Testimony

# The Role of Assault Weapons in Mass Shooting Incidents

## State of the Science

# Addendum

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Document submitted August 10, 2022, as an addendum to testimony before the U.S Senate Committee on the Judiciary on July 20, 2022.

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*The Role of Assault Weapons in Mass Shooting Incidents: State of the Science*

Testimony of Kyleanne M. Hunter [1]
The RAND Corporation[2]

Addendum to testimony before the Committee on the Judiciary
United States Senate

Submitted August 10, 2022

Following the hearing on July 20, 2022, the congressional committee sought additional information and requested answers to the questions in this document. The answers were submitted for the record.

## Questions from Ranking Member Charles E. Grassley

### *Question 1*

*In your testimony, you referred to the movement of firearms from states with less stringent firearms restrictions to states with more stringent restrictions. ATF trace data published on the ATF website indicates that each state is its own greatest source of firearms used in crimes. Is this ATF data accurate?*

### *Answer*

Yes, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) data are accurate. As my earlier testimony states, "Findings from crime gun-trace reports show that guns frequently flow from areas with less restrictive laws or enforcement histories to areas with more restrictive

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laws or a stronger enforcement history." This is true, and it applies not only to the flow of guns between states but also to the *intrastate movement* of guns (i.e., moving guns within a state from cities with less restrictive gun regulations to cities with more restrictive gun regulations). What trace data we have show this to be so. Chicago is a key example of this. Chicago has some of the most restrictive gun regulations in the country. Per the most recent publicly available Chicago crime gun-trace data, over 80 percent of crime guns in Illinois are recovered in Chicago—and more than 60 percent of those come from outside the state. Guns are flowing into Chicago both from areas in Illinois with less restrictive gun policies and from surrounding states, primarily Indiana, which has less restrictive gun policies.

Additionally, although states may be the largest supplier of their own crime guns, they do not necessarily account for the majority of crime guns recovered: States with more restrictive gun laws are the source for a smaller percentage of overall crime guns in their state than states with less restrictive gun laws. For example, per the 2020 ATF trace data available on the ATF website, there were 4,225 crime guns recovered and traced in New Jersey, a state with very restrictive gun laws; 487 (11.5 percent) of these guns were traced to New Jersey, meaning that 3,738 guns came from out of state. Pennsylvania, Georgia, Virginia, North Carolina, South Carolina, and Florida—all states with less restrictive gun policies—have a combined 1,653 (40 percent) guns recovered in crimes committed in New Jersey traced back to them. In New York, another state with restrictive gun laws, 7,254 crime guns were recovered in 2020, 910 (12.5 percent) originated in New York state. Again, Pennsylvania, Georgia, Virginia, North Carolina, South Carolina, and Florida were responsible for a larger percentage of crime guns—2,601 (35.8 percent) of crime guns recovered in New York.

Contrast these numbers with those of Georgia, a state with much less restrictive gun laws. Per the 2020 ATF trace data available on the ATF website, there were 19,276 crime guns recovered in Georgia; 13,216 (68.5 percent) were traced back to Georgia. Or, for another comparison, take South Carolina, a state that had 9,343 crime guns traced back to it in 2020; 6,279 (67.2 percent) of these guns originated within the state.

The states with the two highest number of crime guns, per ATF trace data available on the ATF website, create a stark contrast. California, the state with the most crime guns recovered (45,246), has some of the most restrictive gun laws in the country. Of the 45,246 crime guns recovered in California, 15,184 (33.5 percent) originated in California. Texas, the state with the second highest number of crime guns per the ATF (38,394) could not be more different than California both in terms of gun laws and the percentage of crime guns that originated in-state. Of the 38,394 crime guns reported, 27,354 (71.2 percent) originated in Texas.

These data illustrate that although states may be the largest supplier of their own crime guns in terms of numbers, they are not necessarily supplying the majority of crime guns recovered in their states. And states with more restrictive gun laws account for a much smaller—often the minority—percentage of crime guns recovered in each state, while states with more permissive gun laws account for a much larger—often the majority—percentage of crime guns recovered in each state.

### *Question 2*

*The ATF publishes large amounts of data regarding tracing records on its website each year. ATF tracing data is restricted from sharing specifically because the data contains large amounts of personally identifiable information as well as sensitive law enforcement investigative data. Releasing that data may cause significant harm to ongoing investigations and prevent law enforcement from obtaining convictions in gun cases. In order for Congress to weigh the advantages and disadvantages to releasing this information, what specific tracing information is not available to you and please explain what research would be conducted with that information?*

### *Answer*

Although the ATF does publish a large amount of data, both the current aggregation level of data and the way they are presented prevent robust research from being done. Prior to the Tiahrt Amendment being passed in the early 2000s, the ATF routinely released complete data from the trace database in response to Freedom of Information Act (FOIA) requests from researchers and the public. Tiahrt restricts access to valuable data, including

- time to crime
- location of purchase
- age of purchaser
- number of legal sales or transfers.

