar. Is.		1										1				2
P. Rico												1				1
US	23	104	10	3	8	6	122	27	13	6	3	153	24	15	7	524

FINDING 6**Individuals who lie on the criminal background check form are rarely punished.**

“Under federal law, persons who are charged with felonies cannot purchase or receive firearms. Because Lawton was prohibited from purchasing a firearm, the Wisconsin Handgun Hotline declined his application. This is the first prosecution in the Western District of Wisconsin of someone who lied on an ATF Form 4473 and did not get the firearm.”⁵⁷

The Brady Act requires firearms purchasers to submit to a background check to determine their eligibility to possess a firearm. Applicants must attest on the federal ATF form 4473 that they are buying the gun for themselves and not someone else, are not under indictment for a felony crime, have never been convicted of a felony, are not a fugitive from justice, are not addicted to a controlled substance, have never been committed to a mental institution, have not been dishonorably discharged from the armed forces, are not illegally in the country, have not renounced their citizenship, are not under a restraining order, and have not been convicted of a crime of domestic violence.

After the applicant attests that they do not fall into a prohibited category listed above, the applicant signs the form 4473 with the understanding that “making a false oral or written statement...with respect to this transaction is a crime punishable

as a felony.”⁵⁸ The background check is then commenced to ensure the veracity of the purchaser’s application.

Persons prevented from receiving a firearm because of a rejected background check are subject to arrest if they have submitted false information on their application, in violation of 18 U.S.C. Section 922(a)(6) or 924(a)(1)(A).

From 2000 through 2002, roughly 450,000 applicants were rejected from purchasing a firearm after signing the ATF form certifying that they had no record that would deny them a firearm.⁵⁹ The denied applicants included:

- 260,000 who were denied because of a previous felony conviction.⁶⁰
- 60,000 who were denied because of a crime of domestic violence or a restraining order.⁶¹
- 25,000 who were denied because of an outstanding arrest warrant.⁶²

[57] United States Attorney for the Western District of Wisconsin press release, December 2, 2002.

[58] ATF, Form 4473 – Firearms Transaction Record Part I – Over the Counter.

[59] Bureau of Justice Statistics, *Background Checks for Firearm Transfers, 2001*, September 2002 (figures for 2002 are estimates based on previous years numbers).

[60] Ibid.

[61] Ibid.

[62] Ibid.

Yet, only 1,594 charges were brought by federal prosecutors for violating either 922(a)(6) or 924(a)(1)(A). This means that for every 1,000 applicants who committed the felony of making a false statement to the government in order to obtain a firearm, less than 4 people were prosecuted – even though federal law enforcement had the name, address and in some cases the Social Security number of the applicant.

- The number of prosecutions increased from 501 in FY2000, to 515 in FY2001, and 578 in FY2002 – from roughly 10 prosecutions per state to just under 12.
- In FY2002, 99.6% of potential cases of lying on the background check form went unenforced, compared to 99.7% in FY2000.
- Over the past three years, federal prosecutors in only four states have charged more than 100 individuals for lying on the background check form – New York (160), Pennsylvania (136), Texas (116), and Florida (113).

Typically, the most common sanction, if any at all, is the ATF sending a letter to the felon-applicant telling them not to repeat the crime.⁶³

Part of the fault for the paucity of enforcement lays with state and local government agencies that perform the background check but do not always report this crime to police. 35% of these government entities reported that they have never arrested or notified another unit with regard to false or missing information on an application to purchase a gun.⁶⁴ Even more troubling, according to the Bureau of Justice Statistics, 15% of these government entities either do not notify law enforcement when the denied applicant is a fugitive, or will only notify law enforcement if the denied applicant was wanted on a warrant that involved a felony.⁶⁵ Pennsylvania has apprehended more than 500 wanted criminals since 1998 by establishing a system where the background check operator immediately notifies the police if the background check shows that the applicant has an outstanding warrant.⁶⁶

For every 1,000 people who violate sections 922(a)(6) and 924(a)(1)(A), fewer than 4 are prosecuted.

[63] "Legal Team Puts Power Behind Gun Laws; Federal, County Officials Push Harshes Penalty," Lexington (KY) Herald Leader, Page A1.

[64] *Background Checks for Firearm Transfers, 2001*, page 7.

