



# CLOSING ILLEGAL GUN MARKETS

Extending Criminal Background Checks To **All** Gun Sales

A Report by the Educational Fund to Stop Gun Violence



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Gun Sales**

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**May 2002**

This report's recommendations are endorsed by the following organizations:

American Public Health Association

Child Welfare League of America

Children's Defense Fund

Evangelical Lutheran Church in America

National Association for the Advancement of Colored People

National Black Police Association

Presbyterian Church (USA)

Union of American Hebrew Congregations

## **Summary: The Benefits of Requiring A Criminal Background Check for Every Gun Sale**

The 1994 Brady Act introduced an essential law enforcement tool to help keep guns out of the hands of criminals: background checks. The checks help prevent the sale of guns to purchasers prohibited by law from owning them (e.g., because of felonies, domestic abuse, or serious mental illness).

Research clearly shows that background checks are effective in blocking criminal access to guns. Nearly 700,000 illegal purchases were prevented by Brady Act background checks from 1994 through 2000.<sup>1</sup>

Also, felons, domestic abusers and other prohibited purchasers are less likely to try to buy guns when they know comprehensive background check requirements are in place.

But current federal law requires criminal background checks only for guns sold through licensed firearm dealers, which account for just 60 percent of gun sales.<sup>2</sup> That means two out of every five guns acquired in the United States – including guns bought at gun shows, through classified ads, and between individuals – change hands without a background check. ***Statistical analysis indicates that extending criminal background checks to all gun transactions in the United States could prevent nearly 120,000 additional illegal gun sales every year.***

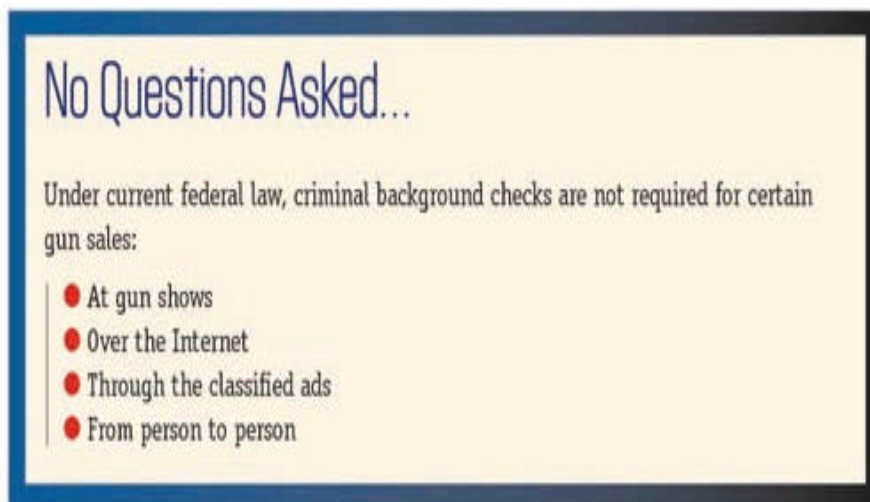
Extending criminal background checks to all gun transactions would allow law-abiding Americans to purchase guns, while providing law enforcement officials with an essential tool to close illegal gun markets and prevent criminal access to guns.

Although 16 states have taken the first steps toward expanding background checks beyond licensed dealers, only a handful of these have implemented truly comprehensive background check systems. California has implemented such a system, and its experience demonstrates the ability of an extended background check system to stop more illegal gun sales.

## Introduction

“Criminals should not be allowed to get guns.” This simple, common sense belief is shared by nearly every American, no matter which side of the gun debate he or she agrees with more. It is also the intent of our national gun laws: Convicted felons, domestic abusers, and those with dangerous mental illnesses are among those prohibited from buying or owning guns.

However, the lack of consistent laws means that criminals still do obtain guns, and they do so easily. Federal background checks are required only for gun sales that occur through licensed gun dealers. ***The 40 percent of sales that take place outside the network of licensed gun dealers can, under federal law, occur with no background check, no questions asked.***<sup>3</sup>



Background checks are a primary tool used by law enforcement to stop criminals from getting guns. The 1994 Brady Act mandated

background checks for sales from licensed gun dealers, such as gun stores. But criminals can avoid gun stores, opting instead to get their guns through *private transactions* between unlicensed sellers, friends, associates, and other informal contacts. Remarkably, federal law does not require a background check for any of these sales.

