



# Framework for Action

## 28 Ideas for State Executive Action to Prevent Gun Violence and Fight Gun Crime

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By Chelsea Parsons, Arkadi Gerney, and Tim Daly

December 2015

Center for American Progress



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# Introduction and summary

It has been three years since one of the nation's most horrific mass shootings: the massacre at Sandy Hook Elementary School. The movement to enact stronger gun laws since that tragedy has been characterized by two seemingly conflicting trends. In communities across the country, the groundswell of activism and engagement has been unprecedented. The public is demanding action by local, state, and national leaders to address the epidemic of gun violence in this country—not only regarding the mass shootings that garner the bulk of media attention, but also for the thousands of shooting deaths that too often go unnoticed. Millions of Americans have signed petitions and pledges; called their elected representatives; and organized and attended rallies and vigils pleading for change. At the same time, the inertia in Congress has been inexorable, as our elected representatives have largely failed to heed these calls for action to enact the common sense legislation that is supported by a vast majority of Americans and would undoubtedly save lives.<sup>1</sup>

Yet, in the face of these conflicting dynamics, there has been substantial leadership at the state level to take on the gun lobby and enact stronger gun laws. Since 2013, a number of states—including Colorado, Connecticut, Washington state, and Oregon—have enacted new laws to require background checks for all gun sales, closing the biggest loophole in the states' gun laws and bringing the total number of states that have implemented this law to 18.<sup>2</sup> In addition, 18 states have strengthened their laws to prevent domestic abusers from having easy access to guns.<sup>3</sup> There has also been substantial innovation by many state legislatures to enact new approaches to gun violence: For example, in 2014, California enacted a law to provide a flexible remedy for family members to temporarily disarm an individual who is experiencing a mental health or other personal crisis that increased their risk of committing an act of gun violence.<sup>4</sup>

While action in Congress remains challenging, state leaders can continue to innovate and even go further to proactively address gun violence in this country. One opportunity that has been underutilized in many states is the option of non-legislative action to address gun violence. State executives—including governors,

attorneys general, public health officials, and heads of state police—have substantial authority to implement new regulations, policies, and protocols in order to address many different aspects of gun violence that affect local communities. Actively exercising this authority will have a real effect on both reducing gun violence and saving lives. At the same time, this type of executive action is crucial to help bolster and support the legislative efforts that are underway in many states to strengthen gun laws in the face of the gun lobby’s extreme pressure and opposition. Use of executive authority will also help spur and drive new legislative efforts in states that have not yet been successful in this area.

In this report, the Center for American Progress offers 28 recommendations across six categories for how state executives can take nonlegislative action to address various aspects of gun violence in their communities:

### Strengthening background checks

1. Issue guidance to licensed gun dealers to encourage them to conduct voluntary background checks on behalf of private sellers
2. Require background checks for private sales at gun shows that are held on publicly owned property
3. Create an interagency working group to evaluate the state’s progress in providing prohibiting records to the background check system
4. Apply for federal grant funding to improve background check records
5. Ensure that all domestic violence and drug abuse prohibiting records are pre-validated and flagged in the background check system

### Enhanced enforcement of current laws

6. Investigate and prosecute cases in which prohibited individuals attempt to purchase guns from licensed dealers and fail a background check
7. Create a dedicated gun crime investigative unit in state and local police departments to focus on illegal gun trafficking and gun crime
8. Create an illegal gun tip line
9. Increase the use of technology to solve gun crimes and prevent shootings

10. Implement de-escalation training for police officers and increase the use of independent prosecutors in investigations of police officers who use lethal force
11. Implement a lethality assessment program for officers who are responding to domestic violence calls
12. Implement statewide standardized protocol requiring prohibited domestic abusers to surrender all firearms in their possession
13. Provide guidance to local judges to ensure that they order the surrender of firearms by domestic abusers in appropriate cases

#### Improved data collection and analysis

14. Require state and local law enforcement agencies to trace all crime guns
15. Conduct an annual review of trace data to identify the largest sources of crime guns in the state
16. Create an opt-in program for law enforcement agencies across the state to share trace data
17. Create a review commission to study every gun-related death in the state
18. Improve statewide collection of crime and gun death data

#### Enhanced community engagement

19. Implement a violence-intervention program in local hospital emergency rooms for gunshot victims
20. Implement community-based programs to prevent violent crime in vulnerable communities

#### Enhanced oversight of gun carrying

21. Conduct an annual review of concealed-carry permit reciprocity agreements with other states and rescind those agreements with states that fail to meet certain standards
22. Conduct monthly background checks to ensure continued eligibility for individuals who have been issued concealed-carry permits
23. Use existing criminal laws to discourage reckless acts of open carry

## Enhanced regulation of the gun industry

24. Increase security measures and improve other business practices of gun dealers
25. Create a grading system for gun dealers that incentivizes adoption of best practices
26. Use state and local buying power to encourage best practices by gun manufacturers and dealers
27. Divest public funds from gun manufacturers that fail to adopt best practices
28. Enforce state sales tax laws on high-volume sellers of guns who have not obtained a federal firearms license

To be sure, not every recommendation is appropriate or feasible in every state. State laws vary widely, and states often face varying challenges when it comes to gun violence. But the list of ideas offered in this report is intended to present wide-ranging options for state executives who are committed to taking real action to address gun violence in their communities.



# Strengthening background checks

Requiring a background check for all gun sales is a key component to preventing gun access by individuals who pose an increased risk to public safety. Federal law currently requires a background check only for gun sales that are conducted by a federally licensed dealer, but sales by unlicensed individuals—commonly referred to as private sellers—are not required to include a background check. To date, 18 states and Washington, D.C., have acted to close this private sale loophole that makes it easy for people who are prohibited from gun possession—including convicted felons, domestic abusers, and the seriously mentally ill—to purchase a gun without a background check and with no questions asked.<sup>5</sup> These laws have proven to be effective in reducing gun violence: In states that require background checks for all handgun sales, 48 percent fewer people commit suicide with guns, 46 percent fewer women are shot to death by their intimate partners, and 48 percent fewer police officers are killed with handguns.<sup>6</sup> Moreover, data from states that have either adopted or repealed universal gun check laws demonstrate the effectiveness of such laws. In the decade since Connecticut enacted a law requiring individuals to obtain a permit—and pass a background check—before being allowed to purchase a handgun, the state has seen a 40 percent reduction in firearm homicides. In Missouri, where the state legislature voted in 2007 to repeal a similar permit-to-purchase requirement that also included a background check for all handgun sales, firearm homicides have increased by 25 percent.<sup>7</sup> While passing background checks legislation is key to reducing gun violence, there are a number of nonlegislative actions that state executives can take to strengthen the background check system and reduce the number of guns that are sold without a background check.

## 1. Issue guidance to licensed gun dealers to encourage them to conduct voluntary background checks on behalf of private sellers

Although private sellers are not required to conduct a background check before selling a gun in most states, this does not mean that they are prevented from doing so. In fact, private sellers should be encouraged to seek out a background



check before selling a gun to ensure that a prospective buyer is not prohibited under state or federal law from possessing guns. In most states, private individuals do not have direct access to the gun background check system; however, they may seek the assistance of a licensed gun dealer to conduct the check on their behalf. In January 2013, as part of his package of 23 executive actions to address gun violence, President Barack Obama directed the Bureau of Alcohol, Tobacco, Firearms and Explosives, or ATF, to make it clear that this was an appropriate use of the National Instant Criminal Background Check System, or NICS.<sup>8</sup> ATF subsequently issued a letter to all licensed gun dealers advising them that they may access NICS to conduct voluntary checks for private sellers.<sup>9</sup>

States, too, can take action to encourage licensed dealers to facilitate background checks for private sales.<sup>10</sup> For example, in 2009, the Maine Department of Public Safety issued a letter to all licensed dealers in the state, inviting them to participate in a voluntary program to conduct background checks for private sales.<sup>11</sup> The Department of Public Safety then compiled a list of participating dealers and made it publicly available so that private sellers who were seeking this service would know which dealers had agreed to provide it.<sup>12</sup> This was part of a larger program in Maine—the Gun Sellers Awareness Campaign—designed to educate gun dealers about the risks of selling guns to prohibited purchasers.<sup>13</sup> A growing number of gun dealers around the country have begun offering this service. For example, a licensed gun dealer in Kingston, Tennessee, began offering free background checks for private sales in June 2015, and at least two other dealers in the local area have similar policies.<sup>14</sup> The dealer explained that his policy was driven by the needs of the community, saying, “There is a growing sentiment that private sellers should do more to ensure guns don’t fall into the hands of the wrong people.”<sup>15</sup>

Other states should follow Maine’s example of not only educating dealers in the state about the availability of the background check system to facilitate private sales but also encouraging them to use the system for this purpose.

## 2. Require background checks for private sales at gun shows that are held on publicly owned property

Gun shows, with their combination of gun sales by licensed dealers and private sellers, provide a unique environment for commerce in firearms and pose a heightened risk of illegal sales. A 2000 study by ATF reviewed 1,500 federal gun

trafficking investigations and found that at least 26,000 firearms had been diverted to the illegal secondary market from gun shows. It found that gun shows are the second largest source of illegally trafficked guns after corrupt dealers, with 30 percent of the guns that were involved in federal gun trafficking prosecutions over a two-and-a-half-year period having a connection to gun shows.<sup>16</sup> Gun shows are a known venue for illegal gun sales: A 2009 investigation by the City of New York of seven gun shows in Nevada, Ohio, and Tennessee found that 63 percent of private sellers at these gun shows were willing to sell a firearm to buyers who indicated that they could not pass a background check.<sup>17</sup> Some state executives have begun to recognize the need for increased oversight of gun shows: For example, in 2013, New York Attorney General Eric Schneiderman created a comprehensive set of best practices for gun show promoters to minimize the risk of illegal sales at these venues that was voluntarily adopted by all promoters in the state.<sup>18</sup>

While there is no central list of gun shows held across the country, review of a few websites reveals that gun shows are often held on state-owned property, such as state and county fairgrounds and convention centers. For example, according to just one gun show listings website—gunshows-usa.com—there were at least 381 gun shows across the country that were held on state or county fairgrounds between January and October 2015.<sup>19</sup> State or local executives should use existing regulatory authority over the operation of these state- or county-owned venues to require background checks for all sales at gun shows held on these premises. Some local jurisdictions have attempted to use their authority as owners or managers of these properties to require that background checks are conducted on all sales at gun shows that are hosted in these venues. For example, in January 2014, county commissioners in Travis County, Texas, declined to renew the lease for the Saxet Gun Show at the county-owned Exposition Center after the show promoter refused the county’s request to require background checks for all gun sales at the show.<sup>20</sup> Sam Biscoe, a county judge and chairman of the county commissioners, laid out the rationale behind the decision not to renew the lease, explaining, “If you use a public facility to sell guns, we really oughta have background checks done. Or don’t use the facility.”<sup>21</sup> Similarly, in February 2013, the Tucson City Council passed a resolution requiring background checks for all gun sales at gun shows held on city-owned or managed property.<sup>22</sup> While this was an action by a legislative body, it was not a binding ordinance, but rather, as described by Council Member Steve Kozachik, “[A] condition of using our property.”<sup>23</sup>

In addition to this type of contracting authority over state-owned venues, a number of states have granted rulemaking authority to administrative bodies that could permit this type of action. For example, the Iowa legislature created a state fair authority and board to organize the annual state fair and other events on the state fairgrounds.<sup>24</sup> The statute provides that the state fair board has “custody and control” over the fairground and may grant permission to vendors to sell goods on fair property “under rules the board prescribes.”<sup>25</sup> The state fair authority then implemented numerous administrative rules governing the conduct of various types of events that are held on the fairgrounds, including horse shows<sup>26</sup> and farm animal sales.<sup>27</sup> It also issued administrative rules for permissible conduct in each of the facilities on the fairgrounds.<sup>28</sup> The Iowa state fair board could use this administrative authority to prescribe rules and standards for events held on the state fairgrounds, including a mandate that any gun show held on the property require a background check for every sale. Indeed, in 2004, the state fair board considered such a proposal but ultimately failed to enact it.<sup>29</sup>

State executives should examine whether any gun shows are regularly held on state-owned or managed property and use their authority to ensure that background checks are performed for all sales at these events. Local executives can engage in the same exercise for county or municipal property.