[65] *Background Checks for Firearm Transfers, 2001*, Bureau of Justice Statistics Bulletin, July 2001, page 7.

[66] Pennsylvania State Police Department press release, December 3, 2002.

Although this law should be easy to enforce, legal experts say that the law is often not prosecuted because (1) the purchaser is denied the gun—which is the purpose of the background check anyway; and (2) some prosecutors view this felony as a paperwork violation which would clog the federal courts.

Whether or not these are legitimate reasons not to fully enforce this law, opponents of new gun laws have often pointed to the lack of prosecutions of these two statutes as proof that gun laws are not enforced. And under both the Bush and Clinton Administrations, this law was – and is – mostly ignored.

Lying on Background Check Form ⁶⁷							
Statute	2000		2001		2002		ALL
	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	
State							
Alabama			3		7	2	12
Alaska	2		1				3
Arizona	4		3		5	7	19
Arkansas	2	1	7	2	9		21
California	19	3	29	5	16	2	74
Colorado	8		11	6	11	4	40
Connecticut							0
Delaware			2		11	1	14
Florida	36	1	31	6	24	15	113
Georgia	10	8	6	16	7	22	69
Hawaii							0
Idaho			2	1	1		4
Illinois	8	3	5	7	5	2	30
Indiana	13	2	24	3	32	16	90
Iowa	4		1		7		12
Kansas	4		4	1	4		13
Kentucky	14		7	3	18	4	46
Louisiana	19	2	19		11		51
Maine	7		4	1	13	2	27
Maryland	5	1		1	4		11

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[67] DoJ, *Criminal Caseload Statistics, FY2000-FY2002*.

Statute	2000		2001		2002		ALL
	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	922(a)(6)	924(a)(1)(A)	
Mass.	4		2		4		10
Michigan	6	1	5		4	2	18
Minnesota	2	3	3	2	1	1	12
Mississippi	3		7	3	5	1	19
Missouri	4	2	3	2	6	3	20
Montana			1		2		3
Nebraska	4		4	1	5		14
Nevada	4				5	1	10
New Hamp.	2		1			1	4
New Jersey						2	2
New Mexico	6	4	3	1	2	3	19
New York	13	25	6	62	10	44	160
North Car.	14	3	10	6	12	2	47
North Dak.	1		2		2		5
Ohio	11	14	17	6	27	4	79
Oklahoma	5		4		3	3	15
Oregon	10		8		8	1	27
Pennsylvania	28	29	15	24	14	26	136
Rhode Island	1				6		7
South Car.	14		10		21	3	48
South Dak.	4		5		1		10
Tennessee	5		6	1		2	14
Texas	47	3	40	1	22	3	116
Utah	4				3		7
Vermont	4		5	3	3		15
Virginia	10	3	11	12	6	8	50
Washington	18		4		15		37
West Virginia	7	1	2	2	4	5	21
Wisconsin	2		2	2	1	4	11
Wyoming	3				3		6
DC							0
Guam					1		1
Puerto Rico	1				1	2	
US	392	109	335	180	381	197	1594

FINDING
7

Although police routinely recover crime guns with obliterated serial numbers, prosecutions are rare.

“In Passaic (New Jersey), Abel Reyes-Perez, 28, met with the undercover officers and produced a box containing ten 9 mm pistols, all of them with obliterated serial numbers. The agreed upon purchase price was \$5,000, and Perez turned over the box. As the agents identified themselves as law officers, Perez fled. He was arrested later the same night.”⁶⁸

By law, every firearm sold in America contains a serial number that is etched into the gun. The serial number, along with the make and model of the gun, is used to help law enforcement determine the origin of the firearm if it turns up in a crime. Under federal law, manufacturers must record the serial number of every gun they make and note which distributor or licensed firearms dealer they sold it to. Retail gun dealers must keep a record of the name and address of the individuals who buy each gun, along with the serial number of the firearm. When a gun is recovered in a crime and is traced by law enforcement, that trace yields two important pieces of information: the name of the gun store that sold the firearm and the name of the first retail purchaser of the gun. This information is instrumental in tracking down, investigating and prosecuting straw purchasers, corrupt gun stores, and gun traffickers.

