Danger in The Land of Enchantment

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A Report by Everytown for Gun Safety
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Executive Summary

In October 2016, a violent felon from Deming tried to buy a gun. He had recently served time in prison for three felonies related to a domestic violence incident: armed with a revolver, he choked his fiancée, told her he would break her neck, and tried to force her into the trunk of her car.¹ His felony convictions made it illegal for him to buy or possess firearms — but now he was online and actively shopping for a Glock handgun. If he had tried to buy one at a licensed dealer, where background checks are legally required, his felony convictions would have blocked the sale. Instead, he turned to online ads — where, because of a loophole in the law in New Mexico, gun sales can be arranged with no background check required.

Policymakers have long recognized that it’s dangerous for people with a felony conviction, a history of domestic abuse, or serious mental illness to have guns.² People with such records, like the man described above, are legally prohibited from buying or possessing guns. That’s why licensed gun dealers — Walmart, Dick’s Sporting Goods, or any of the hundreds of local gun stores across New Mexico — are legally required to contact the background check system to run a check on every buyer. When someone who is not allowed to have a gun attempts to make a purchase, the background check blocks the sale.

But there’s a problem with this system. In New Mexico, because of a dangerous loophole in the law — referred to as the background check loophole — background checks are not required when guns are sold by individuals who are not licensed dealers.³ These sales are called “unlicensed” gun sales, and they aren’t just taking place between friends or neighbors — they’re taking place on the internet. Websites like Armslist.com, the “Craigslist for guns,” provide a platform for unlicensed gun sales to be arranged online, between strangers. Because of the background check loophole, criminals can turn to these online unlicensed sales to arm themselves illegally, no background check required, no questions asked.

To understand how often criminals in New Mexico take advantage of the background check loophole to buy guns in unlicensed online sales, Everytown investigators (1) examined the size of the state’s unlicensed online sale market, and (2) posted for-sale ads online, tracking how many responses were from New Mexicans prohibited by law from buying or possessing firearms.
The findings are unambiguous: **New Mexico criminals — including people convicted of crimes like attempted kidnapping, armed robbery, and assault with a deadly weapon — are turning to unlicensed online gun sales to arm themselves.** That’s exactly what the convicted felon from Deming did. In October 2016, he responded to an online ad (posted by an Everytown investigator) for a Glock 19 handgun.

This report demonstrates that:

- **On just two popular websites, New Mexico unlicensed sellers post more than 4,000 unique gun ads annually,** none of which legally require a background check.

- **One in fifteen (6.7%) individuals who were attempting to purchase guns from Everytown investigators was found to have criminal records that made it illegal for them to purchase a gun.** Of particular concern, 64 percent (9 of 14) of those prohibited buyers were facing open criminal charges, were on probation or parole, or had warrants out for their arrest when they contacted investigators.

- **The rate of attempted illegal purchases is four times higher online than it is at New Mexico’s licensed dealers,** indicating that people legally prohibited from gun possession may be turning to unlicensed online sales rather than attempting a purchase at a licensed dealer where a background check is required.

Online gun sales aren’t always a threat to public safety, but when they happen without background checks, that’s exactly what they can become. In states that require background checks for all handgun sales — not just sales at licensed dealers — the toll of gun violence is lower, including fewer women shot to death by their intimate partners, and fewer law enforcement officers shot and killed in the line of duty.

Nineteen states and the District of Columbia have acted in the interests of public safety and closed the background check loophole. New Mexico hasn’t joined them yet — and until that changes, thousands of guns will remain accessible to any criminal with an internet connection, no background check required, no questions asked.
Introduction: Background Checks, Public Safety, and the Background Check Loophole

Lawmakers and public safety experts have long recognized that it’s dangerous for people with a felony conviction, a history of domestic abuse, or serious mental illness to possess guns; those factors indicate an increased risk of harm to oneself or others. That’s why federal law prohibits people with those records from buying or possessing guns.

In order to enforce the federal firearm law, Congress created the National Instant Criminal Background Check System (NICS). Since 1998, licensed firearm dealers have been required to contact NICS for a background check on every buyer. When a person prohibited by law from buying firearms attempts to make a purchase, that background check stops the sale.

