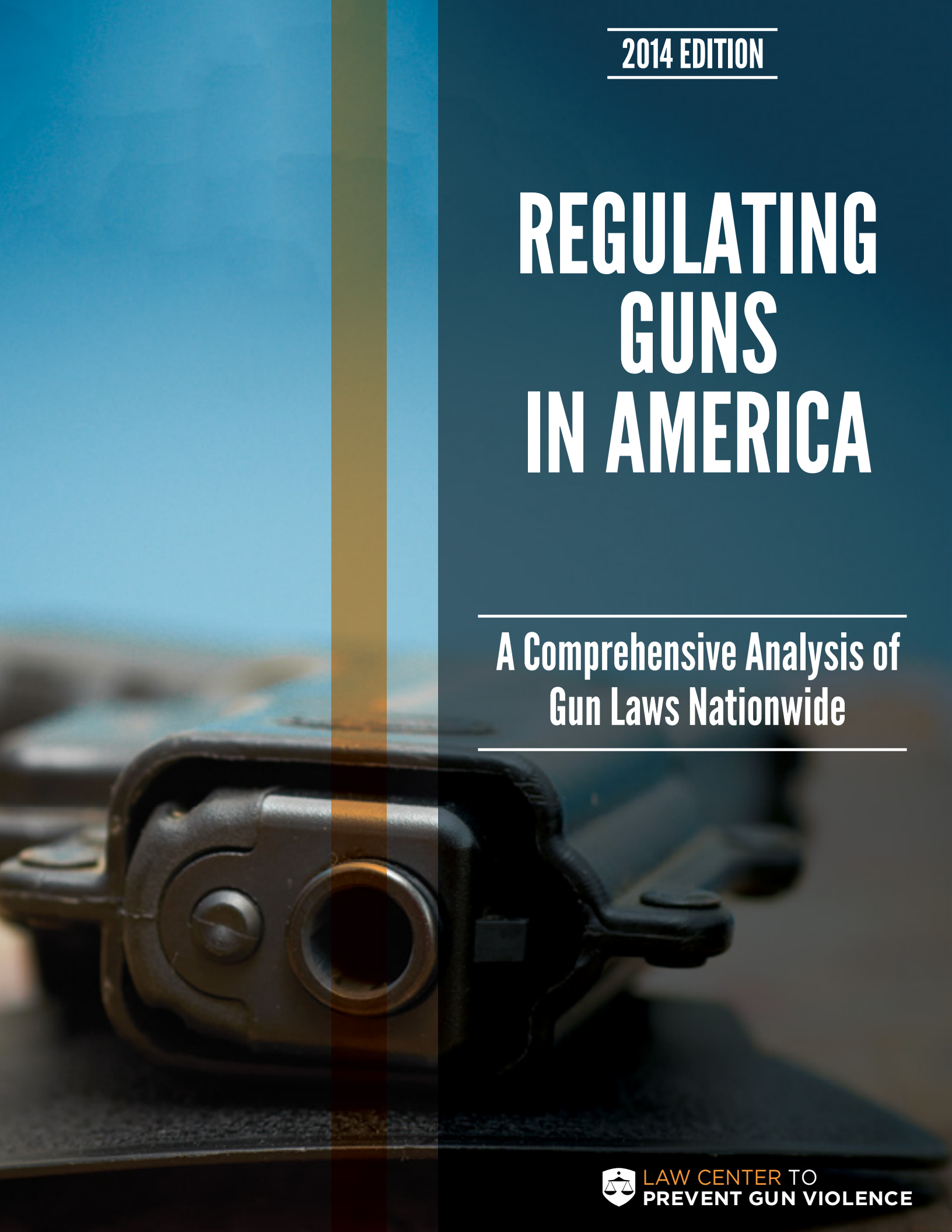

2014 EDITION

REGULATING GUNS IN AMERICA

A Comprehensive Analysis of Gun Laws Nationwide

LAW CENTER TO PREVENT GUN VIOLENCE

REGULATING GUNS IN AMERICA

A COMPREHENSIVE ANALYSIS OF GUN LAWS NATIONWIDE

2014 EDITION

A PUBLICATION BY:

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INTRODUCTION

Our Nation's Epidemic of Gun Violence

The massacre at Sandy Hook Elementary School in December 2012, which tragically took the lives of 20 children and 6 adults, awakened many Americans to the grim reality of gun violence in the United States. Although mass shootings receive the most media attention, over 100,000 people are victims of a gunshot wound every year in this country.[1] More than 30,000 of these victims lose their lives,[2] and for every person who dies, two others are injured.[3] In 2010, the most recent year for which data is available, firearms killed 31,672 people in the U.S., including 11,078 homicides, 19,392 suicides, and 606 unintentional firearm deaths.[4] In 2011, guns were used to commit over 470,000 violent crimes and approximately 70% of all homicides that year were committed with a firearm.[5]

Gun violence burdens the American public with overwhelming medical, legal and societal costs. Medical costs alone have been estimated at $2.3 billion annually, half of which are borne by American taxpayers.[6] When all direct and indirect medical, legal and societal costs are included, the estimated annual cost of gun violence in our nation amounts to $100 billion.[7]

No segment of our society is immune from gun violence. Children and young people are at special risk: in 2010, 2,711 juveniles age 19 and under died from gunshot wounds and another 15,576 were injured.[8] In fact, children and young people under the age of 25 account for 38% of all firearm deaths and injuries.[9] Gun violence also increases the probability of death in incidents of domestic violence,[10] raises the likelihood of fatalities among those who attempt suicide,[11] and disproportionately affects communities of color. While African Americans make up 13% of the population, in 2010 they suffered more than 23% of all firearm deaths, and nearly 56% of all firearm homicides. Firearm homicide is the leading cause of death for African American males ages 15-34.[12]

Despite these staggering statistics, our federal gun laws are incredibly weak. In fact, U.S. gun laws remain the weakest of all industrialized nations in the world.[13] Our laws do not, for example:

- Require background checks on all gun purchasers;
- Regulate ammunition sellers or buyers;
- Require firearm owners to be licensed or firearms to be registered;
- Ban military-style assault weapons or large capacity ammunition magazines;
- Require firearm owners to report to law enforcement if their firearms are lost or stolen;
- Limit the number of firearms that may be purchased at any one time; or
- Impose a waiting period before the purchase of a firearm.

After the unfathomable events at Sandy Hook Elementary School, Americans turned to their lawmakers to fill the gaps in our nation's gun laws and to finally do something to reduce the carnage. Although opinion polls showed that over 90% of Americans (including 84% of gun owners and 74% of NRA members) support universal background checks for all gun buyers,[14] in April 2013, the U.S. Senate failed to achieve the 60 votes necessary for even a modest background check bill to proceed at the federal level.

Fortunately, the Sandy Hook tragedy triggered historic progress at the state level. In fact, 21 states strengthened their gun laws in 2013, and eight states made significant changes to their laws. Even states with historically weak gun laws, like Florida, Missouri, and Texas, took action. The groundbreaking number of laws adopted in 2013 included laws requiring universal background checks, as well as bans on military-style assault weapons and large capacity ammunition magazines, licensing requirements for gun owners, safe storage requirements, ammunition regulations, and laws to prevent access to guns by domestic abusers and the dangerously mentally ill.

These strong measures have created significant momentum for change at the state level, which should ultimately act as a catalyst for the broader federal reforms our country desperately needs.

This Publication and the Law Center's Services

Regulating Guns in America is designed for use by elected officials, law enforcement, and gun violence prevention advocates. It provides a one-of-a-kind, comprehensive, national review of existing federal and state laws on 28 topics covering major areas of gun policy. It also includes a discussion of selected local laws. In addition to identifying existing laws in each jurisdiction, the report compares and contrasts different policy approaches used to address each topic, and offers a list of features that characterize the most comprehensive legislation in each area.

Regulating Guns in America also includes

- An analysis of the authority of local governments to regulate firearms;
- A section entitled "Dangerous Trends in State Legislation," which documents alarming new types of laws that states have begun adopting at the behest of the gun lobby; and
- A brief summary regarding legal challenges to firearms regulations arising under the Second Amendment to the U.S. Constitution.

The Law Center to Prevent Gun Violence is a national law center formed in the wake of the July 1, 1993 assault weapon massacre at a law firm in downtown San Francisco. The Law Center provides legal expertise, information and advocacy to help elected officials and other community leaders advance effective, legally-defensible laws to reduce gun violence. In addition to developing model laws and assisting in the drafting of firearms laws, the Law Center:

- Tracks the latest developments in all state firearms legislation nationwide;
- Conducts legal and policy research and analysis;
- Testifies at public hearings in support of or in opposition to firearm-related legislation;
- Monitors all Second Amendment litigation nationwide;
- Arranges for pro bono litigation assistance, for example, when a local government is sued following the adoption of a violence prevention ordinance; and
- Files amicus curiae ("friend of the court") briefs in support of governmental entities and individuals in firearm-related litigation.

The Law Center's web site, www.smartgunlaws.org, provides detailed summaries of federal and state gun laws, as well as summaries of local gun laws in specific states. The site also offers an in-depth

discussion of the Second Amendment to the U.S. Constitution and examines the policies discussed in this publication, as well as other policies to reduce gun violence.

The Law Center is available to assist public officials and other community leaders seeking to adopt or defend gun violence prevention measures. Please contact us at (415) 433-2062, or at requestassistance@smartgunlaws.org for further information.

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[1] Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Fatal Injury Reports, National and Regional, 1999-2010* (Feb. 2014), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html; Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS), Nonfatal Injury Reports, 2001 – 2012 (Feb. 2014), at http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html.*

[2] WISQARS Fatal Injury Reports, 1999-2010, supra note 1.

[3] WISQARS Nonfatal Injury Reports, 2001-2012, supra note 1.

[4] WISQARS Fatal Injury Reports, 1999-2010, supra note 1.

[5] Bureau of Justice Statistics, U.S. Dep't of Justice, Special Report: Firearm Violence, 1993-2011 (May 2013), at http://www.bjs.gov/content/pub/pdf/fv9311.pdf.

[6] Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, 282 JAMA 447 (Aug. 4, 1999).

[7] Philip J. Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

[8] An additional 9,252 juveniles were injured with BB or pellet guns. WISQARS Nonfatal Injury Reports, 2001-2012, supra note 1.

[9] *Id.,* WISQARS Fatal Injury Reports, 1999-2010, supra note 1.

[10] Susan B. Sorenson, *Firearm Use in Intimate Partner Violence: A Brief Overview, in 30 Evaluation Review*, A Journal of Applied Social Research, Special Issue: Intimate Partner Violence and Firearms, 229, 232-33 (Susan B. Sorenson ed., 2006).

[11] Matthew Miller et al., *The Epidemiology of Case Fatality Rates for Suicide in the Northeast,* 43 Annals Of Emergency Med. 723, 726 (2004).

[12] Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Leading Causes of Death Reports, National and Regional, 1999-2010 at http://webappa.cdc.gov/sasweb/ncipc/leadcaus10_us.html.*

[13] Wendy Cukier & Victor Sidel, *The Global Gun Epidemic: From Saturday Night Specials to AK-47s* 131 (2006).

[14] CNN/ORC International poll (Aug. 9, 2012), at http://i2.cdn.turner.com/cnn/2012/images/08/09/rel7a.pdf (finding that 96% of respondents supported universal background checks); Sarah Dutton et al., *9 in 10 Back Universal Gun Background Checks,* CBSNews.com (Jan. 17, 2013), at http://www.cbsnews.com/8301-34222_162-57564386-10391739/9-in-10-back-universal-gun-background-checks/; Dana Blanton, *Fox News poll: Twice as Many Favor More Guns over Banning Guns to Reduce Crime,* FoxNews.com (Jan. 18, 2013), at http://www.foxnews.com/politics/2013/01/18/fox-news-poll-twice-as-many-favor-more-guns-over-banning-guns-to-reduce-violent/. Colleen L. Barry et al., *Perspective: After Newtown — Public Opinion on Gun Policy and Mental Illness,* 368 New Eng. J. Med. 1077-1081 (March 21, 2013) at http://www.nejm.org/doi/full/10.1056/NEJMp1300512?query=featured_home&&.

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Part 1: Background Checks & Access to Firearms

Introduction

This Part examines laws designed to prevent dangerous people from having access to firearms. It begins with a section regarding universal background checks for gun sales and transfers, and continues with a section regarding the categories of people who are disqualified from purchasing and possessing firearms through background checks and the removal of guns already in dangerous hands. The third section discusses the issue of reporting information regarding dangerously mentally ill people to the background check system, and the fourth section discusses laws to keep guns out of the hands of domestic abusers. The fifth and final section discusses particular issues regarding access to firearms at gun shows.

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Universal Background Checks & the Private Sale Loophole

Background

The most dangerous gap in federal firearms laws today is the "private sale" loophole. Although federal law requires licensed firearms dealers to perform background checks on prospective purchasers and maintain records of all gun sales, it does not require unlicensed "private" sellers to do so. An estimated 40% of all firearms sold in the U.S. are transferred by unlicensed sellers.[1]

According the U.S. Department of Justice, because federal law does not require universal background checks, **"individuals prohibited by law from possessing guns can easily obtain them from private sellers and do so without any federal records of the transactions."**[2] "The private-party gun market," one study observed, "has long been recognized as a leading source of guns used in crimes."[3] Although the private sale loophole is frequently referred to as the "gun show" loophole (because of the particular problems associated with gun shows), it applies to all private firearm sales, regardless of where they occur.[4]

The growth of the Internet has significantly increased the ability of individuals prohibited from possessing firearms to find sellers willing to transfer firearms to them without background checks.

- As of September 2013, about 67,000 firearms were listed for sale online from private, unlicensed sellers.[5]
- 29% of ads by private sellers on Armslist.com (a popular website for firearm sales) were posted by high-volume private sellers who posted five or more ads over an eight-week period.[6]
- According to an undercover investigation conducted by the City of New York, 62% of private online firearm sellers agreed to sell a firearm to a buyer even after the buyer had told the seller that he or she probably could not pass a background check.[7]

When private sellers don't run background checks, people known to be dangerous can easily obtain guns, often with deadly consequences. For example, in 2012, a gunman killed three people, including his wife, and injured four others at a spa in Wisconsin, after buying a gun through a private seller he found online. The shooter was prohibited from purchasing guns due to a restraining order his wife had acquired against him, but was able to buy the gun anyway because the seller was not required to run a background check.[8]

In a 2007 report, the International Association of Chiefs of Police (IACP) stated that, because individuals who fail a background check can easily access firearms through private sales, "guns are far too easily acquired by prohibited possessors, and too often end up being used in gun crime and gun violence."[9] The IACP concluded that "Congress, as well as state, local and tribal governments, should enact laws requiring that all gun sales and transfers proceed through" a federally licensed dealer.[10]

Private sales represent a significant conduit for illegal gun trafficking.

- The Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) found that during one 29-month period, unlicensed sellers were involved in about one-fifth of illegal trafficking investigations nationwide and associated with nearly 23,000 trafficked guns.[11]

- A study which used crime gun trace data from 53 U.S. cities for the years 2000–2002 found that laws regulating private handgun sales are strongly associated with fewer trafficked guns.[12]
- A 2009 GAO report found that "secondary firearms – firearms resold following the first retail purchase from an FFL, or 'used guns' – are commonly trafficked to Mexico."[13]
- Another report observed that the lack of background check and record retention requirements for private gun transfers "continue to make it much easier for prohibited persons to purchase firearms and much harder for U.S. authorities to successfully trace how a firearm illegally reached Mexico."[14]

Gun offenders overwhelmingly obtain their guns through private sales. A survey of state prison inmates in 13 states who were convicted of gun offenses found that only 13.4% obtained the gun from a gun store or pawnshop, where background checks are required.[15] Nearly all (96.1%) of those inmates who were already prohibited from possessing a gun at the time of the crime obtained the firearm through an unlicensed private seller.[16]

When background checks are required, they are extremely effective at keeping guns out of the hands of prohibited persons. Since the federal background check requirement was adopted in 1994, over two million prohibited persons have been denied a firearm transfer or permit.[17] In 2010 alone, more than 117,000 gun transfers were denied using the federal background check system.[18]

Repeated polls have shown that over 90% of the American public supports laws requiring background checks on all gun purchasers, regardless of whether they buy weapons from licensed dealers or private sellers.[19] A survey conducted for the New England Journal of Medicine in January 2013 found that 84% of gun owners and 74% of NRA members also support requiring a universal background check system for all gun sales.[20]

As described below, the strongest laws require a background check at the point of sale for every gun transfer. Some additional states only require a background check when a gun is sold at a gun show, or require gun purchasers to obtain a license before purchasing a gun and issue the license only after a background check. For additional information in support of these laws, see our summaries on Gun Shows and Licensing Gun Owners & Purchasers.

<u>Summary of Federal Law</u>

Federal law imposes various duties on federally licensed firearms dealers. Firearms dealers must, among other things: (1) perform background checks on prospective firearm purchasers; (2) maintain records of all gun sales; (3) make those records available to law enforcement for inspection; (4) report certain multiple sales; and (5) report the theft or loss of a firearm from the licensee's inventory.[21] Federal law imposes none of these requirements on *unlicensed* sellers, however.

The Gun Control Act of 1968 provides that persons "engaged in the business" of dealing in firearms must be licensed.[22] Although Congress did not originally define the term "engaged in the business," it did so in 1986 as part of the McClure-Volkmer Act (also known as the "Firearms Owners' Protection Act"). That Act defined the term "engaged in the business," as applied to a firearms dealer, as "a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or

business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms."[23]

Significantly, however, the term was defined to *exclude* a person who "makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms."[24] According to a 1999 report issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the current definition of "engaged in the business" often frustrates the prosecution of "unlicensed dealers masquerading as collectors or hobbyists but who are really trafficking firearms to felons or other prohibited persons."[25]

SUMMARY OF STATE LAWS CLOSING THE PRIVATE SALE LOOPHOLE

Seventeen states and D.C. have extended the background check requirement beyond federal law to at least some private sales. Six states (California, Colorado, Connecticut, Delaware, New York, Rhode Island) and D.C. require universal background checks at the point of sale for all transfers of all classes of firearms, including purchases from unlicensed sellers; Maryland and Pennsylvania laws do the same, but are limited to handguns. Two states (Illinois and Oregon) require a background check whenever a firearm in sold at a gun show. Finally, four states (Hawaii, Illinois, Massachusetts and New Jersey) require any firearm purchaser, including a purchaser from an unlicensed seller, to obtain a permit issued after a background check, and four more states (Iowa, Michigan, Nebraska and North Carolina) do the same only for handguns.[26]

Nevada and Oregon have laws allowing voluntary background checks by unlicensed sellers.

Most of these jurisdictions also require unlicensed sellers to keep records of firearm sales or report such sales to law enforcement, as detailed in our summary on Maintaining Records & Reporting.

Description of State Laws Closing the Private Sale Loophole

1. *Background Checks at the Point of Transfer:* The most comprehensive approach to ensuring that guns are not sold to prohibited persons is through a requirement for a background check at the point of transfer of any firearm. Processing transfers by private sellers through licensed dealers or a law enforcement agency helps to ensure that a background check will be conducted prior to any transfer.

States that Require a Background Check at the Point of Transfer
California
Colorado
Connecticut
Delaware
District of Columbia
Maryland (handguns only)
New York
Pennsylvania (handguns only)
Rhode Island

In California,[27] Colorado,[28] Delaware,[29] and New York[30] all firearm transfers must be processed through licensed dealers, who must conduct background checks on prospective firearm purchasers. Rhode Island requires all sellers to obtain a completed application form from the prospective purchaser, and to submit the form to law enforcement for purposes of conducting a background check.[31] Concealed handgun permit holders in Delaware and Rhode Island are exempt. Connecticut requires any person transferring a firearm to either submit a form to law enforcement or conduct the transfer through a licensed dealer, so that a background check is conducted for every sale or transfer.[32] In the District of Columbia, firearms may be transferred only by or to a licensed dealer.[33]

Maryland[34] and Pennsylvania[35] require a background check on every prospective transferee of a handgun, which may be conducted by a licensed dealer or a designated law enforcement agency.

2. *Gun Show Background Checks:* Illinois[36] and Oregon[37] require a background check before the sale or transfer of a firearm at a gun show. For more information about the regulation of gun shows, see our summary on Gun Shows.

3. *State Permit Requirements for Private Purchasers:* Eight states regulate private sales primarily by prohibiting private sellers from transferring certain firearms to purchasers who do not have the requisite state license or permit, and requiring a background check before issuing the license or permit.

States that Require Permits for Private Purchasers After a Background Check[38]
Hawaii
Illinois
Iowa (handguns only)
Massachusetts
Michigan (handguns only)
Nebraska (handguns only)
New Jersey
North Carolina (handguns only)

More specifically, Hawaii,[39] Illinois,[40] Massachusetts[41] and New Jersey[42] require a person to obtain a license or permit before purchasing any firearm from any seller, and such license or permit cannot be obtained without a background check. Iowa,[43] Michigan,[44] Nebraska,[45] and North Carolina[46] require a person to obtain a license or permit before purchasing a handgun (but not a rifle or a shotgun) and require a background check before issuing the license or permit. These permits and licenses vary greatly in duration; as a result, there is a risk in some of these states that a person will become prohibited from purchasing a firearm after obtaining the license or permit but before purchasing a firearm. Illinois, on the other hand, now requires a seller to contact law enforcement and verify the validity of the purchaser's permit (called a FOID Card) at the time of the sale, effective January 1, 2014. State licensing requirements are discussed in detail in our summary on Licensing Gun Owners & Purchasers.[47]

3. *Voluntary Background Checks by Private Sellers:* In Nevada[48] and Oregon,[49] private sellers are not required to conduct background checks on purchasers (except, in Oregon, at gun shows), but they

may request a background check of the purchaser. In Oregon and Nevada, the seller makes the request to the relevant state agency, which must process the request. In Oregon, subject to certain exceptions, a transferor who receives notification that the transferee is eligible to complete the transfer is immune from civil liability for any use of the firearm after the time of transfer.

MODEL LAW

The Law Center's September 2011 publication, *Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales* includes a model law requiring background checks on all gun purchasers. For more information, contact the Law Center.

FEATURES OF COMPREHENSIVE LAW REGULATING PRIVATE SALES

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- For all firearm transfers, private sellers are subject to similar requirements as licensed dealers, including background checks and recordkeeping requirements:
  - The most comprehensive option requires all firearm transfers to be conducted through licensed dealers, so that background checks will be completed on all purchasers (including purchases from unlicensed sellers), and sales records will be maintained *(California, Colorado, Delaware, District of Columbia, New York)*
  - If the jurisdiction does not require that all firearm transfers be conducted through licensed dealers, private sellers are required to:
    - conduct background checks through a central law enforcement agency that has access to federal and state databases of prohibited purchasers *(Rhode Island requires private sellers to conduct background checks directly through law enforcement; Connecticut require private sellers to conduct background checks through licensed dealers or law enforcement);*
    - maintain records of all firearm transfers for a lengthy period *(Illinois requires all sellers to retain sales records for 10 years)*; and
    - report all transfers to state and local law enforcement *(Connecticut, Hawaii, Massachusetts)*

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[1] Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Department of Justice, National Institute of Justice Research in Brief 6-7 (May 1997), at https://www.ncjrs.gov/pdffiles/165476.pdf .

[2] U.S. Dep't of Justice, Office of the Inspector General, *Review of ATF's Project Gunrunner* 10 (Nov. 2010), at http://www.justice.gov/oig/reports/ATF/e1101.pdf. In addition, because federal law does not require private sellers to inspect a buyer's driver's license or any other identification, there is no obligation for such sellers to confirm that a buyer is of legal age to purchase a firearm.

[3] Garen J. Wintemute et al., *Private-Party Gun Sales, Regulation, and Public Safety*, 363 New Eng. J. Med. 508, 509 (Aug. 5, 2010), at http://www.nejm.org/doi/pdf/10.1056/NEJMp1006326.

[4] Issues specific to gun shows are discussed in our summary on Gun Shows.

[5] Third Way and Americans for Responsible Solutions, *What a Difference a Law Makes: Online Gun Sales in States With and Without Background Checks* (Sept. 2013), at: http://www.thirdway.org/subjects/15/publications/744.