The only reason to deface a serial number on a firearm is to hinder police efforts to trace it in the event it is recovered in a crime. According to ATF, an obliterated serial number is a giveaway that the gun is

trafficked: “The obliteration of the serial number on a crime gun is a key criminal indicator of trafficking, because it shows that someone in the chain of possession assumes that the gun will be used for a crime.”⁶⁹ In certain high crime cities, one in ten crime guns have obliterated serial numbers.⁷⁰

Section 922(k) of Title 18, U.S. Code makes possessing, selling or transferring a firearm with an obliterated serial number a federal crime, punishable by imprisonment of up to five years. This law, though designed by Congress to be specific, targeted and severe, is routinely broken and roundly ignored.

- Nationwide, only 259 charges were filed under the 922(k) statute outlawing obliterated serial numbers during fiscal years 2000 to 2002.⁷¹
- Although the number of obliterated serial number cases increased slightly (from 76 cases in FY2000, to 85 in FY2001, and to 98 in FY2002), in 2002 there were still fewer than two 922(k) cases per state on average.

[68] *Passaic Man Pleads Guilty to Selling 20 Handguns*, U.S. Attorney for the District of New Jersey press release, March 16, 2000.

[69] ATF, *Crime Gun Trace Reports (2000)*, July 2002, page 50.

[70] ATF, *Crime Gun Trace Reports (2000)*, selected cities, July 2002.

[71] Department of Justice, FY00 – FY02 Criminal Caseload Statistics on Title 18 USC 922 and 924.

- In 2000, police in the fifty cities participating in the “Youth Crime Gun Initiative” recovered 3,749 firearms with obliterated serial numbers – or 4.2% of all crime guns recovered.⁷²

In certain high crime cities, where guns are frequently trafficked from other states, obliterated serial numbers are common, but prosecution is almost non-existent.

Obliterated Serial Numbers Recovered in Crimes in Selected Cities and the Number of Prosecutions in that Jurisdiction (2000):

City	Guns with Obliterated Serial Numbers ⁷³	922(k) Prosecutions
Baltimore	303	2
Boston	71	4
Chicago	667	0
Detroit	227	8
New York	714	7
Philadelphia	468	0
Washington, DC	99	0
Total	2,549	21

The practice of obliterating serial numbers will remain attractive to criminals as long as the possibility of prosecution remains remote.

Although 2,549 guns with obliterated serial numbers were recovered in these seven cities during 2000, federal prosecutions totaled only 21 cases – a ratio of 8 prosecutions for every 1000 possible 922(k) cases.

Federal prosecutors in Connecticut, Delaware, New Hampshire, Oklahoma, Oregon, Rhode Island and the District of Columbia brought no prosecutions under this statute from 2000 to 2002. The states with the most prosecutions were New York (25), Virginia (14) and Utah (12).

Though thousands of guns with obliterated serial numbers are recovered each year, and despite the fact that these guns are a prime indicator of gun trafficking, the statute is essentially ignored. The practice of obliterating serial numbers will remain attractive to criminals as long as the possibility of prosecution remains remote.

[72] ATF, *Crime Gun Trace Reports (2000)*, for all cities, July 2002.

[73] ATF, *Crime Gun Trace Reports (2000)*, for selected cities, July 2002.

Obliterated Serial Number⁷⁴

Statute	2000 922(k)	2001 922(k)	2002 922(k)	ALL
State				
Alabama	1	4	1	6
Alaska	1			1
Arizona	2	1	1	4
Arkansas			2	2
California	2	3	5	10
Colorado	3	3		6
Connecticut				0
Delaware				0
Florida	1	1	4	6
Georgia		4	4	8
Hawaii		1	1	2
Idaho	1		3	4
Illinois	4	5	2	11
Indiana	2	3		5
Iowa	1			1
Kansas			2	2
Kentucky	1	1	1	3
Louisiana	2		4	6
Maine		1		1
Maryland	2	1	1	4
Massachusetts	5	1	2	8
Michigan	4	5	2	11
Minnesota	1		1	2
Mississippi		3	4	7
Missourri	3	2	5	10