This report presents a new analysis of the effectiveness of background checks, and recommends their expanded use to stop more criminals from getting guns.

## **Extending Background Checks Would Prevent Illegal Gun Sales**

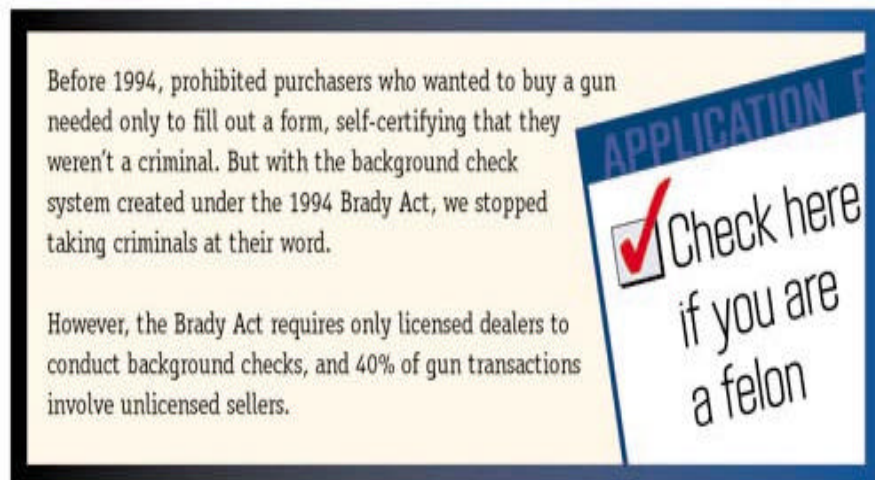
Extending America's criminal background check system to all gun transactions – and strictly enforcing them – could prevent nearly 120,000 additional illegal gun transactions annually – sales that, under the current system, likely go through undetected.

Between 1999 and 2000, 16.3 million applications for firearm transfers were subject to a background check.<sup>4</sup> About 2.2 percent of these submissions, some 357,000 applications, were rejected because the applicant was a prohibited purchaser.<sup>5</sup>

Researchers estimate, however, that firearms acquired through licensed dealers account for only 60 percent of gun transfers.<sup>6</sup> That means that during the same two years, roughly 10,867,000 additional transactions occurred through non-dealer sales that were *not* subject to background checks. If criminal background checks had been strictly applied to these non-dealer transactions, and if the rejection rate was the same as the rejection rate for dealer sales over the two-year period, an additional 239,000 illegal firearm transactions could have been blocked, an average of almost 120,000 each year.

However, even this significant figure may underestimate the number of illegal gun acquisitions that could be prevented by extending background checks to all sales, because prohibited purchasers may be more likely than legal gun buyers to seek out non-dealers to

obtain firearms. If that were so, the rejection rate for non-dealer transactions could be much higher than the rejection rate for dealer sales.

