



Compliance with universal background check gun laws

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ABSTRACT

Some states have enacted laws extending background checks on persons seeking to acquire a firearm to cover gun transfers among private persons, not just those involving licensed gun dealers. The same kind of law has been proposed at the federal level. The effectiveness of 'universal background checks' (UBCs) is dependent on how many people seeking to acquire a gun from a private party comply with the required background check. Data on background checks on attempted private transfers were combined with estimates of total private gun acquisitions (with or without checks), and the results indicated that only 10.6% of private transfers in Colorado in 2019 and 3.5% of those in Oregon in 2017 were subjected to a state-mandated background check.

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Introduction

Universal background checks (UBCs) are probably the most prominent and potentially consequential gun control measures currently promoted by the nation's major gun control advocacy groups (Brady Campaign 2020; Coalition to Stop Gun Violence 2020; Everytown for Gun Safety 2020). A law mandating UBCs requires that *all* those attempting to acquire a firearm must pass a background check for a record of a criminal conviction or membership in another high-risk group such as mentally ill persons, drug addicts, or alcoholics – including those trying to get a gun from a source other than a licensed gun dealer. Federal law has for decades required background checks on transfers from federal firearms licensees (FFLs), but not those by private parties. Thus, the significance of UBCs is that they extend the scope of background checks to encompass private (nondealer) transfers.

Regulating transfers of firearms among private parties is potentially especially important in reducing criminal gun violence because most criminals acquire their guns from sources other than licensed gun dealers – that is, from unlicensed sources not (in states without UBC laws) subject to background checks. A 2016 national survey of prison inmates indicated that only 10.1% of those who possessed a gun during the crime for which they were incarcerated had obtained the gun from a retail source like a gun store or pawn shop (Alper and Glaze 2019, 7). The vast majority of gun acquisitions by criminals are from sources that, in places without UBC laws, are not required to conduct a background check.

As of March 2020, 14 states and the District of Columbia required background checks on private transfers of *all* types of guns, either by requiring a background check at the point of transfer or by requiring a permit (issued only to those who passed a background check) to acquire a gun. Another

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six states required background checks for private transfers of *handguns* only (Giffords Law Center 2020).

The degree to which extending background checks to encompass private transfers can affect gun acquisition by disqualified persons is at least partly a function of the extent to which transferors comply with the legal requirement that prospective transferees submit to a check. Therefore, it is important to know the rate at which prospective private gun transferors comply with this mandate. Most states that require background checks for private firearm transferees do not publicly report separate counts of background checks for private transfers, lumping them in with checks connected with dealer transfers. Colorado and Oregon, however, publish separate counts for private transfer checks, so we can use their data to compute rates of compliance with the legal requirement for background checks on prospective private gun transfers. Colorado requires background checks on private transfers of all gun types, and Oregon requires them on private transfers of handguns.

If one accepts at face value what gun owners tell survey researchers, compliance with state UBC requirements is quite high. In a national online survey conducted in 2015, 163 respondents who lived in states with UBC laws and who had acquired a gun via a private transfer in the previous 2 years (2013–2015) were asked if their transfer had been subject to a background check, and 74% claimed that they *had* undergone the checks that their state required (Miller, Hepburn, and Azrael 2017, 237). It would, however, be understandable if people who had illegally obtained guns without the background check lied on this point – the authors of the study conceded that responses might be subject to a ‘social desirability bias’ (238). We, therefore, test these claims using official data on numbers of background checks on private transfers known to have actually been performed.