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Statute	2000 922(k)	2001 922(k)	2002 922(k)	ALL
Montana		1		1
Nebraska			2	2
Nevada	2			2
New Hamp.				0
New Jersey	1		2	3
New Mexico	1	3		4
New York	10	10	5	25
North Carolina	1		2	3
North Dakota	2			2
Ohio	3		2	5
Oklahoma				0
Oregon				0
Pennsylvania	1	3	2	6
Rhode Island				0
South Carolina		3	2	5
South Dakota	2	1		3
Tennessee		2	4	6
Texas	4	3	4	11
Utah		6	6	12
Vermont		2		2
Virginia	6	4	4	14
Washington	1		1	2
West Virginia			2	2
Wisconsin			1	1
Wyoming			5	5
Puerto Rico	1	3	5	9
Virgin Islands	5	4	3	12
Guam		2		2
US	76	85	98	259

Nearly all federal prosecutions involve those with previous criminal histories in possession of a firearm or for the use of a firearm in a federal crime of violence or drugs.

“They presented valid Georgia driver’s licenses, filled out state background checks and federal form #4473 for multiple gun purchases and then, between them, walked out with a total of 20 handguns. By the end of the day, the weapons were allegedly in the hands of accused gunrunner Charles Chapman, headed on a 16-hour journey to Brooklyn, NY.”⁷⁵

Section 922(g) of Title 18 of the U.S. Code bars felons and other prohibited buyers from possessing a firearm.*

Section 924(c) makes it a federal crime to use a firearm in cases of drug trafficking or any other violent felony that can be prosecuted in federal court. These two statutes make up the crux of programs like Richmond’s Project Exile, which seeks to use stiffer federal sentences for what are usually handled as local, street level crimes.

Some argue that programs like Project Exile have only a minimal effect on crime because they focus on street level criminals after the crime has already been committed, rather than on gun trafficking, straw purchasing, and the black market that puts guns in the hands of criminals in the first place. Others argue that using these two statutes to the fullest is a necessary part of a comprehensive anti-crime package.

While this argument may never be settled, it is clear that as far as a national law enforcement strategy is concerned, prosecuting these two statutes has been

the only strategy employed by either the Clinton or Bush Administrations.

- 85% of the total prosecutions under the federal firearms statutes were for violations of 922(g) and 924(c).
- Between FY2000 and FY2002, federal prosecutors brought 21,217 charges under these two statutes, out of a total of 25,002 federal charges.
- 94% of the increase in the number of federal prosecutions between FY2000 and FY2002 are attributable to more 922(g) and 924(c) cases.
- 20% of the federal prosecutions under these statutes came from three states – Texas (1,856), Virginia (1,299) and North Carolina (1,033).
- The number of 922(g) and 924(c) prosecutions increased from 5,900 in FY2000, to 6,875 in FY2001, and 8,428 in 2002.

The percentage of 922(g) and 924(c) cases out of all federal firearm cases increased from 82.8% in FY2000 to 86.0% in FY2002.

[75] *Topside Loaf Online*, “The Iron Pipeline: Topside ranks among the nation’s top sources for illegal firearms trafficking,” Timothy Glynn, August 30, 1998.

* Beyond felons, 922(g) bans from possessing a firearm fugitives from justice, unlawful users of controlled substances, mental defectives, illegal aliens and those in America on non-immigrant visas, those dishonorably discharged from the armed forces, those who have renounced their citizenship, those under a permanent domestic violence restraining order, and those convicted of a domestic violence misdemeanor.

Prohibited Buyers In Possession/Possession While Committing Federal Crime⁷⁶

Statute	2000			2001			2002			ALL
	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	
State										
Alabama	111	48		129	77		202	90		657
Alaska	6	9		12	7		13	9		56
Arizona	67	57		92	44		93	53		406
Arkansas	29	9		30	16		35	22		141
California	169	89		194	81		219	98		850
Colorado	78	16		75	17		83	14		283
Conn.	37	6		48	9		45	6		151
Delaware	2	4		10	12		50	5		83
Florida	145	79	1	220	102	1	228	100	3	879
Georgia	119	58		187	95		139	76		674
Hawaii	10	1		9	0		29	1		50
Idaho	8	1		8	6		33	14		70
Illinois	102	46		75	34		153	63		473
Indiana	76	40		70	45		80	63		374
Iowa	90	29		81	28		83	21		332
Kansas	64	49		59	39	1	69	42		323
Kentucky	41	46	1	91	64	1	111	71		426
Louisiana	131	11		114	20		144	34		454
Maine	39	2		20	5		40	12		118
Maryland	212	11		170	24		107	43		567
Mass.	21	2		35	15		55	26		154
Michigan	91	29		157	24		269	39		609
Minnesota	37	12		31	4		18	12		114
Mississippi	50	35		53	34		60	31		263