[6] Mayors Against Illegal Guns, *In the Business, Outside the Law: How Unlicensed Sellers Are Flooding the Internet with Guns* (Dec. 2013), at https://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/InTheBusiness.pdf.
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[8] Michael Cooper, Michael S. Schmidt & Michael Luo, *Loopholes in Gun Laws Allow Buyers to Skirt Checks*, N.Y. Times (Apr. 10, 2013), at http://www.nytimes.com/2013/04/11/us/gun-law-loopholes-let-buyers-skirt-background-checks.html.
[9] Int'l Ass'n of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (2007), at http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87.
[10] *Id.*
[11] Bureau of Alcohol, Tobacco and Firearms, U.S. Dep't of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*,xi (June 2000), at http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf.
[12] Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking,* Journal of Urban Health 86: 525–537 (2009).
[13] U.S. Gov't Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 26 (June 2009), at http://www.gao.gov/new.items/d09709.pdf.
[14] Colby Goodman & Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges*, *in Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime* 198 (Eric L. Olson, David A. Shirk & Andrew Selee eds., 2010), at http://www.wilsoncenter.org/sites/default/files/Shared%20Responsibility%2012.22.10.pdf. *See also* Statement Before the United States House of Representatives Committee on Foreign Affairs, Subcommittee on the Western Hemisphere by William Hoover, Assistant Dir. for Field Operations of the Bureau of Alcohol, Tobacco, Firearms and Explosives, ¶ 8 (Feb. 7, 2008), at http://www.atf.gov/press/releases/2008/02/020708-testimony-atf-ad-hoover-sw-border.html.
[15] Katherine Vittes et al., *Legal status and source of offenders' firearms in states with the least stringent criteria for gun ownership* 19 Injury Prev. 26-31 (2013).
[16] *Id.*
[17] Bureau of Justice Statistics, U.S. Dep't of Justice, *Background Checks for Firearm Transfers, 2010 - Statistical Tables*, at http://bjs.gov/content/pub/pdf/bcft10st.pdf. These statistics cover the period March 1, 1994 – Dec. 31, 2010.
[18] States may choose to have the FBI conduct background checks for guns sold in their state directly or to have a state agency process the background checks and contact the FBI on behalf of the seller. According to a report from the Bureau of Justice Statistics, the FBI denied 72,659 gun transfers in 2010 after conducting the background check directly, and state agencies denied an additional 44,589 transfers after the state contacted the FBI to conduct the background check. These statistics do not include background checks conducted for firearm licenses or permits. *Id.*
[19] CNN/ORC International poll (Aug. 9, 2012), at http://i2.cdn.turner.com/cnn/2012/images/08/09/rel7a.pdf (finding that 96% of respondents supported universal background checks); Sarah Dutton et al., *9 in 10 Back Universal Gun Background Checks*, CBSNews.com (Jan. 17, 2013), at http://www.cbsnews.com/8301-34222_162-57564386-10391739/9-in-10-back-universal-gun-background-checks/; Dana Blanton, *Fox News poll: Twice as Many Favor More Guns over Banning Guns to Reduce Crime*, FoxNews.com (Jan. 18, 2013), at http://www.foxnews.com/politics/2013/01/18/fox-news-poll-twice-as-many-favor-more-guns-over-banning-guns-to-reduce-violent/; CBS News/New York Times poll, *9 in 10 Back Universal Gun Background Checks* (Jan. 2013) at http://www.cbsnews.com/8301-34222_162-57564386-10391739/9-in-10-back-universal-gun-background-checks/.
[20] Colleen L. Barry et al., *Perspective: After Newtown — Public Opinion on Gun Policy and Mental Illness,* 368 New Eng. J. Med. 1077-1081 (March 21, 2013) at http://www.nejm.org/doi/full/10.1056/NEJMp1300512?query=featured_home&&.
[21] 18 U.S.C. §§ 922(t), 923(g).
[22] 18 U.S.C § 921(a)(21)(C).
[23] *Id*.
[24] *Id*.
[25] U.S. Department of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Gun Shows: Brady Checks and Crime Gun Traces* 13-14 (Jan. 1999).
[26] Note that Illinois requires a background check whenever a firearm is sold at a gun show, and requires any person purchasing a firearm anywhere to first obtain a permit, known as a Firearm Owner's Identification Card, after a background check. Under a new law, a seller who is not a dealer and not at a gun show must contact the State Police and verify the validity of the Card at the time of the sale. 2013 Ill. H.B. 1189.

[27] Cal. Penal Code §§ 27545, 27850-28070.
[28] Colo. Rev. Stat. § 18-12-112. 2013 Colo. H.B. 1229. *See also* Colo. Rev. Stat. §§ 12-26.1-101 – 12-26.1-108 (pre-existing law requiring a background check before a firearm is sold at a gun show).
[29] Del. Code tit. 11, § 1448B, tit. 24, § 904A.
[30] N.Y. Gen. Bus. Law § 898. See 2013 NY ALS 1. *See also* N.Y. Gen. Bus. Law §§ 895-897; N.Y. Penal Law § 400.00 (pre-existing law requiring a background check before sale of a firearm at a gun show).
[31] R.I. Gen. Laws §§ 11-47-35 – 11-47-35.2.
[32] Conn. Gen. Stat. §§ 29-33(c), 29-36l(f), 29-37a(e)-(j). 2013 Ct. ALS 3. *See also* Conn. Gen. Stat. § 29-37g (pre-existing law requiring a background check before a firearm is sold at a gun show).
[33] D.C. Code Ann. § 7-2505.02.
[34] Md. Code Ann., Pub. Safety §§ 5-101(t), 5-124. Maryland's requirement applies to "regulated firearms," which is defined to include handguns and assault weapons. However, assault weapons are now generally banned in Maryland.
[35] 18 Pa. Cons. Stat. § 6111(b), (c), (f)(2).
[36] 430 Ill. Comp. Stat. 65/3, 65/3.1.
[37] Or. Rev. Stat. §§ 166.432 – 166.441.
[38] This list excludes those states, like Connecticut and New York, which require a background check at the point of sale in addition to a license or permit.
[39] Haw. Rev. Stat. Ann. §§ 134-2, 134-13.
[40] 430 Ill. Comp. Stat. 65/1 – 65/15a, 720 Ill. Comp. Stat. 5/24-3(k).
[41] Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E, 131P.
[42] N.J. Stat. Ann. § 2C:58-3.
[43] Iowa Code §§ 724.15 – 724.20.
[44] Mich. Comp. Laws §§ 28.422, 28.422a.
[45] Neb. Rev. Stat. Ann. §§ 69-2404, 69-2407, 69-2409.
[46] N.C. Gen. Stat. §§ 14-402 – 14-404.
[47] While these requirements ensure that a background check has been conducted at some point, a person may fall within a prohibited category after the license or permit is issued but before the time the person attempts to purchase a firearm. As a result, licensing laws do not necessarily prevent these individuals from accessing firearms as effectively as background checks at the time of transfer.
[48] Nev. Rev. Stat. Ann. § 202.254.
[49] Or. Rev. Stat. § 166.436.

Categories of Prohibited People

Background

Federal law prohibits the purchase and possession of firearms by people who fall within certain categories, such as convicted felons, domestic abusers, and people with specific kinds of mental health histories.[1] Although background checks have prevented over two million people in these categories from obtaining guns,[2] the federal law does not generally include other types of people identified by public health researchers as being at a significantly higher risk than the general population of being dangerous, including:

- Those who have been convicted of violent or gun-related misdemeanors;[3]
- Those with a history of abusing alcohol or drugs;[4]
- Those convicted of juvenile offenses;[5] and
- Additional people who have suffered from severe mental illness.[6]

Violent or Gun-Related Misdemeanants: A study in the Journal of the American Medical Association analyzing purchasers of handguns in California found that purchasers with at least one prior misdemeanor conviction were more than seven times as likely as those with no prior criminal history to be charged with a new offense after a handgun purchase.[7]

Alcohol Abusers: Numerous studies have associated alcohol abuse with a person's tendency to engage in violent behavior.[8] Research has demonstrated that alcohol consumption reduces shooting accuracy and impairs judgment about the propriety of using a gun.[9] Gun owners are more likely to drink and drive than those with no firearms at home, and to have more than 60 drinks per month.[10] In addition, heavy alcohol use is more common among firearm owners who keep their guns unlocked and loaded.[11]

Drug Offenders: A body of research shows that the illegal use of controlled substances and involvement in illegal drug markets are strongly associated with a heightened risk of violence.[12] While federal law prohibits possession of firearms by any "illegal user of a controlled substance," records identifying these individuals are rarely reported. For more information, see our summary on Background Check Procedures.

Juvenile Offenders: Research also indicates that individuals convicted of offenses at a young age are likely to commit further acts of violence as adults. For example, a study analyzing low-income, minority youth in Chicago found that those who were arrested before age 18 had a 38% higher likelihood of a subsequent felony conviction by age 26 compared with those who had not been arrested.[13]

Dangerously Mentally Ill: Federal law prohibits firearm possession by individuals who have been "committed to a mental institution" or "adjudicated as a mental defective." This prohibition, however, does not include many other individuals known to be dangerously mentally ill. A study by Mother Jones magazine of 62 mass shootings between 1982 and 2012 found that 38 of the shooters displayed signs of mental health problems prior to the killings.[14]

Americans broadly support laws to keep guns away from dangerous individuals. A national poll conducted for the New England Journal of Medicine in January 2013 found that strong majorities of Americans support a 10-year prohibition on gun possession for people convicted of the following crimes:

- Any serious crime as a juvenile – 83.1% support (including 80% of gun owners);
- Any two or more crimes involving alcohol or drugs within a 3-year period – 74.8% support (including 70.5% of gun owners);
- Publicly displaying a gun in a threatening manner – 71.1% support (including 71.3% of gun owners);
- Carrying a concealed gun without a permit – 57.8% support (including 49% of gun owners);
- Assault and battery, even if it does not result in serious injury or involve a lethal weapon – 53% support (including 48.5% of gun owners).[15]

In addition, 74.5% of Americans support laws requiring health care providers to report people who threaten to harm themselves or others to the background check system to prevent them from having a gun for six months.[16]

A different poll found that both NRA members (82%) and non-NRA member gun owners (86%) support laws prohibiting people on terrorist watch lists from purchasing guns. 61% of NRA members and 69% of non-NRA member gun owners strongly support this proposal.[17] Individuals on terror watch lists tried to buy guns and explosives 1,453 times between February 2004 and December 2010. On more than 1,300 occasions, the FBI was unable to block these sales because the person did not fall into a prohibited category.[18] Suspected terrorists have used firearms in a number of high-profile shootings, such as the massacre in November 2009 at Fort Hood, Texas.[19]
For information about prohibitions against gun possession by domestic abusers see our summary on Domestic Violence and Firearms. For information about age restrictions for gun possession, see our summary on the Minimum Age to Purchase or Possess Firearms.

Summary of Federal Law

Federal law establishes the baseline regarding the types of persons who are ineligible to purchase firearms. The federal Gun Control Act of 1968, codified at 18 U.S.C. § 922, generally prohibits the sale of firearms to any person who:

- Has been convicted of, or is under indictment for, a crime punishable by imprisonment for more than one year;[20]
- Is a fugitive from justice;
- Is an unlawful user of or addicted to a controlled substance;[21]
- Is underage;[22]
- Has been adjudicated as a mental defective or committed to a mental institution;[23]
- Is unlawfully in the United States or has been admitted to the U.S. under a nonimmigrant visa;
- Has been dishonorably discharged from the military;
- Has renounced his or her U.S. citizenship;

- Is subject to a court order restraining him or her from harassing, stalking or threatening an intimate partner, his or her child or a child of a partner or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; or
- Has been convicted of a misdemeanor offense of domestic violence.[24]

For more information on people prohibited from purchasing or possessing firearms as a result of mental illness or domestic violence, see our summaries on Mental Health Reporting and Domestic Violence & Firearms.

As discussed below, some states have enacted laws prohibiting additional categories of dangerous people from purchasing or possessing guns. Notably, in 2012 the FBI began accepting into the database it uses for firearm purchaser background checks records identifying people prohibited from purchasing or possessing firearms under state, as well as federal, law.[25]

SUMMARY OF STATE LAWS GOVERNING CATEGORIES OF PROHIBITED PEOPLE

Only Vermont has no state law prohibiting possession of a firearm by, or restricting sale of a firearm to, certain categories of individuals.[26] In addition to laws restricting access to firearms by certain categories of people, a number of states have laws intended to help remove firearms from prohibited people and other manifestly dangerous individuals, as described below.

Laws detailed in the summary on Domestic Violence and Firearms identify domestic abusers who are prohibited from possessing or purchasing firearms, and laws detailed in the summary on the Minimum Age to Purchase and Possess Firearms impose age restrictions on the purchase and possession of firearms.

State Laws That Identify the Individuals for Whom Access to Firearms Is Restricted, or Remove Firearms from Dangerous Individuals

State	Violent or gun-related misdemeanors[27]	Dangerously Mentally Ill[28]	Drug Abusers[29]	Alcohol Abusers	Juvenile Offenders
Alabama[30]			handguns *	handguns	
Alaska[31]			Yes	Yes	Yes
Arizona[32]		Yes			Yes
Arkansas[33]		Yes			
California[34]	Yes	Yes	Yes	Yes	Yes
Colorado[35]					Yes
Connecticut[36]	Yes	Yes			Yes
Delaware[37]	Yes	Yes	Yes	handguns	Yes
D.C.[38]	Yes	Yes	Yes	Yes	
Florida[39]	Yes	Yes	Yes		Yes
Georgia[40]					

State (cont'd)	Violent or gun-related misdemeanors	Dangerously Mentally Ill	Drug Abusers	Alcohol Abusers	Juvenile Offenders
Hawaii[41]	Yes	Yes	Yes	Yes	Yes
Idaho[42]					
Illinois[43]	Yes	Yes	Yes		Yes
Indiana[44]	Yes			handguns	
Iowa[45]	Yes				Yes
Kansas[46]		Yes	Yes	Yes	Yes
Kentucky[47]					Yes
Louisiana[48]					
Maine[49]	Yes	Yes			Yes
Maryland[50]	Yes	Yes	Yes	Yes	Yes
Massachusetts[51]	Yes	Yes	Yes	Yes	Yes
Michigan[52]		handguns			
Minnesota[53]	Yes	Yes	Yes		Yes
Mississippi[54]				handguns	
Missouri[55]		Yes	Yes	Yes	
Montana[56]					
Nebraska[57]	Yes				
Nevada[58]		Yes	Yes		
New Hampshire[59]					
New Jersey[60]	Yes	Yes	Yes	Yes	Yes
New Mexico[61]					
New York[62]	Yes	Yes	Yes		
North Carolina[63]		handguns	handguns		
North Dakota[64]	Yes	Yes			Yes
Ohio[65]		Yes	Yes	Yes	Yes
Oklahoma[66]		Yes	Yes	Yes	Yes
Oregon[67]	Yes	Yes			Yes
Pennsylvania[68]	Yes	Yes	Yes	Yes	Yes
Rhode Island[69]		Yes	Yes	Yes	
South Carolina[70]		Yes	handguns	handguns	
South Dakota[71]	Yes				
Tennessee[72]	Yes	Yes	Yes	Yes	
Texas[73]	Yes		Yes	Yes	
Utah[74]		Yes	Yes		Yes
Vermont					

Virginia[75]		Yes	handguns		Yes
Washington[76]	Yes	Yes			Yes
State (cont'd)	Violent or gun-related misdemeanors	Dangerously Mentally Ill	Drug Abusers	Alcohol Abusers	Juvenile Offenders
West Virginia[77]	Yes	Yes	Yes	Yes	
Wisconsin[78]		Yes	Yes	Yes	Yes
Wyoming[79]		Yes[80]			

**States that are marked "handguns" only prohibit people in these categories from purchasing or possessing handguns. These people may still legally purchase and possess rifles and shotguns.*

Description of State Laws Governing Prohibited Possessors

The federal categories of prohibited purchasers are the prevailing minimum for all states. States may adopt laws prohibiting additional persons from purchasing and/or possessing firearms. Most states incorporate at least some classes of federally-prohibited purchasers into their state laws so that they may prosecute violators. In some cases states apply broader standards than federal law, or designate additional classes of prohibited persons. State provisions that implement or go beyond federal law are described below:

1. ***Felons and Misdemeanor Offenders****:* All states except Vermont restrict access to firearms by felons. Most state laws mirror federal law, and apply the standard definition of felony to bar persons convicted of crimes punishable by imprisonment for more than one year. Other states prohibit a broader category of offenders. Twenty-three states and the District of Columbia either specifically prohibit the transfer, purchase or possession of firearms to persons convicted of certain designated misdemeanors, or define the disqualifying offenses to include some misdemeanors.

New Jersey, for example, prohibits firearm purchases by persons who have been convicted of a "crime," defined as an offense punishable by imprisonment in excess of six months. New York includes specified felonies and "serious offenses" including child endangerment, certain kinds of disorderly conduct, and certain kinds of stalking.

California and Connecticut each have a long list of felonies and violent or firearm-related misdemeanors that disqualify people from owning firearms.

In Illinois, felony or misdemeanor convictions within the previous five years for battery, assault, aggravated assault, or violation of an order of protection, in which a firearm was used or possessed, are disqualifying offenses.

2. ***Persons with Mental Illness****:* Thirty-three states and the District of Columbia have laws that restrict access to firearms by persons who are mentally ill. While most states use definitions of mental illness similar to the federal Brady Act[81] and its implementing regulations, several states have broadened the category of mentally ill persons who are prohibited from purchasing or possessing firearms.[82]

For example, under federal law, persons who are voluntarily committed to a mental hospital are not prohibited from possessing firearms.[83] The following states have closed this gap by prohibiting firearm purchase or possession by persons who have been voluntarily admitted to a mental hospital within specified time periods: Connecticut (within the preceding six months), Illinois (until receiving a certification that he or she is not a danger), Maryland (until receiving "relief" from the firearm disqualification) and the District of Columbia (within the preceding five years).[84]

Several other states define more broadly than federal law those persons who are disqualified from possessing firearms due to mental illness. Illinois includes an extensive list of disqualifying circumstances related to mental illness, including having been a patient in a mental institution, being mentally or developmentally disabled, or being impaired by a mental condition "of such a nature that it poses a clear and present danger to the applicant, any other person or persons or the community." The phrase "clear and present danger" refers to any person determined by one of a group of designated mental health professionals, school administrators or law enforcement officers to pose a clear and imminent risk of serious physical injury to self or another, or to demonstrate threatening physical or verbal behavior.[85] California law also includes a list of disqualifying factors relating to mental illness, including: communicating a serious threat of violence against an identifiable individual to a licensed psychotherapist, or being held for treatment for mental illness for 72 hours, if either event occurred within the last five years. These states also provide a process whereby people in these categories can formally seek to have these designations removed.

Hawaii prohibits possession by any person who is or has been diagnosed as having a significant behavioral, emotional, or mental disorder. Maryland law prohibits any person who is suffering from a mental disorder and has a history of violent behavior against others from possessing a firearm unless he or she has received a certification from the Maryland Health Department stating that he or she may possess a firearm. For more information about mental illness and guns, see our summary on Mental Health Reporting.

3. ***Drug and Alcohol Abusers and Misdemeanants***: Federal law prohibits persons who are unlawful users of or addicted to a controlled substance from purchasing or possessing firearms. Twenty-seven states and the District of Columbia also prohibit drug abusers, persons convicted of drug-related misdemeanors, and/or persons under the influence of controlled substances from purchasing or possessing some or all firearms. Twenty-one states and the District of Columbia prohibit persons who are alcohol abusers, misdemeanants, and/or under the influence of alcohol, from purchasing or possessing firearms.

4. ***Juvenile Offenders****:* Federal law does not restrict purchases of firearms by persons with juvenile convictions. Twenty-six states prohibit persons with certain juvenile convictions from purchasing or possessing firearms. These laws vary, with some prohibitions ceasing when the person reaches a certain age, and other prohibitions ceasing after a certain time period has passed.

5. ***Suspected Terrorists****:* Federal law does not restrict purchases of firearms by individuals suspected of being involved in terrorist activity or deemed a terrorist by the federal government. In 2013, New Jersey became the first state to enact a law restricting access to firearms by "any person

named on the consolidated Terrorist Watchlist maintained by Terrorist Screening Center" administered by the FBI.

6. ***Disarming Prohibited Possessors****:* Federal law does not provide a mechanism for the removal of guns from individuals who have become prohibited from possessing firearms. Most states allow law enforcement to seize firearms when they are discovered in the possession of a person who is in one of the categories listed above. However, few states have a procedure for the removal of firearms when individuals become prohibited from possessing them.

For example, Massachusetts requires the revocation of an individual's firearm identification card following any event that renders the cardholder prohibited from possessing firearms.[86] Upon receipt of the written notice of revocation from the licensing authority, the prohibited person must "without delay" surrender all firearms. The licensing authority may then transfer the firearms to a licensed firearms dealer for storage. The prohibited person then has one year in which to transfer the firearms to any eligible person.[87] Similarly, in Connecticut, a person who becomes ineligible to possess firearms has two business days to transfer firearms in his or her possession to an eligible person or surrender them to a state official. If the person surrenders firearms to the state official, he or she then has a year to sell or transfer them to an eligible person.[88]

In Hawaii, any person who becomes disqualified from possessing firearms must surrender his or her firearms to law enforcement or sell the firearms to a licensed dealer within 30 days. If the person does not do so, law enforcement may seize the firearms.[89]
Pennsylvania gives a person who has become prohibited from possessing firearms 60 days in which to sell the firearms to an eligible person outside his or her own household.[90]

New York enacted a law in 2013 that requires a judge who has convicted a person of a crime that disqualifies him or her from possessing firearms to demand the person surrender all firearms.[91]

California courts must notify convicted defendants and persons determined to have a mental health condition that they are prohibited from possessing a firearm.[92] The form that California uses states that the prohibition is effective "immediately upon occurrence of the prohibiting event." The prohibited person must immediately designate an eligible third party who then has 30 days to relinquish them to law enforcement, sell them to a third party through a licensed firearms dealer, or sell them to a dealer. In addition, California's Department of Justice maintains a Prohibited Armed Persons File, an on-line database that tracks persons who once lawfully owned a firearm but subsequently fell into a prohibited category.[93]

A law that Illinois enacted in 2013 requires any person who receives a notice that his or her Firearm Owner's Identification (FOID) Card has been revoked to complete a Firearm Disposition Records listing his or her firearms and the location where they will be maintained during the prohibited term within 48 hours.[94]

Upon the occurrence of certain mental health-related events, Wisconsin state courts must determine whether federal law prohibits the individual from possessing firearms. If the person is deemed prohibited, the court must order the seizure of any firearm owned by the individual.[95]

Many states have a procedure to notify certain domestic abusers about the firearm prohibition or require domestic abusers to surrender firearms when they become prohibited. For further information about such laws, see our summary on Domestic Violence and Firearms. Additional states also require certain other categories of individuals to be notified that they must surrender firearms when they become prohibited from possessing them.[96]

7. ***Removal of Firearms from Individuals Shown to Be Dangerous****:* California, Connecticut, Indiana, and Texas provide a procedure by which law enforcement may seize firearms from an individual that the law enforcement officer believes to be dangerous.[97] In Connecticut and Indiana, the officer may seek a warrant and the court must issue the warrant if it finds that there is probable cause that the person poses a risk of imminent personal injury to self or others and is in possession of firearms.[98] In certain circumstances, a law enforcement officer in Indiana may seize a firearm before issuance of a warrant if the officer subsequently submits a written statement to a court describing the basis for believing the person to be dangerous. The court must then determine whether the firearm must be returned.[99]

Texas enacted a law in 2013 that authorizes a law enforcement officer who takes a dangerously mentally ill person into custody for emergency transportation to a mental health facility to seize any firearms in the person's possession. The law enforcement agency may retain the firearms for up to 30 days (longer if the person has been involuntarily committed to a mental health facility).[100] California's law is similar to the law in Texas, except that California requires, rather than simply authorizes, law enforcement to seize firearms in this situation.[101]

Illinois and New York also enacted laws in 2013 involving reporting of dangerous people, revocation of gun licenses, and surrender or seizure of firearms. More specifically, New York now requires a mental health professional to report a person for whom he or she is currently providing treatment services if the mental health professional determines that the person is likely to engage in conduct that would result in serious harm to self or others. Law enforcement must then determine whether the person is licensed to possess a handgun and, if so, revoke the license. The person is then required to surrender any firearms in his or her possession; if he or she fails to do so, any law enforcement officer may seize them.[102] Illinois law is similar to New York law, with clearly dangerous people becoming ineligible to purchase a firearm, their licenses being revoked, and their guns being surrendered or seized. In Illinois, the initial reporting requirement applies not just to mental health professionals, but to certain school administrators and law enforcement officials as well.[103]

A number of states authorize or require law enforcement officers to remove firearms from the scene of a domestic violence incident, in certain circumstances. For more information, see our summary on Domestic Violence and Firearms. For more information about restricting access to firearms by the dangerously mentally ill, see our summary on Mental Health Reporting.

FEATURES OF A COMPREHENSIVE LAW GOVERNING THE CATEGORIES OF PROHIBITED PEOPLE

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- At a minimum, categories of prohibited purchasers are as extensive as federal law to allow state or local prosecution of violators *(Hawaii and Tennessee incorporate all federal categories by reference)*
- Access to firearms is restricted for persons with convictions for violent, firearm-related and other serious misdemeanors *(23 states, District of Columbia)*
- Access to firearms is restricted for people who are dangerous because of mental illness, including people reported as dangerous to themselves or others *(California, Illinois, New York)* and people who have been involuntarily hospitalized *(California, Connecticut, Illinois)*
- Access to firearms is restricted for persons subject to a domestic violence restraining order[104]
- Access to firearms is restricted for persons who are drug abusers and/or misdemeanants *(27 states, District of Columbia)*
- Access to firearms is restricted for persons who are alcohol abusers and/or offenders *(21 states, District of Columbia)*
- Access to firearms is restricted for persons with certain juvenile convictions *(26 states)*
- Access to firearms is restricted for persons under certain ages[105]
- Selling or transferring a firearm to a person who is prohibited from possessing firearms is prohibited[106]
- A state agency tracks armed individuals who have become prohibited from possessing firearms *(California, Hawaii, Massachusetts)* and these individuals must surrender their firearms soon after *(Connecticut – 2 business days, Hawaii- 30 days, Massachusetts – without delay)*; if a prohibited person fails to surrender firearms, law enforcement must seize them *(Hawaii)*
- A law enforcement officer may seize firearms from a person shown to be dangerous *(California, Connecticut, Indiana, Texas)*
- A procedure exists to remove firearms from people identified as dangerous by mental health professionals *(Illinois, New York)*, school administrators, or law enforcement officials *(Illinois)*

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[1] 18 U.S.C. § 922(d), (g).

[2] Bureau of Justice Statistics, U.S. Dep't of Justice, *Background Checks for Firearm Transfers, 2010 - Statistical Tables*, at http://bjsdata.ojp.usdoj.gov/content/pub/pdf/bcft10st.pdf. These statistics cover the period March 1, 1994 – Dec. 31, 2010.

[3] K. Vittes et al., *Legal Status and Source of Offenders' Firearms in States with the Least Stringent Criteria for Gun Ownership,* 19 Inj. Prev. 26 (2013).

[4] Consortium for Risk-Based Firearm Policy, *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy* (Dec. 2013), at http://www.efsgv.org/wp-content/uploads/2013/12/GPHMI-State.pdf.

[5] K. Vittes et al., *Legal Status and Source of Offenders' Firearms in States with the Least Stringent Criteria for Gun Ownership,* 19 Inj. Prev. 26 (2013).

[6] Consortium for Risk-Based Firearm Policy, *supra,* note 4 at 10-11.

[7] Garen J. Wintemute, *Prior Misdemeanor Convictions As A Risk Factor For Later Violent And Firearm-Related Criminal Activity Among Authorized Purchasers Of Handguns,* 280 JAMA 2083 (1998).