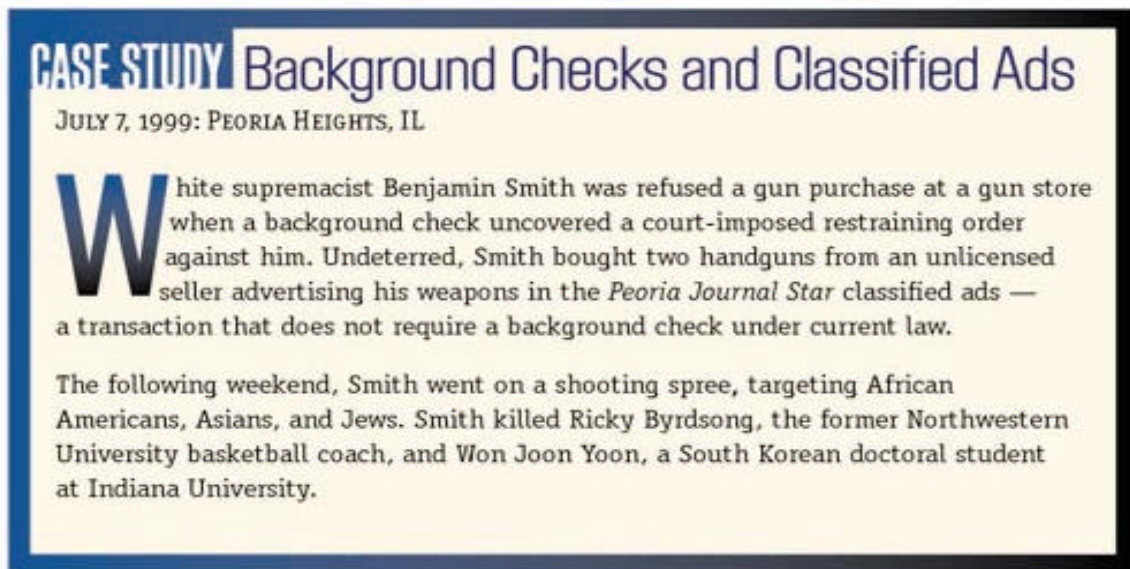


## **Keeping Guns Out of Criminal Hands: Are Current Laws Working?**

Current federal law requires criminal background checks for transactions conducted by federally licensed gun dealers (FFLs) – those who are “engaged in the business” of selling firearms (e.g., gun store owners).

However, individuals who are not “engaged in the business” of selling guns are nonetheless allowed under federal law to sell guns in large quantities from their “private collections.” These unlicensed – or private – sellers are not subject to the requirements of licensed dealers, and therefore do not have to conduct background checks on buyers. Some states have established their own background check system for private sales, but most have not. Private sales, which account for an estimated 40 percent of gun sales nationwide, take place at gun shows, through the classified ads, and even over the Internet.

That means that in most states, felons, domestic abusers, and other potentially violent individuals can still get guns easily, no questions asked.



**CASE STUDY** Background Checks and Classified Ads

JULY 7, 1999: PEORIA HEIGHTS, IL

**W**hite supremacist Benjamin Smith was refused a gun purchase at a gun store when a background check uncovered a court-imposed restraining order against him. Undeterred, Smith bought two handguns from an unlicensed seller advertising his weapons in the *Peoria Journal Star* classified ads — a transaction that does not require a background check under current law.

The following weekend, Smith went on a shooting spree, targeting African Americans, Asians, and Jews. Smith killed Ricky Byrdsong, the former Northwestern University basketball coach, and Won Joon Yoon, a South Korean doctoral student at Indiana University.

### **Federal Law**

The Gun Control Act of 1968 defined various types of prohibited purchasers, and barred FFLs from selling to anyone who fit one of the categories. This honor system for criminals, which allowed prohibited purchasers to buy guns openly and directly

from federally licensed dealers, remained intact until Congress passed the Brady Act.

The Brady Act, which took effect in 1994 after an intense seven-year legislative battle, finally gave teeth to the “prohibited purchaser” provisions of the 1968 law by requiring background checks for handgun sales by licensed dealers. In 1998, the law expanded to cover rifle and shotgun sales. But like the 1968 law, the Brady Act did not cover transactions by unlicensed sellers, leaving millions of “private” gun sales in the United States each year completely unregulated.