Since the background check system was implemented, it has blocked nearly three million gun sales across the country to people legally prohibited from having firearms, including over 26,000 sales in New Mexico alone. (See table at right.)

But not all gun sales require background checks. Neither federal law nor New Mexico state law requires background checks for guns transferred in unlicensed sales — meaning any sale that is not made by a licensed gun dealer, including sales between strangers who meet online. This means that people legally prohibited from gun possession can purchase a gun through an unlicensed sale with no background check required, no questions asked. And Everytown research shows that people who could not pass a background check at a gun store attempt to buy guns through unlicensed sales on the internet instead.

There is strong evidence that closing the background check loophole saves lives. In states that require background checks for all handgun sales, 47 percent fewer women are shot to death by their intimate partners, 53 percent fewer law enforcement officers are killed with guns, and there is 48 percent less gun trafficking in cities.

Investigating Unlicensed Internet Gun Sales in New Mexico: Methods and Findings

To understand the public safety impact of New Mexico’s background check loophole, particularly as it applies to online unlicensed sales, Everytown investigated (1) the number of guns for sale online without a legally required background check; and (2) how frequently criminals, domestic abusers, and other would-be purchasers who are legally prohibited from having guns seek out firearms through unlicensed online sales.

METHODS

To estimate the number of guns available online through unlicensed sellers in New Mexico, Everytown researchers reviewed ads on two websites, Armslist.com and Backpage.com, both of which are commonly used by New Mexicans to post classified ads offering firearms. Everytown used a software program to record all gun ads posted by New Mexico sellers on both websites over a one-year period, then excluded ads from licensed dealers, ads that did not offer firearms for sale (e.g. ads for ammunition), ads for sales outside of New Mexico, and duplicate ads. Everytown conducted a quality review of the data and adjusted the estimate to account for potential errors.
To assess how frequently criminals, domestic abusers, and other would-be purchasers who are legally prohibited from having guns seek out firearms through unlicensed online sales, Everytown investigators placed 27 for-sale firearm ads — 26 on Armlist.com and one on Backpage.com, over a 36-day period. When respondents to the ad voluntarily provided identifying information, investigators searched publicly available court records to identify whether any of these would-be buyers had felony convictions, domestic violence misdemeanor convictions, bench warrants, orders of protection, or other records that would prohibit them from purchasing a gun.8,9

For a more detailed description of Everytown’s research methods, see Appendix 2.

FINDINGS

There are over 4,000 guns for sale by unlicensed internet sellers in New Mexico, none of which legally require a background check.

Researchers identified an estimated 4,057 unique online ads for unlicensed firearm sales in New Mexico posted on Armlist.com and Backpage.com over the course of a year. As a result, on any given day, when a would-be buyer logs on to look for a gun, they are likely choosing from hundreds of options of firearm sales from unlicensed sellers. None of those firearm sales would legally require a background check.

One in fifteen New Mexicans attempting to purchase a gun from Everytown investigators had criminal records that made the purchase they were attempting illegal.

The firearm ads posted by Everytown investigators received responses from 209 New Mexican would-be buyers who voluntarily provided identifying information. Fourteen would-be buyers (6.7%) were found to have criminal records—including for child abuse, domestic violence, heroin distribution, and attempted kidnapping— that made it illegal for them to purchase guns.

Of particular concern, 64 percent (9 of 14) of those prohibited buyers were facing open criminal charges, were on probation or parole, or had warrants out for their arrest when they contacted investigators.

In New Mexico, the rate of attempted illegal purchases in the unlicensed online market is four times higher than it is at licensed firearms dealers.

At New Mexico’s licensed dealers, background checks block 1.5 percent of purchases because the buyer was barred by law from buying and possessing firearms—in line with national rates.10,11 In contrast, 6.7 percent of those who responded to Everytown’s online gun ads were prohibited by law from buying and possessing firearms—a rate over four times higher than the share of prohibited purchasers attempting to buy firearms at licensed dealers.12 The difference suggests that people who are not legally allowed to buy guns are aware of the background check loophole, and turn to unlicensed internet sellers at a higher rate than they do licensed dealers.
PROHIBITED WOULD-BE BUYERS SEEKING GUNS ONLINE IN NEW MEXICO

In the course of this research, Everytown investigators observed the following individuals attempting to buy guns in unlicensed sales without background checks — despite the fact that their criminal records barred them from buying or possessing guns.