### 3. Create an interagency working group to evaluate the state’s progress in providing prohibiting records to the background check system

Since the enactment of the Brady Handgun Violence Prevention Act in 1993, federally licensed gun dealers have been required to conduct a background check prior to completing every gun sale.<sup>30</sup> To facilitate these checks, the Federal Bureau of Investigation, or FBI, created the National Instant Criminal Background Check System in 1998. NICS is a system that queries a number of databases to determine whether an individual is eligible to purchase a gun.<sup>31</sup> In addition to using NICS, states may establish their own background check system and conduct their own checks for gun sales that occur within the state. Currently 13 states—referred to as Point of Contact States—have opted to conduct their own background checks for all gun sales. An additional seven states—known as Partial Point of Contact States—have elected to conduct their own background checks for handgun sales or for handgun permit applications, but they rely on the FBI to conduct background checks for the sale of long guns.<sup>32</sup>

It was the 2007 massacre at Virginia Tech that first highlighted the shortcomings in record submission to the background check system. The shooter in that incident was legally prohibited from purchasing a gun because of his mental health history, yet he was able to buy the guns that he used to kill 32 people because the record of his involuntary mental health treatment had not been provided to the background check system.<sup>33</sup> Since that time, a number of states have taken steps to evaluate their success in ensuring that gun-prohibiting records are provided to NICS and to identify areas for improvement. For example, in 2012, with grant funding from the U.S. Department of Justice, the Arizona Criminal Justice Commission created a NICS Task Force to identify problems with reporting prohibiting records to the background check system, as well as to develop solutions to address those gaps.<sup>34</sup> The task force included 76 members from a variety of local, state, and federal agencies, including police departments, prosecutors, corrections, court administrators, public health officials, elected officials, and criminal justice policymakers.<sup>35</sup> The task force examined challenges for all categories of prohibiting records and developed a comprehensive set of long-term recommendations, which included establishing clear protocol for who is responsible for entering and updating criminal justice information; creating a “score card” to measure each county’s progress in maintaining accurate criminal history records; engaging in “criminal justice process mapping” to understand how each municipal and county criminal justice system handles criminal records; and providing county-specific technical assistance.<sup>36</sup> The task force also offered recommendations that were specific to each category of prohibiting record.<sup>37</sup> Similar task forces have been created in a number of other states, including Alabama, Nevada, New York, and Oregon.<sup>38</sup> In February 2013, Connecticut Gov. Dannel Malloy (D) issued a series of executive actions to address gun violence that included a direction to state agencies to evaluate existing protocols for providing information to the background check system.<sup>39</sup>

While many states have relied on federal funding to support these task forces, states need not wait for an influx of new funding to begin identifying gaps in the flagging and submission of records to the background check system. State executives can begin the process: Convene all of the stakeholders in the state and request that state leaders in law enforcement, court administration, and mental health review the state’s practices for providing prohibiting records to NICS and identify areas where gaps exist. This information can then provide a basis for a grant application for federal funding in order to address these issues.

#### 4. Apply for federal grant funding to improve background check records

In response to the record submission issues that were brought to light by the Virginia Tech shooting, Congress enacted the NICS Improvement Act in 2008, providing incentives for states to submit all relevant mental health prohibiting records to the background check system and creating a new federal grant funding program—the NICS Act Record Improvement Program, or NARIP—to provide funding to the states in order to improve records submission.<sup>40</sup> Since 2009, 26 states have received grant funding through this program for a total of \$72.3 million.<sup>41</sup> Many of these states saw substantial improvements over a short period in terms of the number of mental health records submitted to NICS.<sup>42</sup> For example, from August 2010 to September 30, 2015, mental health records in NICS increased four-fold from approximately 864,962 to more than 4.1 million.<sup>43</sup> Over the same period, background check denials due to mental illness increased by 65 percent, which means that the system became much more effective at preventing people from buying guns who were prohibited because of their mental health history.<sup>44</sup> In 2015, an additional \$14.5 million was appropriated to the NARIP grant program, bringing the total amount of available grant funding to \$73 million after an unprecedented bipartisan vote in the U.S. House of Representatives.<sup>45</sup> Currently, roughly half of the states are eligible to apply for this grant funding, and, in 2014, 17 states received NARIP grants.<sup>46</sup>

A second federal grant program is available to all 50 states to help improve criminal history records. The National Criminal History Improvement Program, or NCHIP, is funded by the Bureau of Justice Statistics and provides grant funding for states to improve the “quality, timeliness, and immediate accessibility of criminal history records and related information.”<sup>47</sup> This grant funding can be used to address many different aspects of criminal history records, including increasing personnel to conduct audits and perform manual data entry; upgrading records and case management systems; and improving information sharing across agencies.<sup>48</sup> The grant process takes place on an annual basis, and since NCHIP’s inception in 1995, \$598,716,045 has been awarded to all 50 states.<sup>49</sup> While it is not specifically intended to improve records for firearm background checks, NCHIP funding can be used at the state level to address many aspects of criminal history records that are queried during NICS checks. For example, NCHIP funding could be used to improve a state’s submission of arrest warrant records to the FBI. This improved submission would address a serious gap in reporting that includes the records of millions of fugitives who are prohibited from buying guns but whose records have not been provided to the background check system.<sup>50</sup>

State executives should take advantage of this federal funding and apply for grants to address gaps in reporting to the background check system. To address issues that affect the success of a state's background check system, state leaders should also consider other sources of federal funding, such as the Violence Against Women Act's STOP Formula Grant Program, which provides funding for the criminal justice response to domestic violence.<sup>51</sup>

## 5. Ensure that all domestic violence and drug abuse prohibiting records are pre-validated and flagged in the background check system

While earlier efforts to address record submission gaps have focused primarily on mental health prohibiting records, similar challenges are present regarding other categories of records, specifically those relating to domestic violence and drug abuse. A focus on ensuring that domestic violence prohibiting records are provided to the background check system is crucial—not only because of the increased risk of homicide when abusers have access to guns, but also because gaps in the reporting of domestic violence records have been implicated in other mass shootings. For example, 15-year-old Jaylen Fryberg shot and killed four of his classmates in Marysville, Washington, in 2014 using a gun that was purchased by his father, Raymond Lee Fryberg Jr. Raymond had a permanent domestic violence protection order against him that should have prevented him from purchasing a gun. However, the record of this order was not provided to the FBI by the tribal court that issued it, and he was able to pass a background check and buy the gun later used by Jaylen in this attack.<sup>52</sup>

Federal law prohibits domestic abusers from buying or possessing guns under two circumstances: if they have been convicted of a misdemeanor crime of domestic violence or are subject to a domestic violence restraining order.<sup>53</sup> Federal law also prohibits anyone who is “an unlawful user of or addicted to any controlled substance” from buying or possessing a firearm.<sup>54</sup> When an individual seeks to buy a gun from a licensed dealer and a background check is run, three databases are queried: the National Crime Information Center, or NCIC, which houses information about fugitives and restraining orders; the Interstate Identification Index, or III, which contains records regarding arrests and convictions; and the NICS Index, which contains other records relating to prohibited purchasers, such as mental health prohibiting records.<sup>55</sup>

While the vast majority of background checks are completed immediately, roughly 9 percent of checks require additional time to determine if a record in one of these databases prohibits an individual from owning a gun.<sup>56</sup> Federal law allows three business days for this additional investigation; if the check has not been completed in those three days, the dealer has the discretion to complete the sale—a transaction referred to as a “default proceed.”<sup>57</sup> If, after a default proceed transaction, the FBI or state agency determines that the individual was, in fact, prohibited from gun possession—a transaction referred to as a “delayed denial”—the dealer is notified, and the matter is referred to ATF in order to retrieve the gun.<sup>58</sup>

Default proceed cases pose a particular risk to public safety because they are eight times more likely than background checks that are resolved immediately to involve prohibited purchasers.<sup>59</sup> The risk of these transactions was highlighted in June 2015 when it was discovered that the perpetrator of the mass shooting at Emanuel AME Church in Charleston, South Carolina, bought his gun through a default proceed transaction. This occurred after errors in his criminal record prevented the FBI examiner from discovering that he admitted to illegal drug possession during an arrest and was therefore prohibited from buying a gun.<sup>60</sup>

Additionally, data shows that delayed denial cases often involve individuals who are prohibited because of domestic violence. In 2003, the last year these data are available, domestic violence prohibitors made up the largest category of delayed denial transactions, accounting for 34 percent of these cases.<sup>61</sup> This is more than twice the portion of denials based on domestic violence that occur during typical background checks that are resolved immediately.<sup>62</sup>

There are a few reasons that domestic violence and drug abuse prohibiting records pose an increased challenge during gun background checks and can require additional investigation. First, many criminal history records in III are incomplete and do not have information about how an arrest was resolved, so it may not be clear as to whether an individual was actually convicted of a gun-prohibiting crime. Second, the federal definition of misdemeanor crime of domestic violence does not always align with a state’s criminal code, so it may not be readily apparent from the record whether a misdemeanor assault conviction has all of the requisite elements to be federally prohibiting—for example, whether the crime occurred between people in a qualifying relationship. Similar issues often arise when there is an indication of illegal drug possession in a criminal record. Federal law bars gun buying for anyone who is an “unlawful user” of a controlled substance—a category that is further defined by regulation and FBI protocol to include individuals



who have a history of repeated drug possession arrests or who admit to unlawful possession during the course of an arrest.<sup>63</sup> Whether a drug-related arrest that appears in a NICS background check is gun prohibiting requires a more detailed investigation by an FBI NICS examiner, which often requires inquiries to local law enforcement, who must search their records for key information.<sup>64</sup>