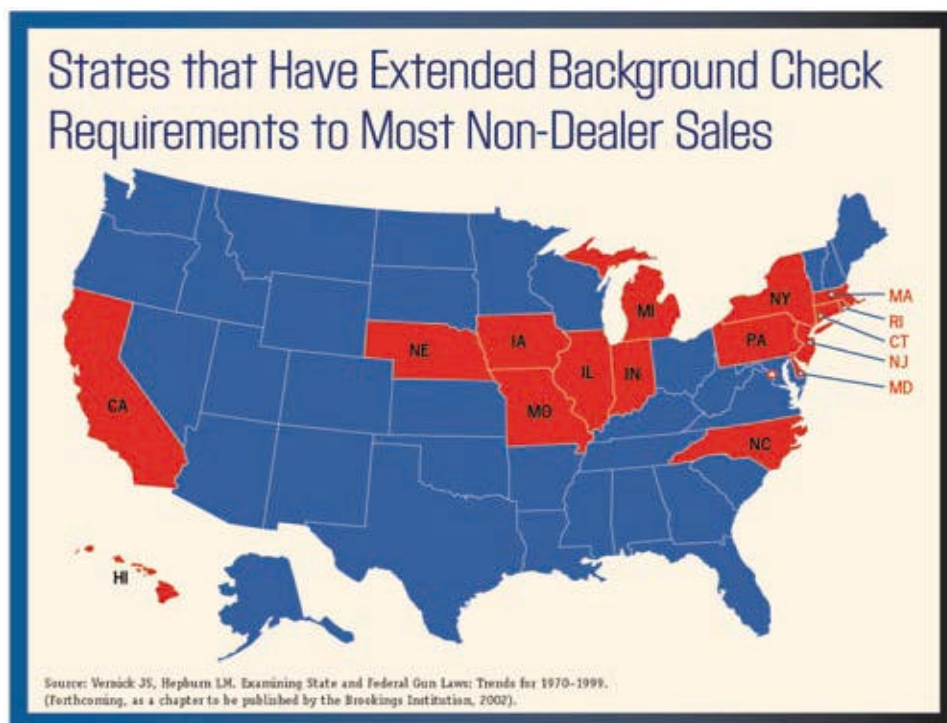


Today, people who buy guns from FFLs must first pass a background check to ensure that they are not

in a prohibited category. But people buying guns anywhere else are not required under federal law to undergo a background check. In other words, it is still trivially easy for criminals and other prohibited purchasers to buy guns, as long as they do so from unlicensed sellers.

### **State Law**

Sixteen states have at least partially extended the background check requirement to most non-dealer sales.<sup>10</sup> But of these, only a few have enacted mechanisms such as registration, which improves enforcement of background check systems.



In short, there is no uniform standard in today's system. Despite the progress made in a handful of states, the vast majority of Americans live in communities that lack a comprehensive, enforceable background check system for gun sales by unlicensed sellers.

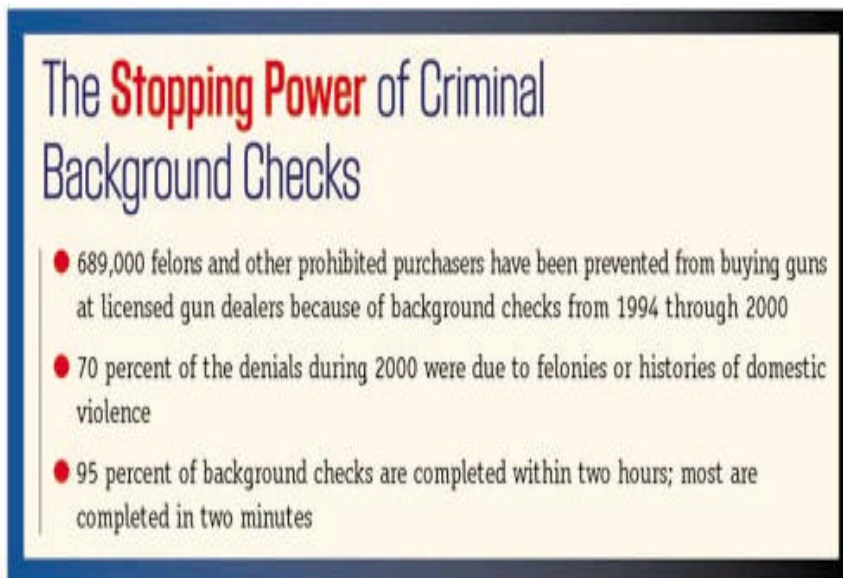
### **The Stopping Power of Criminal Background Checks**

Research clearly shows that background checks help block criminal access to guns. Nearly 700,000 illegal purchases – or 2.3 percent of all attempts to buy from licensed dealers – were prevented by Brady Act background checks from 1994 through 2000.<sup>11</sup> During 2000, most rejections resulted from prior felony convictions or indictments, and nearly 70 percent resulted from either felonies or histories of domestic violence.<sup>12</sup>

As previously noted, the Brady Act – which had initially addressed only handguns – was expanded in 1998 to include long-gun transfers by gun dealers. Prohibited purchaser rejections jumped from roughly 70,000 total rejections per year from 1996 to 1998, to more than 200,000 in 1999.<sup>13</sup> Had the Brady Act included long guns since 1994, hundreds of thousands of additional illegal transactions could have been prevented.