[8] Garen J. Wintemute, *Broadening Denial Criteria for the Purchase and Possession of Firearms: Need, Feasibility, and Effectiveness,* in Reducing Gun Violence in America 77, 82 (Daniel W. Webster ed., Johns Hopkins University Press, 2013); K. Vittes et al., *Legal Status and Source of Offenders' Firearms in States with the Least Stringent Criteria for Gun Ownership,* 19 Inj. Prev. 26 (2013); Mona Wright et al., *Felonious or Violent Criminal Activity That Prohibits Gun Ownership Among Prior Purchasers of Handguns: Incidence and Risk Factors,* 69 J. Trauma 948 (2010).

[9] Brendan Carr, *A Randomized Controlled Feasibility Trial of Alcohol Consumption and the Ability to Appropriately Use a Firearm,* 15 Inj. Prev. 409 (2009).

[10] Garen J. Wintemute, *Association Between Firearm Ownership, Firearm-Related Risk and Risk Reduction Behaviors and Alcohol-Related Risk Behaviors,* 17 Inj. Prev. 422 (2011).
[11] *Id.*
[12] Educational Fund to Stop Gun Violence, *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy* (Dec. 2013), at http://www.efsgv.org/wp-content/uploads/2013/12/GPHMI-State.pdf.
[13] Suh-Ruu Ou et al., *Childhood Predictors of Young Adult Male Crime,* 32 Child Youth Serv. Rev. 1097 (Aug. 2010), at http://www.ncbi.nlm.nih.gov/pubmed/20657803.
[14] Mark Follman, *Mass Shootings: Maybe What We Need Is a Better Mental-Health Policy,* Mother Jones (Nov. 9, 2012) at http://www.motherjones.com/politics/2012/11/jared-loughner-mass-shootings-mental-illness.
[15] Colleen L. Barry et al., Perspective: *After Newtown — Public Opinion on Gun Policy and Mental Illness,* 368 New Eng. J. Med. 1077-1081 (March 21, 2013) at http://www.nejm.org/doi/full/10.1056/NEJMp1300512?query=featured_home&&.
[16] *Id.*
[17] Dr. Frank Luntz/Word Doctors for Mayors Against Illegal Guns, *America's Gun Owners Support Common Sense Gun Laws* 11 (Dec. 2009) at http://www.mayorsagainstillegalguns.org/downloads/pdf/luntz_poll_slides.pdf.
[18] Congressional Research Service, *Terrorist Watch List Screening and Background Checks for Firearms,* CRS Report for Congress, (May 1, 2013), at http://www.fas.org/sgp/crs/terror/R42336.pdf.
[19] Mayors Against Illegal Guns, *Closing the Terror Gap in Gun Background Checks,* at http://mayorsagainstillegalguns.org/downloads/pdf/terror-gap-may-2011.pdf.
[20] The term "crime punishable by imprisonment for a term exceeding one year" does not include—
(A) any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
(B) any State offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less. 18 U.S.C. § 921(a)(20). The term also does not apply to certain situations where the person has had his or her eligibility restored. *See id.*
[21] A federal regulation issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) defines "unlawful user of or addicted to any controlled substance" and states "An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year." 27 C.F.R. § 478.11.
[22] Additional information about the federal age restrictions for the purchase and possession of firearms is contained in our summary on the Minimum Age to Purchase and Possess Firearms.
[23] Regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) define "[a]djudicated as a mental defective" to include persons who have been determined to be a danger to themselves or to others, or who lack the mental capacity to contract or manage their own affairs. 27 C.F.R. § 478.11. The regulations further define "[a]djudicated as a mental defective" to include those persons found insane by a court in a criminal case, those persons found incompetent to stand trial, and those persons found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. §§ 850a, 876b. *Id.* ATF regulations define "[c]ommitted to a mental institution" to mean involuntary commitment. 27 C.F.R. § 478.11. The Obama administration has begun the process to update these regulations. See Amended Definition of "Adjudicated as a Mental Defective" and "Committed to a Mental Institution", 79 Fed. Reg. 774 (proposed January 7, 2014) (to be codified at 27 C.F.R. § 478.11).
[24] 18 U.S.C. § 922(b)(1), (d), (x)(1). .
[25] Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, *National Instant Criminal Background Check System (NICS) Operations 2012*, *at* http://www.fbi.gov/about-us/cjis/nics/reports/2012-operations-report.
[26] Federal law requiring background checks for all dealer sales does apply in Vermont, however, as it does in all other states.
[27] This list does not include states like Virginia whose firearm prohibition for misdemeanants only applies to drug misdemeanants. Those states are included under drug abusers
[28] This list does not include states that only prohibit mentally ill individuals from possessing firearms if they have been found not guilty by reason of insanity or incompetent to stand trial in a criminal case.
[29] A "Yes" is given for any state that restricts firearm access to drug abusers, misdemeanants, and/or persons under the influence of controlled substances. A "Yes" is not given to states, such as South Dakota and Washington, that only prohibit drug users from possessing firearms if they have been convicted of a felony drug offense.

[30] Ala. Code § 13A-11-72.
[31] Alaska Stat. § 11.61.200.
[32] Ariz. Rev. Stat. §§ 13-904(A)(5), (H), 13-3101(A)(7), 13-3102(A)(4), 13-3113.
[33] Ark. Code §§ 5-73-103, 5-73-132.
[34] Cal. Penal Code §§ 23515, 29800-30010; Cal. Welf. & Inst. Code §§ 8100, 8101, 8103, 8105.
[35] Colo. Rev. Stat § 18-12-108.
[36] Conn. Gen. Stat. §§ 29-36k, 29-36n, 29-38c, 53a-217, 53a-217c.
[37] Del. Code tit. 11, § 1448, tit. 24, § 903.
[38] D.C. Code §§ 7-2502.02 – 7-2502.03, 7-2502.08, 22-4503.
[39] Fla. Stat. §§ 790.23, 790.233, 790.235, 790.065.
[40] Ga. Code §§ 16-11-131.
[41] Haw. Rev. Stat. § 134-7.
[42] Idaho Code § 18-3316.
[43] 405 Ill. Comp. Stat. 5/1-116, 405 Ill. Comp. Stat 5/6-103.1 - 6-103.3, 430 Ill. Comp. Stat. 65/1.1, 2, 4, 8 - 8.2, 9 - 9.5.
[44] Ind. Code §§ 35-47-2-7, 35-47-4-1, 35-47-4-5, 35-47-4-6, 35-47-14-1 – 35-47-14-9.
[45] Iowa Code §§ 724.15, 724.26.
[46] Kan. Stat. §§ 21-6301(a)(10), (13), 21-6304.
[47] Ky. Rev. Stat. §§ 237.070, 527.040.
[48] La. Rev. Stat. § 14:95.1.
[49] Me. Rev. Stat. tit. 15, § 393.
[50] Md. Code Ann., Pub. Safety §§ 5-101, 5-133, 5-133.3, 5-205, 5-206.
[51] Mass. Gen. Laws ch. 140, §§ 129B, 129C, 129D, 131, 131E, 131F.
[52] Mich. Comp. Laws §§ 28.422, 28.426, 750.224f.
[53] Minn. Stat. §§ 518B.01, 609.224, 609.2242, 609.749, 624.713, 624.719.
[54] Miss. Code §§ 97-37-5, 97-37-13.
[55] Mo. Rev. Stat. § 571.070.
[56] Mont. Code §§ 45-8-313.
[57] Neb. Rev. Stat. § 28-1206.
[58] Nev. Rev. Stat. § 202.360.
[59] N.H. Rev. Stat. §§ 159:3, 173-B:5.
[60] N.J. Stat. §§ 2C:1-4, 2C:39-7, 2C:58-3.
[61] N.M. Stat. § 30-7-16.
[62] N.Y. Penal Law §§ 265.00, 265.01, 400.00; N.Y. Crim. Proc. Law §§ 330.20, 380.96; N.Y. Mental Hygiene Law § 9.46.
[63] N.C. Gen. Stat. §§ 14-402, 14-404, 14-415.1, 14-415.3, 14-269.8.
[64] N.D. Cent. Code § 62.1-02-01.
[65] Ohio Rev. Code § 2923.13.
[66] Okla. Stat. tit. 21, §§ 1283, 1289.10, 1289.12.
[67] Or. Rev. Stat. §§ 166.250(1)(c), 166.270, 166.470.
[68] 18 Pa. Cons. Stat. § 6105.
[69] R.I. Gen. Laws §§ 11-47-5, 11-47-6, 11-47-7.
[70] S.C. Code §§ 16-23-30, 23-31-1040.
[71] S.D. Codified Laws §§ 22-14-15, 22-14-15.1, 22-14-15.2.
[72] Tenn. Code §§ 39-17-1307, 39-17-1316, 39-17-1321.
[73] Tex. Penal Code §§ 46.04, 46.06(a)(3), Tex. Health and Safety Code § 573.001, Tex. Crim. Proc. Code Art. 18.191.
[74] Utah Code § 76-10-503(1)-(3).
[75] Va. Code §§ 18.2-308.1:1 – 18.2-308.1:5, 18.2-308.2-18.2-308.2:01(b).
[76] Wash. Rev. Code §§ 9.41.010, 9.41.040, 9.41.171, 9.41.175.
[77] W. Va. Code § 61-7-7.
[78] Wis. Stat. §§ 51.20 (13)(cv), 51.45(13)(i)(1), 54.10(3)(f)(1), 55.12(10)(a), 941.29.
[79] Wyo. Stat. §§ 6-8-102, 6-8-404.
[80] In 2010, Wyoming enacted a "Firearms Freedom Act" purporting to exempt from federal regulation any firearm manufactured commercially or privately in Wyoming and that remains exclusively within the borders of Wyoming. The Act

prohibits possession of such firearms by certain mentally ill individuals. For more information about the Firearms Freedom Act, see Dangerous Trends in State Legislation.

[81] 18 U.S.C. § 922.

[82] Even under state laws defining mental illness more broadly than federal law, states may not properly report mental health records to agencies conducting background checks. Additional information on the availability of mental health records for background checks is contained in our summary on Mental Health Reporting.

[83] 27 C.F.R. § 478.11.

[84] Florida enacted a law in 2013 that treats a person as federally prohibited from possessing firearms if a judge or magistrate has classified him or her as a danger based on the fact that he or she was voluntarily committed and the examining physician certified that a petition for involuntary commitment would have been filed if the person had not consented to treatment. 2013 Fla. HB 1355 (Approved by the Governor June 28, 2013).

[85] In Illinois, no person may acquire or possess any firearm or ammunition without a valid FOID card. Upon request by the Illinois Department of State Police (DSP), applicants must sign a release waiving any right to confidentiality and requesting disclosure to the DSP of "limited mental health institution admission information" from another state, the District of Columbia or a foreign country. No mental health treatment records may be requested. The information must be destroyed within one year of receipt. 430 Ill. Comp. Stat. 65/4(a)(3).

[86] Mass. Gen. Laws ch. 140, § 129B(4).

[87] Mass. Gen. Laws ch. 140, § 129D.

[88] Conn. Gen. Stat. §§ 29-36k.

[89] Haw. Rev. Stat. § 134-7.3.

[90] 18 Pa. Cons. Stat. § 6105(a)(1)(i).

[91] N.Y. Crim. Proc. Law §§ 330.20, 380.96.

[92] Cal. Penal Code § 29810.

[93] The database cross-references firearm transfer records against a list of individuals who have become ineligible to own or possess firearms. This information can be shared with a limited group of public and private entities and individuals, including law enforcement, for the purpose of determining if persons are armed yet prohibited from possessing firearms.

[94] 430 Ill. Comp. Stat. 65/9.5.

[95] Wis. Stat. §§ 51.20, 51.45, 54.10, 55.12.

[96] Colorado requires the Department of Corrections to notify certain inmates upon discharge that they are prohibited from possessing firearms. Colo. Rev. Stat § 18-12-108. West Virginia requires any person who has been adjudicated as a mental defective or involuntarily committed to a mental institution to be "duly notified" that he or she must surrender any firearms he or she owns. W. Va. Code § 61-7-7.

[97] In 2009, Alabama amended its law regarding emergency situations to generally authorize a law enforcement officer to disarm an individual if the officer reasonably believes that it is immediately necessary for the protection of the officer or another individual. The officer must return the firearm to the individual before discharging that individual unless the officer arrests that individual for a crime or seizes the firearm as evidence or, at the discretion of the officer, the individual poses a threat to himself or herself or to others. Ala. Code § 31-9-10(d)(2).

[98] Conn. Gen. Stat. § 29-38c.

[99] Ind. Code §§ 35-47-14-1 – 35-47-14-9.

[100] Tex. Health and Safety Code § 573.001, Tex. Crim. Proc. Code Art. 18.191.

[101] Cal. Welf. & Inst. Code §§ 8102.

[102] N.Y. Mental Hygiene Law § 9.46, N.Y. Penal Law § 400.00.

[103] 405 Ill. Comp. Stat 5/6-103.3, 430 Ill. Comp. Stat. 65/8, 9, 9.5.

[104] Additional information about laws governing prohibitions on firearm purchase and possession by domestic abusers is contained in our summary on Domestic Violence and Firearms.

[105] Additional information about laws governing minimum age to purchase and possess firearms is contained in the Minimum Age to Purchaser and Possess Firearms Policy Summary.

[106] Additional information about laws limiting sales to prohibited individuals is contained in our summary on Gun Trafficking & Straw Purchases.

Mental Health Reporting

Background

Federal law prohibits the sale of firearms to certain individuals with a history of mental illness, and requires licensed dealers (but not unlicensed sellers) to request a background check prior to the transfer of a firearm to screen out these and other prohibited purchasers.[1] However, federal law cannot require states to make information identifying these people available to the federal or state agencies that perform background checks,[2] and many states fail to voluntarily report the necessary records to the FBI's National Instant Criminal Background Check System (NICS) especially with respect to people prohibited from gun possession for mental health reasons. As a result, some **individuals known to be dangerous can pass background checks and obtain firearms.**

The most tragic incident involving a state's failure to report mental health records occurred in April 2007, when Virginia Tech student Seung-Hui Cho shot and killed 32 people and injured 17 others before committing suicide on the college campus in Blacksburg, Virginia.[3] Cho was, in fact, prohibited from purchasing a firearm under federal law because of a history of mental illness.[4] However, Cho was able to purchase firearms through two licensed dealers after two background checks. While Virginia law at that time required that some mental health records be submitted to the databases used for background checks, it did not require reporting of all people prohibited from possessing firearms for mental health reasons.[5]

Other mass shootings, including those in Tucson, Arizona on January 8, 2011, in Aurora, Colorado on July 20, 2012, and in Newtown, Connecticut on December 14, 2012, have also resulted in renewed calls for better laws addressing guns and mental illness. Our nation's leaders, including President Obama, have joined these calls[6] and states have begun to respond.

- Between November 1999 and November 2007, the number of disqualifying mental health records in NICS increased from less than 90,000 to about 400,000.[7]
- The number of mental health records in NICS increased over 700% between the Virginia Tech shooting and January 31, 2014.[8]
- As of January 31, 2014, there were over 3 million mental health records in NICS,[9] with over one million records added in 2013 alone.[10]

Since the Virginia Tech shooting, about half of the states have enacted laws authorizing and requiring the submission of mental health records to NICS, as described below. States that have enacted such laws have, in fact, subsequently submitted greater numbers of records. Of the states that had submitted the top 15 highest numbers of records as of May 2013, 14 (93%) had enacted such laws, while only two of the 15 poorest performing states (13%) had enacted such laws.[11]

Despite the huge increase in the number of individuals identified in NICS, records of many individuals prohibited from possessing firearms because of their mental health histories are still missing from the database. The greatest gains in the numbers of state records submitted to NICS largely reflect the efforts of a small minority of states,[12] and as of November 2013, 12 states have identified less than 100 of these people.[13]

When mental health information is submitted to NICS, it can be effective at preventing firearm transfers by licensed dealers to dangerous people. In 2005, of the total number of prospective purchasers who were denied following an FBI background check, only 0.5% were denied for mental health reasons.[14] By 2010, this number had risen to 1.8%.[15] During the first three years after Virginia began submitting certain mental health information to NICS, Virginia's disqualifying mental health records resulted in 438 denials of firearm purchases.[16]

Although some states have cited a concern for privacy as a reason that records have not been submitted to NICS, the mental health records submitted to NICS only identify the individuals through names, birth dates and similar data, and include no clinical information.[17] In addition, as described below, access to information in NICS is tightly controlled.

States that do not submit records identifying people prohibited because of their mental health histories to NICS may nevertheless require a check of their own mental health records prior to a firearm transfer. See our summary on Background Check Procedures for information about state law requirements regarding background checks. However, a person attempting to purchase a firearm in one state may have a disqualifying mental health history in another state. For example, of the 438 denials of firearm purchases by persons with mental health histories in Virginia in the three years after Virginia began submitting its mental health records to NICS, 378 were attempts to purchase firearms in states other than Virginia.[18] Thus, a search of in-state mental health records ensures that a person disqualified on mental health grounds will not be allowed to purchase a firearm from a licensed firearms dealer in the state where the mental health record exists, but does not prevent such a person from purchasing a firearm in another state.

Summary of Federal Law

Federal Law Regarding Mental Illness and Guns

The Gun Control Act of 1968 prohibits any person from selling or otherwise transferring a firearm or ammunition to any person who has been "adjudicated as a mental defective" or "committed to any mental institution."[19] According to federal regulations, a person has been "adjudicated as a mental defective" if a court, board, commission or other lawful authority has determined that he or she, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

(1) is a danger to himself, herself, or others, or

(2) lacks the mental capacity to contract or manage his or her own affairs.[20]

The term "adjudicated as a mental defective" is defined to explicitly include a finding of not guilty by reason of insanity or incompetence to stand trial.[21]

Federal regulations define a person as "committed to a mental institution" if a court, board, commission, or other lawful authority has formally committed him or her to a mental institution. The term is defined to include involuntary commitments, but does not include persons who are admitted to a mental institution voluntarily or for observation.[22] In January 2014, the Obama administration

began the process to update these regulations to explicitly include, among other individuals, people who have been ordered to receive outpatient treatment.[23]

States may prohibit additional categories of people from purchasing or possessing firearms on the basis of mental illness. Detailed information on these laws is contained in our summary on Categories of Prohibited People.

The Federal Background Check System

The Brady Handgun Violence Prevention Act (the "Brady Act") requires licensed dealers to request a background check prior to transfer of a firearm.[24] Background checks are performed through a search of the NICS system.[25] For more general information about background check requirements, see our summary on Background Check Procedures.

The NICS system includes four federal databases. Two of these - the Interstate Identification Index and the "NICS Index" - contain records that may identify a person as disqualified from possessing firearms on the basis of mental health or developmental disability.

The Interstate Identification Index (III) includes mental health information that states have reported to the FBI as part of their criminal history records, such as findings of not guilty by reason of insanity or incompetence to stand trial. However, most state records that are in the NICS system and disqualify a person because of a mental health history or developmental disability exist in the "NICS Index," not the III.

Federal law does not require states to submit information to NICS; participation is strictly voluntary.[26] However, **effective background checks on prospective firearm purchasers depend on the existence of complete, accurate information in the NICS database.** Therefore, to fully capture all records that would disqualify someone under federal law from purchasing or possessing firearms due to mental illness or developmental disability, state law should require that states report to NICS whenever a court, board, or other lawful authority:

- Determines that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself, herself, or others (even if that person is not involuntarily committed to a mental institution as a result);
- Determines that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease lacks the mental capacity to contract or manage his or her own affairs (depending on state law, this may include a finding that a person is "incapacitated" or disabled by mental illness or developmental disability, or it may result in the appointment of a guardian or conservator);
- Finds a person not guilty by reason of insanity, mental disease or defect, or lack of mental responsibility in a criminal case;
- Finds a person guilty but insane in a criminal case;
- Finds a person incompetent to stand trial; or

- Formally commits a person involuntarily to a mental institution or asylum for mental illness, developmental disability, or other reasons, such as drug use, including people committed for inpatient or outpatient treatment.[27]

NICS Improvement Amendments Act of 2007

In January 2008, President Bush signed into law the NICS Improvement Amendments Act of 2007, which, among other things:

- Provided financial rewards and penalties to encourage states to provide to NICS information relevant to whether a person is prohibited from possessing firearms, including identifying information regarding people adjudicated as a mental defective or committed to mental institutions; [28] and
- Authorized grants to assist states in establishing and upgrading their reporting and background check systems.[29] In order to be eligible for the grants authorized by the Act, a state had to implement a "relief from disabilities" program that met the Act's requirements.[30]

According to the Government Accountability Office, 15 states received NICS Act grants during at least one fiscal year from 2009-2011.[31]

Privacy and Access to Records

Federal and state privacy laws are frequently cited as reasons why states do not provide complete mental health records to the FBI.[32] However, federal regulations include requirements to ensure the privacy and security of mental health records that have been submitted to NICS. Access to data stored in NICS is limited to use in firearm purchaser background checks and other closely related law enforcement activities (such as the issuance of firearms-related permits, and enforcement activities by ATF), and safeguards protect against unauthorized disclosures.[33]

Furthermore, the federal Health Insurance and Portability and Accountability Act of 1996 (HIPAA) and implementing regulations restrict disclosure of protected health information only by health care plans, providers, and clearinghouses.[34] In addition, HIPAA and its regulations permit any disclosure made:

- When authorized by the patient;
- When required by law, including state law;
- For a law enforcement purpose in response to a relevant and specific request from a law enforcement official; or
- To prevent or lessen a serious and imminent threat to the health and safety of a person or the public.[35]

In response to calls from President Obama, in 2013 the Department of Health and Human Services began the rulemaking process to amend the regulations that implement HIPAA to directly address mental health reporting to NICS.[36]

SUMMARY OF STATE LAWS GOVERNING THE REPORTING OF MENTAL HEALTH INFORMATION

Forty-three states have laws that require or authorize the reporting of some mental health information to the federal NICS database or a state database for use in firearm purchaser background checks. As described below, the categories of individuals who are reported vary, as do the specific procedures and requirements involved.

States that Authorize or Require Reporting of Mental Health Records to NICS

Alabama[37]
Arizona[38]
Colorado[39]
Connecticut[40]
Delaware[41]
Florida[42]
Georgia[43]
Idaho[44]
Illinois[45]
Indiana[46]
Iowa[47]
Kansas[48]
Kentucky[49]
Louisiana[50]
Maine[51]
Maryland[52]
Minnesota[53]
Mississippi[54]
Missouri[55]
Nebraska[56]
Nevada[57]
New Jersey[58]
New York[59]
North Carolina[60]
North Dakota[61]
Oklahoma[62]
Oregon[63]
Pennsylvania[64]
South Carolina[65]
South Dakota[66]
Tennessee[67]
Texas[68]
Virginia[69]
Washington[70]
West Virginia[71]
Wisconsin[72]

States that Authorize or Require the Collection of Mental Health Records in an In-State Database Only

Arkansas[73]
California[74]
Hawaii[75]
Massachusetts[76]
Michigan[77]
Ohio[78]
Utah[79]

Description of State Laws Regarding Mental Health Reporting

For citations to these laws, please see the lists above.

A. ***The Categories of Mentally Ill Individuals to be Reported:*** Most state mental health reporting laws are limited to individuals who have been subject to specified state mental health inpatient commitment procedures. However, as described below, a number of states have broader reporting requirements.

1. *States identifying individuals to be reported by reference to federal and/or state prohibited categories:* About one-third of the states identify at least some of the individuals to be reported by reference to the federal and/or state prohibited categories or through incorporating language from the federal law. Four states (Illinois, Nebraska, New Jersey and Pennsylvania) explicitly include in their reporting laws all mentally ill individuals prohibited from firearm possession under federal or state law. Other states explicitly reference only the federal mental health prohibited categories and require the reporting of all individuals who fall within those categories.

2. *States reporting individuals confined as inpatients:* All of the states mentioned in this Summary include within the groups of people to be reported at least some people confined to mental institutions as inpatients, although the length of the required confinement varies. For example, California requires the reporting of individuals held in a county mental health facility for 72 hours, pursuant to a state law prohibiting firearm possession by such individuals.[80] In Kansas, on the other hand, individuals who are committed are only reported in situations where the court can order a commitment that lasts three months.[81] Most of these laws only involve people who have been subject to formal involuntary commitment processes, although Florida enacted a law in 2013 that requires reporting of a *voluntarily* committed person if a judge or magistrate has classified the person as a danger because the examining physician certified that a petition for involuntary commitment would have been filed if the person had not consented to treatment.[82]

3. *Involuntary outpatient mental health treatment:* The following states specifically mandate the reporting of certain individuals ordered to receive outpatient mental health treatment.

Arizona
California
Florida
Idaho
Illinois
Indiana
Michigan
Mississippi
Nebraska
Nevada
North Carolina
North Dakota
Oregon
Pennsylvania
South Dakota
Tennessee
Virginia
Washington
West Virginia[83]
Wisconsin

4. *Guardianships for the mentally ill or developmentally disabled:* The following states specifically mandate the reporting of individuals appointed a guardian because they lack the capacity to manage their own affairs.[84]

Arizona
California
Colorado
Florida
Idaho
Illinois
Maryland
Michigan
Mississippi
Nevada
New York
North Dakota
Texas
Virginia
Wisconsin

5. *Persons found insane in a criminal case:* About half of the states specifically authorize or require the reporting of all individuals found not guilty by reason of insanity in a criminal case or identify any person found guilty but insane in a criminal case as an individual to be reported. Additional states may report these individuals through their criminal history reporting laws.

6. *Persons found incompetent to stand trial:* About half the states specifically authorize or require the reporting of any person found incompetent to stand trial. Again, additional states may report these individuals through their criminal history reporting laws.

B. ***Process for Reporting:*** The reporting of people with relevant mental health histories for the purposes of firearm background checks is usually a two-step process, with certain exceptions as described below. Courts or mental health institutions usually report information to a centralized state agency, and the state agency may then forward the information to NICS and/or other law enforcement agencies that conduct background checks.