One way for state and local law enforcement to alleviate the need for this type of additional investigation and minimize the number of default proceed and delayed denial transactions is for those agencies to prescreen and pre-validate these records as gun prohibiting. Pre-validation involves flagging an individual's criminal history record—either relating to an arrest, conviction, or restraining order—if it is one that prohibits the individual from purchasing a gun under state or federal law. Both NCIC and III have an option to flag a record as gun prohibiting, yet as of 2012, only 22 states are using these flags.<sup>65</sup> Pre-validating and flagging these records would eliminate any ambiguity when the FBI NICS examiner is trying to determine if an individual's criminal history renders them ineligible for gun possession, and it would reduce the number of cases that require an extensive, time-consuming investigation. Connecticut has begun to pre-validate records of misdemeanor domestic violence convictions as gun prohibiting and has created a form for state criminal court judges to use to affirmatively indicate that a conviction renders the defendant barred from buying guns under federal law.<sup>66</sup>

State executives should take the following steps to ensure that domestic violence and drug abuse prohibiting records are properly identified in NICS:

- Establish a protocol for state and local police agencies to proactively assess whether a domestic violence misdemeanor conviction or restraining order or a drug-related arrest is sufficient to disqualify the individual from gun possession
- Ensure that this protocol includes the use of the Brady flag in both III and NCIC to affirmatively indicate that the individual is barred from buying or possessing a gun



# Enhanced enforcement of current laws

A common refrain from the gun lobby and those who oppose strengthening gun laws is that new gun laws are not necessary—we simply need to enforce the laws that are already on the books.<sup>67</sup> While this is an overly facile assessment of the current state of the nation’s gun laws, it is true that there is much that state and local law enforcement can do to aggressively and effectively enforce existing gun laws in order to reduce the illegal trafficking of firearms, prevent prohibited individuals from having easy access to guns, and prevent gun violence in the community.

## 6. Investigate and prosecute cases in which prohibited individuals attempt to purchase guns from licensed dealers and fail a background check

When an individual attempts to buy a gun from a licensed dealer, they are required to complete a form—commonly referred to as a 4473—that asks for certain identifying information about the individual, as well as specific questions to ascertain whether the individual is prohibited from buying a gun.<sup>68</sup> Lying on this form is a federal crime, punishable by up to 10 years in prison.<sup>69</sup> However, federal prosecutions of this conduct are rare. In 2009, the FBI referred 71,010 cases of a prohibited purchaser attempting to buy a gun from a federally licensed dealer to ATF. After further investigation and the application of referral criteria that was developed jointly by ATF and the U.S. Attorney’s Offices, the U.S. attorney ultimately accepted only 77 of these so-called lie-and-try-to-buy cases for prosecution.<sup>70</sup> In addition to being a violation of federal law, providing false information to a gun dealer in connection with a prospective purchase may also violate state laws regarding making false statements.<sup>71</sup>

The fact that an individual who is prohibited from gun possession even attempted to buy a gun can be a crucial piece of information to local law enforcement about the potential risk that person poses to public safety in their com-

munity. Some states have begun to take these lie-and-try-to-buy cases more seriously by investigating and, when appropriate, prosecuting offenders for this illegal conduct. In 2014, Oregon implemented new statewide protocols for police on how to investigate background check denials: When an individual fails a background check at a gun store, the state police are alerted through the state's Firearm Instant Check System, and state troopers are dispatched immediately to the dealer to investigate.<sup>72</sup> In the first six months of the program, 1,071 firearm denial investigations were initiated, and 462 cases were referred to the district attorney for prosecution.<sup>73</sup>

Virginia state police have also aggressively investigated individuals who have failed background checks. Since 2000, the state police notify local law enforcement when a resident of its jurisdiction fails a background check, and the local police conduct further investigation. This process has resulted in a number of criminal prosecutions.<sup>74</sup> In addition, Virginia state troopers have improved enforcement of current gun laws and background checks at gun shows, and arrests of individuals who were illegally attempting to buy guns at gun shows rose in the first three years after enforcement efforts began in 2011.<sup>75</sup> In Pennsylvania, too, the State Police Firearms Division initiates investigations whenever a denial is issued. Between 1999 and 2013, a total of 1,627 prohibited individuals were convicted for illegally attempting to buy firearms in the state.<sup>76</sup>

Proactively investigating and prosecuting lie-and-try-to-buy cases is much easier in Point of Contact states—those that operate their own gun background check system—because the investigating agency is also the agency that conducts the background check and thus has real-time access to denial data. However, this type of proactive approach is also possible in non-Point of Contact states that rely on the FBI to conduct background checks for gun sales with cooperation from ATF and the FBI. For example, when an individual fails a background check because of an outstanding arrest warrant, the FBI contacts the law enforcement agency that issued the warrant and notifies it of the attempted purchase, as well as the location of the gun dealer.<sup>77</sup> State executives in these states should work with ATF and the FBI to develop standardized protocol for sharing information about NICS denials with state law enforcement agencies in order to facilitate active enforcement of these crimes.

## 7. Create a dedicated gun crime investigative unit in state and local police departments to focus on illegal gun trafficking and gun crime

To ensure a dedicated and specially trained focus on gun crime in local communities, some jurisdictions have created specific gun crime investigation units or, in smaller departments, have designated several officers to focus exclusively on gun crime. In August 2014, Delaware Gov. Jack Markell (D) announced the creation of a gun investigation unit within the state police. This investigative unit focuses on illegal gun sales and trafficking in the state and investigates illegal transfers of firearms, possession by prohibited purchasers, and the reporting of lost and stolen firearms.<sup>78</sup> In 2013, Maryland enhanced its gun trafficking enforcement with the creation of a gun trafficking task force and a dedicated gun center that provides assistance to local law enforcement agencies on cases involving guns.<sup>79</sup> During the first year that the Maryland Gun Center was in operation, its staff received 2,828 requests for assistance from state and local police. The Maryland Gun Tracing Task Force—a joint operation of law enforcement agencies across the state, as well as ATF—seized 723 guns, made 71 arrests, and executed 70 search warrants as a result of crime gun trace information in 2013 alone.<sup>80</sup> Many local police agencies have also begun developing their own dedicated gun investigative capacity. In Kansas City, Missouri, local police created an Illegal Firearms Squad comprised of local officers and ATF agents. The squad investigates the network of illegal guns across the larger metropolitan area.<sup>81</sup> In Fresno, California, the city expanded its gun crime unit following a sudden uptick in violent crime in 2015. The gun crime unit was created in 2012, but it had only one detective until four detectives and a sergeant were recently added to the full-time unit.<sup>82</sup> Similarly, in Jacksonville, Florida, the sheriff's office has a gun crime investigation unit, the aim of which is to reduce gun violence by focusing investigations on illegal gun networks. The Jacksonville unit is a partnership between the state and the county; the unit works with ATF and the state attorney's office, and it also has a special agent from the Florida Department of Law Enforcement.<sup>83</sup>

As ATF continues to struggle with resource limitations and other burdens on its ability to effectively focus on illegal firearms trafficking,<sup>84</sup> state leaders should work to fill this gap and ensure a robust enforcement effort at the state level. State leaders should work with law enforcement to ensure a dedicated focus on gun trafficking and gun crime in police agencies across the state.

## 8. Create an illegal gun tip line

In addition to conducting proactive investigations into illegal gun trafficking and use of guns in crimes, law enforcement can also encourage civilians to help stem the use of illegal guns in their communities by implementing a tip line. These programs typically pay between \$100 and \$2,000 for information related to illegal guns.<sup>85</sup> This type of program has been implemented at the state level; in large cities, including Washington, D.C., Philadelphia, and Baltimore; and in small communities such as Jamestown, New York.<sup>86</sup> Despite some criticism regarding the effectiveness of such programs,<sup>87</sup> there have been tangible results. A tip line operated by the Miami-Dade County Police Department received more than 2,400 tips between June 2007 and February 2011, resulting in the confiscation of 535 guns, the arrest of 329 perpetrators, and the solving of three homicide cases.<sup>88</sup> Operation Gun Stop in New York City offers a reward of \$1,000 for anonymous tips, and the program has resulted in the recovery of 3,350 illegal guns since it was created in 2001.<sup>89</sup> In October 2015, Virginia Gov. Terry McAuliffe (D) announced the creation of an illegal gun tip line that will be operated by the state police.<sup>90</sup>

State police should consider implementing a statewide crime gun tip line as a means to provide civilians an anonymous mechanism to report illegal guns in their community to help take dangerous weapons off the street.

## 9. Increase the use of technology to solve gun crimes and prevent shootings

There are a number of technology-based products and services available to state and local law enforcement to help solve gun crimes and more effectively respond to gun violence. One is the National Integrated Ballistic Information Network, or NIBIN, which is an “interstate automated ballistic imaging network” that ATF created in 1999.<sup>91</sup> It allows law enforcement agencies to enter shell casing evidence into a database and search for matches from evidence collected at other crime scenes from any jurisdiction across the country.<sup>92</sup> When a gun is fired, it leaves a number of unique marks—known as tool marks—on the bullet and the spent cartridge case. Because these marks are unique to each gun, they can serve as a fingerprint for a gun and allow investigators to connect bullets or casings to a specific gun, as well as to those left at other crime scenes.<sup>93</sup> Since 1999, more than 2.4 million shell casings have been catalogued in NIBIN, resulting in 68,000 matches between crime scenes.<sup>94</sup>

Despite NIBIN's enormous potential to help solve individual gun crimes and identify larger patterns and trends in criminal use of guns in communities, evaluations of the program have found that ATF and local law enforcement largely underutilize the database.<sup>95</sup> However, some jurisdictions have developed innovative new programs to enhance the use of ballistics imaging technology and NIBIN in order to help solve local gun crime. In January 2013, the Denver Police Department created a new partnership with ATF called the Crime Gun Intelligence Center, or CGIC, to enhance the city's use of ballistics and crime gun tracing.<sup>96</sup> The primary goal of the CGIC is to engage in real-time ballistics analysis with a goal of analyzing shell casings using NIBIN within 24 to 72 hours following a shooting.<sup>97</sup> This emphasis on speed allows investigators to use ballistics evidence to generate leads much more quickly as a way to help apprehend active shooters.<sup>98</sup> As of April 2015, this program has aided investigations of more than 50 shootings and led to the arrest of at least 35 individuals.<sup>99</sup> Similar programs have been launched in Chicago, Boston, and New Orleans.<sup>100</sup>

Another technology that can assist law enforcement in more effectively responding to and ultimately preventing shootings in the community are gunshot detection systems. This technology recognizes the sound of gunshots and relays the location of a shooting to police almost immediately, allowing law enforcement to respond even if a call is never placed to 911. This technology fills an important gap in police response to shootings, as many go unreported to police. For example, in the first month that this technology was in place in one community in Brooklyn, New York, the system—provided by the company ShotSpotter—detected 55 shooting incidents, but only 12 of those cases were reported to law enforcement through a 911 call.<sup>101</sup> Relying solely on citizens to report incidents that involve gunfire means that police are not able to adequately respond to many shootings and, in turn, cannot adequately assess the level of gun violence in a community or develop targeted solutions to address it. In addition to enhancing the police response to shootings in communities that experience both high levels of gun violence and low rates of reporting, gunshot detection technology can provide law enforcement with increased data about the nature of gun violence in the community and trends in shootings, including locations that most frequently experience shootings; the time of day and day of the week when such incidents are more likely to occur; and shootings that occur without a victim but still negatively effect community health.<sup>102</sup> Some police departments are also using this information to increase their engagement with the community. In September 2015, the Detroit Police Department announced a new program in which volunteers would knock



on doors in the immediate area where gunshots were detected three days after a shooting and inform residents that shots had been heard and offer information about local community services.<sup>103</sup>

State executives should invest in technological innovations—including expanded use of NIBIN and gunshot detection technology—to provide additional tools for law enforcement to effectively address gun violence in the community.