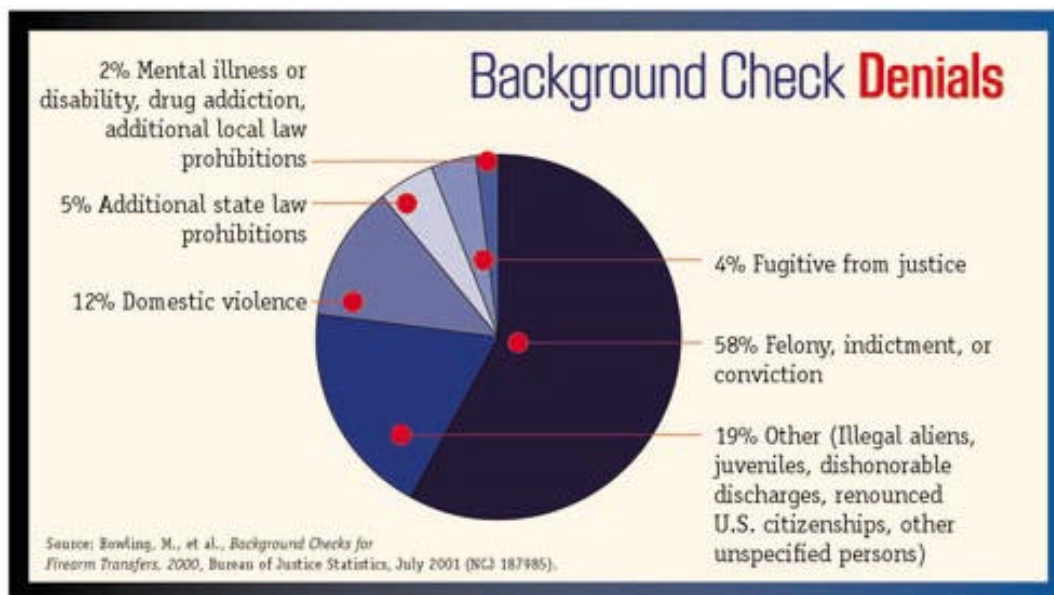


Furthermore, the lowest rejection rates occur in states with expanded background check systems, such as New Jersey and Illinois.<sup>14</sup> Because criminals know the



stopping power of comprehensive background check systems, they may be less likely to try to buy guns from licensed dealers in states with stronger systems than in states with less rigorous ones.

Moreover, background checks have proven to be of minimal inconvenience to gun buyers. The General Accounting Office has reported that 95 percent of background checks are completed within two hours, and most are completed in just two minutes.<sup>15</sup>

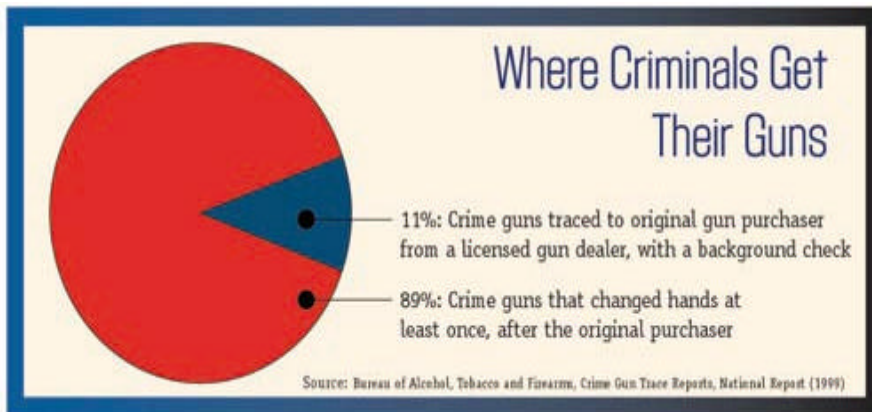


## **How Do Criminals Get Guns?**

With criminal background checks required for only some gun transactions, criminals still have easy access to guns. Where are they getting them? Research provides a clear answer: Unregulated transactions disproportionately feed the illegal gun market.

- One Bureau of Alcohol, Tobacco, and Firearms (ATF) study examined more than 21,000 crime gun traces -- the path of a gun from the time it is legally purchased to its use in crime. Nearly 90 percent of these crime guns had changed hands at least once, after originally being bought at a licensed gun dealer, before being used in a crime.<sup>16</sup>
- In another study, ATF reviewed more than 1,500 gun trafficking investigations conducted during a two-year period. The study found that gun shows and other secondary-market sources – venues for selling weapons after their original purchase – were a “major trafficking channel,” involving “approximately 26,000 illegally diverted firearms.”<sup>17</sup> Unlicensed, private sellers were responsible for nearly 23,000 illegally trafficked guns. The report notes “investigations usually involve multiple trafficking channels,” suggesting that many trafficked guns may involve both a gun show sale and a sale by an unlicensed seller.<sup>18</sup>
- The same ATF study of trafficking investigations found that “the many thousands of guns that traffickers supply illegally, without a Brady background check or [a federal] transfer record that enables tracing, are firearms that are likely to be associated with other crimes.”<sup>19</sup> ATF also noted that “persons prohibited from possessing firearms, including felons, are obtaining guns from the illegal market,” and that these trafficked firearms “are subsequently used in serious crimes . . . .”<sup>20</sup>
- A recent Department of Justice study found that the percentage of gun-carrying criminals who got their guns from “friends or family” has increased