1. *States that require reporting to NICS either directly or through a state agency:* The following states have laws that make it mandatory for courts to provide mental health information to NICS directly or through a centralized state agency for the purpose of transmitting this information to NICS.

Alabama
Connecticut
Georgia
Idaho
Illinois
Indiana[85]
Iowa
Kansas
Kentucky
Maine
Maryland
Minnesota
Mississippi
Nevada
New Jersey
New York
North Carolina
North Dakota
Oklahoma
Oregon
South Carolina
South Dakota[86]
Tennessee
Texas
Virginia
Washington
Wisconsin

Similarly, Delaware requires hospitals housing the mentally ill to report certain records to the State Bureau of Identification and to NICS.

2. *States where disclosure to NICS is authorized, but not required:* The following states' laws explicitly authorize, but do not require, reporting to NICS: Arizona, Colorado, Florida, Nebraska, Missouri, Pennsylvania, and West Virginia.[87]

3. *States that collect mental health records but do not address disclosure to NICS:* The following states' laws acknowledge that they collect mental health records for use in firearm purchaser background checks, although these laws do not address disclosure to NICS: Arkansas, California, Hawaii, Massachusetts, Michigan, Ohio and Utah. Most of these states require courts to report mental health information to a centralized state agency in connection with firearm purchaser background checks.[88] In Hawaii and Massachusetts, a state agency is charged with collecting mental health records for use in firearm purchaser background checks, although there is no explicit reporting requirement.[89]

4. *States that utilize reports from mental health facilities, psychotherapists, law enforcement or schools:* The following states utilize reports from mental health facilities about individuals who have fallen into federal or state categories of prohibited firearm purchasers for firearm purchaser background checks: California, Delaware, Hawaii, Illinois, Maryland, Massachusetts, New York, Ohio, Oregon, Washington and West Virginia. In some of these states, this reporting takes the place of reporting by courts; in other states this reporting is in addition to reporting by courts.

In California, in addition to reporting by mental health facilities, if a person communicates to a licensed psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims, the psychotherapist must report the person to local law enforcement, which must in turn report the person to the California Department of Justice for the purposes of firearm purchaser background checks.[90] Similarly, New York adopted a law in 2013 that requires a mental health professional to report any person receiving treatment who is likely to engage in conduct that would result in serious harm to self or others; this information may be used to determine firearms eligibility and must be destroyed after five years.[91] Illinois enacted a law in 2013 requiring reporting by any physician, clinical psychologist, qualified examiner, law enforcement official or the primary administrator for any school who determines that a person presents a "clear and present danger" to self or others, including any person determined to demonstrate threatening physical or verbal behavior.[92]

5. *State agencies required to enter into an MOU with the FBI:* Two states, Illinois and Connecticut, have enacted laws requiring certain state agencies to enter into a Memorandum of Understanding ("MOU") with the FBI regarding submittal of information to NICS. In this context, MOUs are written agreements that set forth the responsibilities of the various agencies and ensure that the mental health information submitted to NICS will only be utilized for firearm-related background checks. In Connecticut, the State's Department of Emergency Services and Public Protection, Department of Mental Health and Addiction Services, and Judicial Department were required to enter into an MOU with the FBI for the purpose of implementing NICS. Similarly, both the Illinois Department of State Police and the Department of Human Services were required to enter into an MOU with the FBI for this purpose.

C. *Time Period for Reporting:* The following states' laws require courts, agencies, or mental health officials to report mental health information within a specified time frame.

Arkansas (immediately)
California (immediately)
Colorado (within 48 hours)
Florida (one month)
Kansas (five days)
Illinois (seven days)
Louisiana (25 days)
Maryland (promptly)
Michigan (immediately)
Minnesota (within three business days)
Mississippi (30 days)
Nebraska (as soon as practicable but within 30 days)
North Carolina (no later than 48 hours, excluding weekends and holidays)
Ohio (seven days)
Pennsylvania (seven days)
South Carolina (five days)
South Dakota (seven working days)
Tennessee (as soon as practicable but no later than the third business day)
Texas (30 days)
Utah (30 days)
Virginia ("forthwith" or no later than the close of business on the next business day)
Washington (three judicial days)
Wisconsin ("in a timely manner")

D. *The Reporting of Individuals Who Previously Became Prohibited:* As noted above, some states have only recently begun reporting people who are prohibited from possessing firearms because of mental illness. As a result, a large number of people are prohibited from possessing firearms because of a prior adjudication or commitment but have not been reported. A small number of states have undertaken the task of identifying these people from old court records in order to report them to NICS or other databases. For example, in 2009, Texas enacted a law requiring courts to search through and submit 20 years' worth of records by September 1, 2010,[93] making Texas a leader in the number of records submitted to NICS.[94] Similarly, Minnesota enacted a law in 2013 that requires courts to enter all persons civilly committed during the period from January 1, 1994, to September 28, 2010, into NICS by July 1, 2014.[95] South Carolina also enacted a law in 2013 that requires courts to search back through a minimum of ten years' worth of records to identify individuals to be reported.[96]

E. *States that Require Firearm Transferees to Authorize Disclosure of Mental Health Records:* A number of states require applicants for firearm licenses or persons seeking to purchase firearms to authorize disclosure of mental health information. For more information about these laws, see our summary on Background Check Procedures.

FEATURES OF A COMPREHENSIVE MENTAL HEALTH REPORTING LAW

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- State law requires reporting anyone prohibited by federal or state law from purchasing or possessing a firearm due to mental illness *(Illinois, Nebraska, New Jersey, and Pennsylvania)*
- Complete reporting by states of anyone prohibited by federal law from purchasing or possessing a firearm due to mental illness includes any person:
    - Determined by a court or other lawful authority to be a danger to self or others because of a mental disorder or defect;
    - Determined by a court or other lawful authority to lack the mental capacity to contract or manage his or her own affairs because of a mental disorder or defect, including any person appointed a guardian on this basis *(15 states)*;
    - Formally committed involuntarily to a mental institution or asylum as an inpatient *(Most states report at least some individuals)* or outpatient (*20 states*)*;*
    - Found not guilty by reason of insanity, mental disease or defect, or lack of mental responsibility in a criminal case;
    - Found guilty but insane in a criminal case;
    - Found incompetent to stand trial*;*
    - Who falls within the categories of individuals prohibited under state law from possessing firearms *(California, Illinois, Nebraska, New Jersey, Pennsylvania, Texas);* or
    - Who has previously fallen into one of these categories *(Texas has reported individuals who became prohibited as far back as September 1, 1989.)*
- Licensed psychotherapists *(California, Illinois, New York),* law enforcement officials and school administrators *(Illinois)* must report mentally ill individuals who demonstrate violent behavior; these people become prohibited from possessing firearms
- Courts must ensure that information is reported to NICS and to an in-state agency *(Tennessee and Washington)*, which is also charged with ensuring reporting to NICS *(Connecticut, Illinois)*
- Law enforcement agencies other than NICS that conduct firearm purchaser background checks or issue firearm purchaser licenses have access to any databases containing relevant mental health records (*California, Colorado, Illinois*)
- Mental health facilities must report individuals who are prohibited from possessing firearms for mental health reasons, if such individuals are not reported by courts *(California, Delaware, Illinois)*
- Mental health records are reported immediately upon an adjudication or commitment that renders a person prohibited from purchasing or possessing a firearm *(Arkansas, California, Michigan)*

[1] 18 U.S.C. § 922(d)(4), (t). Sales by unlicensed sellers are not subject to background checks under federal law. For additional information on sales by unlicensed sellers, see our summary on Universal Background Checks & the Private Sale Loophole.
[2] *See* 28 C.F.R. § 25.4. Case law suggests that a federal statute requiring states to disclose records to the FBI would violate the Tenth Amendment. In *Printz v. U.S.*, 521 U.S. 898 (1997), a 5-4 decision, the Supreme Court struck down the interim provisions of the Brady Act obligating local law enforcement officers to conduct background checks on prospective handgun purchasers. The Court held that Congress cannot compel state officials to enact or enforce a federal regulatory program.
[3] Mass Shootings at Virginia Tech, April 16, 2007, *Report of the Review Panel Presented to Governor Timothy M. Kaine* 5 (Aug. 2007), at http://www.governor.virginia.gov/TempContent/techPanelReport.cfm.
[4] A Virginia special justice declared Mr. Cho to be "an imminent danger" to himself as a result of mental illness on December 14, 2005, and directed Mr. Cho to seek outpatient treatment. *Id.* at 48, 71.
[5] *Id.* at 71-73.
[6] *See* Office of the President, *Now is the Time: Gun Violence Reduction Executive Action,* at http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_actions.pdf; Congressional Gun Violence Prevention *Task Force, It's Time to Act: A Comprehensive Plan That Reduces Gun Violence and Respects the 2nd Amendment Rights of Law-Abiding Americans* (Feb. 7, 2013), at http://www.scribd.com/doc/124384563/Gun-Violence-Prevention-Task-Force-Recommendations.
[7] U.S. General Accounting Office, *Gun Control: Options for Improving the National Instant Criminal Background Check System* 7-8 (Apr. 2000), at http://www.gao.gov/archive/2000/gg00056.pdf; Michael B. Mukasey, Prepared Remarks of Attorney General Michael B. Mukasey at the National Association of Attorneys General Winter Meeting, Park City, Utah (Nov. 29, 2007).
[8] *Id.,* Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Dep't of Justice, *Active Records in the NICS Index As of January 31, 2014*, at http://www.fbi.gov/about-us/cjis/nics/reports/nics-index-013114.pdf.
[9] *Id.*
[10] *Id.,* Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Dep't of Justice, *National Instant Criminal Background Check System (NICS) Operations 2012*, at http://www.fbi.gov/about-us/cjis/nics/reports/2012-operations-report.
[11] Mayors Against Illegal Guns, *Twenty Years After US Requires Gun Background Checks, New FBI Data Shows Information Gaps Still Allow Criminals to Get Firearms* (Nov. 21, 2013), at http://www.demandaction.org/detail/2013-11-twenty-years-after-us-requires-gun-background-checks.
[12] U.S. General Accounting Office, GAO-12-684, *Gun Control—Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks*, at 9-10 (July 2012), available at www.gao.gov/assets/600/592452.pdf.
[13] Everytown for Gun Safety, *Closing the Gaps: Strengthening the Background Check System to Keep Guns Away from the Dangerously Mentally Ill* (May 2014), at http://everytown.org/article/closing-the-gaps/?source=fbno_closingthegaps&utm_source=fb_n_&utm_medium=_o&utm_campaign=closingthegaps.
[14] U.S. Department of Justice, *Background Checks for Firearm Transfers, 2005, Bureau of Justice Statistics Bulletin* 5 (Nov. 2006), *available at* http://www.bjs.gov/content/pub/pdf/bcft05.pdf.
[15] Bureau of Justice Statistics, U.S. Dep't of Justice, *Background Checks for Firearm Transfers, 2010 - Statistical Tables* (Feb. 2013), at http://www.bjs.gov/content/pub/pdf/bcft10st.pdf.
[16] Rachel L. Brand, Assistant Attorney General for Legal Policy, U.S. Department of Justice, *Lethal Loopholes: Deficiencies in State and Federal Gun Purchase Laws, Statement before the House Committee on Oversight and Government Reform, Subcommittee on Domestic Policy, U.S. House of Representatives* 12 (May 10, 2007), *at* http://www.usdoj.gov/olp/pdf/guns07a.pdf.
[17] Congressional Research Service, *Submission of Mental Health Records to NICS and the HIPAA Privacy Rule,* CRS Report for Congress (April 15, 2013), at http://www.fas.org/sgp/crs/misc/R43040.pdf.
[18] *Brand, supra* note 18, at 12.
[19] 18 U.S.C. § 922(d)(4). Such persons are prohibited from possessing firearms. 18 U.S.C. § 922(g)(4).
[20] 27 C.F.R. § 478.11.
[21] *Id.*
[22] *Id.* The term includes commitments for mental defectiveness, mental illness, and other reasons, such as drug use.
[23] See Amended Definition of "Adjudicated as a Mental Defective" and "Committed to a Mental Institution", 79 Fed. Reg. 774 (proposed January 7, 2014) (to be codified at 27 C.F.R. § 478.11).
[24] 18 U.S.C. § 922(t).

[25] *Id.* In most states, dealers request background checks by contacting the FBI, which performs these background checks by searching NICS. Only 13 states – called Point of Contact states – require dealers to contact a state agency, which searches NICS and other in-state databases for information regarding the prospective purchaser. *Id.*
[26] *See* 28 C.F.R. § 25.4.; U.S. General Accounting Office, GAO-12-684, *Gun Control—Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks* 7 (July 2012), at www.gao.gov/assets/600/592452.pdf. *See supra* note 2.
[27] 27 C.F.R. § 478.11.
[28] Pub. L. No. 110-180, §§ 102, 104, 121 Stat. 2559 (2008).
[29] *Id.*, § 103.
[30] *Id.*, § 103(c). In order to be eligible for the grants authorized by the Act, a state had to implement a program that allows a person who falls within the mental prohibited categories described above to petition for restoration of his or her firearms eligibility and requires that such petitions be granted "pursuant to State law and in accordance with the principles of due process, if the circumstances regarding the disabilities … and the person's record and reputation, are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." *Id.,* § 105.
[31] U.S. General Accounting Office, GAO-12-684, *Gun Control—Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks* (July 2012), at www.gao.gov/assets/600/592452.pdf.
[32] *Id.*
[33] 28 C.F.R. § 25.1, *et seq.*
[34] 45 C.F.R. § 164.104.
[35] 45 C.F.R. §§ 164.508, 164.512(a), (f), (j). State privacy laws are similar. *See* Mass Shootings at Virginia Tech, *supra* note 3, at 65.
[36] Office of the Secretary, Dep't of Health and Human Services, *Advanced Notice of Proposed Rulemaking, HIPAA Privacy Rule and the National Instant Criminal Background Check System (NICS),* 78 Fed. Reg. 23872 (April 23, 2013), at https://www.federalregister.gov/articles/2013/04/23/2013-09602/hipaa-privacy-rule-and-the-national-instant-criminal-background-check-system-nics.
[37] Ala. Code § 22-52-10.8.
[38] Ariz. Rev. Stat. §§ 13, 609, 13-925, 36-540, 14-5304.
[39] Colo. Rev. Stat. §§ 13-5-142, 13-9-123, 15-14-102, 18-4-412(4), 19-1-304.
[40] Conn. Gen. Stat. §§ 17a-500(b), (c)(2), 29-36f(b)(8), 29-36l, 29-38b.
[41] Del. Code Ann. tit. 11, § 8509; tit. 16, §§ 5001, 5161(b)(13)g, (14); tit. 29, § 9017(c).
[42] Fla. Stat. Ann. § 790.065(2)(a)(4).
[43] Ga. Code Ann. §§ 16-11-172(b), 35-3-34(e); Ga. Comp. R & Regs. 140-2-.17.
[44] Idaho Code Ann. §§ 67-3003(1)(i), 66-356, 9-340A(2), 9-340C(6), (13).
[45] 405 Ill. Comp. Stat. 5/6-103.1, 5/6-103.2, 5/6-103.3; 430 Ill. Comp. Stat. 65/3.1, 65/4(a)(3), 65/8.1; 740 Ill. Comp. Stat. 110/12(b).
[46] Ind. Code Ann. §§ 11-10-4-3(e), 12-26-6-8(g), 12-26-7-5(c), 33-24-6-3(a)(8), 35-36-2-4(e), 35-36-2-5(f), 35-36-3-1(c).
[47] Iowa Code §§ 690.4, 692.17, 724.17, 724.31.
[48] Kan. Stat. Ann. §§ 59-2946, 59-2966, 75-7c25.
[49] Ky. Rev. Stat. § 237.108.
[50] La. Rev. Stat. § 13:753.
[51] Me. Rev. Stat. tit. 25, § 1541(3)(c), tit. 34-B, § 3864(12).
[52] Md. Code, Pub. Safety § 5-133.2; Md. Code, Health-Gen. § 10-605; Md. Code, Crim. Proc. §§ 3-106(h), 3-112(d).
[53] Minn. Stat. §§ 245.041, 253B.09, 253B.24, 624.713.
[54] Miss. Code Ann. §§ 9-1-49, 45-9-103.
[55] Mo. Rev. Stat. §§ 43.503(6), 552.030(7), 610.120(1), 630.140(5).
[56] Neb. Rev. Stat. Ann. § 69-2409.01.
[57] Nev. Rev. Stat. Ann. §§ 159.0593(1), 174.035(8), 175.533(3), 175.539(4), 178.425(6), 179A.163(1), 179A.165(1), 433A.310(4), (5).
[58] N.J. Stat. Ann. §§ 2C:58-3, 30:4-24.3, 30:4-24.3a; N.J. Admin. Code §§ 10:7-7.1, 13:54-1.4 – 13:54-1.6.
[59] N.Y. Penal Law §§ 400.00(4), 400.03(5)-(6); N.Y. Crim. Proc. Law §§ 330.20, 730.60; N.Y. Mental Hyg. Law §§ 7.09(j), 9.11, 9.46, 13.09(g), 31.11(5), 33.13(b), (c); N.Y. Exec. Law § 837(19); N.Y. Jud. Law § 212(2)(q).

[60] N.C. Gen. Stat. §§ 122C-54(d1), (d2), 122C-54.1, 14-404(c1).
[61] N.D. Cent. Code § 62.1-02-01.2.
[62] 2013 OK S.B. 1845 (to be codified as Okla. Stat. tit. 21 § 1290.27).
[63] Or. Rev. Stat. §§ 166.412, 166.432, 181.740, 426.130, 426.160, 427.293; Or. Admin. R. 257-010-0060.
[64] 18 Pa. Cons. Stat. §§ 6109(i.1), 6111.1; 50 Pa. Stat. Ann. §§ 7109, 7111; 37 Pa. Code §§ 33.103(e), 33.120.
[65] S.C. Code Ann. §§ 23-31-1010, 23-31-1020. See 2013 S.C. Acts 22 (Signed May 3, 2013).
[66] 2014 S.D. H.B. 1229 (signed by the Governor March 14, 2014).
[67] Tenn. Code Ann. §§ 16-1-117(a), 16-3-812, 16-10-213(b), (c), 16-11-206(b), (c), 16-15-303(g), 16-16-120(b), 33-3-115, 33-3-117.
[68] Tex. Gov't Code §§ 411.052, 411.0521.
[69] Va. Code Ann. §§ 19.2-169.2, 19.2-389, 19.2-390, 37.2-819, 64.2-2014 .
[70] Wash. Rev. Code Ann. §§ 9.41.047, 9.41.090, 9.41.094, 9.41.097, 10.97.030(4), 10.97.045, 71.05.390(17), 71.34.340(16).
[71] W. Va. Code §§ 27-5-4(c)(3), 61-7A-2, 61-7A-3.
[72] Wis. Stat. §§ 51.20(13)(cv)(4), 175.35(2g)(d)(1).
[73] Ark. Code Ann. §§ 5-2-302, 5-2-310(b), 5-2-314, 12-12-209, 20-47-214, 20-47-215.
[74] Cal. Welf. & Inst. Code §§ 8100, 8103 – 8105; Cal. Penal Code § 28220.
[75] Haw. Rev. Stat. Ann. §§ 134-3.5, 334-2.5(c)(4); 334-60.2, 704-406, 704-411.
[76] Mass. Gen. Laws ch. 123, § 36; ch. 140, §§ 129B(2), 131(e).
[77] Mich. Comp. Laws §§ 28.243(9), (10), 330.1464a, 700.5107, 769.16a – 769.16b.
[78] Ohio Rev. Code § 5122.311.
[79] Utah Code Ann. § 53-10-208.1.
[80] Cal. Welf. & Inst. Code § 8103(f)(2).
[81] Kan. Stat. § 59-2966. The Law Center has not conducted an analysis of the duration of the required confinement in all 50 states.
[82] 2013 Fla. HB 1355 (Approved by the Governor June 28, 2013).
[83] West Virginia requires the reporting of individuals who are committed to outpatient treatment to the state's central mental health registry. However, these individuals are not explicitly mentioned in the provision authorizing disclosure to NICS. W. Va. Code §§ 61-7A-3, 61-7A-4.
[84] Although Missouri does not mandate the reporting of incapacitated individuals who have been appointed a guardian, it requires the Missouri State Patrol to report to NICS if such an individual successfully petitions for the removal of the firearm disqualification. In this way, Missouri recognizes that such individuals may have been reported to NICS. Mo. Rev. Stat. § 571.092.
[85] In addition to reporting by courts, the Indiana Department of Corrections must transmit information to the Division for transmission to NICS whenever it "involuntarily transfers" a criminal to the Division of Mental Health and Addiction. *See* Ind. Code Ann. § 11-10-4-3.
[86] In South Dakota, the prosecuting attorney must report people found not guilty by reason of insanity and people found incompetent to stand trial, and a county board of mental health must report involuntary commitments. 2014 S.D. H.B. 1229. A county board of mental health consists of a lawyer or magistrate appointed by the presiding circuit judge of the county court and two other people appointed by the board of county commissioners; this board is responsible for determining whether people within the county must be involuntarily committed. S.D. Codified Laws §§ 27A-7-1, 27A-10-9.1.
[87] Arizona, Colorado and Nebraska's laws require reporting to NICS when a formerly mentally ill person's eligibility to possess firearms is restored. Ariz. Rev. Stat. § 13-925(h); Colo. Rev. Stat. § 13-5-142; Neb. Rev. Stat. § 69-2409.01. These provisions indicate that at least some reporting of mental health records to NICS is authorized.
[88] In these states, there may be no legal impediment to release of this information to NICS. This list does not include states whose reporting requirements only apply to criminal verdicts. For example, Missouri requires courts to report verdicts of not guilty by reason of mental disease or defect to its criminal records central repository.
[89] States may utilize in-state mental health databases when conducting firearm purchaser background checks in addition, or as an alternative, to utilizing NICS. For more information about state laws requiring a search of in-state mental health records during the background check process, see the Background Checks Policy Summary.
[90] The person is prohibited from possessing firearms for five years, unless he or she petitions for restoration of firearms eligibility sooner. Cal. Welf. & Inst. Code §§ 8100, 8105. In 2013, Tennessee enacted a similar law requiring reporting by mental health professionals to law enforcement. See 2013 TN SB 789 § 9.
[91] N.Y. Mental Hyg. Law § 9.46; N.Y. Exec. Law § 837(19).

[92] 2013 Ill. ALS 63 §§ 105, 145, 150. These people are prohibited from possessing firearms under Illinois law until they have their firearms eligibility restored.
[93] 2009 Tex. ALS 950 § 3.
[94] Stewart M. Powell, "Texas among leaders in filing gun reports," Houston Chronicle, June 22, 2011, at http://www.chron.com/news/houston-texas/article/Texas-among-leaders-in-filing-gun-reports-2079219.php; Texas Office of Court Administration, *Texas NICS Mental Health Record Improvement Plan Progress, Challenges, and Recommendations* (Oct. 2012), at http://www.txcourts.gov/oca/pdf/NICSRecordImprovementPlan.pdf.
[95] 2013 Minn. ALS 86 § 10.
[96] 2013 S.C. Acts 22, § 3.

Domestic Violence & Guns

Background

Guns pose a particular threat in the hands of domestic abusers.[1]

- Abused women are five times more likely to be killed by their abuser if the abuser owns a firearm.[2]
- Domestic violence assaults involving a gun are 23 times more likely to result in death than those involving other weapons or bodily force.[3]
- More than two-thirds of spouse and ex-spouse homicide victims between 1980 and 2008 were killed with firearms.[4]
- In 2011, nearly two-thirds of women killed with guns were killed by their intimate partners.[5]

Domestic violence also plays a role in mass shootings. A study by Mayors Against Illegal Guns of every identifiable mass shooting (shooting in which four or more people were murdered) between January 2009 and January 2013 found that 57% of them involved the killing of a family member or a current or former intimate partner of the shooter.[6]

The impact of guns in domestic violence situations is not limited to homicides. A 2004 survey of female domestic violence shelter residents in California found that more than one third (36.7%) reported having been threatened or harmed with a firearm.[7] In nearly two thirds (64.5%) of the households that contained a gun, the intimate partner had used the firearm against the victim, usually threatening to shoot or kill her.[8]

As described below, federal law prohibits abusers who have been convicted of domestic violence misdemeanors and abusers subject to certain domestic violence restraining orders from possessing guns.[9] **The federal laws intended to prevent access to firearms by domestic abusers have significant limitations**, however, and some states have adopted broader laws to address these problems.

1. *Family and Dating Partner Violence:* Domestic violence affects persons in relationships that fall outside the protections of federal law. For example, dating partners are not within the federal prohibitions unless the partners are/were cohabitating as spouses or have a child in common. The risk of domestic violence being committed by a dating partner is well-documented. In 2008, individuals killed by current dating partners made up almost half of all spouse and current dating partner homicides.[10] A study of applicants for domestic violence restraining orders in Los Angeles found that the most common relationship between the victim and abuser was a dating relationship, and applications for protective orders were more likely to mention firearms when the parties had not lived together and were not married.[11]

The current federal prohibitions also do not address violence against family members other than a child or intimate partner, such as an abused sibling or parent. According to data from the U.S Department of Justice, the proportion of family homicides that involve children killing their parents has been increasing, rising steadily from 9.7% of all family homicides in 1980 to 13% in 2008.[12]

2. *Removal of Firearms:* The federal prohibitions on firearm possession by domestic abusers do not ensure that guns that are already in the possession of an abuser are removed. A March 2013 investigation by the New York Times found that more than 50 people in Washington State were arrested on gun charges in 2011 while subject to protective orders, and that over a three-year period, more than 30 people in Minnesota were convicted of an assault with a dangerous weapon while subject to protective orders.[13] A survey of domestic abusers enrolled in Massachusetts batterer intervention programs between 2002 and 2005 found that perpetrators who continued to possess firearms after they were prohibited from doing so by federal law were more likely to attempt homicide or threaten their partners with guns than domestic violence perpetrators who had relinquished their firearms.[14] Studies have also identified numerous instances of individuals killed by domestic abusers using firearms even after those abusers had become prohibited from possessing guns.[15]

3. *Reporting of Abusers:* In order for background checks to prevent abusers from obtaining guns, states must report abusers who fall within prohibited categories to the proper databases. Identifying the abusers to be reported involves a series of complex legal issues that many states have not yet addressed.[16] As a result, many states do not comprehensively enter domestic violence protective order and offender information into the proper databases.