#### 10. Implement de-escalation training for police officers and increase the use of independent prosecutors in investigations of police officers who use lethal force

A number of high-profile police killings of unarmed African Americans—including Michael Brown in Ferguson, Missouri; Eric Garner in Staten Island, New York; and Walter Scott in North Charleston, South Carolina—have focused attention on the use of lethal force by police officers and raised a number of questions about these incidents, including how often they occur and the most effective methods for investigating them. Regarding frequency, in the past, there had been extremely limited data on the number of incidents in which police officers use lethal force against civilians. Reporting of these incidents to the FBI has been notoriously flawed and incomplete, which has left a significant data gap.<sup>104</sup> However, this year, two media outlets have stepped in to begin to fill this gap, tracking all instances of police officer killings of civilians in real time using media reports of these incidents. *The Guardian* has been counting all police-caused fatalities,<sup>105</sup> while *The Washington Post* has been tracking every instance of a police officer's fatal shooting of a civilian.<sup>106</sup> The results of these projects have been astounding and provide an unprecedented look at the frequency with which police officers use lethal force.

This new information, coupled with the growing list of unarmed African American men killed by officers, has led to numerous calls to revisit police training on de-escalation strategies. A survey of police agencies that was conducted by the Police Executive Research Forum in spring 2015 found that police recruits receive an average of 58 hours of training on the use of firearms and 49 hours of training on defensive tactics—but only 8 hours of training on de-escalation.<sup>107</sup> Preparing officers to de-escalate potentially dangerous interactions with the public is crucial—84 percent of the police killing of civilians counted by *The Guardian* involved individuals who were armed with a weapon. Many of these incidents were likely legally justified; however, it is certainly not a desirable outcome for

society to have police officers using lethal force at this rate. Officers therefore need to be provided with tools and strategies for de-escalating conflicts, as well as with alternatives to the use of lethal force. A number of jurisdictions around the country have begun to improve this aspect of police officer training, including Seattle, Kansas City, Los Angeles, and Las Vegas.<sup>108</sup> In the “Final Report of the President’s Task Force on 21st Century Policing,” one of the recommendations is for law enforcement training on the use of force “to emphasize de-escalation” and include a focus on use of “less than lethal technologies.”<sup>109</sup> A recent CAP report offering recommendations for improving police-community relations in Baltimore likewise recommended ensuring that all police officers in that city receive training on de-escalation techniques.<sup>110</sup>

In addition to these staggering numbers, a second issue that has received intensive scrutiny is the procedures in place for investigating cases in which a police officer kills a civilian. In many jurisdictions, these incidents are simply investigated in the same manner as any other criminal case by the local prosecutors. The wisdom of this approach has been questioned following the failure of local prosecutors to obtain grand jury indictments in some of these cases, particularly in the deaths of Michael Brown and Eric Garner. One concern with placing the responsibility for such investigations with the local prosecutor’s office is that the prosecutors are not always able to remain impartial in these cases because of their close working relationship with the police department upon which they rely on to assist with investigations and prosecutions.<sup>111</sup>

Some jurisdictions have addressed this potential conflict of interest by employing special or independent prosecutors to investigate allegations of improper use of force by police officers. For example, Maryland has established an independent special prosecutor’s office that handles a variety of cases, including allegations of police misconduct.<sup>112</sup> In July 2015, New York Gov. Andrew Cuomo (D) issued an executive order appointing the New York state attorney general as a special prosecutor “in matters relating to the deaths of unarmed civilians caused by law enforcement officers,” as well as to “review cases where there is a question of whether the civilian was armed and dangerous at the time of his or her death.”<sup>113</sup>

Now that there are more accurate data about the frequency with which police officers use lethal force against civilians, state leaders in law enforcement need to take steps to address this form of violence in the community and ensure that police officers are resorting to lethal force only in rare circumstances. State executives should implement substantial de-escalation training for police officers

statewide, providing officers with tools and strategies to de-escalate potentially dangerous encounters with civilians as an alternative to using lethal force. In addition, state leaders should consider options for using independent prosecutors who do not have a close working relationship with the local police department to investigate use-of-force cases in order to ensure appropriate oversight and accountability in these cases.

#### 11. Implement a lethality assessment program for officers who are responding to domestic violence calls

The risk that a victim of domestic violence will be killed increases substantially when an abuser has access to a firearm. Having a gun in the home increases the risk of homicide of an intimate partner by eight times compared to households without guns and by 20 times when there is a history of domestic violence in the family.<sup>114</sup> It is therefore crucial that officers who are responding to domestic violence calls take steps to determine whether an abuser has access to guns and whether there are other factors that increase the risk of homicide. To facilitate this process, domestic violence advocates and researchers have developed an evidence-based tool to help police officers assess whether a victim of domestic violence is at an increased risk for lethal violence. This approach, commonly known as a Lethality Assessment Program, or LAP, has been pioneered by the Maryland Network Against Domestic Violence, which created its program in 2005.<sup>115</sup> In a jurisdiction that has implemented a LAP, a responding officer uses what is called a Lethality Screen to ask the victim a series of evidence-based questions to assess whether she or he faces an increased risk for homicide. This survey includes questions about the abuser's access to guns; previous use or threats to use a weapon against the victim; whether there has been a threat to kill either the victim or children; and other specific past violent or threatening behavior.<sup>116</sup> LAP protocol then requires the officer to immediately contact the local domestic violence crisis hotline if the victim answers certain questions affirmatively and encourages the victim to talk to a trained advocate who provides information on safety planning, as well as options for how to leave the abusive relationship.<sup>117</sup> The goal of the LAP is to provide an immediate connection to services for victims at the highest risk of fatal violence. A LAP often includes ongoing follow-up by service providers and law enforcement.<sup>118</sup> A secondary benefit of the program—in addition to providing this connection to services—is that it gives officers a standardized method to ascertain an abuser's access to guns, improving officer safety and leading to a stronger criminal justice response to those cases.

As of 2013, jurisdictions in 30 states had implemented an LAP,<sup>119</sup> including jurisdictions in Connecticut, Delaware, Indiana, Massachusetts, Missouri, Oklahoma, Vermont, and Virginia.<sup>120</sup> Maryland has implemented the program statewide.<sup>121</sup> State executives should commit to implementing the LAP statewide to ensure that the most at-risk victims are provided a crucial connection to services and that police officers have an effective tool for responding in these cases.

## 12. Implement statewide standardized protocol requiring prohibited domestic abusers to surrender all firearms in their possession

Congress and many state legislatures have recognized the danger posed by domestic abusers with guns and have enacted laws that prohibit certain abusers from buying and possessing firearms, specifically those who have been convicted of a misdemeanor crime of domestic violence or are subject to a domestic violence restraining order.<sup>122</sup> However, these laws are effective only if they are supported by standardized statewide protocol that enforces these statutory provisions and ensures that not only are prohibited domestic abusers prevented from buying new guns, but also that they are not able to continue possessing guns already owned prior to becoming prohibited. Most states have failed to implement such a protocol, leaving many victims of domestic violence vulnerable to abusers who are able to retain possession of their guns while the police and court system turn a blind eye. Additionally, a number of states have failed even to enact strong laws prohibiting domestic abusers from buying and possessing guns in the first place, creating an even more dangerous gap in the law.

Wisconsin and Oregon have been leaders in efforts to ensure that prohibited domestic abusers surrender their guns. In 2010, the State of Wisconsin Office of Justice Assistance's Violence Against Women Advisory Committee and the Governor's Council on Domestic Violence Surrender Protocol Committee developed a firearms surrender protocol and launched it as a pilot program in four local counties.<sup>123</sup> This protocol had three elements:

- When victims of domestic violence petition the court and are granted a temporary restraining order, or TRO, the court schedules an injunction hearing to take place within 14 days. Both parties—the victim and the abuser—must complete and present a statement of firearms form at the hearing, listing all firearms the respondent owns.

- If a permanent order of protection is issued, and the abuser becomes prohibited from gun ownership under Wisconsin state law, the court orders the firearms that they own to be surrendered and schedules a separate firearms surrender hearing.
- When the protection order expires, the abuser may request that the court order the return of the surrendered firearms. Prior to returning any firearms, the sheriff's department conducts a background check to verify that they are now legally eligible to possess firearms. The court then notifies the victim when the guns are returned.<sup>124</sup>

A study conducted by the University of Wisconsin-Milwaukee found that all parties involved in the above process reported that the implementation of this protocol was “not nearly as difficult or as onerous to implement as was first expected.”<sup>125</sup> The evaluation of the pilot program in Wisconsin provided evidence that was used to successfully pass a statewide law in 2014 that codified the firearms surrender requirement following a domestic violence conviction or protective order.<sup>126</sup> The Oregon Firearms and Domestic Violence Task Force also created model surrender procedures for courts, law enforcement, prosecutors, victims' advocates, and defense counsel in order to ensure that abusers surrender their guns.<sup>127</sup> Multnomah County in Oregon has been a state leader in implementing this program, creating a comprehensive surrender program in 2013 that includes designated surrender locations and a surrender affidavit that the respondent must complete and file.<sup>128</sup>

Local jurisdictions have also begun to explore this approach. For example, Dallas County has become the first county in Texas to require convicted domestic abusers or those who are subject to emergency protective orders to surrender their firearms. Judge Roberto Cañas designed the program, which asks respondents to tell the court if they own firearms. If they do, they will be ordered to surrender them and provide a receipt proving that they complied with this order. Individuals can surrender firearms either to the sheriff's department by turning them in to a private gun range—which has agreed to store all surrendered firearms—or they can give them to a verified third party.<sup>129</sup>

In light of the overwhelming evidence that domestic abusers' access to guns dramatically increases the risk that a victim will be murdered,<sup>130</sup> state leaders should take all available steps to ensure that abusers do not have easy access to guns. State executives should work with law enforcement, court officials, and domestic vio-

lence service providers to develop protocol for ensuring that domestic abusers are not permitted to retain possession of any guns once they become prohibited due to a disqualifying conviction or restraining order.