Method for estimating the compliance rates

The compliance rate is defined as the percent of private firearm transfers that were subjected to background checks. The number of such background checks is publicly reported on the relevant Colorado and Oregon websites (Colorado 2020; Oregon 2020). The challenging part of computing compliance rates is, therefore, estimating the total number of private gun transfers, whether subjected to checks or not. One way to estimate this figure is to make use of the official counts of dealer transfer background checks and multiply them by R , the ratio of private transfers over dealer transfers, as established in two national surveys. In the National Survey of the Private Ownership of Firearms (NSPOF), 36.3% of all firearm acquisitions were the result of private transfers while 63.7% were obtained from a gun shop, pawnshop, hardware, department, or other store or at a gun show or a flea market – nearly all of which are licensed sources subject to background checks (Cook and Ludwig 1996, 25). Thus, 36.3% were obtained from private sources not subject (in a pre-UBC era) to background checks. An almost identical result was obtained in a national 2015 online survey. Miller, Hepburn, and Azrael (2017, 237) found that 36% of firearms acquired in the 2 years preceding the survey (2013–2015) had been obtained from a private source. Thus, $R = 36/64 = 0.56$. That is, the number of private gun transfers is 0.56 of the number of dealer transfers. Later we compute, as a sensitivity check, how results differ if a much smaller share of gun transfers is assumed to be private.

In 2017 in Colorado, the reported number of background checks on transfers by federal firearms licensees (FFLs) was 347,172 (Colorado 2020). Thus, assuming that our estimated R ratio of 0.56 applied in Colorado in 2017, the estimated total number of private transfers of firearms in Colorado, whether subjected to a background check or not, was $347,172 \times 0.56 = 194,416$. In Oregon in 2017, there were 281,492 FFL transactions subjected to a background check (Oregon 2020), so the estimated total number of private gun transfers in Oregon in 2017 was $281,492 \times 0.56 = 157,636$.

Results

The figures used to estimate compliance rates are shown in Table 1. The numbers of FFL-linked background checks and private transfer background checks are taken from the Colorado and Oregon online reports. The estimated numbers of private transfers were those computed in the previous section, and the estimated compliance rates are the number of private transfer background checks divided by the total number of private transfers, times 100%.

In Colorado, only about 10.6% of private transfers (20,523/194,416) were subjected to a background check. In Oregon, an even smaller 3.5% were subjected to a background check (5,588/160,450). Put another way, 89.6% of Colorado's private transfers of guns, and 96.5% of Oregon's, were not subjected to the legally required background checks of transferees. The vast majority of gun transferors of these states are flouting the requirements of a universal background check.

The accuracy of these compliance rates depends on how accurate R is in describing the share of gun acquisitions in Colorado and Oregon in 2017 that were via private transfers rather than dealer (FFL) transfers. If a smaller share of guns in these states are obtained from private transfers than national survey data indicate, making R smaller, the estimated number of private transfers would be lower, and compliance rates would, therefore, be higher. As a sensitivity check, we computed alternative estimates based on the assumption that only 20% of guns were acquired from private, non-FFL, sources, and that R, therefore, was $0.20/0.80 = 0.25$ (instead of 0.57). The resulting estimates are shown in the lower panel of Table 1.

Under the hypothetical alternative assumptions, the estimated number of private transfers in 2017 was 86,793 in Colorado and 70,373 in Oregon. The estimated compliance rates would then be 23.6% (20,523/86,793) in Colorado and 7.9% (5,588/70,373) in Oregon. Thus, even under the extreme assumption that private gun transfers claim a far lower share of all firearm transfers than actual empirical evidence indicates, at least 76% of private transfers in Colorado and 92% in Oregon were made without the transferees going through a background check. The conclusion still remains that the vast majority of gun transferors in both states violate the legal requirements of the UBC laws. Of course, it is possible that private transfers claim an even *larger* share of gun transfers than the two national surveys indicated, in which case the estimated compliance rates would be even lower than we found.

Unless compliance rates are radically higher in other parts of the country than in Colorado and Oregon, it is likely that most of the people in the Miller, Hepburn, and Azrael (2017) survey who claimed that they had undergone a background check when obtaining a gun from a private source was lying or otherwise mistaken. The numbers of background checks actually performed on private gun transferees in those two states were nowhere near high enough to be consistent with a claimed 74% compliance rate – even if one generously assumed that private transfers are far less common than surveys indicate them to be.

Table 1. Estimated rates of compliance with universal background check requirements.