This information is essential for answering key research questions that address the supply of crime guns. Time to crime information is currently provided in aggregate; however, this greatly limits researchers' ability to do detailed analysis. Particularly for understanding the details about guns recovered with a short time to crime, being able to tie them to particular dealers can help investigators gain an understanding of dealer characteristics that are associated with higher rates of crime gun generation—critical information for guiding surveillance and enforcement decisions. The ATF considers a time to crime of less than three years as a potential signal of trafficking.[3] Knowing which federally licensed firearms dealers have guns traced back to them with short times to crime will help researchers provide policymakers with information that can help inform supply side approaches to combating crime. Having information on the location and number of transfers of the gun can also help to gain an understanding of policies that reduce straw purchases and identify trafficking patterns. Although data on illegal transfers does not exist, multiple transfers on the secondary market may be an indication of trafficking.[4] Releasing these data will not undermine personal privacy interests or jeopardize personally identifiable information. The current FOIA regulations already protect individuals. FOIA exemptions (b)(6)

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[3] Bureau of Alcohol, Tobacco, and Firearms, *Commerce in Firearms in the United States, February 2000*, Washington, D.C.: U.S Department of the Treasury, February 2000, https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB2000102002.xhtml.

[4] Christopher S. Koper, "Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use," *Journal of Quantitative Criminology*, Vol. 30, No. 2, June 2014, pp. 285–315.

and (b)(7)(c) protect personal privacy interests from being disclosed.[5] Any information falling under these exemptions can be redacted, and the data still prove valuable to researchers to answer the above questions.

Having access to information about the characteristics of specific gun dealers is also important for stemming the flow of crime guns. A 2000 study—the most recent available—found that more than 60 percent of guns recovered in crimes were traced back to just 1 percent of federally licensed firearms dealers, and that 90 percent of guns recovered in crimes could be traced back to just over 5 percent of federally licensed firearms dealers.[6] If researchers were to have access to the root data for this report on an annual basis, we could provide valuable findings on the characteristics of dealers most likely to have guns traced to them, and determine how this may have changed with other demographic shifts. Again, the above-mentioned FOIA provisions apply to protect personal privacy interests, and there is precedent for anonymizing dealers while still providing critical information.[7]

Concerns about jeopardizing ongoing law enforcement investigations are also addressed by current FOIA regulations. FOIA exemption (b)(7) contains six categories of protected information compiled for "law enforcement purposes,"[8] including any information that would compromise law enforcement investigations and efforts. Any information falling under this exemption can be redacted, and the data still would prove valuable to researchers.

It is also important to note that courts have found that the release of trace data overwhelmingly does not compromise law enforcement investigations. In *City of Chicago v. U.S. Treasury,* the Seventh Circuit noted that the ATF failed to point to a "single concrete law enforcement proceeding that could be endangered" by trace data release.[9] Additionally, the Eastern District of New York made findings of fact that disclosure of trace information "need not compromise ongoing or potential criminal investigations, or lead to injuries or the death of ATF agents or civilians involved in undercover investigations." Indeed, "[t]here is no reason to believe that the reports issued by ATF containing crime gun trace data have compromised a single law enforcement investigation."[10]

Although removing Tiahrt restrictions could provide researchers with the most comprehensive access to data, even with these restrictions there are additional aggregate data sets that could be released to provide researchers with the data needed to answer questions that are in the interest of public safety. For example, aggregate trace data broken down by type of federal firearm license (FFL), such as pawnbroker, retailer, manufacturer, could illuminate gun-trafficking patterns associated with different types of FFLs, enhancing understanding of the types

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[5] U.S. Department of Justice, "Exemption 6," in *Department of Justice Guide to the Freedom of Information Act*, Washington, D.C., posted October 4, 2019, https://www.justice.gov/oip/page/file/1207336/download.

[6] Bureau of Alcohol, Tobacco, and Firearms, 2000.

[7] Maloney, Carolyn B., letter to Gary M. Restaino, Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives re: ongoing Committee on Oversight and Reform investigation into gun violence and law enforcement efforts to address it, Washington, D.C.: U.S. House of Representatives, April 28, 2022.

[8] U.S. Department of Justice, "Exemption 7," in *Department of Justice Guide to the Freedom of Information Act*, Washington, D.C., posted January 27, 2022, https://www.justice.gov/oip/foia-guide/exemption_7/download.

[9] *City of Chi. v. U.S. Dep't of the Treasury*, 287 F.3d 628, 631 (7th Cir. 2002).

[10] *NAACP v. AcuSport*, 271 F. Supp. 2d 435, 505 (E.D.N.Y. 2003).

of risks associated with different FFL types, and providing policymakers with the information to address the supply of crime guns. Anonymized data on FFLs associated with a threshold number of traces (for example, FFLs with 50 or more traces) could allow researchers to understand common characteristics of the FFLs with the most crime gun traces. Aggregate data related to owners of traced firearms—for examples, possessors with multiple possessions and the types of firearms they possessed—and aggregate data regarding a unique buyer status would allow researchers to answer questions related to illegal trafficking patterns. The ATF requires data collection on multiple sales,[11] which could contribute to this aggregate data.

Additionally, data on FFL inspection-compliance inspections—including violations and consequences—are important for understanding how dealers may be skirting the law. The recently launched Gun Store Transparency Project shows that dealers who have multiple violations still receive minimal consequences.[12]

[11] Bureau of Alcohol, Tobacco, Firearms and Explosives, "Reporting Multiple Firearms Sales," webpage, April 12, 2022, https://www.atf.gov/firearms/reporting-multiple-firearms-sales.

[12] Brady Campaign to Prevent Gun Violence, "Gun Store Transparency Project," homepage, undated, https://gunstoretransparency.org.