### 13. Provide guidance to local judges to ensure that they order the surrender of firearms by domestic abusers in appropriate cases

While there are a growing number of states that have enacted legislation prohibiting individuals subject to a domestic violence restraining order from buying or possessing a gun—mirroring the federal law in this respect—roughly half of the states have not passed similar laws.<sup>131</sup> However, this does not mean that judges in these states are powerless to disarm domestic abusers. In a number of states, judges have broad authority to order a wide range of injunctive relief in domestic violence cases, including ordering the surrender of guns. For example, Pennsylvania,<sup>132</sup> Rhode Island,<sup>133</sup> Maine,<sup>134</sup> and Texas<sup>135</sup> have laws specifically providing that judges may order the surrender of guns as part of a domestic violence protection order. Michigan law provides that a petitioner may apply to the court for an order enjoining the abuser from buying or possessing a gun.<sup>136</sup> Yet some research suggests that these permissive surrender laws are underutilized. A June 2015 report by Everytown for Gun Safety studying orders of protection that were issued in Rhode Island found that judges ordered the surrender of guns in less than 13 percent of cases where there was some indication that the abuser may have access to guns. That means that, between 2012 and 2014, 325 abusers who had access to guns were not required by the court to surrender these firearms during protection order proceedings.<sup>137</sup>

Additionally, even in states that do not provide explicit statutory authority for ordering the removal of guns, judges generally have broad authority to order whatever relief is necessary as a condition of an order of protection to ensure the safety of a domestic violence victim. For example, a court in Alabama may order “other relief as it deems necessary to provide for the safety and welfare of the plaintiff or any children and any person designated by the court” as part of a temporary or final order of protection.<sup>138</sup> Judges in Nevada have the authority to order “such other relief as it deems necessary in an emergency situation” when issuing a temporary or extended order of protection.<sup>139</sup> In Florida, judges have the authority to order “such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement.”<sup>140</sup>

There is a robust body of judicial education materials focused on the issue of domestic violence. For example, the National Judicial Institute on Domestic Violence is a partnership of three organizations—Futures Without Violence, the National Council of Juvenile and Family Court Judges, and the Office on Violence Against Women—that, since 1999, has worked to offer educational programs to judges as a means to provide additional support and resources to aid in their handling of domestic violence, sexual assault, stalking, and elder abuse cases.<sup>141</sup> In many jurisdictions, court administration officials work with advocates to create written guides—called benchbooks—for judges who handle domestic violence cases. The books provide information about the personal dynamics that are involved in domestic violence, the applicable state laws, and best practices for handling these cases.<sup>142</sup> A 2015 review of benchbooks by the Center for Court Innovation found that a discussion of firearms is included in books in 17 jurisdictions, although many of these resources fail to include specific guidance for ensuring that abusers surrender their guns.<sup>143</sup> The Pennsylvania Coalition Against Domestic Violence has created a benchbook that fills this void, providing detailed, step-by-step guidance regarding the removal of guns, suggesting that judges:

- Ask about access to guns in all cases, order the removal of guns from abusers who have access, and strictly enforce those orders
- Give warnings to defendants about the consequences of violating this order
- Disallow family or friends to act as safekeepers for surrendered guns for the duration of a removal order
- Create a procedure for return of guns upon expiration of the order
- Prioritize the safety of the victim and the community throughout this process<sup>144</sup>

State executives and court administrators should ensure that judges receive training and educational materials regarding the need to ensure that abusers do not have access to guns, as well as the option to order surrender of firearms in protection orders—regardless of whether there is explicit statutory authority for this type of relief. Judges should be urged to exercise their authority to order this relief in appropriate cases.



# Improved data collection and analysis

Developing smart and effective laws and policies to prevent gun violence requires access to accurate, detailed, and timely data about gun violence, gun deaths, and gun-related crimes. For decades, the gun lobby has campaigned to limit access to gun-related data.<sup>145</sup> This has primarily taken the form of restrictive policy riders to ATF's budget that limit access to crime gun trace data, as well as to the budgets of the Centers for Disease Control and Prevention and the National Institutes of Health that have had a chilling effect on public health research into gun deaths and injuries.<sup>146</sup> But, despite these efforts to limit access to and analysis of gun crime and gun death data, there are a number of steps state and local leaders can take to improve the collection, analysis, and dissemination of this information. Doing so would have a significant effect in expanding the knowledge base regarding these issues and contribute to a more informed policy discussion.

## 14. Require state and local law enforcement agencies to trace all crime guns

A gun that is recovered at the scene of a crime can provide substantial information about gun crime and illegal gun trafficking in the community. One former branch chief at the ATF National Tracing Center explained the value of crime gun tracing, saying:

*A single firearms trace can tell you who bought the gun, where it was purchased, what identification and address was used by the purchaser, and if the purchaser bought other handguns at the same time. One trace also has the potential to identify and link suspects involved in criminal violations, develop potential witnesses, determine the sources of firearms used in crimes, prove ownership, and produce new investigative leads.*<sup>147</sup>

ATF operates the National Tracing Center, which traces crime guns and manages eTrace, an internet-based service where local law enforcement agencies can submit information about guns that were recovered in crimes for tracing.<sup>148</sup>

In a trace request, law enforcement identifies a recovered gun's model, the serial number, and manufacturer. ATF uses that information to contact the manufacturer of the gun. The manufacturer identifies the gun dealer who first sold the gun, and ATF interviews the dealer to learn the identity of the first retail purchaser of the gun. Typically, trace requests end when the first retail purchaser is identified.<sup>149</sup> Then law enforcement can use other investigative techniques to attempt to recreate the full ownership history of the gun. If they get lucky, they may be able to identify the person who used it in the crime that is being investigated. Trace data can also provide valuable intelligence about large gun trafficking networks. For example, after tracing 30 guns that were recovered at various crime scenes in Chicago, ATF discovered that all of these guns were originally sold in Marion, Ohio. The agency then worked with local law enforcement to disrupt a gun-trafficking ring that was illegally trafficking guns to Chicago in return for heroin.<sup>150</sup>

Despite the value of crime gun tracing, this service is widely underutilized by local police departments. While the eTrace system is available for use by all U.S. law enforcement agencies, only 5,080 of nearly 18,000 agencies nationwide actively use eTrace to trace crime guns.<sup>151</sup> One month after the shooting at Sandy Hook Elementary School, President Obama issued an executive order directing all federal law enforcement agencies to trace all guns recovered during criminal investigations.<sup>152</sup> State executives can issue similar guidance to state and local law enforcement agencies. Law enforcement agencies in cities such as Boston<sup>153</sup>, Chicago<sup>154</sup>, and New York<sup>155</sup> currently work closely with ATF to trace crime guns in an attempt to identify gun traffickers. At the state level, both Texas and Massachusetts have developed protocols for law enforcement officers to encourage tracing: They have added mandatory fields to electronic recordkeeping systems so that officers must enter details about crime guns into state databases and submit them to ATF for tracing.<sup>156</sup> In New Jersey, the attorney general has directed all local law enforcement to report information about any gun used to commit a crime into both the NCIC and the New Jersey trace system, which is connected to eTrace, within 24 hours of recovery.<sup>157</sup> In October 2015, Virginia Gov. McAuliffe issued a package of executive actions to address gun violence, including that all local police departments in the state trace every crime gun.<sup>158</sup>

Recognizing the value and potential of crime gun trace data, state executives should work with the state police to ensure that all law enforcement agencies in the state trace all crime guns and provide any necessary resources to those agencies to ensure compliance with this order.

## 15. Conduct an annual review of trace data to identify the largest sources of crime guns in the state

In addition to providing information to help solve individual crimes, crime gun tracing can provide comprehensive information about how illegal guns enter a community and, in particular, the gun dealers who are overrepresented in selling firearms that are used in crime. In examining trace data and identifying the first retail seller of recovered crime guns, law enforcement agencies have consistently found that a large share of crime guns originate from a small number of gun dealers who either knowingly divert guns to illegal markets or are negligent in the operation of their businesses.<sup>159</sup> Throughout the United States, the majority of guns used in crimes are traced back to just a small percentage of gun dealers.<sup>160</sup> Conducting an annual review and analysis of trace data can help identify these dealers and allow for more targeted enforcement.

An analysis of trace data of crime guns recovered in a jurisdiction can provide detailed information about the most prevalent sources of illegal guns used in crime in different communities. For example, Chicago's Office of the Mayor, in conjunction with the Chicago Police Department, has released two reports in recent years presenting information from trace analyses conducted on every gun recovered at crime scenes in the city. These analyses revealed that a significant portion of crime guns originated from just four local gun dealers.<sup>161</sup> A similar 2013 analysis of crime guns recovered and traced in New York City revealed that it experienced a different problem: 90 percent of crime guns recovered in the jurisdiction were originally sold by out-of-state gun dealers.<sup>162</sup> A recent study of gun trace data from Boston, conducted in partnership with the Mayor's Office, the Boston Police Department, and researchers at Harvard University, revealed yet a different problem: While the state has very strong gun laws that require record-keeping for secondary market gun sales, this law is being inadequately enforced, and information about secondary gun transfers was missing for 63 percent of recovered handguns from Boston, where it should have been available.<sup>163</sup>

This type of data analysis allows local leaders to develop highly targeted enforcement operations to address the illegal flow of guns into a specific community. In Chicago, that might mean focusing on those four dealers, while in New York City, law enforcement may instead choose to partner with law enforcement in the primary source states of guns recovered in crime. The Boston study demonstrates a need to focus on enforcing the existing strong gun laws in that jurisdiction.

State executives should work with state and local law enforcement to conduct this type of annual review of trace data across their state and identify the leading sellers of crime guns that are recovered. In addition to mandating that all police agencies trace all crime guns, executives should require police agencies to share annual aggregate trace data with state police to facilitate this type of statewide review of the illegal gun market.

#### 16. Create an opt-in program for law enforcement agencies across the state to share trace data

Despite the value of crime gun trace data for identifying illegal gun trafficking networks and helping solve gun crimes, local law enforcement is often hampered in making the best and most proactive use of this data. One obstacle is limitations on the use and dissemination of trace data that were enacted by Congress in 2004.<sup>164</sup> These limitations took the form of riders to ATF's budget, collectively referred to as the Tiahrt Amendments after their original sponsor, Rep. Todd Tiahrt (R-KS). These riders drastically limit public disclosure of trace data and prohibit the use of this data in civil actions.<sup>165</sup> Rollbacks to these restrictions enacted in 2008 and 2010 have eliminated some of the harshest restrictions on law enforcement access to this data.<sup>166</sup> Yet, even with this access, it remains difficult for local law enforcement agencies to effectively access trace data from other jurisdictions when it may be relevant to ongoing criminal investigations. For example, eTrace is not set up to allow law enforcement agencies to directly access trace data relating to guns recovered in another jurisdiction—they can learn that such information exists through a query of eTrace, but they need to obtain the data directly from the other law enforcement agency.<sup>167</sup> This limits the ability of local law enforcement agencies to conduct proactive intelligence-based investigations into crime that crosses its borders.