A FELONY DOMESTIC ABUSER ATTEMPTING TO BUY A GLOCK HANDGUN

In late 2012, a 22-year-old man from Deming was at home eating dinner with his fiancée and their infant child when, according to court documents, he “flipped out”, ordering his fiancée and their infant outside. Armed with a revolver, he choked his fiancée, told her that he would break her neck, and ordered her to get into the trunk of her car, attempting to physically force her inside the vehicle. He told her there would be repercussions if she told anyone of the incident.

The defendant was arrested and charged with felony attempted kidnapping, felony aggravated battery against a household member with a deadly weapon, and felony aggravated assault against a household member with a deadly weapon. In May 2013, he pled guilty to all three counts. Each of these felony convictions prohibited him from buying or possessing guns under federal and New Mexico state law.

But on October 13, 2016, this convicted domestic abuser was attempting to buy a gun online. He responded to an ad posted by Everytown investigators on Armslist for a $300 Glock 19 handgun.
A MAN OUT ON BOND FOR MULTIPLE FELONIES ATTEMPTING TO BUY AN AK RIFLE

According to court documents obtained by Everytown, in September 2015, a 29-year-old man from Albuquerque got into an argument with a stranger at a bar and then followed the stranger, the stranger’s girlfriend, and the couple’s two-month-old son to the family’s car in the bar’s parking lot. As the family began to drive off, the man fired multiple shots with a .45-caliber handgun, hitting the car. No physical injuries were reported.

One year after the shooting, in September 2016, the alleged shooter was arraigned on several felonies stemming from the incident, and pled not guilty. He was released on bond with a GPS bracelet and ordered to abide by a 6:00 p.m. curfew. As a condition of his bond, he was also prohibited from buying or possessing weapons, including firearms.

Just two weeks after being released on bond, the defendant was seeking firearms. He repeatedly called and texted Everytown investigators about an ad they had placed on Armslist.com offering an AK WASR 10 rifle. He offered $300 cash, and noted that “we don’t need a bill of sale or none of that.” He told investigators that he was only available to meet before 6:00 PM, saying that he “takes care of (his) mom at night.”

October 6, 2016

Hello my names [redacted] I’m texting about ur ak, do you still have [it] ?? I’m gonna see if u would take 300 for it ...

October 7, 2016

We don’t need a bill of sale or none of that I’ll just give u the 300 ok ...
A REPEAT FELON ATTEMPTING TO PURCHASE A MAC-11 SEMI-AUTOMATIC PISTOL

In November 2014, Bernalillo County police received a report of two men entering a private home through a window. When they arrived, the officers found the home “ransacked”, and apprehended a 25-year-old man and his cousin. Officers found a stolen diamond and gold necklace on the 25-year-old, and placed him under arrest.

The man pled guilty to felony residential burglary. This was not his first run-in with the law; his sentence contained an additional year in prison due to his habitual offender status. He had previously pled guilty to multiple felonies, including felony aggravated assault with a deadly weapon against a household member in 2013, and felony auto burglary in 2009. These felony convictions prohibited the man from buying or possessing guns under federal and state law.

Five months after his sentencing, in July 2016, he was moved to a halfway house, which he illegally fled two weeks later. He briefly checked in with his probation officer by phone, where he admitted to using methamphetamines and tranquilizers.

After that phone call, a bench warrant was issued for the man’s arrest. But that didn’t stop him from responding to an ad Everytown investigators had posted on Armslist.com. The ad offered a Mac-11 semi-automatic pistol for sale. Using a fake name, this felon emailed, texted, and called to offer cash for the gun and to ask if a bill of sale would be required to complete the transaction, or if it would “just be a private sale.”
Conclusion

This investigation provides the first quantitative analysis of the vast online market in New Mexico, where thousands of guns are available to anyone with an internet connection, no background check required and no questions asked. And it provides **clear evidence that criminals are taking advantage of a loophole in New Mexico law to avoid background checks and obtain firearms from law-abiding gun owners** — and without a background check on the sale, those law-abiding gun owners have no way to know they’re arming a criminal.

