

Gun Trafficking and White House-Directed DOJ-ATF Report

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On [April 7, 2021](#), the [White House](#) announced that it has directed the Department of Justice (DOJ) to issue an annual report on firearms trafficking, similar to a report that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) previously released in 2000. That report, [Following the Gun: Enforcing Federal Laws Against Firearms Traffickers](#), was based on a survey of 1,530 criminal investigations conducted by ATF from July 1996 to December 1998. It followed a 1999 report on ATF's [Youth Crime Gun Interdiction Initiative](#) (YCGII), which was based on firearms trace data. Both prior reports explored questions regarding the nature of gun trafficking in the United States and shed light on the unlawful flow of firearms from jurisdictions with less restrictive firearms laws to jurisdictions with more restrictive firearms laws. Some of ATF's assertions about high-volume, organized gun trafficking proved debatable and the use of trace data in civil lawsuits controversial. Congress responded by limiting the release of unfiltered trace data and prohibiting certain lawsuits against gun dealers.

Trace Data and Related Legislation

The Gun Control Act of 1968 (GCA, [18 U.S.C. §§921-931](#)) is the principal statute regulating interstate firearms commerce in the United States. The purpose of the GCA is to assist federal, state, and local law enforcement in ongoing efforts to reduce crime and violence. Congress constructed the GCA to allow state and local governments to regulate firearms more strictly within their own borders, albeit subject to certain constitutional limitations under the Second Amendment. Hence, one condition of a federal firearms license, which permits the holder to engage in interstate firearms commerce, is that a federal firearms licensee (FFL) must comply with both federal and state law.

In 1996, the Clinton Administration launched the YCGII to stop “traffickers,” who were unlawfully supplying firearms to juveniles (age 17 and younger) and youth (age 18 to 24), through comprehensive firearms tracing and analysis. By FY2004, YCGII had expanded to more than 60 cities. For FY2005, the George W. Bush Administration requested and received funding to expand [Project Safe Neighborhoods \(PSN\)](#) and YCGII to 80 cities, yet ATF dropped the YCGII program in FY2005 and began promoting the PSN program as part of its broader integrated violence reduction strategy. For the years 1997 through 2000, ATF published YCGII reports that included data on firearm traces by participating cities.

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The cessation of the YCGII reports coincided with the passage of the “Tiahrt amendment,” a provision named for the former Member who originally offered the amendment, Representative Todd Tiahrt. This provision restricts ATF from using annually appropriated funding (for FY2005 forward, as modified in P.L. 112-55) to release unfiltered trace data to anyone other than law enforcement agencies or prosecutors. Critics assert that the Tiahrt amendment blocks academic research and the use of trace data in certain civil lawsuits. [President Joe Biden](#) favors repealing both Tiahrt and the Protection of Lawful Commerce in Arms Act (PLCAA; P.L. 109-92). The latter prohibits [certain civil lawsuits](#) against firearms manufacturers and dealers to recover damages related to the unlawful use of their products by others, based in part on ATF firearms trace data.

Nature of Gun Trafficking

In ATF’s 2000 *Following the Gun* report, ATF examined the thesis that organized traffickers satisfy the criminal demand for firearms by acquiring them in jurisdictions where they are less strictly regulated, and selling them for a premium in jurisdictions where they are more strictly regulated. [Anthony Braga](#), a criminologist and proponent of “supply-side measures” to combat gun trafficking, conducted the survey for the ATF report. In a sample of 1,530 investigations, 648 (42%) involved juveniles or youth. While federal firearms licensees were implicated in 133 (8.7%) investigations, FFLs accounted for the highest number of diverted firearms per investigation on average (354). It was not reported how many of these dealers were federally prosecuted. Gun shows and flea markets accounted for 198 (13%) investigations and the next highest number of diverted firearms per investigation on average (131). Straw purchases—the illegal purchase of a firearm by one person for another—accounted for 709 (46.3%) investigations, and stolen firearms accounted for 367 investigations (24%). (These percentages exceed 100%, because some investigations involved more than one channel of unlawful commerce.) A majority of investigations (1,072, or 70.1%) involved intrastate, as opposed to interstate, destinations for trafficked firearms.

After the release of this report, [Gary Kleck](#), also a criminologist, questioned the validity of some of ATF’s assertions about high-volume gun traffickers. His antithesis to the “organized trafficking model” is that the general availability of firearms does not make gun trafficking a particularly profitable criminal enterprise, and that firearms transactions are more frequently made on a small-scale, opportunistic basis. Kleck notes that firearms can change hands several times, under a multitude of circumstances, in some instances lawfully through private transfers or inheritance, or when private gun owners change state residences.

Possible Issue for Congress

In the past 20 years, ATF has increased its firearms tracing and crime gun intelligence capacities. The House Committee on Appropriations recently noted (H.Rept. 116-455, p. 81) that Congress had authorized ATF to release “statistical aggregate data regarding firearms traffickers and trafficking channels,” yet it has only released “data regarding the geographical location where crime guns were first sold at retail.” In the White House-directed report, DOJ-ATF could address both the strengths and weaknesses of trace data as observed by both Braga’s and Kleck’s analyses, while tying trace data more conclusively to investigations and outcomes, as one way to develop an improved national strategy to address gun trafficking. Such an approach could possibly forestall any backlash against DOJ-ATF for producing an unbalanced report. (For examples of Braga’s and Kleck’s viewpoints, see [The Illegal Supply of Firearms](#) and [The Myth of Big-Time Gun Trafficking](#), respectively.)

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