from 34 percent in 1991 to 40 percent in 1997.<sup>21</sup> This finding again suggests that criminals are looking to unlicensed, private sellers.



Criminals get their guns through private sales that do not require background checks. But what happens in a

state where background checks are required for all sales, even private ones?

### **The California Experience: Feasible and Effective Background Checks**

California's background check system has prevented thousands of prohibited transactions that likely would have proceeded in any state without such a system. At the same time, the system has not prevented legal purchasers from buying guns. Legitimate private transactions remain rapid and simple in California, but it's harder for prohibited purchasers to get guns.

In 1991, three years before the Brady Act went into effect, California began requiring virtually every gun transaction in the state – even private sales – to be conducted through a licensed dealer or a law enforcement agency.<sup>22</sup> Existing law already required dealers and law enforcement agencies to conduct background checks before transferring any guns.<sup>23</sup> The 1991 law therefore established background checks for all gun sales, including long guns.<sup>24</sup>

According to the California Department of Justice, which administers the state's background check system, 354,202 background checks were conducted in 2001, resulting in just over 3,600 denials.<sup>25</sup> More than 33,500 of these checks involved private transactions, hundreds of which were denied.<sup>26</sup> Although additional prohibited transactions could be blocked if California adopted a more comprehensive registration system<sup>27</sup>, the state's experience demonstrates the value of extending

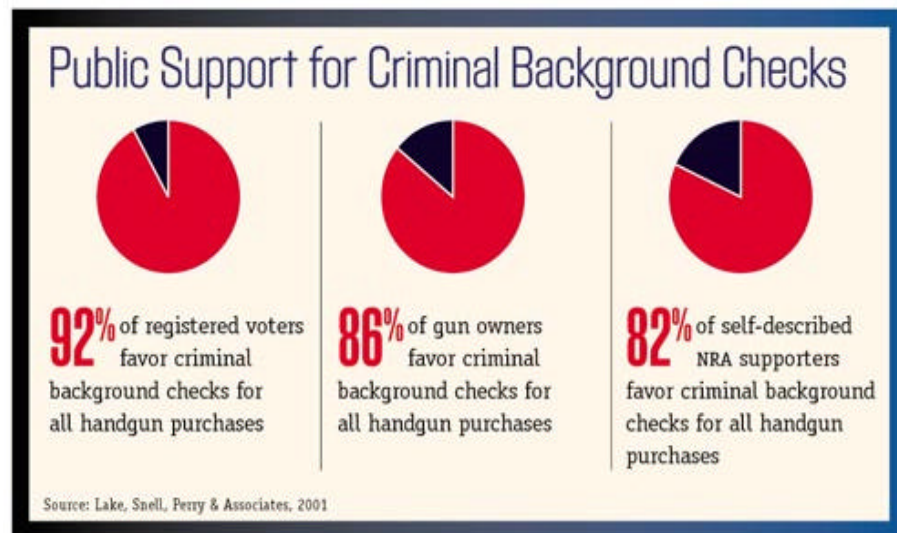
background checks to all transactions.

Still, the additional denied gun transactions in California likely prevented violent crimes in the state, and they demonstrate the stopping power of background checks. When background checks are applied to unregulated gun transactions, more criminals are blocked from getting guns, and potentially deadly crimes are prevented.

### **Conclusion**

The Brady Law requires licensed dealers to conduct a criminal background check before any gun sale can proceed. Since its enactment, the Brady Law has proven to be one of the most efficient law enforcement tools available, preventing nearly 700,000 illegal transactions from occurring through licensed gun dealers.

But the Brady Law's application – and therefore its effectiveness – is limited; the law only applies to transactions by licensed



dealers. Forty percent of gun transactions nationwide occur through unlicensed sellers and private transactions that require no background check, no questions asked. This gaping loophole in federal law may explain why nine out of ten traced crime guns have changed hands through at least one private transaction.