Lawmakers in New Mexico can close the background check loophole by extending background check requirements to all gun sales, a measure that 87% of New Mexicans support. Other states have recently improved their laws in similar ways. As of January 2017, nineteen states, home to approximately half of the United States population, require background checks for all handgun sales.

These states are already seeing results. For example, in Colorado, where the state legislature passed a law requiring background checks for all gun sales in 2013, dealers have conducted nearly 53,000 background checks for sales by unlicensed sellers. These background checks blocked over 1,000 gun sales to criminals and other people prohibited from buying guns. And contrary to predictions by the law’s opponents that this would deter legal gun ownership, the gun market in Colorado — including sales by unlicensed individuals online — continues to flourish.

Online gun sales don’t have to be a threat to public safety. Closing the background check loophole makes states safer from gun violence, a significant threat to New Mexicans: in the last ten years, there have been 3,157 gun deaths in New Mexico. Until policymakers make sure all gun sales require a background check, thousands of guns will remain accessible to criminals in New Mexico, no questions asked.
Appendix 1: 
Dangerous People Shopping for Guns Online in New Mexico

Over the month-long investigation period, researchers observed the following individuals attempting to buy guns illegally online, despite the fact that their criminal records barred them from buying or owning guns. Because of the background check loophole, these attempted purchases did not require a background check on the buyer:

SEP 24, 2016
A DOMESTIC ABUSER

Purchase Attempt:
On September 24th, 2016, a 32-year-old man contacted investigators about a Smith & Wesson M&P Shield handgun.

Prohibiting Factors:
In 2010, he pled guilty in Colorado to third-degree misdemeanor assault after he allegedly punched his live-in girlfriend (the mother of his four-year-old daughter) in the face.

SEP 25, 2016
A CHILD ABUSER OUT ON BOND

Purchase Attempt:
On September 25th, 2016, a 22-year-old man texted investigators about acquiring a Hi Point C9 handgun.

Prohibiting Factors:
In August 2016, he was arrested and charged with felony false imprisonment, felony child abuse, and misdemeanor battery against a household member, along with a number of other misdemeanors, after he allegedly threw his girlfriend and her two children on the floor and down a flight of stairs. He was out on bond, with the explicit condition that he not possess firearms, when he contacted investigators about purchasing the handgun.

SEP 25, 2016
A REPEAT FELON OUT ON BOND FOR DOMESTIC ABUSE

Purchase Attempt:
On September 25th, 2016, a 30-year-old man texted investigators about acquiring a Hi Point C9 handgun.

Prohibiting Factors:
In 2002, he was convicted of felony federal possession of heroin with intent to distribute.

SEP 28, 2016
A FELON

Purchase Attempt:
On September 28th, 2016, a 40-year-old man contacted investigators about purchasing a Glock 26 handgun.

Prohibiting Factors:
In 2002, he was convicted of felony federal possession of heroin with intent to distribute.

SEP 29, 2016
A FELON

Purchase Attempt:
On September 29th, 2016, a 40-year-old man texted investigators about purchasing four separate handguns.

Prohibiting Factors:
In 1998, he pled guilty to five felonies, including two counts of burglary, two counts of larceny, and one count of receiving stolen property, after he attempted to steal two cars and assorted power tools.

OCT 1, 2016
A REPEAT FELON

Purchase Attempt:
On October 1st, 2016, a 27-year-old man contacted investigators about purchasing a Mac-11 semi-automatic pistol. He spoke with investigators over the phone, giving a false name and asking if a bill of sale would be required to complete the transaction, or if it would just be a private sale.

Prohibiting Factors:
He has pled guilty to multiple felonies since 2008, including felony aggravated assault with a deadly weapon against a household member in 2012, and felony auto burglary in 2009.

OCT 4, 2016
A REPEAT FELON

Purchase Attempt:
On October 4th, 2016, a 55-year-old man emailed investigators about a Taurus Millennium G2 handgun.