4. *Background Checks:* The lack of a federal requirement for a background check before every sale of a gun, including sales by unlicensed, private sellers, enables many domestic abusers to obtain the firearms they use against their victims. In states that require a background check for every handgun sale, 38% fewer women are shot to death by intimate partners.[17] For more information about background check requirements, see our summary on Universal Background Checks & the Private Sale Loophole.

State laws that restrict access to firearms by a person subject to a domestic violence restraining order are associated with a significant reduction in the number of intimate partner homicides. One study found that such laws are associated with a 19% reduction in the risk of such homicides.[18]

Policies that protect victims of domestic violence enjoy tremendous public support. A 2006 survey of California residents demonstrated that 70% of men and 84% of women want firearms taken away from domestic violence perpetrators.[19] Similarly, a poll published in the New England Journal of Medicine in January 2013 found that 80.8% of people surveyed, including 75.6% of gun-owners, support prohibiting gun ownership for 10 years after a person has been convicted of violating a domestic violence restraining order; the same survey found that 73.7% of gun owners and 72.4% of non-gun owners support prohibiting gun ownership for 10 years after a person is convicted of domestic violence.[20]

<u>Summary of Federal Law</u>

Federal law prohibits purchase and possession of firearms and ammunition by persons who have been convicted in any court of a "misdemeanor crime of domestic violence" and/or who are subject to certain domestic violence protective orders.[21]

The federal prohibition that applies to domestic violence misdemeanants was adopted in 1996 and is commonly known as the "Lautenberg Amendment" after its sponsor, the late Frank Lautenberg (D-NJ). It defines a "misdemeanor crime of domestic violence" as an offense that is a federal, state or tribal law

misdemeanor and has the use or attempted use of physical force or threatened use of a deadly weapon as an element.[22] In addition, the offender must:

- Be a current or former spouse, parent, or guardian of the victim; or
- Share a child in common with the victim; or
- Be a current or former cohabitant with the victim as a spouse, parent or guardian; or
- Be similarly situated to a spouse, parent or guardian of the victim.[23]

A conviction for a misdemeanor crime of domestic violence represents the third-most frequent reason for denial of an application to purchase a firearm by the FBI, after a felony conviction and an outstanding arrest warrant.[24] Between November 30, 1998 and January 31, 2014, over 107,000 people convicted of a misdemeanor crime of domestic violence were denied purchase of a firearm because of this law.[25]

The federal law prohibiting subjects of protective orders from purchasing or possessing firearms and ammunition applies only if the protective order was issued after notice to the abuser and a hearing, and only if the order protects an "intimate partner" of the abuser or a child of the abuser or intimate partner.[26] An "intimate partner" includes a current or former spouse, a parent of a child in common with the abuser, or an individual with whom the abuser does or has cohabitated.[27] Between November 30, 1998 and January 31, 2014, over 45,000 people subject to domestic violence protective orders were denied purchase of a firearm because of this prohibition.[28] Research indicates that this prohibition also deters people subject to active protective orders from applying to purchase a firearm.[29]

The Violence Against Women and Department of Justice Reauthorization Act of 2005 (the "2005 VAWA") required states and local governments, as a condition of certain funding, to certify that their judicial administrative policies and practices included notification to domestic violence offenders of both of the federal firearm prohibitions mentioned above and any applicable related federal, state, or local laws.[30] The 2005 VAWA did not require states or local governments to establish a procedure for the surrender of firearms by abusers, however.

SUMMARY OF STATE LAWS REGARDING DOMESTIC VIOLENCE AND FIREARMS

Many states have adopted laws that restrict access to firearms by domestic abusers. As described below:

- More than a dozen states prohibit possession of firearms by domestic violence misdemeanants, and four states specifically require abusers to surrender firearms when convicted of a domestic violence misdemeanor;
- Three states have enacted laws to facilitate the reporting of domestic violence misdemeanants to the database used for background checks;
- More than two-thirds of the states prohibit firearm possession by abusers who are subject to domestic violence protective or restraining orders;
- About half of the states authorize or require a court that is issuing a domestic violence protective order to require the abuser to surrender firearms; and
- About a third of the states authorize or require law enforcement officers to remove firearms when they arrive at the scene of a domestic violence incident.

Some of these laws apply to ammunition, as well as firearms.

1. *State Laws Prohibiting Domestic Violence Misdemeanants from Purchasing or Possessing Firearms or Ammunition*[31]

As noted above, federal law prohibits purchase and possession of firearms and ammunition by persons convicted of a "misdemeanor crime of domestic violence," but federal law defines that term narrowly. Many states go beyond federal law and prohibit purchase or possession of firearms or ammunition by persons with misdemeanor convictions involving a broader class of victims. The strongest laws prohibit purchase or possession of firearms by individuals convicted of violent misdemeanors generally, regardless of the victim's relationship to the offender.

California, for example, prohibits the purchase and possession of firearms or ammunition by anyone convicted of assault, battery, or stalking without regard to the victim's relationship to the offender.[32] Connecticut and New York also use this approach. For more information about these laws, see our summary on Categories of Prohibited People.[33]

The following jurisdictions have laws that specifically prohibit firearm purchase or possession by persons convicted of misdemeanor domestic violence offenses:[34]

Arizona[35]
Colorado[36]
Delaware[37]
District of Columbia[38]
Illinois[39]
Iowa[40]
Louisiana[41]
Minnesota[42]

Montana[43]
Nebraska[44]
New Jersey[45]
Tennessee[46]
Texas[47]
Washington[48]
West Virginia[49]

These laws exceed federal law in the following ways:

- Some of these laws include in their definitions of "domestic violence," a violent misdemeanor against a former or current dating partner of the offender, or someone with whom the offender has had a romantic relationship.
- Some of these laws include in their definitions of "domestic violence," a violent misdemeanor against any present or former household member or cohabitant of the offender.
- Some of these laws include in their definitions of "domestic violence," a violent misdemeanor against any family member, regardless of whether the victim resides with the offender.
- A few of these laws also prohibit anyone convicted of a misdemeanor domestic violence from purchasing or possessing ammunition (in addition to firearms).

Illinois, for example, prohibits firearm and ammunition possession by anyone convicted of "domestic battery," defined to include certain acts against:

- Any person related by blood or marriage, or through a child, to the defendant,
- Any person who shares, or has shared, a dwelling with the defendant,
- Any person who has, or has had, a dating or engagement relationship with the defendant (excluding casual acquaintances and ordinary fraternization in business or social contexts),
- Any person with disabilities if the defendant was his or her personal assistant, or
- Any person with a duty to care for an elderly person or a person with disabilities in that person's home.[50]

Illinois also prohibits firearm and ammunition possession by anyone convicted within the past five years of a battery, assault, aggravated assault or violation of an order of protection if the person used or possessed a firearm during the crime, regardless of the person's relationship with the victim.[51]

2. *State Laws Requiring or Authorizing Removal or Surrender of Firearms and/or Ammunition When a Person is Convicted of a Domestic Violence Misdemeanor*

A small number of states require the surrender of firearms by every individual who has become ineligible to possess them; for a description of these laws, see "Disarming Prohibited Possessors," in our summary on Categories of Prohibited People. In addition, Colorado,[52] Iowa,[53] Minnesota,[54] and Tennessee[55] specifically require surrender of firearms when a person is convicted of a domestic violence misdemeanor. In Iowa, for example, a state court that enters a judgment of conviction for a domestic violence misdemeanor and finds that the subject of the order or conviction is in possession of any firearm or ammunition must order the firearm or ammunition to be sold or transferred by a specific date to the

custody of a qualified person in this state, as determined by the court.[56]

3. State Laws Regarding the Reporting of Domestic Violence Misdemeanants to the Databases Used for Firearm Purchaser Background Checks

Three states have recently enacted laws designed to facilitate the reporting of abusers whose crimes fall within the federal definition of a "misdemeanor crime of domestic violence" to the databases used for firearm purchaser background checks. In 2011, New York enacted a law establishing a procedure to be used in trials for certain violent misdemeanors to determine whether the crime qualifies as domestic violence under the federal definition of that term. If the crime is found to fall within the definition, the clerk of the court must send a written a report to a state agency, who then reports the determination to the FBI (which maintains the database used for firearm purchaser background checks).[57] Illinois also enacted a similar law in 2011,[58] and Minnesota enacted a similar law in 2013.[59]

4. *State Laws Prohibiting Subjects of Certain Domestic Violence Protective Orders From Purchasing or Possessing Firearms or Ammunition*

The following states and D.C. have laws similar to the federal law prohibiting subjects of domestic violence protective orders from purchasing or possessing firearms:[60]

Alaska[61]
Arizona[62]
California[63]
Colorado[64]
Connecticut[65]
Delaware[66]
District of Columbia[67]
Florida[68]
Hawaii[69]
Illinois[70]
Indiana[71]
Iowa[72]
Louisiana[73]
Maryland[74]
Massachusetts[75]
Michigan[76]
Minnesota[77]
Montana[78]
Nebraska[79]
Nevada[80]
New Hampshire[81]
New Jersey[82]
New York[83]
North Carolina[84]
North Dakota[85]

Oklahoma[86]
Pennsylvania[87]
Rhode Island[88]
South Dakota[89]
Tennessee[90]
Texas[91]
Utah[92]
Virginia[93]
Washington[94]
West Virginia[95]
Wisconsin[96]

As noted above, the federal law prohibiting subjects of protective orders from purchasing or possessing firearms and ammunition applies only if the protective order was issued after notice to the abuser and a hearing, and only if the order protects an "intimate partner" of the abuser, as federal law defines the term. Some state laws are broader, as described below.

a. Ex Parte Orders: Many states, including California, Illinois, Massachusetts, Texas, Virginia, and West Virginia, go beyond federal law by prohibiting firearm purchase or possession by persons subject to domestic violence protective orders issued before notice to the abuser or a hearing (known as "ex parte" orders), or authorize judges to prohibit firearm purchase or possession in certain ex parte protective orders. Massachusetts, for example, requires a court that is issuing an ex parte order to order the immediate suspension and surrender of any license to carry firearms or firearms identification card which the defendant may hold and order the defendant to surrender all firearms and ammunition which he or she possesses to the appropriate law enforcement official.[97]

b. Individuals Who May Seek a Protective Order:[98] Many states exceed federal law by including a broader category of victims who may apply for a domestic violence protective order prohibiting firearms. About half the states exceed federal law by allowing victims to seek a domestic violence protective order prohibiting purchase or possession of firearms by:

- A former or current dating partner or anyone with whom the victim has had a romantic relationship;
- Any person who is presently or has in the past resided with the victim; and/or
- Any family member, even if the abuser has never resided with the victim.

A small number of states also prohibit subjects of domestic violence protective orders from purchasing or possessing ammunition.

In California, for example, a person subject to any one of the following types of court orders is prohibited from possessing a firearm or ammunition:

- A domestic violence protective order whether issued ex parte, after notice and hearing, or in a judgment;
- A temporary restraining order issued to a victim of harassment;
- A temporary restraining order issued to an employer on behalf of an employee;

- A temporary restraining order issued to a postsecondary educational institution on behalf of a student;
- A protective order for an elderly or dependent adult who has suffered abuse, provided the abuse was not solely financial;
- An emergency protective order related to stalking; or
- A protective order relating to a crime of domestic violence or the intimidation or dissuasion of victim or witness.[99]

Under California law, individuals may seek a domestic violence protective order, prohibiting the purchase or possession of firearms, against:

- A former or current dating partner or any person with whom the individual has had a romantic relationship;
- Any person who is presently or has in the past resided with the individual; or
- Any family member, even if the abuser has never resided with the individual.[100]

5. *State Laws Requiring or Authorizing Removal or Surrender of Firearms and/or Ammunition When a Protective Order Is Issued* [101]

To ensure that firearms are taken from the homes of abusers, some state laws require abusers to surrender firearms when they become subject to protective orders. The strongest laws require law enforcement to remove firearms at this point, while weaker laws authorize, but do not require, judges issuing protective orders to include requirements that the abuser surrender firearms.

a. States Requiring or Authorizing Removal of Firearms and/or Ammunition by Law Enforcement from Abusers Subject to a Protective Order:

A few states directly authorize or require law enforcement officers to remove firearms and/or ammunition from abusers subject to domestic violence protective orders, including ex parte protective orders.

- In Massachusetts, when law enforcement serves a domestic violence protective order, law enforcement must immediately take possession of all firearms and ammunition in the abuser's possession, or under his or her ownership or control.[102]
- In Hawaii, upon service of a domestic violence restraining order, the police officer may take custody of any firearms and ammunition in plain sight, discovered pursuant to a consensual search, or surrendered by the person. If the police officer is unable to locate firearms or ammunition registered to that person or known to the victim, the police officer must apply to the court for a search warrant for the purpose of seizing firearms and ammunition.[103]
- New Jersey authorizes a judge issuing a domestic violence protective order to order law enforcement to search for and seize any firearm in the abuser's possession.[104]
- In Illinois, when a court issues a domestic violence protective order that triggers the federal firearms prohibition, the court must also issue a warrant for seizure of any firearms in the abuser's possession.[105]

b. States Requiring or Authorizing the Court to Order the Abuser to Surrender Firearms and/or Ammunition:

Half of the states and D.C. authorize or require a court that is issuing a domestic violence protective order to require the abuser to surrender firearms. Some of these states also authorize or require firearm surrender provisions in certain ex parte domestic violence protective orders, and some of these states also authorize or require orders requiring the surrender of ammunition.

The following states require abusers subject to at least some domestic violence protective orders to surrender certain firearms in their possession:[106]

California
Colorado
Connecticut
Hawaii
Illinois
Iowa
Maryland
Massachusetts
Minnesota
New Hampshire
New York
North Carolina
Tennessee
Washington
Wisconsin

Six of these states (California, Illinois, Maryland, New Hampshire, Tennessee, and Wisconsin) require subjects of domestic violence protective orders to surrender all firearms in his or her possession, regardless of the circumstances leading to the order. California's law authorizes the court to issue a search warrant if the abuser fails to relinquish firearms he or she possesses.

In other states, domestic violence protective orders must direct the abuser to surrender firearms if certain conditions are met. In New York, for example, a court issuing a domestic violence protective order (including an ex parte order) must order the immediate surrender of all firearms owned or possessed by the abuser if the court finds a substantial risk that the abuser may use or threaten to use a firearm unlawfully against the victim, and in other specified situations.[107] Note that the federal prohibition on firearm possession may apply even if these state laws do not require the surrender of firearms already in the abuser's possession.

In addition, the following states and D.C. authorize (but do not require) courts to issue protective orders that direct the abuser to surrender certain firearms in his or her possession in various circumstances:

Alaska
Arizona

Delaware
Florida
Indiana
Nevada
New Jersey
North Dakota
Pennsylvania
Rhode Island
South Dakota

Note that the federal prohibition on firearm possession may apply even if the court has not chosen to order the abuser to surrender firearms.

c. To Whom Must the Abuser Surrender the Firearms: About half of the states listed above specify to whom an abuser must surrender his or her weapons for safekeeping during the term of the order. Among these states, most require or authorize abusers to surrender their firearms to law enforcement. Illinois, for example, requires the abuser to turn over his or her firearms to law enforcement.[108] California requires the abuser either to surrender his or her firearms to law enforcement or to sell those firearms to a licensed gun dealer.[109] Other states permit the abuser to surrender his or her firearms to other designated third parties.[110]

6. *State Laws Authorizing Law Enforcement to Remove Firearms or Ammunition at the Scene of a Domestic Violence Incident*

About a third of the states require or authorize law enforcement officers to remove firearms when they arrive at the scene of a domestic violence incident. These laws vary in terms of whether removal is required or simply authorized, which firearms must be removed, and the length of time that must pass after the incident before the firearms can be returned.

For laws regarding law enforcement removal of firearms from dangerous people generally, see the section entitled "Removal of Firearms from Individuals Shown to Be Dangerous" in our summary on Categories of Prohibited People.

a. States Requiring or Authorizing the Removal of Firearms at the Scene of a Domestic Violence Incident:

The following states require, rather than simply authorize, law enforcement to remove at least some firearms at the scene of a domestic violence incident:

California[111]
Hawaii[112]
Illinois[113]
Montana[114]
Nebraska[115]
New Hampshire[116]

New Jersey[117]
Ohio[118]
Oklahoma[119]
Pennsylvania[120]
Tennessee[121]
Utah[122]
West Virginia[123]

The following states authorize, but do not require, law enforcement to remove firearms at the scene of a domestic violence incident: Alaska,[124] Arizona,[125] Connecticut,[126] Indiana,[127] and Maryland.[128]

b. Firearms Subject to Removal: The most comprehensive approach requires law enforcement to remove all firearms in the abuser's possession, ownership or control.

- In New Hampshire, law enforcement must remove all firearms and ammunition in an abuser's control, ownership, or possession whenever law enforcement has probable cause to believe that a person has been abused.[129]
- Connecticut authorizes, but does not require, the removal of all firearms and ammunition at the location where domestic violence is alleged to have been committed if the firearms or ammunition are in the possession of the suspect or in plain view.[130]

Other states allow the removal of only certain firearms, or allow the removal of firearms only if certain conditions are met:

- In New Jersey, law enforcement must remove firearms observed at the scene if law enforcement has probable cause to believe domestic violence has occurred and reasonably believes these firearms expose the victim to danger.[131]
- In California, law enforcement officers who are at the scene of a domestic violence incident involving a threat to human life or a physical assault must take temporary custody of any firearm in plain sight or discovered pursuant to a consensual or other lawful search.[132]
- In Hawaii, a police officer who believes that a person recently assaulted or threatened to assault a family or household member must seize all firearms and ammunition that were used or threatened to be used in the commission of the offense, and may seize all firearms in plain view, or discovered pursuant to a consensual search, as necessary for the protection of the officer or any family or household member.[133]

Many states, such as Oklahoma,[134] have even weaker laws, and only allow the seizure of firearms used in the incident, and only if the abuser is simultaneously arrested.

c. Duration of the Removal: State laws vary with respect to the duration of the removal of firearms from domestic abusers.

- Of the states that specify a duration, Ohio law is the strictest, requiring firearms seized at the scene of a domestic violence incident to be given (permanently) to law enforcement, sold at public

auction, or destroyed, although this law only applies to firearms used, brandished, or threatened to be used in the incident.[135]

- Some states, such as Illinois and Maryland, direct that firearms may only be held so long as they are needed for evidence or until the proceedings against the abuser are concluded.[136]
- Some states require firearms to be held for a specified time period:

    - Arizona requires firearms seized at a domestic violence scene be held by law enforcement for at least 72 hours, and up to 6 months if a court finds that return of the firearm may endanger the victim.[137]
    - New Jersey gives the prosecutor 45 days in which to petition for title of a firearm seized at a domestic violence scene.[138]

FEATURES OF A COMPREHENSIVE LAW REGARDING DOMESTIC VIOLENCE AND FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- In addition to persons prohibited by federal law, persons convicted of a violent misdemeanor against a former or current dating partner, cohabitant, or family member are prohibited from purchasing or possessing firearms and ammunition *(California, Connecticut, Illinois, New York)*
- When a person is convicted of a domestic violence misdemeanor, the court must order the person to surrender all firearms and ammunition in his or her possession *(Colorado, Iowa, Tennessee)*
- A court that is convicting a defendant of a violence misdemeanor must determine whether the crime falls within the federal definition of "misdemeanor crime of domestic violence," and, if so, must report the defendant to the databases used for firearm purchaser background checks *(Illinois, New York)*
- In addition to persons prohibited by federal law, former or current dating partners, cohabitants, or family members who are subject to a domestic violence protective order are prohibiting from purchasing or possessing firearms and ammunition *(California, Hawaii, Massachusetts, Utah)*
- Persons subject to a domestic violence protective order issued before notice or a hearing are prohibited from purchasing or possessing firearms and ammunition *(California, Illinois, Massachusetts, Texas, Virginia, West Virginia, Wisconsin)*
- All domestic violence protective orders require law enforcement to seize all firearms and ammunition in the abuser's possession, or under his or her ownership or control *(Illinois, Massachusetts)*
- Law enforcement responding to a domestic violence incident are required to remove all firearms and ammunition in the abuser's possession, or under his or her ownership or control *(New Hampshire)*
- Firearms seized at the scene of a domestic violence incident must be permanently given to law enforcement, sold at public auction, or destroyed *(Ohio)*

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[1] *See* Center for American Progress, *Preventing Domestic Abusers and Stalkers from Accessing Guns* (May 9, 2013) at http://www.americanprogress.org/wp-content/uploads/2013/05/GunsStalkersBrief-3.pdf.

[2] Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study,* 93 Am. J. Pub. Health 1089, 1092 (July 2003).

[3] Linda E. Saltzman, et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 JAMA, 3043-3047 (1992).

[4] Bureau of Justice Statistics, U.S. Dep't of Justice, *Homicide Trends in the United States, 1980-2008,* 20 (Nov. 2011), at http://bjs.gov/content/pub/pdf/htus8008.pdf .
[5] Violence Policy Center, *When Men Murder Women: An Analysis of 2011 Homicide Data*, (September 2013) *at* http://www.vpc.org/studies/wmmw2013.pdf.
[6] Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings* 1 (Jan. 2013), at http://libcloud.s3.amazonaws.com/9/56/4/1242/analysis-of-recent-mass-shootings.pdf.
[7] Susan B. Sorenson et al., *Weapons in the Lives of Battered Women*, 94 *Am. J. Pub. Health 1412, 1413 (2004).*
[8] *Id. at 1414.*
[9] 18 U.S.C. § (g)(8), (9).
[10] *Homicide Trends in the U.S, supra* note 4, at 19.
[11] Katherine A. Vittes et al., *Are Temporary Restraining Orders More Likely to be Issued When Application Mention Firearms?,* 30 Evaluation Rev. 266, 271, 275 (2006).
[12] *Homicide Trends in the U.S, supra* note 4, at 21.
[13] Michael Luo, "In Some States, Gun Rights Trump Orders of Protection," The New York Times, March 17, 2013, at http://www.nytimes.com/2013/03/18/us/facing-protective-orders-and-allowed-to-keep-guns.html?pagewanted=all&_r=0.
[14] Emily F. Rothman et al., *Gun Possession Among Massachusetts Batterer Intervention Program Enrollees.* 30 Evaluation Review 283, 291 (2006).
[15] *See* Center for American Progress, *Preventing Domestic Abusers and Stalkers from Accessing Guns* (May 9, 2013) at http://www.americanprogress.org/wp-content/uploads/2013/05/GunsStalkersBrief-3.pdf; Michael Luo, "In Some States, Gun Rights Trump Orders of Protection," The New York Times, March 17, 2013, at http://www.nytimes.com/2013/03/18/us/facing-protective-orders-and-allowed-to-keep-guns.html?pagewanted=all&_r=0.
[16] Whether a crime falls with the federal definition of "misdemeanor crime of domestic violence," depends on the offender's relationship with the victim and whether the state was required to prove that the offender used or threatened to use "physical force" within the meaning of the federal law. For a discussion of these legal issues, see U.S. Dep't of Justice, *Information Needed to Enforce the Federal Prohibition Misdemeanor Crimes of Domestic Violence* (Nov. 2007), at http://www.ncdsv.org/images/MCDV_Info%20needed%20to%20enforce%20the%20firearm%20prohibition.pdf.
[17] Mayors Against Illegal Guns, *Gun Laws and Violence Against Women,* at http://libcloud.s3.amazonaws.com/9/e9/e/1726/Gun_Laws_and_Violence_Against_Women.pdf.
[18] April M. Zeoli et al., *Effects of Domestic Violence Policies, Alcohol Taxes, and Police Staffing Levels on Intimate Partner Homicide in Large US Cities,* 16 Inj. Prev. 90 (2010). *See also* Elizabeth R. Vigdor et al., *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?,* 30 Evaluation Rev. 313, 332 (June 2006).
[19] Susan B. Sorenson, *Taking Guns from Batterers: Public Support and Policy Implications,* 30 Evaluation Review 361, 369 (2006).
[20] Colleen L. Barry et al., *Perspective: After Newtown — Public Opinion on Gun Policy and Mental Illness,* 368 New Eng. J. Med. 1077-1081 (March 21, 2013) at http://www.nejm.org/doi/full/10.1056/NEJMp1300512?query=featured_home&&.
[21] 18 U.S.C. § 922(g)(8), (9).
[22] 18 U.S.C. § 921(a)(33).
[23] *Id.* Also note that a conviction requires that the offender was represented by counsel or waived the right to counsel and was tried by a jury or waived the right to a jury, if the offense entitled the offender to a jury trial.
[24] Federal Bureau of Investigation, "Federal Denials, November 30, 1998 –January 31, 2014," at http://www.fbi.gov/about-us/cjis/nics/reports/denials-013114.pdf.
[25] *Id.*
[26] 18 U.S.C. § 922(g)(8).
[27] 18 U.S.C. § 921(a)(32). The order must also contain a finding that the person presents a credible threat to the victim and must restrain him or her from certain specified conduct. 18 U.S.C. § 922(g)(8). Most state laws require these elements for the issuance of a protective order.
[28] Federal Bureau of Investigation, "Federal Denials, November 30, 1998 –January31, 2014," at http://www.fbi.gov/about-us/cjis/nics/reports/denials-013114.pdf.
[29] Katherine A. Vittes et al., *Keeping Guns Out of the Hands of Abusers: Handgun Purchases and Restraining Orders,* 98 Am. J. Public Health 828 (May 2008), at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2374807/.
[30] 42 U.S.C. § 3796gg-4.