ATF has created a new initiative to minimize the remaining burdens of the Tiahrt Amendments on law enforcement's access to trace data. Through its "collective data sharing initiative," ATF allows state and local law enforcement agencies to opt in to a program that allows them to share all trace data directly with other participating agencies in the state in real time.<sup>168</sup> This initiative was first piloted in Virginia in 2013 and provides additional information for participating law enforcement agencies to analyze patterns of gun trafficking throughout the state. In the first eight weeks that the program was active in Virginia, 25 of the states'

352 local law enforcement agencies agreed to join the information-sharing database, and most law enforcement agencies in the state are expected to join in the future.<sup>169</sup> Illinois and Maryland were scheduled to be the next two states to pilot a statewide opt-in program through ATF's collective data sharing program.<sup>170</sup>

State executives should explore how they can participate in this type of opt-in program to enhance the proactive use of trace data in the state in order to address gun trafficking.

## 17. Create a review commission to study every gun-related death in the state

In an effort to better understand certain types of deaths—most often domestic violence and child abuse-related homicides—many states and local jurisdictions have established standardized protocol for conducting a detailed review of these cases. This review process often takes the form of a board or commission that is typically composed of elected leaders, law enforcement, service providers and victim advocates, health care providers, and members of the academic community. Engaging in this type of detailed and systematic case-by-case review can illuminate trends and patterns in these deaths and help craft a more targeted and strategic response to preventing them.<sup>171</sup> This approach can also be used to study gun deaths in the state as a way to help state leaders, law enforcement, service providers, and community groups understand the nature of their state's gun deaths and develop programs to help prevent future deaths.

One example of this type of program is the Homicide Review Commission—created in the city of Milwaukee, Wisconsin, in January 2005—in an effort to combine public health and law enforcement approaches to violence in the city.<sup>172</sup> The commission is composed of service providers, members of the community, criminal justice professionals, and government officials. It engages in a progressive review process of homicides and near-fatal shootings and also reviews nonfatal shootings in order to study and understand this type of violence.<sup>173</sup> The commission issues annual reports that provide a detailed overview of homicides in the city, including an analysis of the most common circumstances in which homicides occurred, a demographic breakdown of perpetrators and victims, and a review of the communities most affected by homicides and nonfatal shootings.<sup>174</sup> A program evaluation conducted by the National Institute of Justice found that this homicide review process has resulted in a 52 percent reduction in homicides throughout the city from January 1999 through December 2006.<sup>175</sup>

State leaders should convene statewide stakeholders to conduct an annual review of gun deaths. The resulting body of data and research could help guide legislative and policy proposals that are tailored to address the specific needs of the state. Alternatively, state executives could tailor this review process to focus on a subset of gun deaths that relate most closely to a challenge apparent in the state. For example, states with the highest rates of gun murders—such as Louisiana, Mississippi, and Alabama—could focus incident review efforts on those cases, whereas states with higher rates of gun-related suicides—such as Alaska, Wyoming, and Montana—could focus tracking efforts on those gun deaths.<sup>176</sup>

## 18. Improve statewide collection of crime and gun death data

Access to accurate and timely data is a critical component to understanding crime and violence in a given jurisdiction. The data allow local leaders to identify trends in violent crime and develop effective strategies for reducing crime and enhancing community safety. The Uniform Crime Report, or UCR, which is published by the FBI, is the most comprehensive database of crime statistics in the country. Reporting to this program is voluntary, however, which has led to a number of gaps in the information.<sup>177</sup> An illustrative example is the number of civilian homicides that are committed by police officers and reported each year to the FBI—which are known as justifiable homicides. Recent national attention on these incidents has led to the realization that the data available to the FBI regarding these homicides are grossly inaccurate. A Bureau of Justice Statistics study released in March 2015 found that the FBI’s reported number for justifiable homicides was at least 50 percent lower than the actual total.<sup>178</sup>

While the U.S. Department of Justice has not mandated that local law enforcement report crime data to the FBI, state executives can take action to improve data collection and reporting in their jurisdiction. For example, in February 2015, New York Gov. Cuomo ordered that all crime reporting agencies in the state provide statistics for all of the categories in the “Supplementary Homicide Report,” including murder, negligent manslaughter, and justifiable homicide.<sup>179</sup> California Attorney General Kamala Harris created a new initiative in September 2015 that provides increased public access to data about civilian deaths while in custody in order to increase transparency and help contribute to informed policymaking.<sup>180</sup>

State executives should consider options similar to those taken in New York and California to improve data collection and reporting on all categories of gun deaths in the state.

# Enhanced community engagement

Passing strong laws and implementing executive policies to reduce gun violence and minimize access to guns by individuals who pose a heightened risk of harm to the community is only one aspect of an effective approach to addressing gun violence. State leaders must also support community-based initiatives to address other issues that contribute to violence: poverty, lack of economic and educational opportunities, and an often deeply damaged relationship with the police. Many strong and innovative community-based programs have focused on gun violence prevention for decades, and they combine the unique strengths of particular communities' grass-roots and an evidence-based public health approach to preventing violence.

## 19. Implement a violence-intervention program in local hospital emergency rooms for gunshot victims

One often missed opportunity to intervene in an ongoing cycle of violence and prevent retaliatory action is in the hospital emergency room. In many communities that experience high rates of gun violence—particularly gang-related violence—victims of gunshot wounds and other violent assaults often do not seek the assistance of law enforcement because they do not trust police. However, they will seek medical treatment in order to address their injuries. These hospital visits can offer a crucial opportunity to engage with young people—as they are most often both the perpetrators and victims of violence—and provide them with a connection to community and social services. These programs can also help prevent retaliatory violence, which is a major cause of fatal violence in many communities—especially among young people.<sup>181</sup>

Hospital-based violence-intervention programs have been implemented in a number of jurisdictions around the country since the mid-1990s. One such program was established in 1998 at a trauma center at the University of Maryland School of Medicine. Individuals who participated in the program saw significant positive results in terms of reduced criminal activities and repeat hospitalizations. Patients



who were admitted to the trauma center for injury due to a violent assault, and who had a previous hospitalization for a similar injury, could participate in the Violence Intervention Program. Participants were assigned a social worker who created a service plan that could include substance abuse treatment, employment training and services, and conflict-resolution training. The social worker made home visits after the patient was discharged. The patients also participated in weekly group sessions with other participants. Additionally, the individual's parole or probation officer was involved in the ongoing engagement.<sup>182</sup> A study of this program compared participants with a control group who did not receive these services. It found that—between January 1, 1999, and October 1, 2001—individuals who did not participate in the program were six times more likely to be rehospitalized as a result of a violent assault; three times more likely to be arrested for violent crimes; and four times more likely to be convicted of a violent crime as compared to patients who participated in the program.<sup>183</sup> These programs have been implemented in many trauma hospitals across the country, including more than 30 programs that are part of the National Network of Hospital-based Violence Intervention Programs, which was founded in 2009.<sup>184</sup> Harborview Medical Center in Seattle, Washington, is launching a new initiative in 2015 based on a successful intervention program that the hospital used for patients with injuries related to alcohol abuse. Under this program, patients admitted to the hospital for a gunshot wound will be interviewed by a social worker in the hospital and offered “individual case management.”<sup>185</sup> The management will include 12 follow-up sessions in order to build skills such as conflict resolution and explore the role of guns in the patient's environment.<sup>186</sup>

State executives should implement hospital-based violence-intervention programs in all public hospitals in high-violence communities. They also should provide support and incentives for these programs to be implemented in private hospitals in these communities as well.

## 20. Implement community-based programs to prevent violent crime in vulnerable communities

In addition to policies and programs focused on illegal gun access and gun trafficking into the community, state and local leaders should consider programs aimed at addressing the underlying root causes of violence and preventing violent

altercations in affected communities. Easy access to guns and widespread illegal gun carrying drive fatal altercations—but there are also other factors at play in communities that experience high rates of violent crime that are not necessarily addressed by laws and policies that focus solely on guns.

There are several program models that address violence in high-risk communities. Harvard criminologist David Kennedy developed an early model that was implemented in Boston in 1996 designed around a concept of focused deterrence.<sup>187</sup> This program, called Operation Ceasefire, created a partnership with law enforcement and community leaders to identify individuals responsible for violent crimes in the community and reach out directly to them in order to intervene and attempt to prevent future violence. In this program, local, state, and federal law enforcement officers invited the high-risk individuals to a community meeting. There, they explained that future violence would be met with a strong justice-system response, including long criminal sentences, and that all gang members would be held criminally accountable for the acts of individual members. In addition to these “sticks,” officers also offered “carrots” through connections to social services, such as job training and substance abuse treatment.<sup>188</sup> Boston’s Operation Ceasefire program had a significant effect on reducing both homicides of young men and gun-related assaults in the city: One evaluation of the program found a 63 percent reduction in the average number of youth homicides per month after the program began, as well as a 25 percent reduction in the monthly number of gun assaults.<sup>189</sup> This model has been implemented in a number of other cities with similar results.<sup>190</sup>

Another model focuses less on law enforcement outreach and employs former gang-involved individuals to deter future violence. One such program, Baltimore’s Safe Streets, was launched in 2007.<sup>191</sup> This initiative employed “street outreach workers,” many of whom were formerly incarcerated, to mediate conflicts in the community and work with high-risk youth to prevent violence.<sup>192</sup> A 2012 evaluation of this program found that it had an effect on reducing gun violence in the four communities studied: Across the four sites, the program was associated with preventing 35 nonfatal shootings and five murders.<sup>193</sup> One neighborhood that was evaluated experienced a 56 percent reduction in homicides and 34 percent reduction of nonfatal shootings.<sup>194</sup> The researchers found that the community mediation aspect of the program seemed to have a significant effect on reducing violence.<sup>195</sup> In a similar program in Rhode Island, the Institute for

the Study and Practice of Nonviolence places trainers, many of whom are formerly incarcerated, into underserved neighborhoods to prevent retaliation and provide advocacy, mentoring, and conflict mediation to high-risk youths who live there. The Streetworkers program serves over 3,000 individuals per year.<sup>196</sup>

These programs provide promising models for addressing the underlying root causes of violence in affected communities. State executives should work with community leaders, law enforcement, and public health experts to identify the communities that suffer from the highest levels of gun violence in the state and devote resources to implementing and operating community-based intervention programs as a way to reduce that violence.