	Colorado	Oregon
(1) Private Party Transaction Background Checks	20,523	5,588
(2) Dealer Transaction Background Checks, all gun types	347,172	281,492
(3) Estimated Total Private Transactions [(2) x R]	194,416	157,636
(4) Estimated Compliance Rate [(1)/(3) x 100%]	10.6%	3.5%
(5) Private checks resulting in denial	410	43
(6) Private party denial rate [(5)/(1) x 100%]	2.0%	0.8%
Sensitivity Check, Assuming Only 20% of Gun Transfers Are Private (R = 0.25)		
(7) Alternative Estimated Total Private Transfers [(2) x 0.25]	86,793	70,373
(8) Alternative Estimated Compliance Rate [(1)/(7) x 100%]	23.6%	7.9%

Note: R = the ratio of total private transfers over total dealer transfers. R was initially set at an empirically based 0.56, then reduced to a hypothetical 0.25 (assuming a much smaller share of gun acquisitions are via private transfers) for purposes of the sensitivity check.

Private transfers denied by background check failures

Among prospective firearm transferees who do go through a background check, very few fail the check, i.e., are found to possess a disqualifying characteristic such as a criminal conviction. In Colorado in 2017 just 2.0% of checks on private transferees resulted in a denial; in Oregon, just 1.8% were denied. Few would-be gun acquirers with disqualifying traits go through a background check that they would fail, so little of the benefit of UBC laws can be attributed to denying guns to ineligible persons who submit to, and fail, background checks.

Optimistically, the rarity of denials is consistent with the view that some disqualified persons do not submit to background checks because they are deterred from even trying to get a gun from any source, private or not, and that the purpose of the law – discouraging gun acquisition by dangerous persons – is to some extent achieved. More pessimistically, low denial rates are also consistent with the interpretation that disqualified persons evade background checks by getting guns from private sources that disobey the legal requirement for checks.

The widespread flouting of the requirements of UBC laws does, however, clearly indicate that there are large numbers of gun owners willing to transfer guns to persons whose legal eligibility to acquire guns is at best unknown or at least is not established by an official background check. To be sure, some of these transferors may believe the transferees are qualified to get a gun, based on the transferor's person acquaintance with the prospective transferee. Other transferors, however, may know the transferee to be ineligible or not care enough about the transferee's eligibility to bother with the check.

Conclusions

It is impossible to say how many ineligible persons in Colorado and Oregon refrained from getting guns from a private source because they faced a background check that they would fail. If the number is large, then UBC laws have significant benefit of the sort that their supporters have long hoped for (e.g., Kleck 1991, 435–437). On the other hand, what we do know from the Colorado and Oregon experiences is that few private gun owners who transfer their guns make their prospective transferees submit to the legally required background checks in those states. This implies that there are many private gun sources in those sources that could be exploited by criminals and other ineligible persons who would fail a background check. Perhaps public education programs aimed at gun owners could increase compliance rates above their current low levels. Failing that, optimism about the potential for universal background checks to reduce gun acquisition by dangerous persons must be tempered by a recognition that many gun owners are willing to flout the legal requirement that private firearm transfers be subject to background checks.

Disclosure statement

No potential conflict of interest was reported by the author.

Notes on contributor

Gary Kleck is the Emeritus David J. Bordua Professor of Criminology and Criminal Justice at Florida State University. His research has focused on the topics of the impact of firearms and gun control on violence, deterrence, crime control, and violence. He is the author of *Point Blank: Guns and Violence in America*, which won the 1993 Michael J. Hindelang Award of the American Society of Criminology. He also wrote *Targeting Guns* (1997) and, with Don B. Kates, Jr., *The Great American Gun Debate* (1997) and *Armed* (2001). His articles have been published in the *American Sociological Review*, *American Journal of Sociology*, *Social Forces*, *Criminology*, *Journal of Criminal Law and Criminology*, *Law & Society Review*, *Journal of Research in Crime and Delinquency*, *Crime and Delinquency*, and many other journals. He has testified before Congress and state legislatures on gun control issues and his work has been cited by the U.S. Supreme Court. He has served as a consultant to the National Research Council, National Academy of Sciences Panel on the Understanding and Prevention of Violence, as a member of the U.S. Sentencing Commission's Drugs-Violence Task

Force, and as a member of the National Research Council Committee on Priorities for a Public Health Research Agenda to Reduce the Threat of Firearm-related Violence. His most recent book is *Punishment and Crime*, with Brion Sever.

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