[31] Note that federal law does not require background checks on ammunition purchasers. For more information on laws governing the transfer of ammunition, see our summary on Ammunition Regulations.
[32] Cal. Penal Code §§ 29805, 30305.
[33] California also authorizes courts to prohibit defendants from purchasing or possessing firearms in cases where the defendant is *charged* with, but not yet convicted of, a domestic violence misdemeanor. Cal. Penal Code § 136.2(a)(7)(B),(d),(e).
[34] The Law Center is also aware of the following laws that require courts to provide domestic violence misdemeanants notice of the federal law prohibiting firearm possession, but which do not prohibit firearm possession by these individuals, or require them to surrender firearms already in their possession. Ark. Code § 5-26-313; S.C. Code Ann. §§ 16-25-20, 16-25-65, 16-25-30.
[35] Ariz. Rev. Stat. §§ 13-3101(A)(7)(d), 13-3102(A)(4), 13-3601.
[36] Colo. Rev. Stat. §§ 18-1-1001(3)(c), 18-12-108(6)(c)(I), 18-6-801(8).
[37] Del. Code Ann. tit. 10, § 901(12); tit. 11, § 1448(a)(7), (d).
[38] The District of Columbia prohibits anyone convicted of an "[i]ntrafamily offense" from registering a firearm for five years following the conviction. All firearms in the District must be registered. D.C. Code Ann. 7-2502.03(a)(4)(D).
[39] 430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8(k), (l); 720 Ill. Comp. Stat. 5/12-3.2; 725 Ill. Comp. Stat. 5/112A-3.
[40] Iowa Code §§ 236.2, 708.1, 708.2A, 708.11, 724.15(1), 724.26.
[41] La. Rev. Stat. § 14:95.10 (as reenacted by 2014 La. H.B. 753 (signed by Governor May 22, 2014)).
[42] Minn. Stat. §§ 609.2242, 624.713, subd. 1.
[43] Mont. Code Ann. § 45-5-206. In Montana, the court may prohibit an offender from "possession or use of the firearm used in the assault." Mont. Code Ann. § 45-5-206(7).
[44] Nebraska prohibitions firearm possession by domestic violence misdemeanants for seven years following conviction. Neb. Rev. Stat. § 28-1206(1)(b), (4)(a).
[45] N.J. Stat. Ann. §§ 2C:25-19(a), (d), 2C:25-26(a), 2C:39-7(b), 2C:58-3(c)(1).
[46] Tenn. Code Ann. §§ 39-13-111(a), (b), (c)(6), 39-17-1307(f)(1)(A).
[47] Texas prohibits firearm possession by domestic violence misdemeanants for five years following release from confinement or community supervision. Tex. Fam. Code Ann. § 71.001 *et seq.*; Tex. Penal Code Ann. §§ 22.01, 46.04(b).
[48] Wash. Rev. Code Ann. §§ 9.41.010, 9.41.040(2)(a)(i), 10.99.020(3).
[49] W. Va. Code § 61-7-7(a)(8).
[50] 430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8(l); 720 Ill. Comp. Stat. 5/12-3.2(a)(1), (2), 725 Ill. Comp. Stat. 5/112A-3.
[51] 430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8(k),
[52] Colo. Rev. Stat. §§ 18-1-1001(3)(c), 18-12-108(6)(c)(I), 18-6-801(8).
[53] Iowa Code §§ 236.2, 708.1, 708.2A, 708.11, 724.15(1), 724.26.
[54] Minn. Stat. § 609.2242, subd. 3.
[55] Tenn. Code Ann. §§ 39-13-111(c)(6), 39-17-1307(f)(1)(A).
[56] Iowa Code § 724.26(4).
[57] N.Y. Crim. Proc. Law §§ 370.15, 380.97.
[58] 725 Ill. Comp. Stat. 5/112A-11.1, 5/112A-11.2.
[59] Minn. Stat. § 624.713, subd. 5.
[60] Some additional states require courts to provide protective order defendants notice of the federal law prohibiting firearm possession, but do not prohibit firearm possession by these individuals, or require them to surrender firearms already in their possession. *See, e.g.,* Ark. Code § 9-15-207(b)(3).
[61] Alaska Stat. §§ 18.66.100(c)(6), (7), 18.66.990(3), (5).
[62] Ariz. Rev. Stat. §§ 13-3601, 13-3602(G)(4), 13-3624(D)(4).
[63] Cal. Penal Code §§ 136.2, 1524(a)(11), 18250, 29825(d), 30305; Cal. Civ. Proc. Code §§ 527.6(t), 527.9; Cal. Fam. Code §§ 6211, 6218, 6304, 6306(a), 6389.
[64] Colo. Rev. Stat. §§ 13-14-105, 13-14-105.5, 18-1-1001(9), 18-6-803.5(c)(I).
[65] Conn. Gen. Stat. §§ 29-36f(b), 29-36k, 46b-15, 46b-38a, 53a-217, 53a-217c.
[66] Del. Code Ann. tit. 10, §§ 1041(2), 1043(e), 1045(a)(8); tit. 11, § 1448(a)(6).
[67] D.C. Code Ann. §§ 7-2501.01(9B), 7-2502.03(a)(12), 7-2506.01, 16-1001(6)-(9), 16-1005(c)(10).
[68] Fla. Stat. Ann. §§ 741.28, 741.30(1)(e), (6)(g), 741.31(4), 790.233.
[69] Haw. Rev. Stat. §§ 134-7(f), 586-1, 586-3.
[70] 430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8.2; 725 Ill. Comp. Stat. 5/112A-3, 5/112A-14(b)(14.5); 750 Ill. Comp. Stat. 60/201, 60/214(b)(14.5), 60/217(a)(3)(i).
[71] Ind. Code Ann. §§ 31-9-2-42, 31-9-2-44.5, 34-26-5-2, 34-26-5-9(c)(4), (f).

[72] Iowa Code §§ 236.2(2), (4), 236.5(1)(b)(2), 724.26(2), (4).
[73] La. Rev. Stat. § 46:2136.3 (as reenacted by 2014 La. H.B. 753 (signed by Governor May 22, 2014)).
[74] Md. Code Ann., Fam. Law §§ 4-501, 4-506; Pub. Safety § 5-133(b)(12).
[75] Mass. Gen. Laws ch. 140, §§ 129B(1)(viii), 129C, 131(d)(vi); ch. 209A.
[76] Mich. Comp. Laws §§ 28.422(3)(a)(iii)-(v), 600.2950(1)(e), (12),), 600.2950a(3)(c), (26).
[77] Minn. Stat. §§ 260C.201, subd. 3, 518B.01, subd. 6, 624.713, subd. 1.
[78] Mont. Code Ann. §§ 40-15-102(2)(a), 40-15-103(6), 40-15-201(f).
[79] Neb. Rev. Stat. §§ 28-1206(1)(a), (4)(b), 42-903, 42-924.
[80] Nev. Rev. Stat. §§ 33.018, 33.020, 33.031, 33.033.
[81] N.H. Rev. Stat. Ann. §§ 173-B:1, 173-B:4, 173-B:5.
[82] N.J. Stat. Ann. §§ 2C:25-19, 2C:25-28(f), (j), 2C:25-29(b), 2C:39-7(b)(3), 2C:58-3(c)(6).
[83] N.Y. Crim. Proc. Law §§ 530.11, 530.12, 530.14; N.Y. Fam. Ct. Act §§ 812, 822, 828(3), 842-a; N.Y. Penal Code § 400.00.
[84] N.C. Gen. Stat. §§ 50B-1, 50B-3(11), 50B-3.1.
[85] N.D. Cent. Code §§ 14-07.1-01, 14-07.1-02, 14-07.1-03.
[86] Okla. Stat. Ann. tit. 22, § 60.11.
[87] 18 Pa. Cons. Stat. § 6105; 23 Pa. Cons. Stat. §§ 6102, 6107 – 6108.3.
[88] R.I. Gen. Laws §§ 15-15-1, 15-15-3.
[89] S.D. Codified Laws § 25-10-24.
[90] Tenn. Code §§ 36-3-625, 39-13-113, 39-17-1307(f)(1).
[91] Tex. Penal Code Ann. §§ 25.07, 46.04; Tex. Fam. Code Ann. §§ 71.001 *et seq.*, 85.022(b)(6), (d); Tex. Crim. Proc. Code Ann. art. 17.292(c)(4).
[92] Utah Code Ann. §§ 78B-7-102.78B-7-106(2)(d), 78B-7-107(2), 78B-7-402(3), 78B-7-404(3)(b),(5).
[93] Va. Code Ann. §§ 16.1-228, 16.1-253.1, 16.1-253.4, 16.1-279.1 ,18.2-308.1:4, 18.2-308.2:2.
[94] Wash. Rev. Code Ann. §§ 9.41.800, 10.99.040, 26.50.010, 26.50.070. *2014 Wa. ALS 111 (effective June 2014).*
[95] W. Va. Code §§ 48-27-204, 48-27-305, 48-27-403(a), 48-27-502(b), 61-7-7(a)(7).
[96] Wis. Stat. §§ 813.12(1)(am), (b), (c), (4m) 941.29(1)(f), (g), (2)(d), (e).
[97] Mass. Gen. Laws ch. 209A, § 3B.
[98] State laws may also prohibit firearm purchase or possession by persons subject to anti-stalking protective orders that do not depend on the relationship between the offender and the victim. These laws are not discussed here.
[99] Cal. Penal Code §§ 136.2, 1524(a)(11), 18250, 29825(d), 30305; Cal. Civ. Proc. Code §§ 527.6(t), 527.9; Cal. Fam. Code §§ 6211, 6218, 6304, 6306(a), 6320-6322, 6389.
[100] Cal. Penal Code § 29825(d); Cal. Civ. Proc. Code § 527.9(d); Cal. Fam. Code §§ 6209 – 6211.
[101] Some states also authorize issuance of protective orders that require the abuser to surrender his or her firearms license or to direct law enforcement to remove a firearms license from the abuser. For example, North Carolina requires a judge issuing a domestic violence protective order to direct the abuser to surrender all permits to purchase firearms and permits to carry concealed firearms if certain conditions exist. N.C. Gen. Stat. § 50B-3.1.
[102] Mass. Gen. Laws ch. 209A, § 3B.
[103] Haw. Rev. Stat. § 134-7(f).
[104] N.J. Stat. Ann. § 2C:25-29b(16).
[105] 750 Ill. Comp. Stat. 60/214.
[106] For relevant citations, see the section entitled "State Laws Prohibiting Subjects of Certain Domestic Violence Protective Orders from Purchasing or Possessing Firearms and/or Ammunition" above.
[107] N.Y. Fam. Ct. Act § 842-a.
[108] 750 Ill. Comp. Stat. 60/214.
[109] Cal. Fam. Code § 6389.
[110] *See, e.g.,* 23 Pa. Cons. Stat. Ann. §§ 6108-6108.3.
[111] Cal. Penal Code §§ 18250-18500, 33850-33895.
[112] Haw. Rev. Stat. §§ 134-7.5, 709-906.
[113] 725 Ill. Comp. Stat. 5/112A-30(a)(2), 750 Ill. Comp. Stat. 60/304(a)(2).
[114] Mont. Code Ann. § 46-6-603.
[115] Neb. Rev. Stat. § 29-440.
[116] N.H. Rev. Stat. Ann. § 173-B:10.
[117] N.J. Stat. Ann. § 2C:25-21(d).

[118] Ohio Rev. Code Ann. §§ 2935.03(B)(3)(h), 2981.12(A)(2).
[119] Okla. Stat. tit. 22, § 60.8.
[120] 18 Pa. Cons. Stat. § 2711.
[121] Tenn. Code Ann. §§ 36-3-620, 39-17-1317.
[122] Utah Code Ann. § 77-36-2.1(1)(b).
[123] W. Va. Code § 48-27-1002.
[124] Alaska Stat. § 18.65.515(b).
[125] Ariz. Rev. Stat. § 13-3601.
[126] Conn. Gen. Stat. § 46b-38b(a).
[127] Ind. Code Ann. § 35-33-1-1.5.
[128] Md. Code Ann., Fam. Law § 4-511.
[129] N.H. Rev. Stat. Ann. § 173-B:10.
[130] Conn. Gen. Stat. § 46b-38b(a).
[131] N.J. Stat. Ann. § 2C:25-21(d).
[132] Cal. Penal Code §§ 18250-18500, 33850-33895.
[133] Haw. Rev. Stat. §§ 134-7.5, 709-906.
[134] Okla. Stat. tit. 22, § 60.8.
[135] Ohio Rev. Code Ann. §§ 2935.03(B)(3)(h), 2981.12(A)(2).
[136] 725 Ill. Comp. Stat. 5/112A-30(a)(2), 750 Ill. Comp. Stat. 60/304(a)(2); Md. Code Ann., Fam. Law § 4-511.
[137] Ariz. Rev. Stat. § 13-3601.
[138] N.J. Stat. Ann. § 2C:25-21(d).

Gun Shows

Background

Gun shows are events dedicated to the display and sale of firearms and firearm-related accessories. Often held at public venues such as fairgrounds or civic centers, **gun shows operate as temporary markets for the transfer of firearms, and are largely unregulated.** Unlicensed individuals frequently sell guns at gun shows without background checks, retailers often sell firearms to "straw purchasers" (individuals buying a gun on behalf of someone else), and assault weapons are popular.[1] Guns used in the Columbine High School and 101 California Street massacres and the 2010 Pentagon shooting had all been purchased at gun shows.[2]

A 2007 report by the Office of the Inspector General of the U.S. Department of Justice found that the number of gun shows in the U.S. each year ranges from 2,000 to 5,200.[3] A review of two publications in which gun shows were advertised in 2007 found that there were at least 2,377 gun shows in that year.[4] Gun shows typically attract several thousand people and a single gun show can have sales of over 1,000 firearms over the course of one weekend.[5]

A 2007 study compared gun shows in California, which regulates gun shows and private firearm transfers, with gun shows in states with little regulation. The study found that at gun shows in states with less regulation:

- Straw purchases were more common;
- Armed attendees selling guns were more common; and
- Vendors were more likely to sell assault weapons and 50 caliber rifles.[6]

Similarly, a study by the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) in June 2000 reviewed over 1,500 ATF investigations and concluded that **gun shows are a "major trafficking channel,"** associated with approximately 26,000 firearms diverted from legal to illegal commerce.[7] According to the study, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms.[8] Another study explained that, while violent criminals do not buy most of their guns directly from gun shows, gun shows are "the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market."[9]

Gun shows are a popular venue for "private sales" in which unlicensed sellers can sell guns without background checks. A 1999 ATF study found that 25 to 50% of gun show vendors are unlicensed.[10] These private sellers frequently rent table space at gun shows and carry or post "Private Sale" signs signalling that purchases require no paperwork, no background check, no waiting period and no recordkeeping.[11]

A 2009 undercover investigation by the City of New York at gun shows in Nevada, Ohio, and Tennessee "observed many private sellers doing brisk business at gun shows."[12] The investigators tested whether firearms dealers and private sellers would conduct what appeared to be illegal transactions, and found that:

- When investigators claimed that they "probably" could not pass background checks, 22 of 33 private sellers (67%) were still willing to complete the firearm sale;[13] and
- When investigators approached licensed dealers and appeared to conduct straw purchases on behalf of prohibited people, 16 of 17 dealers (94%) were willing to complete these transactions.[14]

In a subsequent investigation – conducted at a Phoenix gun show just a few weeks after the Tucson massacre – an investigator successfully purchased guns from two private sellers despite informing both that he "probably couldn't pass" a background check.[15]

A September 2010 report by Mayors Against Illegal Guns found that **states that do not require background checks for all handgun sales at gun shows are the source of crime guns recovered in other states at a rate more than two and a half times greater than states that do**.[16] None of the ten states that are most frequently the sources of crime guns when population is taken into account require background checks at gun shows.[17]

ATF does not have a formal gun show enforcement program, and conducts investigations of gun shows only when it has law enforcement intelligence that illegal firearms activity is likely to occur.[18] From 2004 to 2006, ATF conducted 202 investigative operations at 195 guns shows, or roughly 3% of the gun shows held nationwide during this period. These operations resulted in 121 arrests and the seizure of 5,345 firearms.[19] Offenses included:

- Convicted felons buying guns;
- Straw purchases;
- Unlicensed individuals selling firearms as a business;
- Dealers failing to document transfers or conducting background checks on purchasers; and
- Persons possessing prohibited firearms, including machine guns and sawed-off shotguns.[20]

A report by the Government Accountability Office regarding gun trafficking to Mexico also confirmed that many traffickers buy guns at gun shows.[21]

The public strongly supports laws imposing background checks on prospective gun purchasers at gun shows. A January 2011 poll found that 89% of people polled favor laws requiring all firearm purchasers at gun shows to pass a criminal background check.[22] A February 2011 poll found that over 82% of poll respondents, including more than 77% of gun owners, in the bellwether states of Arizona, Colorado, Indiana, Virginia and Ohio support laws requiring all sellers at gun shows to run background checks.[23]

<u>Summary of Federal Law</u>

Federal law defines "gun show" as a "function sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community."[24] A federally licensed firearms dealer may conduct business at a gun

show or event located in the same state specified on the license.[25] Dealers must conduct background checks on prospective purchasers and maintain sales records of transactions at gun shows.[26]

Persons who are not federally licensed firearms dealers are also permitted to transfer firearms at gun shows, however. As described above and in our summary on Universal Background Checks & the Private Sale Loophole, unlicensed, private sellers are not required to conduct background checks on purchasers or maintain records of sales.

The explosion of gun shows nationwide is a relatively recent phenomenon that experts attribute to changes in federal law in the mid-1980s. From the adoption of the Gun Control Act of 1968 until 1984, in fact, licensed dealers were prohibited from completing the transfer of guns at gun shows. As one report explains, "Dealers were allowed to exhibit at gun shows, but actual sales had to be consummated at their place of business."[27]

Following the adoption of an ATF regulation that allowed licensed dealers to temporarily operate at gun shows in 1984, Congress passed the so-called Firearm Owners' Protection Act ("FOPA") in 1986. FOPA enabled to dealers to "conduct business temporarily at a location other than the location specified on the license" for a gun show.[28] The act also weakly defined the "engaged in the business" threshold that determines whether a firearms seller must be federally licensed, increasing the number of unlicensed, private sellers.[29] According to one researcher, "the result [of FOPA] appears to have been a rapid increase in both the number and size of gun shows during the 1980s and 1990s."[30]

SUMMARY OF STATE GUN SHOW REGULATION

State laws regulating the sale of firearms or ammunition generally, such as waiting periods, recordkeeping, and background check laws, apply at gun shows. Four states (Connecticut, Colorado, Illinois, and New York) have laws expressly addressing background checks at gun shows, although broader laws also apply. In addition, Oregon requires a background check when a firearm is sold by an unlicensed seller at a gun show only. As described below, twelve states specifically regulate gun shows in other ways, with California having the most comprehensive regulation of gun shows.[31]

1. Background Check Requirements

a. Universal background checks for all firearm transfers: The most comprehensive approach to ensuring that sales are only made to eligible purchasers is through a requirement for universal background checks prior to all firearm transfers wherever the transfer takes place. Ten states and the District of Columbia require a background check before any firearm is purchased from any seller, either by requiring the seller to conduct a background check at the point of sale, or by requiring the seller to verify that the purchaser has a permit issued after a background check. Six other states do the same, but only for handguns. For further details, see our summary on Universal Background Checks & the Private Sale Loophole.

b. *Background checks at gun shows:* Oregon does not generally require a background check when a firearm is sold by an unlicensed seller, but it does require a background check when any

firearm is sold at a gun show. In Oregon, a seller at a gun show may choose to conduct the background check through a licensed dealer for a fee or by contacting the State Police directly.[32]

Illinois is among the ten states mentioned above that generally require a background check before a gun sale; more specifically, in Illinois, any firearm seller must verify the validity of the purchaser's Firearm Owner's Identification Card. Transfers at gun shows are exempted from this requirement, however, and Illinois has a separate law for background checks at gun shows. Under this law, unlicensed sellers at gun shows are subject to the same requirement as licensed dealers to contact the State Police directly to conduct a background check on any prospective transferee.[33]

Colorado, Connecticut, and New York are also among the ten states mentioned above that now require a background check at the point of sale of any firearm. In those three states, pre-existing laws that required background checks at gun shows also remain on the books. Connecticut simply refers to its requirement that sellers conduct background checks through law enforcement and confirms that it applies at gun shows.[34] In Colorado and New York, sellers must request background checks through licensed dealers, who are required to process the transfer (although they may charge a fee) and gun show promoters must ensure that a dealer is available at a gun show to do this.[35]

2. *Other State Gun Show Regulations:*

The following 12 states impose additional requirements on gun shows:

Alabama
California
Colorado
Connecticut
Illinois
Maine
Maryland
New York
Oklahoma
Oregon
Tennessee
Virginia

These laws fall within the following categories:

a. *Safety and security requirements*: In 1999, California enacted the nation's broadest legislation to increase oversight at gun shows. California's statute specifies that gun show promoters must obtain a certificate of eligibility from the state Department of Justice following a background check. Promoters are also required to: (1) prepare security plans for gun shows and notify state and local law enforcement of those plans; (2) certify that they will comply with all applicable federal, state and local laws; (3) obtain liability insurance in an amount not less than $1 million; (4) ensure that all firearms brought into the shows are cleared of ammunition and tagged for identification purposes; and

(5) prohibit anyone under age 18 from entering unless accompanied by a parent, grandparent or legal guardian.[36]

b. *Licensing of gun show vendors:* Maryland requires all vendors of handguns and assault weapons to possess a valid state dealer license or, alternatively, a temporary transfer permit (requiring a background check on the permittee) for persons displaying a handgun or assault weapon at five or fewer shows per year.[37]

c. *Recordkeeping requirements:* Several states impose various types of recordkeeping requirements on gun show promoters and/or sellers.[38] For record-keeping requirements that apply to all sellers, including sellers at gun shows, see our summary on Maintaining Records & Reporting Gun Sales. Colorado,[39] Illinois, New York and Oregon specifically require that records be maintained of all firearm transactions that occurred at gun shows. Illinois requires the transferor to maintain a record for 10 years;[40] New York requires the dealers who process the transfers to retain records for 10 years;[41] Oregon calls for records to be kept by the transferor for 5 years.[42]

d. *Notice to law enforcement:* Virginia requires "firearms show" promoters to give notice of each show to state and local police at least 30 days prior to the show. Promoters must maintain a list of all exhibitors for the duration of the show and transmit a copy of that list to law enforcement within five days of the show's completion.[43] Connecticut also requires gun show promoters to give local law enforcement at least 30 days' notice of a gun show.[44] Alabama requires gun show promoters to pay the state's license tax, provide the county and municipality with a list of participants and collect and remit any applicable state or local sales taxes from participants.[45]

e. *Signage requirements:* California provides an extensive list of warnings that must be posted in a readily visible location at each public entrance to a gun show. Promoters must also post, in a readily visible location at each entrance to the parking lot of the gun show, a sign that states, "The transfer of firearms on the parking lot of this facility is a crime."[46] Maine requires the posting of a sign at all entrances of an organized gun show regarding child access to firearms.[47] Colorado, New York and Oregon require the posting of certain signs regarding their background check requirements.[48]

f. *Special event regulations:* Gun shows may be subject to state laws and regulations regarding special events generally. In Oklahoma, for example, gun shows are explicitly mentioned as an example of a "special event," so that the gun show promoters must ensure that sales taxes are paid in accordance with state law.[49] Tennessee law is similar.[50]

SELECTED LOCAL LAW

Omaha, Nebraska

In 1980, Omaha, Nebraska enacted an ordinance regulating "firearms exhibitions." [51]
Under the ordinance, any person promoting or sponsoring a firearms exhibition must first obtain a local permit. Applicants for such a permit must have a federal firearms dealer license.

A firearms exhibition promoter or sponsor must provide: (1) security personnel at all exhibition entrances, who must ensure that firearms brought into the exhibition are not loaded; (2) 24-hour security at the exhibition site; (3) written notice to all exhibitors stating that all laws and ordinances must be observed; and (4) the names and addresses of all exhibitors to the chief of police. Exhibitors must record all firearms transferred or acquired, must retain these records for two years, and must make this information available to law enforcement.

Omaha also prohibits the exhibition or sale of ammunition "in an assembled state" at firearms exhibitions. Firearms exhibitions in Omaha may not last more than three consecutive days.