# Enhanced oversight of gun carrying

State laws vary widely as to the scope and scale of concealed gun carrying. Each state sets its own standards and requirements for the carrying of concealed loaded guns, and every state grants at least some individuals the privilege of carrying concealed firearms. Some states have strict eligibility and training requirements for concealed-carry applicants, while others have enacted lax permitting systems that allow most individuals to carry as long as they are not prohibited from possessing a gun under federal law.<sup>197</sup> Every state allows qualified individuals to carry concealed firearms, and six states allow residents to carry concealed guns without any permit at all.<sup>198</sup> State laws also vary widely as to where permit holders may carry guns, with some states having expansive laws that allow carrying in most locations, including bars, houses of worship, and school grounds.<sup>199</sup> State leaders have an obligation to ensure that concealed-carry permit systems are operationalized in such a manner to ensure that only law-abiding, legally qualified individuals are allowed to carry guns and that an individual's ability to carry guns does not infringe on the rights of others to a safe community.

## 21. Conduct an annual review of concealed-carry permit reciprocity agreements with other states and rescind those with states that fail to meet certain standards

In addition to setting standards for eligibility to carry concealed firearms, each state makes a determination as to whether to grant reciprocity or recognition to other states' carry permits. States take a variety of approaches to determine whether to grant this reciprocity: According to a 2015 report, as of 2013, 10 states and the District of Columbia did not recognize any out-of-state permits, and 22 states recognized a limited number of out-of-state permits.<sup>200</sup> The states that offer selective reciprocity tend to limit this privilege to states that have equally as stringent permitting laws—for example the state of Virginia accepts out-of-state permits if the permit holder is 21 or older, the issuing state provides instant verification, and the issuing state's law prevents individuals who would be ineligible

in Virginia from acquiring a permit.<sup>201</sup> Today, Virginia has a reciprocity agreement with 13 other states and informally honors the permits issued by an additional 17 states.<sup>202</sup> New Mexico has a similar system in place: The requirements of another state's permitting system must be at least as stringent as New Mexico's law, include a fingerprint background check for applicants, restrict permits to individuals who are 21 or older, require both classroom and live-fire training, and have a statewide system for issuing permits.<sup>203</sup> Currently, New Mexico has reciprocity agreements with 24 other states.<sup>204</sup>

However, states should not treat reciprocity agreements as static documents. State laws regarding concealed-carry permitting change regularly, and states that agree to honor out-of-state permits need to regularly review those agreements to ensure that they continue to reflect the laws and standards of the state. An analysis of pending state legislation by the Law Center to Prevent Gun Violence found that, since 2013, 31 states have introduced legislation that would weaken the eligibility requirements or the process for obtaining a concealed-carry permit.<sup>205</sup> A number of states do engage in a regular review of reciprocity agreements. For example, in 2013, the Pennsylvania Office of the Attorney General modified its agreement with Florida,<sup>206</sup> after Marqus Hill—whose Pennsylvania carry permit was revoked in 2006 but who was able to obtain a permit in Florida in 2007—shot and killed an 18-year-old who was breaking into his car in 2010.<sup>207</sup> With the revision, Pennsylvania residents who have concealed-carry permits from Florida are no longer able to use these out-of-state permits to carry guns in Pennsylvania.<sup>208</sup> New Mexico has a similar review process, and the state revoked its reciprocity agreement with Utah in 2010 after the New Mexico Department of Public Safety found that Utah's licensing requirements did not meet the minimum standard set in New Mexico.<sup>209</sup> Nevada has also been vigilant about re-evaluating reciprocity agreements: In 2009, the state revoked its agreements with Florida and Utah;<sup>210</sup> in 2013, it revoked its agreement with Arizona;<sup>211</sup> and most recently, the state revoked reciprocity with Michigan.<sup>212</sup> Notably, however, the state legislature passed a bill in May 2015 that significantly weakened Nevada's reciprocity system and required the state to recognize weaker concealed-carry permits issued by other states.<sup>213</sup>

The head of the state agency that is responsible for concealed-carry permit reciprocity agreements should conduct an annual review of these agreements to ensure that this privilege is offered only to states that have imposed standards at least as strong as the state that is offering reciprocity.

## 22. Conduct monthly background checks to ensure continued eligibility for individuals who have been issued concealed-carry permits

Another aspect of concealed-carry permitting laws that varies from state to state is the duration of such permits. The validity of permits ranges from one year in Hawaii to seven years in Florida, with many states issuing permits for a five-year period.<sup>214</sup> The long duration of these permits creates the risk that an individual who is granted a permit could become prohibited from gun possession yet retain their valid concealed-carry permit. For example, in 2011, *The New York Times* investigated the permit system in North Carolina and found that 2,400 permit holders were convicted felons or misdemeanants who were barred from owning guns, yet the state failed to revoke or suspend their permits.<sup>215</sup> A 2007 investigation by the *Sun-Sentinel* found that Florida had granted concealed-carry permits to more than 1,400 individuals who had been convicted of felonies, 216 with outstanding warrants, and 128 with active domestic violence restraining orders.<sup>216</sup> The risk of dangerous people retaining their carry permits is escalated in the roughly 20 states where purchasers can buy a gun without a background check if they have a valid concealed-carry permit.<sup>217</sup>

The Kentucky State Police have been a leader on this issue through the 2006 implementation of a process for regularly confirming the continued eligibility for concealed-carry licenses. State police conduct a monthly background check on every licensee to ensure that they have not become prohibited from gun possession or otherwise ineligible for a carry license.<sup>218</sup> This process has proven effective: In 2014, the Kentucky State Police revoked 601 concealed weapons licenses and suspended an additional 738 licenses.<sup>219</sup> Other states have implemented a process for alerting the licensing authority when an individual becomes ineligible for a carry permit. In Virginia, the state police enter the names of every concealed-carry permit holder in its statewide criminal records system. If they find that an individual has become disqualified due to an intervening criminal issue, the police unit notifies the circuit court that issued the concealed handgun permit.<sup>220</sup> In 2014, these notifications resulted in the revocation of 670 permits in the state.<sup>221</sup>

Law enforcement leaders should follow these examples and implement a process for conducting regular background checks on all concealed-carry permit holders to ensure their continued eligibility. When necessary, they also should suspend or revoke the permits of those individuals who no longer meet the requirements for this privilege.

### 23. Use existing criminal laws to discourage reckless acts of open carry

While carrying concealed guns is regulated by some type of permit process in the vast majority of states, openly carrying long guns without any type of permit is legal, with few limitations, in 44 states.<sup>222</sup> In recent years, there has been a growing movement of open-carry enthusiasts who engage in public displays of open gun carrying to protest gun laws and attempt to normalize public gun carrying.<sup>223</sup> Open-carry demonstrations have taken place at restaurants, stores, and other businesses,<sup>224</sup> and in recent months, open-carry activists have begun patrolling locations to provide increased security. For example, open-carry activists demonstrated outside of a number of military recruiting offices<sup>225</sup> after the attack on a military recruiting center and a naval reserve center in Chattanooga, Tennessee, on July 16, 2015, resulted in the murder of five service members.<sup>226</sup> These individuals claimed to be providing increased security and protection at these locations despite the fact that they were asked by military officials not to do so because they themselves posed a new security threat.<sup>227</sup> Members of the Oath Keepers—a controversial citizen militia group—also engaged in armed patrols in Ferguson, Missouri, in August 2015 during demonstrations around the one-year anniversary of the shooting death of Michael Brown by a police officer who was ultimately relieved of criminal liability when the grand jury declined to bring charges.<sup>228</sup> Their presence was unwelcome by both demonstrators and police, with the police chief characterizing their actions as “unnecessary and inflammatory.”<sup>229</sup> Law enforcement has expressed concern about this type of open-carry display, warning that it creates a dangerous situation where police officers are unable to quickly ascertain whether an armed individual poses a risk to public safety.<sup>230</sup>

While open carry is legal in most states, the manner in which an individual displays a firearm and the totality of the circumstances may violate other criminal laws. Openly carrying guns in a reckless or threatening manner may violate criminal laws relating to menacing,<sup>231</sup> reckless endangerment,<sup>232</sup> or improper display or brandishing of a weapon.<sup>233</sup> Law enforcement should use existing laws to prevent reckless and dangerous displays that create public safety risks and generate fear and unease in the community. In June 2015, for example, police in Gulfport, Mississippi, arrested two individuals who were openly carrying a shotgun in Wal-Mart and pumped a round into the chamber; they were charged with disturbance in a public place and disturbance of the public peace.<sup>234</sup> In 2012, police officers in Louisville, Kentucky, arrested and charged a man with menacing and disorderly conduct after he refused an officer’s instruction to conceal the gun that he was openly carrying in an Arby’s restaurant following complaints



by concerned customers.<sup>235</sup> While there are numerous criminal laws that this conduct may violate, local police agencies often mistakenly believe that all acts of open carrying are permissible and constitutionally protected. In the Gulfport case, the police chief initially declined to arrest the individuals, focusing solely on the open-carry element of their conduct and saying that “the actions of these two men are sanctioned by state laws,” although such actions did have a negative effect on the community.<sup>236</sup>

State attorneys general should develop guidance for local law enforcement agencies regarding what state laws may be violated by reckless acts of open gun carrying and clarifying that, even in states where some form of open carrying is permitted, this does not provide blanket immunity over reckless and dangerous public displays of guns.



# Enhanced regulation of the gun industry

Regulating the gun industry is a critical part of ensuring that the actors involved in introducing guns into the stream of commerce are doing so in a safe and legal manner. ATF is the primary regulatory body that is responsible for ensuring that manufacturers and gun dealers comply with federal law. However, ATF's budget has remained stagnant over the past two decades, and it operates with limited resources, making it difficult—and sometimes impossible—for ATF agents to regulate the industry at even a minimum standard. Inspections of gun dealers are an important tool that ATF has at its disposal for detecting illegal gun networks and cracking down on the small percentage of gun dealers that supply the majority of all crime guns recovered by law enforcement.<sup>237</sup> But, because of limited resources, ATF agents are unable to inspect most gun dealers with any regularity. The Department of Justice Office of the Inspector General reviewed ATF's gun dealer inspection program and found that, between 2007 and 2012, more than 58 percent of gun dealers in the United States had not been inspected for at least five years.<sup>238</sup> State executives have a number of options that can fill in the gaps in ATF's regulation of the gun industry and help prevent the diversion of guns into illegal trafficking networks.