Prohibiting Factors:
In 2010, he pled guilty to felony forgery and aggravated DWI, and in 2011, he pled guilty to felony forgery.
A MAN OUT ON BOND

Purchase Attempt:
On October 6th, 2016, a 30-year-old man contacted investigators about purchasing an AK rifle.

Prohibiting Factors:
In September 2016, he was charged with several felonies, and was out on bond when he contacted investigators about purchasing the rifle. As a condition of his bond, he was not to possess any weapons.

OCT 11, 2016  
A FELON

Purchase Attempt:
On October 11th, 2016, a 32-year-old man contacted investigators about purchasing a 9mm Hi Point handgun.

Prohibiting Factors:
In 2003 he was convicted of felony armed robbery, after he robbed a gas station with a handgun.

OCT 12, 2016  
A FELON

Purchase Attempt:
On October 12th, 2016, a 50-year-old man emailed investigators about acquiring a Hi Point 9mm handgun.

Prohibiting Factors:
In 1989, he was convicted in Illinois of felony possession of a controlled substance.

OCT 13, 2016  
A DOMESTIC ABUSER

Purchase Attempt:
On October 13th, 2016, a 26-year-old man left a voicemail for investigators about purchasing a Glock 19 handgun.

Prohibiting Factors:
In 2013, he pled guilty to attempted kidnapping, aggravated battery on a household member, and aggravated assault on a household member, all felonies. According to court documents, he allegedly threatened his fiancée and her infant child while armed, and attempted to choke her.

OCT 15, 2016  
A MAN OUT ON BOND

Purchase Attempt:
On October 15th, 2016, a 36-year-old man sent several texts and left a voicemail with investigators about purchasing a Kahr PM9 handgun.

Prohibiting Factors:
At the time he contacted investigators about purchasing the gun, he was on probation, with explicit bond conditions that he not possess firearms, after pleading no contest to charges including felony possession of a controlled substance. He was also subject to a bench warrant for failing to appear at a probation violation hearing in the same case.

OCT 17, 2016  
AN ALLEGED ABUSER OUT ON BOND

Purchase Attempt:
On October 17th, 2016, a 32-year-old man contacted investigators to inquire about a Glock 23 handgun, and called to reiterate his interest six days later.

Prohibiting Factors:
In June 2016, he was charged with two crimes, stemming from an incident where he allegedly assaulted his ex-girlfriend. He was out on bond, with the explicit condition that he not possess firearms, when he contacted investigators about purchasing a firearm. The case was dropped on October 31.

OCT 20, 2016  
A MAN OUT ON BOND

Purchase Attempt:
On October 20th, 2016, a 26-year-old man contacted investigators to inquire about a Glock 26 handgun, and called to reiterate his interest six days later.

Prohibiting Factors:
In August 2016, he was arrested and charged with misdemeanor breaking and entering, and was out on bond, with the explicit condition that he not possess firearms or dangerous weapons, when he contacted investigators about purchasing the firearm.
Appendix 2: Research Methods

ONLINE GUN SALE MARKET VOLUME

Researchers identified two websites catering to New Mexico residents where self-described unlicensed sellers can post ads offering firearms: Armslist.com, and Backpage.com. They then “scraped” (a software technique for collecting online data) all gun ads on both websites on a daily basis for one year, from September 1, 2015, to August 31, 2016.

From Armslist.com, researchers scraped 5,898 total ads. Using a software program coupled with manual review, researchers then excluded ads from licensed dealers; ads that did not offer firearms for sale in New Mexico; and duplicate ads, according to the following definitions:

• Ads from licensed dealers: ads classified by Armslist.com as having an “FFL flag”, or listed by “Premium Vendors”, “Vendors”, or “Dealers”, and ads that were classified as being offered by private sellers but that used the words “dealer”, “FFL”, and/or “licensed” in their title or body text.

• Ads not offering firearms for sale in New Mexico: Ads classified by Armslist.com as “WTB”, or “Want to Buy”; ads that used the words “want to buy”, “wtb”, “looking to buy”, “like to buy”, and/or “want to purchase” in their title or body text; ads with a listed location outside of New Mexico; and ads that did not contain evidence of a firearm for sale in the title, body text, or ad image.