FEATURES OF A COMPREHENSIVE LAW REGULATING GUN SHOWS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- For all firearm transfers, private sellers at gun shows are subject to similar requirements as licensed dealers, including background checks and recordkeeping requirements:
    - The most comprehensive option requires all firearm transfers to be conducted through licensed dealers at the point of sale, so that background checks will be completed on all purchasers (including purchases from unlicensed sellers), and sales records will be maintained *(California, Colorado, Delaware, District of Columbia, New York)*
    - If the jurisdiction does not require that all firearm transfers be conducted through licensed dealers, private sellers at gun shows are required to:
        - conduct background checks through a central law enforcement agency (or licensed dealer) that has access to federal and state databases of prohibited purchasers *(Oregon)*;
        - retain records of all firearm transfers for a lengthy period; and
        - report all such transfers to state and local law enforcement[52]
- If gun show vendors are not licensed dealers, they are required to obtain a permit, including a background check, to sell any weapons *(Maryland requires a permit but only for vendors of handguns and assault weapons)*
- Gun show promoters are required to obtain a permit *(California, Omaha)* after undergoing a background check *(California)*, and/or be a licensed dealer *(Omaha)*
- Safety and security requirements are imposed on the promoter, requiring, for example, that:
    - A list of exhibitors is maintained and provided to law enforcement *(Virginia, Omaha)*
    - There is a security plan and state and local law enforcement are notified of the plan *(California)*
    - All firearms brought into the shows are cleared of ammunition *(California, Omaha)* and tagged for identification purposes *(California)*
    - Entry into gun shows by minors is restricted *(California)*
    - The promoter has a specified minimum level of liability insurance *(California)*
    - There are trained law enforcement personnel on site *(Omaha)*

[1] Garen J. Wintemute, *Inside Gun Shows: What Goes On When Everybody Thinks Nobody's Watching* (2009), at http://www.ucdmc.ucdavis.edu/newsroom/releases/wintemute9-2009/index.html.
[2] Dan Luzadder, *Loophole protects Columbine 'witness',* Rocky Mountain News (Oct. 3, 1999), at http://denver.rockymountainnews.com/shooting/1003robyn.shtml; *Merrill v. Navegar, Inc.,* 26 Cal. 4th 465 (2001); Josh White et al., *Pentagon shooter's gun had many previous owners,* Wash. Post, March 15, 2010, at http://www.washingtonpost.com/wp-dyn/content/article/2010/03/14/AR2010031401254.html. For additional examples of crime guns purchased at gun shows, see *Inside Gun Shows, supra,* note 1, at 1-24 – 1-25; City of New York, *Gun Show Undercover* 12 (Oct. 2009), at http://www.gunshowundercover2009.org/.
[3] Office of the Inspector General, U.S. Department of Justice, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows* i (June 2007), at http://www.justice.gov/oig/reports/ATF/e0707/final.pdf.
[4] *Inside Gun Shows*; *supra,* note 1, at 2-3.
[5] *The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows, supra* note 3, at 6; U.S. Department of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Gun Shows: Brady Checks and Crime Gun Traces* 4-7 (Jan. 1999).
[6] Garen J. Wintemute, *Gun Shows Across a Multistate American Gun Market: Observational Evidence of the Effects of Regulatory Policies,* 13 Inj. Prevention 150, 154-55 (2007). Note that California bans assault weapons and 50 caliber rifles.
[7] Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* xi, 1, 12 (June 2000), at http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf.
[8] *Id*. at 12.
[9] Center for American Progress, *The Gun Debate 1 Year After Newtown: Assessing Six Key Claims About Gun Background Checks* (Dec. 2013), at http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/.
[10] *Gun Shows: Brady Checks and Crime Gun Traces*, *supra* note 5, at 4.
[11] *Gun Shows Across a Multistate American Gun Market, supra,* note 6, at 154-155.
[12] *Gun Show Undercover, supra,* note 2, at 24. In an ATF survey about illegal conduct at gun shows, some licensed dealers "expressed frustration that unlicensed persons were able to sell to buyers without any paperwork (and advertise this fact), leaving the [licensed dealer] at a competitive disadvantage." *Gun Shows: Brady Checks and Crime Gun Traces*, *supra* note 5, at 18. Private sellers' competitive advantage over dealers also includes the fact that "they operate with little or no overhead other than the minimal fee to rent their tables." *Gun Show Undercover, supra,* note 2, at 26. The City of New York's investigation further noted that:

> In addition, none of the private sellers who exhibited indicia of being illegally 'engaged in the business' collected sales tax, even though all three states involved in this investigation require taxes on frequent, profit-oriented sales. Violation of these laws defrauds state, and often local, governments of revenue. Furthermore, several private sellers used the lack of sales tax as a selling point.

Id.
[13] *Gun Show Undercover*, *supra* note 2, at 16.
[14] *Id* at 20.
[15] City of New York, *Gun Show Undercover: Arizona* 1 (Jan. 2011), at http://www.gunshowundercover2009.org/18156.html.
[16] Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 14 (Sept. 2010), at http://www.tracetheguns.org/report.pdf.
[17] *Id.*
[18] *The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows, supra* note 3, at iii.
[19] *Id*, at iv-v.
[20] *Id.* at v.
[21] U.S. Gov't Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 26-27 (2009), *at* http://www.gao.gov/new.items/d09709.pdf. ATF has concluded that the increased incidence of gun trafficking into Mexico is influenced by the accessibility of guns in the secondary market, at U.S. gun shows, flea markets and other private sales locations. Statement Before the United States House of Representatives Committee on Foreign Affairs, Subcommittee on the Western Hemisphere by William Hoover, Assistant Dir. for Field Operations of the Bureau of Alcohol, Tobacco, Firearms and Explosives, ¶ 8 (Feb. 7, 2008), http://foreignaffairs.house.gov/110/hoo020708.htm.

[22] American Viewpoint/Momentum Analysis, *Momentum Analysis & American Viewpoint National Survey (for Mayors Against Illegal Guns)* (Jan. 2011) at http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_poll_01_18_2011.pdf. *See* Dr. Frank Luntz/Word Doctors for Mayors Against Illegal Guns, *America's Gun Owners Support Common Sense Gun Laws* 12 (Dec. 2009) at http://www.mayorsagainstillegalguns.org/downloads/pdf/luntz_poll_slides.pdf (finding that 69% of NRA members and 85% of non-NRA member gun owners (85%) support requiring criminal background checks on all gun purchases at gun shows).

[23] Momentum Analysis, American Viewpoint, Harstad Strategic Research, Bellwether Research & Hart Research Polling for Mayors Against Illegal Guns, *Results from Surveys in AZ, CO, IN, VA, OH* (Feb. 2011), at http://www.mayorsagainstillegalguns.org/downloads/pdf/poll_slides_2011.pdf. See also Press Release, Mayors Against Illegal Guns, *New Polls in Five Bellwether States Show Overwhelming Support to Fix Gun Background Check System* (Mar. 2, 2011), at http://www.mayorsagainstillegalguns.org/html/media-center/pr020-11.shtml.

[24] 27 C.F.R. § 478.100(b).

[25] 27 C.F.R. § 478.100(a)(1).

[26] 27 C.F.R. § 478.100(c).

[27] Violence Policy Center, *Gun Shows in America: Tupperware® Parties for Criminals* (July 1996), at http://www.vpc.org/studies/tuptwo.htm.

[28] 18 U.S.C. § 923(j).

[29] 18 U.S.C. § 921(a)(21)(C). See our summary on Dealer Regulations for more information on this issue.

[30] Garen J. Wintemute, *Inside Gun Shows, supra,* note 1, at 1-20.

[31] New Jersey limits the business of a licensed retail firearms dealer to the building or buildings designated in the license. N.J. Stat. § 2C:58-2(a)(1). An administrative regulation confirms that this law prohibits retail dealers from conducting business at a gun show. N.J. Admin. Code. § 13:54-3.4(e).

[32] Or. Rev. Stat. §§ 166.432 – 166.441.

[33] 430 Ill. Comp. Stat. 65/3, 65/3.1; 720 Ill. Comp. Stat. 5/24-3(A)(k), (C)(7).

[34] Conn. Gen. Stat. § 29-37g.

[35] Colo. Rev. Stat. §§ 12-26.1-101 – 12-26.1-108; N.Y. Gen. Bus. Law §§ 895 – 897; N.Y. Penal Law § 400.00. Colorado's law requiring a background check before the sale of a firearm at a gun show was added through a statewide ballot initiative in 2000 in response to the Columbine tragedy and remains on the books. The state's new law requiring a background check before any private sale was adopted in 2013. The procedures that are required under either of these laws are identical.

[36] Cal. Penal Code §§ 16800, 26805, 27200-27245, 27300-27415.

[37] Md. Code Ann., Pub. Safety §§ 5-106, 5-130.

[38] Federal law requires licensed dealers to maintain firearm sales records indefinitely. 18 U.S.C. § 923(g)(1)(A).

[39] Colo. Rev. Stat. § 12-26.1-102.

[40] 430 Ill. Comp. Stat. 65/3(b).

[41] N.Y. Gen. Bus. Law § 896(c).

[42] Or. Rev. Stat. §§ 166.438(2), 166.441.

[43] Va. Code Ann. §§ 54.1-4200, 54.1-4201.1. These requirements do not apply firearms shows held in any town with a population of not less than 1,995 and not more than 2,010, according to the 1990 United States census. Va. Code Ann. § 54.1-4201.1(C).

[44] Conn. Gen. Stat. § 29-37g.

[45] Ala. Code § 40-12-143.

[46] Cal. Pen. Code § 27240.

[47] Me. Rev. Stat. tit. 15, § 455-A.

[48] Colo. Rev. Stat. § 12-26.1-104 ; N.Y. Gen. Bus. Law § 896(a); Or. Rev. Stat. § 166.438(3).

[49] Okla. Stat. tit. 68, § 1364.2.

[50] Tenn. Code § 67-4-710.

[51] Omaha, Nebraska Municipal Code §§ 19-383 – 19-392.2.

[52] For examples of recordkeeping and reporting requirements see our summary on Maintaining Records and Reporting Gun Sales.

Part 2: Gun Dealer Sales & Other Transfers

Introduction

This Part examines laws regulating firearm sellers, and the manner in which they sell or transfer guns. It begins with a section regarding the licensing and regulation of retail firearm dealers, and continues with a section regarding the procedures that dealers must use to perform background checks. The third section describes laws requiring sellers to maintain records of firearm sales and to report gun sales. The fourth section explains laws that limit the number of guns that can be sold to the same purchaser within a period of time. The fourth and final section describes laws that impose a waiting period before the sale or transfer of a gun.

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Dealer Regulations

Background

Firearms initially enter the consumer market through gun dealers, who are the critical link between manufacturers or distributors and the general public.[1] Even though all guns that are sold to the public, including guns that end up recovered in crimes, originate with dealers, dealers are subject to very little federal oversight.

Over 53,500 individuals currently have "Type 1" federal firearms licenses, which allow them to act as firearms dealers, and over *7,700 individuals have "Type 2" licenses, which allow them to buy and sell guns as pawnbrokers.*[2] About 77,000 individuals have other types of federal firearms licenses.[3] Federal dealer licenses are in high demand because a dealer may purchase unlimited quantities of firearms through the mail, at wholesale prices, without being subject to background checks or any state or local waiting periods.

Oversight of dealers is critical because gun dealers represent a major source of illegally trafficked firearms. One report by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) analyzed 1,530 trafficking investigations conducted between July 1996 and December 1998 and found that dealers and pawnbrokers were associated with over 40,000 trafficked guns.[4] The report concluded that these groups' "access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law."[5]

Almost 70% of the guns recovered in the Mexican drug war between 2007 and 2011 and traced by ATF originated in the United States.[6] According to one report, U.S. law enforcement officials "believe U.S. gun shops are a logical option for illegal trafficking because these shops have large quantities of firearms and ammunition."[7] Given dealers' access to large volumes of weaponry, "their potential collusion with firearms traffickers poses an enormous risk."[8] The weak penalties dealers can face for violating laws, and the infrequency with which dealers' licenses are revoked also both limit the effectiveness of U.S. anti-trafficking efforts.[9]

Despite the need for strong dealer oversight, ATF faces numerous obstacles that enable corrupt dealers to go undetected and unpunished. For example, ATF may conduct only one unannounced inspection of each dealer per year, the burden of proof for prosecution and revocation are extremely high, and serious violations of firearms laws have been classified as misdemeanors rather than felonies. In addition, ATF has historically been grossly underfunded and understaffed.[10]

A 2004 report by the U.S. Department of Justice's Office of the Inspector General (OIG) found that ATF's program for inspecting federal firearm licensees (FFLs), including gun dealers, importers, manufacturers, collectors, and pawnbrokers, was "not fully effective for ensuring that FFLs comply with federal firearms laws because inspections are infrequent and of inconsistent quality, and follow-up inspections and adverse actions have been sporadic."[11] While a 2013 follow-up report by OIG found that ATF had made some improvements in its inspection program, over 58% of FFLs had not been inspected within the past five years due, in part, to a lack of resources.[12] A Washington Post

investigation in 2010 found that, as a result of inadequate staffing, ATF was able to inspect less than 10% of FFL's in 2009 and, on average, dealers are inspected only once a decade.[13]

Although only 62% of FFLs inspected in 2011 were found to be in compliance with federal gun laws,[14] ATF rarely revokes dealers' licenses. In 2011, ATF took administrative action against 4,056 FFLs, but only revoked or denied the renewal of 71 licenses.[15] A 2010 Washington Post report found that, "Criminal prosecutions of corrupt dealers are even more rare [than license revocations], about 15 in a typical year."[16]

Even when ATF seeks to revoke noncompliant dealers' licenses, the administrative process it must pursue can be subject to lengthy delays. The OIG's 2013 report found that some license revocation actions took over two years to complete.[17] In addition, because dealers are able to legally continue selling firearms during the revocation process, lengthy delays increase the likelihood that rogue dealers will continue to violate federal laws as they conduct their business operations.

FFLs must be monitored to ensure that firearms are not stolen or trafficked. The OIG report found that, between 2004 and 2011, FFLs reported 174,679 firearms missing from their inventories.[18] Missing guns pose a serious risk to public safety because they may end up in criminal hands and cannot be traced to the initial purchaser.[19]

A September 2010 report by Mayors Against Illegal Guns concluded that routine inspections of gun dealers provide law enforcement with more opportunities to "detect potential indications of illegal gun activity, including improper recordkeeping or a dealer whose gun inventory does not match their sales records."[20] The report presented data showing that states that do not permit or require inspections of gun dealers are the sources of crime guns recovered in other states at a rate that is 50% greater than states that do permit or require such inspections.

Similarly, a 2009 study found that cities in states that comprehensively regulate retail firearms dealers and cities where these businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities.[21] The International Association of Chiefs of Police recommends that state and local governments enact their own dealer licensing requirements because they can respond to specific community concerns, and because state and local oversight of licensees helps reduce the number of corrupt dealers.[22]

The American public overwhelmingly supports the regulation of firearms dealers. According to a January 2013 poll, 85% of those surveyed (including 79% of all gun owners and 64% of NRA members) support allowing ATF to temporarily take away a gun dealer's license if an audit reveals record-keeping violations and the dealer cannot account for 20 or more guns.[23]

According to the same poll, 69% of respondents favored giving the police and the public access to information about which gun dealers sell the most crime guns so those gun dealers can be subject to greater oversight.[24] In addition, 73% of respondents (including 63% of all gun owners) supported allowing cities to sue licensed gun dealers when there is strong evidence that the gun dealer's careless sales practices allowed many criminals to obtain guns.[25]

Moreover, a nationwide poll conducted in March and April 2008 found that:

> (1) 86% of Americans favor requiring gun retailers to inspect their inventories every year to report stolen or missing guns;
>
> (2) 88% of Americans favor requiring gun stores to keep all guns locked securely to prevent theft; and
>
> (3) 74% of Americans favor requiring gun retailers to videotape all gun sales.[26]

That poll also found that 91% of Americans favor requiring gun stores to perform background checks on employees. Similarly, a May 2012 poll found that 79% of NRA members and 80% of non-NRA gun owners support requiring gun retailers to perform employee background checks – a measure also endorsed by the National Shooting Sports Foundation, the trade association for the firearms industry.[27] In another poll, NRA members (90%) and non-NRA member gun owners (93%) also agreed that "irresponsible gun dealers who break the law by knowingly selling guns to unqualified purchasers should be held accountable to the maximum extent of the law."[28]

Summary of Federal Law

***Licensing Requirements*:** Federal law makes it unlawful for any person except a licensed dealer to engage in the business of dealing in firearms.[29] As applied to a firearms dealer, the term "engaged in the business" is defined as:

> [A] person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.[30]

By contrast, a so-called "private seller" (one who is not "engaged in the business") is exempt from federal licensing requirements.[31] An estimated 40% of firearm sales every year are private sales.[32] Additional information about unlicensed sellers is contained in our summary on Universal Background Checks & the Private Sale Loophole.

According to a 1999 report issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the current definition of "engaged in the business" often frustrates the prosecution of "unlicensed dealers masquerading as collectors or hobbyists but who are really trafficking firearms to felons or other prohibited persons."[33]

The Gun Control Act of 1968[34] established the federal licensing system for firearms manufacturers, importers, pawnbrokers, collectors and dealers, but the requirements imposed were weak.[35] In 1992, more than 284,000 people had federal firearms licenses;[36] the next year, ATF estimated that 46% of all licensed dealers conducted no business at all, but used their licenses to buy and sell firearms in violation of state and local zoning or tax laws.[37]

In 1993 and 1994, Congress adopted laws to strengthen the licensing system. The 1993 Brady Handgun Violence Prevention Act increased the license fee from $10 annually to $200 for the first three years and $90 for each additional three-year period.[38] That law also required applicants to certify that they had informed local law enforcement of their intent to apply for a license.[39] The Violent Crime Control and Law Enforcement Act of 1994 – most notable for requiring dealers to perform background checks on prospective firearm purchasers for the first time – also required applicants for dealer licenses to submit photographs and fingerprints, and to certify that their business was not prohibited by state or local laws, and would, within 30 days, comply with such laws.[40]

The dealer population decreased substantially as a result of these reforms, and the total number of dealers has remained significantly below pre-reform levels.[41] As of August 2013, over 53,000 individuals have "Type 1" federal firearms licenses, which allow them to act as firearms dealers, and over 7,700 individuals have "Type 2" licenses, which allow them to buy and sell guns as pawnbrokers; about 77,000 individuals have other types of federal firearms licenses.[42]

Dealer Duties and Prohibitions: Once licensed, federal law requires dealers to:

- Initiate background checks on unlicensed firearm purchasers;[43]
- Maintain records of the acquisition and sale of firearms;[44]
- Report multiple sales of handguns (i.e., the sale of two or more pistols or revolvers to an unlicensed person within any five consecutive business days);[45]
- If a licensed dealer in California, Arizona, New Mexico, or Texas, report the sale of two or more of certain semiautomatic rifles to an unlicensed person within any five consecutive business days;[46] and
- Report the theft or loss of a firearm within 48 hours after the theft or loss is discovered.[47]

For more information about the background check and record-keeping requirements, see our summaries on Background Check Procedures and Maintaining Records & Reporting Gun Sales.

Dealers must also submit to a maximum of one ATF inspection per year to ensure compliance with federal recordkeeping requirements.[48] More frequent inspections are permitted if a federal magistrate has issued a search warrant or if the search is incidental to a criminal investigation.[49] In addition, dealers must respond to requests for information from ATF regarding the disposition of a firearm if such request is made during the course of a bona fide criminal investigation.[50]

A licensed dealer may not sell or deliver: (1) a handgun to a resident of another state; (2) a handgun or handgun ammunition to a person the dealer knows or has reasonable cause to believe is under the age of 21; or (3) a shotgun or rifle or ammunition for that firearm to a person the dealer knows or has reasonable cause to believe is under the age of 18.[51] A dealer may sell a rifle or shotgun to a resident of a different state if the sale is conducted in person at the dealer's place of business and the sale complies with all of the legal conditions for sale in both states.[52]

Federal law does not require dealers to conduct business on commercial premises. According to a 1998 ATF random sample of dealers nationwide, 56% of all dealers operated out of their homes.[53] Of the remaining 44%, 25% operated out of commercial premises that were gun shops or sporting goods

or hardware stores.[54] The remainder were located in businesses that are not usually associated with gun sales, such as funeral homes or auto parts stores.[55]

Dealers may temporarily conduct business at a location other than that specified on the dealer's license if the temporary location is a gun show in the state specified on the license.[56]

SUMMARY OF STATE LAWS REGULATING FIREARMS DEALERS

The 25 states listed below and the District of Columbia have adopted laws regulating firearms dealers, with additional states requiring dealers to conduct background checks, retain records of sales, or report sales to law enforcement. See our summaries of Background Check Procedures and Maintaining Records and Reporting Gun Sales for these additional laws.

Fifteen states and the District of Columbia require firearms dealers to obtain a license. The regulations cited below also apply.

State	Requires State License	Bans Residential Dealers	Requires Background Checks on Employees	Requires Security Measures	Requires Warnings to Purchasers	Requires Theft or Loss Reporting[57]	Imposes Strict Liability
AL	Yes[58]	No	No	Yes[59]	No	No	No
CA	Yes[60]	No	No	Yes[61]	Yes[62]	Yes[63]	No
CT	Yes[64]	No	Yes[65]	Yes[66]	Yes[67]	No	Yes[68]
DE	Yes[69]	No	Yes[70]	No	No	No	No
DC	Yes[71]	No	No	Yes[72]	No	No	Yes[73]
FL	No	No	No	No	Yes[74]	No	No
HI	Yes[75]	No	No	No	No	No	No
IN	Yes[76]	No	No	No	No	No	No
ME	No	No	No	No	Yes[77]	No	No
MD	Yes[78]	No	No	No	No	No	No
MA	Yes[79]	Yes[80]	No	Yes[81]	Yes[82]	Yes[83]	No
MI	No	No	No	No	Yes[84]	No	No
MN	No	No	No	Yes[85]	Yes[86]	No	No
NE	No	No	No	No	Yes[87]	No	No
NH	Yes[88]	No	No	No	Yes[89]	No	No
NJ	Yes[90]	No	Yes[91]	Yes[92]	Yes[93]	Yes[94]	No
NY	Yes[95]	No	No	No	Yes[96]	No	No
NC	No	No	No	No	Yes[97]	No	No
OH	No	No	No	No	Yes[98]	No	No
PA	Yes[99]	No	No	Yes[100]	No	No	Yes[101]
RI	Yes[102]	No	No	Yes[103]	No	No	No
TX	No	No	No	No	Yes[104]	No	No
VA	No	No	Yes[105]	No	No	No	No
WA	Yes[106]	No	Yes[107]	No	No	No	No
WV	No	No	No	Yes[108]	No	No	No
WI	Yes[109]	No	No	No	Yes[110]	No	No

The other 25 states do not have any of these laws.

Description of State Laws Regulating Gun Dealers

For citations to the statutes discussed below, see the above chart.

1. ***Dealer Licensing***: Fifteen states and the District of Columbia require firearms dealers to obtain a state-issued license. The following states require licensing for the sale of all firearms: California, Hawaii, Massachusetts, New Jersey (dealer employees must also be licensed), Pennsylvania, Rhode Island,[111] and Washington. The District of Columbia also requires licensing for the sale of all firearms.

California appears to have the most comprehensive dealer licensing requirements in the nation. Under California law, a firearms "dealer" or "licensee" must have all of the following:

- A valid federal firearms license;
- Any regulatory or business license, or licenses, required by local government, or a letter from the duly constituted local licensing authority stating that the jurisdiction does not require any form of regulatory or business license and does not otherwise restrict or regulate the sale of firearms;
- A valid seller's permit issued by the State Board of Equalization; and
- A certificate of eligibility issued by the Department of Justice (showing that the person is not prohibited from possessing firearms).

The dealer also must be included in the centralized list of licensees maintained by the California Department of Justice.

The following states require licensing for the sale of handguns or other specified firearms only: Alabama, Connecticut (any person who sells ten or more handguns per year or is an FFL), Delaware (dealer sales of pistols, revolvers or "other deadly weapons made especially for the defense of one's person"), Indiana, Maryland (dealer sales of "regulated firearms," defined as handguns and certain listed assault weapons), New Hampshire, and New York (dealer sales of handguns, assault weapons and large capacity ammunition feeding devices).

In Wisconsin, before a dealer may offer a handgun for sale, the dealer must register each handgun store he or she owns or operates with the Wisconsin Department of Justice. The Department of Justice will provide the dealer with a unique identification number for each store.

2. ***Banning Residential Dealers***: Massachusetts is the only state that prohibits dealers from operating in a residence or dwelling.

3. ***Employee Background Checks***: Five states – Connecticut, Delaware, New Jersey, Virginia and Washington – require background checks on firearms dealer employees. In Connecticut, however, employee background checks are only required where "the principal part of such trade or business is the retail sale of goods other than firearms**.**"

In Delaware, employee background checks must be conducted annually. In New Jersey, employees of retail firearms dealers must first obtain a state-issued license, which is valid for 3 years.

In California, firearms dealers may require employees who handle, sell or deliver firearms at the dealers' place of business to undergo background checks, but such background checks are not mandatory.[112] California law explicitly permits local governments to require background checks of firearms dealer employees.[113]

4. ***Security Measures***: Nine states -- Alabama, California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, and West Virginia require firearms dealers to utilize security measures to reduce the risk of theft from their premises. Dealers in the following states may not display firearms, ammunition and/or advertising so that they can readily be seen from the outside by

the public – Alabama, California and Rhode Island (handguns, imitation handguns and handgun advertising), Massachusetts (firearms), New Jersey (firearms and imitation firearms), Pennsylvania (handguns or short-barreled rifles or shotguns), West Virginia. In California and Minnesota, dealers must store firearms in a specified manner after business hours. In Connecticut, businesses that sell firearms at retail must have burglar alarms that are connected directly to the local police department. New Jersey dealers must install a state-approved theft detection and prevention system and implement security and safe storage measures. Minnesota also requires all firearms dealers to install electronic security systems that meet state specifications.

In the District of Columbia, firearms dealers must keep all firearms and ammunition "in a securely locked place affixed to the premises except when being shown to a customer, being repaired, or otherwise being worked on."

5. ***Warnings to Purchasers***: Fifteen states require dealers to post and/or deliver written warnings to purchasers regarding the risks of storing firearms in a manner accessible to children. Those states are: California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Texas, and Wisconsin.

In California, dealers must post additional warnings, including those regarding the risk of lead exposure from firearms and the state's one-handgun-a-month law.[114]

6. ***Theft or Loss Reporting****:* Three states specifically require dealers to report to state and/or local authorities the theft or loss of any firearm, while other states apply this requirement to firearm owners generally, as described in our summary on Reporting Lost & Stolen Firearms. California requires dealers to report theft or loss of any firearm to the local law enforcement agency where the dealer is located within 48 hours. Massachusetts requires dealers to report any theft or loss to the local licensing authority and to the state Criminal History Systems Board. New Jersey requires dealers to report the loss or theft of firearms or ammunition to the local police force or the state police within 36 hours.

7. ***Strict Liability***:[115] Two states – Connecticut and Pennsylvania – as well as the District of Columbia, impose strict liability on firearms dealers under certain circumstances. In Connecticut, any person who sells, delivers or otherwise transfers a firearm to a person knowing that person is prohibited from possessing such firearm "shall be strictly liable for damages for the injury or death of another person resulting from the use of such firearm by any person." Connecticut also provides that any person who sells, delivers or provides any firearm to another person to "engage in conduct which constitutes an offense knowing or under circumstances in which he should know that such other person intends to use such firearm in such conduct shall be criminally liable for such conduct and shall be prosecuted and punished as if he were the principal offender."

Pennsylvania's law is similar to Connecticut's.