## 24. Increase security measures and improve other business practices of gun dealers

Federal law sets the baseline standards for who is eligible to become a federally licensed gun dealer and what requirements must be met to obtain and maintain a federal firearms license. Federal law and regulations also set conduct standards for licensed dealers, including requiring background checks for all gun sales, maintaining recordkeeping and reporting standards, and employing required business practices, such as making trigger locks available at the point of sale.<sup>239</sup> A number of states have implemented additional licensing or business practice requirements for gun dealers.<sup>240</sup> Fifteen states require gun dealers to obtain a second state-issued license to operate.<sup>241</sup> Other state laws require gun dealers to take certain specific

actions, such as posting warning signs about the risks of keeping unsecured guns in homes with children, and conducting background checks on gun store employees.<sup>242</sup> Still other states have enacted laws imposing additional security requirements on gun dealers to help maintain control over their dangerous inventory. For example, California and Minnesota have legislation that controls the specific manner in which guns must be stored when the business is closed,<sup>243</sup> while Connecticut, New Jersey, and Minnesota have legislation requiring that gun dealers use specific types of electronic security systems.<sup>244</sup> Implementing these types of security measures can have a significant effect on the extent to which guns are diverted from the lawful stream of commerce to illegal gun markets by protecting against theft.<sup>245</sup>

However, ensuring that gun dealers implement strong security measures does not always require new legislation. In states that have already enacted laws requiring gun dealers to obtain a second state-issued gun dealer's license or have mandated other business practices for gun dealers in the state, executives should review those laws and consider whether they can be improved or strengthened by regulation. For example, in January 2015, the New Jersey State Police proposed strengthening the current regulations that govern the conduct of gun dealers in several ways, using the authority provided by statute to "prescribe standards and qualifications for retail dealers of firearms and their employees for the protection of the public safety, health and welfare":<sup>246</sup>

- Require dealers to label all guns in inventory with information about each gun that is consistent with information required to be kept in the dealer's written records
- Immediately notify the state police if the statutorily-required security system becomes inoperable and, if it cannot be fixed within 24 hours, store all guns and ammunition in inventory at another licensed dealer or come up with an alternative approved security method
- Report any thefts or losses of guns or ammunition to the state police within 24 hours
- Prohibit a dealer from storing guns or ammunition at any location other than their licensed business location without obtaining approval from the state police<sup>247</sup>

Executives in states with legislation in place governing the conduct of gun dealers should evaluate these laws and evaluate whether they can strengthen regulations and require increased security measures.

## 25. Create a grading system for gun dealers that incentivizes adoption of best practices

While gun dealers are licensed by ATF and subject to oversight by the federal government, there are relatively few federal laws and regulations that impose restrictions on the operation of these businesses. There are, however, a number of proven best practices that are effective at reducing thefts and losses of guns from gun stores and the knowing diversion of guns into the illegal secondary market.<sup>248</sup> To incentivize gun dealers to voluntarily adopt these best practices, state executives should create a grading system for gun dealers that takes into account certain aspects of the dealer's business. This system would allow law-abiding gun purchasers to be informed about businesses that have taken steps to minimize illegal access to guns and choose to patronize only those dealers.

This grading system would be similar to those used in a number of jurisdictions to grade restaurants<sup>249</sup> and could award points for the implementation of the following business practices, many of which have already been adopted by major gun retailers, including Wal-Mart:<sup>250</sup>

- Refusing to engage in “default proceed” sales and requiring a completed background check before completing a sale
- Videotaping sales to deter straw purchasing and monitor employees
- Requiring state-issued identification at the point of sale to deter use of fake IDs
- Posting consistent signage to notify customers of applicable laws, particularly regarding straw purchasing
- Conducting regular inventory audits to ensure that no guns are missing from inventory

- Implementing certain minimum security measures, including alarms and after-hours storage of guns in a secure location that is not visible from outside
- Providing private sale background checks for a minimal fee
- Conducting background checks of gun store employees

Implementing a grading system for gun dealers would incentivize the adoption of common-sense business practices, which would, in turn, help prevent the diversion of guns into illegal secondary markets. This system also would allow consumers to make informed decisions about which gun stores they wish to patronize.

## 26. Use state and local buying power to encourage best practices by gun manufacturers and dealers

Municipalities are some of the largest purchasers of firearms in the country. As mass purchasers that are buying firearms and ammunition for police and county sheriff's departments, local governments can use their power as consumers to influence the gun industry and incentivize them to adopt practices that can help reduce the flow of guns into illegal markets. The primary lever that the gun industry has for preventing the massive flow of illegal guns is to monitor gun dealers and require dealers to implement safeguards that have been proven to deter straw purchases and illegal sales.<sup>251</sup> Some of the most effective practices for gun dealers to stem the flow of their merchandise to criminals include simple measures such as installing security cameras and using electronic record keeping for sales and inventory.<sup>252</sup>

In January 2013, the National Conference of Democratic Mayors agreed that the buying power of city police departments was an important and previously ignored component of the government's range of tools to combat gun violence. In partnership with Mayors Against Illegal Guns, the coalition of mayors agreed that they would consider gun manufacturers' compliance with certain public safety criteria when they were selecting which manufacturers to purchase firearms from.<sup>253</sup> In 2014, the mayor of Jersey City, New Jersey, Steven M. Fulop, worked with the public safety director to implement a new survey of gun manufacturers as part of the procurement process in order to ascertain the extent to which a manufacturer engages in ethical and responsible practices.<sup>254</sup> The survey includes questions

on compliance with background check laws, methods for the destruction of old weapons, and the production of assault weapons for civilian use.<sup>255</sup> Other law enforcement departments in North Carolina, Illinois, New York, Connecticut, and Florida have adopted similar practices, looking at how gun manufacturers address gun safety technology, as well as their standards for selecting which gun dealers they will sell firearms to.<sup>256</sup> In Miami-Dade County, Florida, elected officials in 14 municipalities agreed to purchase firearms for local police departments only from dealers and manufacturers that implement a set of responsible practices, such as conducting regular inventory checks and training employees to identify straw purchasers.<sup>257</sup> In September 2015, Boston announced a new initiative to include a survey of vendor practices as part of the bidding process for the Boston Police Department's gun purchases as a means "to ensure the vendors and retailers are following best practices in their own company to prevent illegal gun sales and theft."<sup>258</sup>

State and local police executives should include some measure of a prospective gun vendor's compliance with an established set of best practices as part of the bidding and procurement process for buying department-issued guns.

## 27. Divest public funds from gun manufacturers that fail to adopt best practices

Another way that states and municipalities interact with the gun industry is through investing public funds in portfolios that include interests in gun manufacturers. After the shooting at Sandy Hook Elementary School in December 2012, many state and local officials examined the extent to which their investments support the gun industry and questioned whether this was an appropriate investment of public funds. A number of public retirement systems have taken steps to divest from the gun industry. In 2013, the Teachers' Retirement System of the City of New York and the New York City Employees' Retirement System divested all of its shares in gun and ammunition manufacturers—a total of \$13.5 million and \$16.2 million, respectively.<sup>259</sup> City Comptroller John Liu explained these actions, saying, "There is no need to support these companies, whose products can destroy lives and shatter communities in the blink of an eye. Our investment portfolio gains nothing by doing business with these firms."<sup>260</sup> In 2013, the California State Teachers' Retirement System announced that it intended to divest from manufacturers that produce guns that are illegal in California, primarily assault weapons and high-capacity ammunition magazines.<sup>261</sup>



Another approach is to consider options for using the leverage of a public investment portfolio to encourage the gun industry to adopt best practices—in the same way that states and municipalities can use their buying power to influence the conduct of gun manufacturers. Public investment portfolio managers could provide notice to their portfolios’ gun manufacturers of their intention to divest from the company unless they implement certain best practices, including requiring gun dealers who sell their products to adopt the policies outlined in recommendation 25 above; taking security measures to ensure that their guns are not lost or stolen in transit; including second, hidden serial numbers on guns to make it more difficult to render firearms untraceable; and limiting or eliminating any contributions to organizations that lobby against common-sense gun laws. This approach could make a divestment strategy even more effective by giving manufacturers the option of altering their practices to retain the business of these public accounts.

State executives charged with overseeing and managing public investment portfolios should evaluate the extent of their investments in the gun industry and explore options for using the leverage of their investment portfolios to encourage the gun industry to adopt best practices.

## 28. Enforce state sales tax laws on high-volume sellers of guns who have not obtained a federal firearms license

Nearly every state imposes a sales tax on goods sold within the state.<sup>262</sup> In determining which sellers of goods are subject to the sales tax collection requirement, many state laws consider the frequency of sales activity—either in terms of the number of occasions during which sales are made or the quantity of goods sold. A number of states exempt low-volume or low-frequency sellers who engage only in infrequent, casual, or occasional sales from the sales tax collection requirement. For example, under Florida law, an individual is exempt from collecting sales tax on “occasional sales,” or those that occur no more than twice during the year.<sup>263</sup> Georgia law exempts from sales tax a “casual sale transaction,” which is defined as the sale of property over a 12-month period that does not exceed \$500.<sup>264</sup> Under Missouri law, a person is not considered to be “engaged in business” as a retailer for purposes of sales tax collection if their total sales in a calendar year do not exceed \$3,000.<sup>265</sup> These state sales tax laws are similar to the federal law governing which sellers of firearms are required to apply to ATF in order to become a licensed gun dealer. Federal law requires gun sellers who are “engaged in the business” of dealing in firearms to obtain a license and further defines that

term to explain that those individuals engaged only in “occasional sales” are not considered to be engaged in the business and, as a result, not required to obtain a license from ATF.<sup>266</sup> Unlike many of the state sales tax collection laws, which are very detailed and provide explicit guidance as to what it means to be an occasional seller, the federal law and regulation defining what it means to be engaged in the business of dealing in firearms—and what is meant by the term “occasional sales”—is vague, ambiguous, and creates the opportunity for bad actors to exploit this weakness and sell guns at a high volume without obtaining a gun dealer’s license.<sup>267</sup>

Private gun sellers often take advantage of these casual or occasional sales exceptions so they can avoid collecting sales tax. For example, a 2009 investigation of seven gun shows conducted by the City of New York found that many private sellers operating at those shows advertised their tax-free sales in addition to their status as an unlicensed seller who was not required to conduct a background check.<sup>268</sup> While some vendors of other types of products may exploit these sales exemptions and, in doing so, deprive the state of revenue, the stakes are higher when the products being sold are guns and this conduct is coupled with an evasion of the federal law requirement that individuals engaged in the business of dealing in guns must obtain a federal firearms license from ATF. In those circumstances, individuals are able to sell guns in large quantities without any paperwork at the state or federal level and without conducting a firearms background check as a way to ensure that the buyer is legally authorized to purchase a gun.

States often focus tax enforcement efforts on vendors of products that pose a heightened risk to the community. The most common example is tax enforcement of tobacco products. Many states, including Pennsylvania, New Jersey, and Minnesota, have focused enforcement efforts on ensuring compliance with all state laws relating to collection of sales and other required taxes for cigarettes and other tobacco products.<sup>269</sup> State executives should likewise focus sales tax enforcement efforts on high-volume private sellers of guns who are violating both the federal law by not obtaining a federal firearms license—and not conducting background checks—and state law by failing to collect sales tax for these gun sales.



# Conclusion

State executive leaders are in a powerful position to use their existing authority to implement strong regulations, policies, and programs to address many aspects of gun violence that devastates communities across the country. The 28 ideas offered in this report are intended to start the conversation about how elected leaders can use this authority to take action—this is certainly not an exhaustive list. State executives should continue to innovate and lead on this issue and, in doing so, help drive more comprehensive legislative change to strengthen gun laws.

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