In the few states that have extended criminal background checks to cover all guns and all transactions, it is harder for criminals to obtain guns. State officials have found these laws to be a valuable, cost-effective tool, helping police enforce the laws

prohibiting criminals and other dangerous people from getting guns. Despite the clear value of extending background checks to all transactions, most states still do not require criminal background checks for sales by unlicensed sellers.

### **The Next Step: Making Background Checks on All Gun Sales a Reality**

An effective and efficient solution to the continued widespread sale of guns to prohibited purchasers would be a federal policy extending criminal background checks for all gun sales. In the absence of a federal standard, states can slow the flow of guns to the illegal gun market by expanding their own background check systems.

Although different proposals may include differing standards and methods of implementation, to be effective, a background check policy should adhere to the following principles:

- The same rules that apply to licensed gun dealer transactions (e.g., waiting periods, transfer requirements, record-keeping) should apply to transactions by unlicensed/private sellers.
- The criminal background check system should apply to all transactions, regardless of where they occur; this would require all gun transactions to take place through a licensed gun dealer, or through a local law enforcement agency.
- Criminal background checks should apply to all modern, functional guns, including handguns, rifles and shotguns.

Extending criminal background checks to all gun sales would still allow law-abiding Americans to purchase guns, while providing law enforcement officials with an essential tool to close illegal gun markets.

For additional information about criminal background checks, please call the Educational Fund to Stop Gun Violence at 202-408-7560.

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- <sup>1</sup> Bowling, M., et al., *Background Checks for Firearm Transfers, 2000*, Bureau of Justice Statistics, July 2001 (NCJ 187985).
- <sup>2</sup> Cook, PJ and Ludwig, J, *Guns in America: National Survey on Private Ownership and Use of Firearms*, National Institute of Justice Research in Brief, May, 1997.
- <sup>3</sup> *Id.*
- <sup>4</sup> U.S. Department of Justice: Bureau of Justice Statistics, *Background Checks for Firearm Transfers, 2000*, July 20001, NCJ 187985.
- <sup>5</sup> *Id.*
- <sup>6</sup> Cook, PJ and Ludwig, J, *Guns in America: National Survey on Private Ownership and Use of Firearms*, National Institute of Justice Research in Brief, May, 1997.
- <sup>7</sup> U.S. Department of Justice: Bureau of Justice Statistics, *Background Checks for Firearm Transfers, 2000*, July 20001, NCJ 187985.
- <sup>8</sup> *Id.*
- <sup>9</sup> Cook, PJ and Ludwig, J, *Guns in America: National Survey on Private Ownership and Use of Firearms*, National Institute of Justice Research in Brief, May, 1997.
- <sup>10</sup> Source: Vernick JS, Hepburn LM. Examining State and Federal Gun Laws: Trends for 1970-1999. (Forthcoming, as a chapter to be published by the Brookings Institution, 2002).
- <sup>11</sup> Bowling, M., et al., *Background Checks for Firearm Transfers, 2000*, Bureau of Justice Statistics, July 2001 (NCJ 187985).
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.*
- <sup>15</sup> United States General Accounting Office, *Options for Improving the National Instant Criminal Background Check System*, April 2000.
- <sup>16</sup> Bureau of Alcohol, Tobacco, and Firearms, *Crime Gun Trace Reports National Report (1999)*, November, 2000.
- <sup>17</sup> Bureau of Alcohol, Tobacco, and Firearms, *Following the Gun: Enforcing Federal laws Against Firearms Traffickers*, June 2000, at xi.
- <sup>18</sup> *Id.* at x.
- <sup>19</sup> *Id.* at xii.
- <sup>20</sup> *Id.* at 20.
- <sup>21</sup> Bureau of Justice Statistics news release, November 4, 2001.
- <sup>22</sup> Ca. Penal Code sec. 12082.
- <sup>23</sup> Ca. Penal Code sec. 12071.
- <sup>24</sup> Certain transactions are exempt from the background check requirement. See Ca. Penal Code sec. 12078.
- <sup>25</sup> California Department of Justice News Release 02-024, March 18, 2002.
- <sup>26</sup> *Id.*
- <sup>27</sup> Webster, D. W., et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and The Source State of Crime Guns*, Injury Prevention, September 2001.