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Statute	2000			2001			2002			ALL
	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	922(g)	924(c)	924(o)	
Missouri	237	62		258	46	1	316	60		980
Montana	16	18		24	15		35	19		127
Nebraska	19	15		36	16		54	36		176
Nevada	56	18		63	5		145	13		300
New Hamp.	8	1		8	5		12	1		35
New Jersey	97	3		43	6		74	4		227
New Mexico	32	33		63	36		69	27		260
New York	168	82	1	216	98		269	138	1	973
North Car.	152	160	3	194	131		259	134		1033
North Dak.	17	1		14	5		33	9		79
Ohio	65	33		72	28		118	37		353
Oklahoma	61	39		52	41		89	30		312
Oregon	81	19		74	11		108	19		312
Pennsylvania	140	71		161	115		203	99		789
Rhode Island	14	5		17	4		22	2		64
South Car.	48	32	1	97	46	2	208	79		513
South Dak.	10	9		12	7		21	9		68
Tennessee	110	77		194	117		300	114		912
Texas	441	131	1	532	143		427	179	2	1856
Utah	66	7		152	30		196	22		473
Vermont	12			24	7		14	12		69
Virginia	236	154		262	179	1	295	172		1299
Washington	37	21		32	18		82	43		233
West Virginia	53	25		41	16		86	27		248
Wisconsin	54	15		68	9		70	15		231
Wyoming	14	5		13	4		27	17		80
DC	107	46		129	55		156	67		560
Guam	5	1		6	1		8			21
No. Mar. Is.	1						3			4
Puerto Rico	3	13		10	24		13	19		82
Virgin Islands	10	10		7	4		8	2		41
US	4105	1795	8	4844	2024	7	6078	2350	6	21217

Conclusion

Nearly every gun law currently on the books was passed after long debate and with the promise that it would help make America safer and keep guns out of the wrong hands.

This report found that whether these laws would make a real difference is unknown, because, with the exception of two statutes, the laws are used so sparingly that there is very little risk to gun traffickers, straw buyers, corrupt gun store owners, gun thieves or individuals who lie on the background check form of ever being punished.

While progress has been made in using federal laws to apprehend and prosecute street level criminals carrying firearms, no such focus has been placed on the laws meant to curtail the black market that supplies criminals with guns. The increase in the number of federal prosecutions over the past several years is due almost entirely to the use of two statutes that do very little to deal with how guns get to criminals in the first place. There appears to be no comprehensive federal law enforcement strategy to use existing laws to investigate, prosecute, and eliminate the black market that supplies guns to criminals, drug dealers, kids, and gangs.

For example, the report found that a certain level of corruption among gun dealers seems to be tolerated and expected. The enforcement of certain firearms laws – such as the law against

possessing a gun with an obliterated serial number, possessing or selling a stolen firearm, selling to a minor, or bringing a firearm onto school property – is meager.

In addition, certain federal jurisdictions report exceedingly low levels of federal prosecutions. California, Massachusetts, Minnesota, and New Jersey all rank near the bottom of prosecutions per capita and have prosecution rates of about one-third of the national average.

There is not one simple explanation for why most federal firearm laws are being ignored. It may be a combination of factors: insufficient law enforcement and prosecutorial resources, a lack of political and public pressure to vigorously enforce certain firearm laws, or the law is simply artlessly drafted, making obtaining a conviction difficult.

Both political parties and advocacy organizations on all sides of the gun issue purport to agree that gun laws should be vigorously enforced. But it is now absolutely clear that the nearly universal support for enforcing the nation's gun laws has not led to any increased urgency for those charged with prosecuting those laws.

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The Americans for Gun Safety Foundation is a non-profit, non-partisan organization that seeks to educate the public about supporting the rights of individuals to own guns and on the need for better laws and stronger enforcement of existing laws to help keep guns out of the hands of criminals and children.

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