• Duplicate ads: Ads that contained identical first 50-character strings.

From Backpage.com, researchers scraped 273 total ads. Researchers then manually reviewed the title and body text of each ad. When those were not clear, a screenshot of the ad was reviewed. As with the Armslist.com ads, researchers removed ads not offering firearms for sale, ads that appeared to be posted by sellers outside New Mexico; ads that appeared to be posted by a licensed gun dealer; and ads that contained identical first 50-character strings, indicating duplicates. All determinations were made via manual review, with the exception of duplicate identification, which was conducted in Excel.

After these exclusions, the dataset contained 4,135 unique Armslist.com ads, and 60 unique Backpage.com ads, for a total of 4,195 ads from both sites.

Researchers then reviewed a random sample of five percent of the ads (210) to ensure that no ads had been erroneously included. The random sample yielded 206 Armslist.com ads and 4 Backpage.com ads. Of the 210 ads reviewed, seven (3.3 percent) were classified incorrectly. Six of the seven ads offered non-firearm goods (e.g. ammunition or accessories) for sale. One of the seven ads was seeking a gun rather than offering one for sale. No ads were offered by licensed dealers, were offered by sellers residing outside of New Mexico, or were duplicates of other ads in the sample.

To account for those errors of inclusion, researchers applied a 3.3% reduction to the overall volume of observed ads (4,195). That yielded a final estimate of 4,057 unique online ads for unlicensed firearm sales in New Mexico posted on the two websites over the year-long period reviewed.
WOULD-BE BUYERS FOR ONLINE GUN SALES IN NEW MEXICO

To sample a group of individuals seeking to buy firearms online in New Mexico, investigators posted 27 ads (26 on Armslist.com, 1 on Backpage.com) offering firearms for sale in New Mexico. The ads were posted between September 23, 2016 and October 29, 2016. Investigators received 209 responses from would-be buyers in the state who voluntarily provided sufficient information, including their names, phone numbers, and/or email addresses, so that they could be identified using reverse lookup phone data or other sources.

Investigators then searched court records in jurisdictions that contain current or past addresses associated with each individual. Any felony convictions, domestic violence misdemeanor convictions, bench warrants, orders of protection, or other records that could be linked to the individual were analyzed to determine if they prohibited purchase or possession of firearms under state or federal law.

Out of 209 would-be buyers, 14 (6.7%) were prohibited from possessing guns (see Appendix 1 for details). These prohibitions would have made it illegal for them to attempt a gun purchase at a licensed dealer, and likely would have caused them to fail a background check, stopping the sale.

The results of this investigation may understate the share of prohibited buyers in the online market, for the following reasons:

- Investigators only examined court records in the jurisdictions where the identified buyer was associated with a current or past address, so individuals who committed prohibiting crimes in other jurisdictions were not identified.
- Some prohibiting court records might not have been identified or reviewed given variations in the availability of public records across jurisdictions.
- Investigators also did not examine records of some non-criminal prohibiting criteria, including dangerous mental illness, dishonorable discharge from the Armed Forces, and immigration status.
Notes

1 Details according to affidavit for arrest warrant obtained by Everytown.


3 Private or unlicensed sales are gun sales from sellers who are not licensed firearm dealers, such as individuals who only offer guns occasionally or who are making a sale from their personal collection.


5 Everytown for Gun Safety analysis of FBI data, December 2016.


8 In the course of this investigation, investigators initiated contact with law enforcement in certain instances that involved a potential imminent threat or other ongoing or recent contact with the criminal justice system.

9 The federal prohibition on firearm possession does not apply if a person has been pardoned for their criminal conviction or had their civil rights and firearm rights restored under state law. 18 U.S.C. §§921(a)(20)(B),(33)(B)(ii).


12 From 1998 to 2014, the last year for which data is available, New Mexico gun dealers conducted 1,655,972 background checks on would-be gun buyers, and 24,897 (1.5 percent) of those would-be buyers failed the check due to fugitive status, felony conviction, MCDV conviction, unlawful user status, active protection order, or indictment – the categories would-be buyers in this investigation were tested against.