The District of Columbia provides that any firearms dealer who can be shown by a preponderance of the evidence to have knowingly and willfully engaged in the illegal sale of a firearm will be strictly liable in tort for all damages caused by the discharge of the firearm in the District, regardless of whether the

person operating the firearm is the original, illegal purchaser. A strict liability action may not be brought, however:

- When the basis of the strict liability is a firearm originally distributed to a law enforcement agency or a law enforcement officer;
- By a person who can be shown by a preponderance of the evidence to have committed a self-inflicted injury or who was injured by a firearm while committing a crime, attempting to commit a crime, engaged in criminal activity, or engaged in a delinquent act;
- By a person who can be shown by a preponderance of the evidence to be engaged in the sale or distribution of illegal narcotics; or
- By a person who either assumed the risk of the injury that occurred or negligently contributed to the injury that occurred.

Dealers of assault weapons or machine guns in the District will also, with certain exceptions, be held strictly liable in tort for all direct and consequential damages arising from bodily injury or death if the bodily injury or death proximately results from the discharge of the assault weapon or machine gun in the District.

SELECTED LOCAL LAW

San Francisco, California

The City of San Francisco has enacted several comprehensive ordinances to ensure that local firearms dealers utilize common sense and responsible business practices.[116] It is illegal to engage in the business of selling firearms or ammunition in the City without first obtaining a license from the San Francisco Police Department. In order to obtain a license, a potential firearms dealer must comply with a number of basic and important requirements including mandatory background checks for the dealer and the dealer's employees, the installation of a minimum level of security measures to prevent theft, and proof of adequate liability insurance. In addition, dealers may not operate in sensitive public locations such as near schools or day care centers. To discourage theft and trafficking, dealers must conduct bi-annual inventories of all firearms and immediately report any weapons which are either lost or stolen. People who are prohibited from possessing firearms are not allowed on the premises of a firearms dealer. Finally, information related to sales of ammunition must be recorded and stored by the dealer. To ensure that all requirements are being met, the San Francisco Police have the right to inspect a dealer's premises at any time during business hours. Over 30 other local jurisdictions in California have enacted similar ordinances.

MODEL LAW

The Law Center has drafted a *Model Ordinance Regulating Firearms Dealers and Ammunition Sellers for Local Jurisdictions in California*. In addition, the Law Center's September 2011 publication, *Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales*, includes a model law regulating firearms dealers. For more information, contact the Law Center.

FEATURES OF A COMPREHENSIVE DEALER LICENSING AND REGULATION LAW

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- All firearms dealers selling any class of firearm are required to obtain a state and/or local license and undergo a background check *(California, Hawaii, Massachusetts, New Jersey, Pennsylvania, Rhode Island, Washington, District of Columbia)*
- Dealers in residential and other sensitive neighborhoods are prohibited *(Massachusetts)*
- Dealer employees are required to undergo background checks *(Connecticut, Delaware, New Jersey, Virginia, Washington)*
- Dealers are required to take security precautions to reduce the risk of theft (security measures may include safe storage requirements, alarm systems, and limitations on the display of firearms) *(Alabama, California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, West Virginia, District of Columbia)*
- Dealers are required to report all firearm sales to state and local law enforcement
- Dealers are required to provide law enforcement with a physical inventory of all firearms at least annually[117]
- Dealers are required to obtain liability insurance to ensure that persons harmed by the dealers' actions will be adequately compensated[118]
- Dealers are required to post warnings to consumers regarding safe storage of firearms and the consequences of improperly storing firearms *(California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Texas, Wisconsin)*
- Dealers are required to report the theft or loss of any firearm to state and local authorities *(Massachusetts)*
- Dealers are subject to civil liability for negligent entrustment, negligence per se, and knowing violations of federal or state statutes applicable to the sale or marketing of the firearms[119]

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[1] As discussed in the federal law section below, private sellers are allowed to sell guns without obtaining a license or conducting background checks due to the limited definition of "engaged in the business" under federal law. *See* 18 U.S.C. § 921(a)(21)(c).

[2] *Federal firearms licensee totals as of Aug. 13, 2013 were published by ATF at http://www.atf.gov/about/foia/ffl-list.html. In addition to over 53,500 dealer licensees, and 7,700 pawnbrokers, about 64,200 individuals are licensed as firearms collectors, and 11,200 are licensed as manufacturers of firearms or ammunition. Less than 1,000 individuals are licensed as importers of firearms.*

[3] *Id.*

[4] Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* 13 (June 2000), at http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf.

[5] *Id*. at x. According to an ATF review of guns found at crime scenes and traced to dealers in 1998, one percent of dealers were responsible for selling almost 60% of the traced firearms. Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 23 (Feb. 2000), at http://www.mayorsagainstillegalguns.org/downloads/pdf/Commerce_in_Firearms_2000.pdf.

[6] Press Release, Bureau of Alcohol, Tobacco, Firearms & Explosives, U.S. Department of Justice, *ATF Releases Government of Mexico Firearms Trace Data* (April 26, 2012), at http://www.atf.gov/press/releases/2012/04/042612-atf-atf-releases-government-of-mexico-firearms-trace-data.html.

[7] Colby Goodman & Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges*, *in Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime* 192-93 (Eric L. Olson, David A. Shirk & Andrew Selee eds., 2010), at http://www.wilsoncenter.org/sites/default/files/Shared%20Responsibility%2012.22.10.pdf.
[8] *Id.* at 193.
[9] *Id.* a 198.
[10] Brady Center to Prevent Gun Violence, *Shady Dealings, Illegal Gun Trafficking From Licensed Gun Dealers* 24-25 (Jan. 2007), at http://bradycampaign.org/sites/default/files/FINAL%20Shady%20Dealings.pdf. In August 1994, the American Bar Association enacted a resolution expressing support for legislation to increase the number of permitted yearly inspections of firearms dealers and require federally licensed dealers to: (1) maintain adequate business liability insurance; (2) pay annual fees to cover the costs of investigating license applications; and (3) require all employees to undergo background checks. American Bar Association, *Item 10E*, Annual Meeting 1994, http://www.americanbar.org/groups/criminal_justice/policy/index_aba_criminal_justice_policies_by_meeting.html#am9410e.
[11] The report continued:

Specifically, the ATF does not conduct in-person inspections on all applicants before licensing them to sell guns, and ATF compliance inspections of active dealers, including large-scale retailers, are infrequent and vary in quality. Even when numerous or serious violations were found, the ATF did not uniformly take adverse actions, refer FFLs for investigation, or conduct timely follow-up inspections.

Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* i (July 2004), at http://www.justice.gov/oig/reports/ATF/e0405/final.pdf .
[12] Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Review of ATF's Federal Firearms Licensee Inspection Program* ii (Apr. 2013), at http://www.justice.gov/oig/reports/2013/e1305.pdf. According to the 2013 report, "ATF field divisions told ATF headquarters in 2012 that they were still understaffed by 45 percent and that they needed 504 more investigators to conduct all inspections due that year." *Id.* at 22.
[13] Sari Horwitz and James V. Grimaldi, *ATF's Oversight Limited in Face of Gun Lobby*, Wash. Post, Oct. 26, 2010, at http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505823.html?sub=AR.
[14] Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Review of ATF's Federal Firearms Licensee Inspection Program* 1 (Apr. 2013), at http://www.justice.gov/oig/reports/2013/e1305.pdf.
[15] *Id.* at 28.
[16] David S. Fallis, *Virginia Gun Dealers: Small Number Supply Most Guns Tied to Crimes,* Wash. Post, Oct. 25, 2010, at http://www.washingtonpost.com/wp-dyn/content/article/2010/10/24/AR2010102402221.html. One study found that between 1975 and 2005, ATF revoked, on average, fewer than 20 federal firearms licenses per year. Brady Center to Prevent Gun Violence, *Shady Dealings, Illegal Gun Trafficking From Licensed Gun Dealers* 23 (January 2007). The report notes that in 2006, ATF increased its total revocations to 131. *Id*. at 23. ATF prosecuted only 88 corrupt gun dealers between 2000 and 2002. Americans for Gun Safety Foundation, *The Enforcement Gap: Federal Gun Laws Ignored* 4 (May 2003), at http://content.thirdway.org/publications/10/AGS_Report_-_The_Enforcement_Gap_-_Federal_Gun_Laws_Ignored.pdf.
[17] Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Review of ATF's Federal Firearms Licensee Inspection Program* 31 (Apr. 2013), at http://www.justice.gov/oig/reports/2013/e1305.pdf.
[18] *Id.* at 2.
[19] Center for American Progress, *Lost and Stolen Guns from Gun Dealers* (June 2013), at http://www.americanprogress.org/wp-content/uploads/2013/06/GerneyInventoryBrief-1.pdf.
[20] Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 26-27 (Sept. 2010), at http://www.tracetheguns.org/report.pdf.
[21] Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, 86 J. Urban Health 525 (July 2009). Another study found that in major cities, "gun homicide rates were higher where FFLs were more prevalent," concluding that "[m]odification of FFLs through federal, state, and local regulation may be a feasible intervention to reduce gun homicide in major cities." Douglas J. Wiebe et al., *Homicide and Geographic Access to Gun*

Dealers in the United States, 9 BMC Public Health 199 (June 23, 2009), at http://www.biomedcentral.com/content/pdf/1471-2458-9-199.pdf.

[22] Int'l Ass'n of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (2007), at http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87.

[23] Colleen L. Barry et al., *After Newtown — Public Opinion on Gun Policy and Mental Illness*, 368 New Eng. J. Med. 1077, 1079 (Mar. 21, 2013), at http://www.nejm.org/doi/pdf/10.1056/NEJMp1300512.

[24] *Id.*

[25] *Id.*

[26] Greenberg Quinlan Rosner Research & The Tarrance Group for Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3, 6 (Apr. 10, 2008), at http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf.

[27] Press Release, Mayors Against Illegal Guns, *New Poll of NRA Members by Frank Luntz Shows Strong Support for Common-Sense Gun Laws, Exposing Significant Divide Between Rank-and-File Members and NRA Leadership* (July 24, 2012), at http://mayorsagainstillegalguns.org/html/media-center/pr006-12.shtml.

[28] Dr. Frank Luntz/Word Doctors for Mayors Against Illegal Guns, *America's Gun Owners Support Common Sense Gun Laws* 9 (Dec. 2009), at http://www.mayorsagainstillegalguns.org/downloads/pdf/luntz_poll_slides.pdf. Seventy-two percent of NRA members and 79% of non-NRA member gun owners polled strongly agree with this concept. Eighty-two percent of NRA members and 85% of non-NRA member gun owners in this survey would support a requirement that gun retailers perform background checks on their employees to ensure they are not felons. *Id.* at 14.

[29] 18 U.S.C. § 922(a)(1)(A).

[30] 18 U.S.C. § 921(a)(21)(C).

[31] *Id.*

[32] Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Department of Justice, National Institute of Justice Research in Brief 6-7 (May 1997), at https://www.ncjrs.gov/pdffiles/165476.pdf.

[33] U.S. Department of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Gun Shows: Brady Checks and Crime Gun Traces* 13-14 (Jan. 1999), at http://www.atf.gov/files/publications/download/treas/treas-gun-shows-brady-checks-and-crime-gun-traces.pdf.

[34] 18 U.S.C. § 922.

[35] Under the 1968 requirements, any person who was over 21, paid a $10 annual fee, had premises from which to operate, and was not prohibited from possessing firearms was issued a license. Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 11 (Feb. 2000).

[36] *Id.*

[37] *Id.* at 13.

[38] 18 U.S.C. § 923(a)(3)(B). The law also required for the first time that dealers conduct background checks on all gun purchasers.

[39] 18 U.S.C. § 923(d)(1)(F)(iii).

[40] 27 C.F.R. § 478.44(a)(1)(ii); 18 U.S.C. § 923(d)(1)(F)(i), (ii).

[41] By 1997, after the first three-year cycle of relicensing under the new laws had been complete, the number of FFLs had dropped by 49% nationwide, to 107,554. Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 14 (Feb. 2000).

[42] *Federal firearms licensee totals as of Aug. 13, 2013 were published by ATF at http://www.atf.gov/about/foia/ffl-list.html. In addition to about 53,000 dealer licensees, about 7,700 individuals are licensed as pawnbrokers, 64,200 are licensed as firearms collectors, and 11,200 are licensed as manufacturers of firearms or ammunition. Less than 1,000 individuals are licensed as importers of firearms.*

[43] The dealer must: (a) receive from the transferee a completed and signed Firearms Transaction Record (ATF Form 4473), providing detailed information about the transferee; (b) verify the identity of the transferee through a government-issued photo identification; and (c) contact the National Instant Criminal Background Check System (NICS), through either the FBI or a state point of contact, for a determination of whether the transfer may proceed. 27 C.F.R. §§ 478.11, 478.102, 478.124; 18 U.S.C. § 922(t)(1). The dealer may transfer the firearm if NICS provides the dealer with a unique identification number for the transfer or if three business days have elapsed since the dealer contacted NICS and the system has not notified the dealer that the transfer would be unlawful. 18 U.S.C. § 922(t)(1).

[44] 18 U.S.C. § 923(g)(1)(A). The dealer must record, "in bound form," the purchase or other acquisition of a firearm not later than the close of the next business day following the purchase or acquisition. 27 C.F.R. § 478.125(e). The dealer must similarly record the sale or other disposition of a firearm not later than seven days following the date of such transaction and retain the Firearms Transaction Record (ATF Form 4473) obtained in the course of transferring custody of each firearm. *Id*.; § 478.124(b). When a firearms business is discontinued, these records must be delivered to the successor or, if none exists, to the Attorney General. 18 U.S.C. § 923(g)(4).
[45] 18 U.S.C. § 923(g)(3)(A).
[46] In July 2011, the Department of Justice sent demand letters to dealers operating in California, Texas, Arizona, and New Mexico requiring these dealers to report the sale of two or more of certain semiautomatic rifles within a five business day period to the same buyer to help deter gun trafficking to Mexico. *See* ATF Form 3310.12, *Report of Multiple Sale or Other Disposition of Certain Rifles*, at http://www.atf.gov/files/forms/download/atf-f-3310-12.pdf; Bureau of Alcohol, Tobacco, Firearms & Explosives, U.S. Department of Justice, *Q&As for the Report of Multiple Sale or Other Disposition of Certain Rifles*, at http://www.atf.gov/files/firearms/industry/080911-qa-multiple-rifles.pdf.
[47] The report must be made to the Attorney General and to the "appropriate local authorities." 18 U.S.C. § 923(g)(6).
[48] 18 U.S.C. § 923(g)(1)(B). ATF actually inspects dealers very rarely. A Washington Post investigation in 2010 found that, as a result of inadequate staffing, ATF was able to inspect less than 10% of FFL's in 2009 and, on average, dealers are inspected only once a decade. Sari Horwitz and James V. Grimaldi, *ATF's Oversight Limited in Face of Gun Lobby*, Wash. Post, Oct. 26, 2010, at http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505823.html?sub=AR.
[49] 18 U.S.C. § 923(g)(1)(A), (B).
[50] 18 U.S.C. § 923(g)(7).
[51] 18 U.S.C. § 922(b)(1), (3).
[52] 18 U.S.C. § 922(b)(3).
[53] *Commerce in Firearms in the United States, supra* note 4, at 16.
[54] *Id.*
[55] *Id.*
[56] 18 U.S.C. § 923(j).
[57] See our summary on Reporting Lost & Stolen Firearms for laws generally requiring the reporting of lost or stolen firearms.
[58] Ala. Code §§ 13A-11-78, 13A-11-79, 13A-11-83.
[59] Ala. Code § 13A-11-79.
[60] Cal. Penal Code §§ 26500, 26700-26710.
[61] Cal. Penal Code § 26820, 26890(a).
[62] Cal. Penal Code §§ 26835, 23635(e), 23640.
[63] Cal. Penal Code § 26885.
[64] Conn. Gen. Stat. § 29-28.
[65] Conn. Gen. Stat. § 29-37f.
[66] Conn. Gen. Stat. § 29-37d.
[67] Conn. Gen. Stat. § 29-37b.
[68] Conn. Gen. Stat. §§ 52-571f, 53a-8(b).
[69] Del. Code Ann. tit. 24, §§ 901-902.
[70] Del. Code Ann. tit. 24, § 904(b).
[71] D.C. Code Ann. § 7-2504.01(b); D.C. Mun. Regs. tit. 24, § 2321.
[72] D.C. Code Ann. § 7-2504.07.
[73] D.C. Code Ann. §§ 7-2531.02, 7-2531.03, 7-2551.02, 7-2551.03.
[74] Fla. Stat. Ann. § 790.175.
[75] Haw. Rev. Stat. Ann. § 134-31.
[76] Ind. Code Ann. §§ 35-47-2-14 – 35-47-2-16.
[77] Me. Rev. Stat. Ann tit. 15, § 455-A.
[78] Md. Code Ann., Pub. Safety §§ 5-101, 5-106.
[79] Mass. Gen. Laws ch. 140, §§ 122, 122B, 123, 128.
[80] Mass. Gen. Laws ch. 140, § 123.
[81] Mass. Gen. Laws ch. 140, § 123.
[82] Mass. Gen. Laws ch. 140, § 123.

[83] Mass. Gen. Laws ch. 140 §§ 123, 129C.
[84] Mich. Comp. Laws § 28.435(6).
[85] Minn. Stat. § 624.7161; Minn. Admin. Rules Ch. 7504.
[86] Minn. Stat. § 624.7162.
[87] Neb. Rev. Stat. Ann. § 69-2426.
[88] N.H. Rev. Stat. Ann. §§ 159:8, 159:10.
[89] N.H. Rev. Stat. Ann. § 650-C:1(VII).
[90] N.J. Stat. Ann. § 2C:58-2(a); N.J. Admin. Code § 13:54-3.2.
[91] N.J. Stat. Ann. § 2C:58-2(a).
[92] N.J. Stat. Ann. § 2C:58-2(a), N.J. Admin. Code §§ 13:54-3.11, 13:54-6.1-13:54-6.5.
[93] N.J. Stat. Ann. §§ 2C:58-16, 2C:58-17.
[94] N.J. Admin. Code § 13:54-6.6.
[95] N.Y. Penal Law §§ 265.00(9), 400.00.
[96] N.Y. Gen. Bus. Law § 396-ee.
[97] N.C. Gen. Stat. §§ 14-315.1, 14-315.2.
[98] Ohio Rev. Code Ann. §§ 2923.25, 5502.63(A).
[99] 18 Pa. Cons. Stat. § 6112.
[100] 18 Pa. Cons. Stat. Ann. § 6113.
[101] 18 Pa. Cons. Stat. §§ 6111(g)(5), (6).
[102] R.I. Gen. Laws §§ 11-47-38, 11-47-39.
[103] R.I. Gen. Laws § 11-47-40(b).
[104] Tex. Penal Code Ann. § 46.13(g).
[105] Va. Code Ann. § 18.2-308.2:3.
[106] Wash. Rev. Code Ann. § 9.41.110.
[107] Wash. Rev. Code Ann. § 9.41.110(5)(b).
[108] W. Va. Code § 61-7-10(a)(1).
[109] Wis. Admin. Code Jus § 10.04.
[110] Wis. Stat. § 175.37.
[111] Note that R.I. Gen. Laws § 11-47-38 requires all firearms dealers to be licensed. However, state law provides a mechanism for the licensing of dealers in handguns only.
[112] Cal. Penal Code § 26915(a), (b).
[113] Cal. Penal Code § 26915(c), (d).
[114] In addition, Colorado requires FFLs to post a sign describing the state's prohibition on straw purchasers. Colo. Rev. Stat. § 18-12-111.
[115] In 2005, Congress passed and the President signed into law the Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA grants firearms dealers and others immunity from some civil lawsuits. 15 U.S.C. §§ 7901 - 7903. The Act includes, *inter alia,* the following exceptions:
(ii) an action brought against a seller for negligent entrustment or negligence per se;
(iii) an action in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm], and the violation was a proximate cause of the harm for which relief is sought, including:
(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the firearm or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a [firearm]; or
(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code[.]
15 U.S.C. § 7903(5)(A)(ii), (iii). The scope of the PLCAA and its exceptions is being tested in the courts in several pending cases.
[116] San Francisco Police Code §§ 613-619.
[117] Certain local jurisdictions, such as New York City and San Francisco, impose this requirement.
[118] Certain local jurisdictions, such as Los Angeles and San Francisco, impose this requirement.

[119] New York City and San Francisco impose civil liability on dealers and others for some gun injuries and deaths. Civil liability laws require careful drafting in light of the 2005 Protection of Lawful Commerce in Arms Act (PLCAA).

Background Check Procedures

Background

Background checks are designed to identify persons who are ineligible to purchase firearms under federal, state or local law, and prevent those persons from obtaining firearms.[1] As described below, federal law requires federally licensed firearms dealers to conduct background checks on potential firearm purchasers.[2] Since the federal background check requirement was adopted in 1994, over two million prohibited persons have been denied a firearm transfer or permit through the FBI's background check system.[3] Federal law has several flaws, however, that allow ineligible individuals to obtain firearms.

1. ***Private Sales:*** The single largest gap in the federal background check requirement is that unlicensed, private sellers are not required to conduct background checks. As a result, convicted felons and other ineligible people are able to easily buy guns in most states nationwide. This issue is addressed in detail in our summary on Universal Background Checks & the Private Sale Loophole.

2. ***Default Proceeds:*** Under federal law, if a firearms dealer who has initiated a background check has not been notified within three business days that the sale would violate federal or state laws, the sale may proceed by default.[4] This "default proceed" provision allowed 3,722 prohibited purchasers to buy guns in 2012.[5] In each of these instances, ATF received a referral from the FBI requesting further review and possible retrieval of firearms that had been sold to an ineligible person by default.[6] As a result, the FBI has recommended extending the three-day period to allow more research time to complete background checks and to reduce the number of prohibited purchasers who are able to purchase firearms by default.[7] A January 2013 poll found that 76.3% of Americans - including 67% of gun owners - support giving law enforcement up to 5 business days, if needed, to complete a background check for gun buyers.[8]

3. ***State "Points of Contact":*** States have the option of requiring dealers to conduct background checks through state or local agencies, called "Points Of Contact," or directly through the FBI. States that conduct their own background checks can search records and databases in addition to those that the federal law requires to be searched. State databases typically include information that is unavailable to the FBI, including outstanding felony warrants, mental health records, domestic violence restraining orders and final disposition records (those showing whether an arrest resulted in an acquittal or a conviction). Research has found that the practice of conducting firearm purchaser background checks through state or local agencies, as opposed to through the FBI, is associated with reduced firearm death rates, especially with respect to suicides.[9]

4. ***Exemptions for Permit Holders:*** Federal law allows individuals who hold certain firearms-related permits issued by state or local governments (such as concealed weapons permits) to bypass the federally-required background check. This exemption -- the so-called "Brady exemption" -- allows some prohibited persons to acquire firearms when a state permit holder falls into a prohibited category after issuance of the state permit and the state fails to immediately revoke the permit.

5. ***Reporting of Records:*** Federal law cannot require states to make information identifying people ineligible to possess firearms available to the federal or state agencies that perform background checks,[10] and many states fail to voluntarily report the necessary records to the proper databases. As a result, the information that is searched by law enforcement during a background check is often incomplete. This problem applies to every category of person prohibited from possessing firearms, including:

- *Criminal history records:* A survey of the states conducted in December 2010 found that only twelve states reported that 80% or more of their felony charges had a final disposition recorded in their criminal history databases.[11] Without a disposition record, law enforcement cannot immediately determine whether a person who was arrested for a crime was ultimately convicted of that crime and became prohibited from possessing firearms.
- *Mental health records:* States have also inconsistently reported records identifying people whose mental health histories prevent them from legally possessing firearms. For more information about this issue, see our summary on Mental Health Reporting.
- *Drug abuse records:* Federal law prohibits unlawful users and individuals addicted to illegal drugs from possessing firearms, and federal regulations define these terms to include any person found through a drug test within the preceding year to have used a controlled substance unlawfully.[12] There are now hundreds of drug court programs across the country that require periodic drug testing as part of their programs, yet this positive test data is rarely available for firearm purchaser background checks.[13] According to a November 2011 report by Mayors Against Illegal Guns, 44 states have submitted fewer than ten records to the controlled substance file of a centralized nationwide database, and 33 states have not submitted any records at all.[14]
- *Domestic violence records:* Federal law prohibits firearm possession by individuals subject to a domestic violence protective order or who have been convicted of a domestic violence misdemeanor.[15] Yet, states have had difficulty identifying and reporting individuals who fall within these categories.[16] For more information about this issue, see our summary on Domestic Violence and Firearms.

In light of these significant reporting deficiencies, the FBI has encouraged states to provide more complete records.[17]

6. ***Verifying Identification:*** While each gun purchaser must present proof of identity when applying to purchase a firearm, federal law does not provide a mechanism for dealers to ensure that these identification documents are valid.[18] This gap in the federal background check system allows prohibited individuals to purchase firearms without effective background checks using fake or forged identification documents.[19] As a result, researchers have suggested that all dealers should be linked to state motor vehicle databases so that they can verify the validity of driver's licenses offered by potential gun purchasers.[20] A national poll conducted for Mayors Against Illegal Guns in April 2008 found that 83% of Americans would support a law requiring gun sellers to install machines that can verify the validity of a gun buyer's driver's license.[21]

Summary of Federal Law

The Brady Act requires federally licensed firearms dealers to perform background checks on prospective firearms purchasers to ensure that the firearm transfer would not violate federal, state or local law.[22] Since 1998, the Brady Act has been implemented through the National Instant Criminal Background Check System (NICS), which was used to conduct 174,623,643 background checks between November 30, 1998 and August 31, 2013.[23] Since the federal background check requirement was adopted in 1994, over two million prohibited persons have been denied a firearm transfer or permit through the FBI's background check system.[24]

States have the option of designating a state or local agency as a Point of Contact (POC) and having that agency conduct NICS checks, or having those checks performed by the FBI.[25] Gun dealers initiate a NICS check by contacting the FBI or state POC (typically by telephone or computer) after the prospective purchaser has provided a government-issued photo I.D. and completed a federal Firearms Transaction Record (also known as Form 4473).[26] The FBI or POC must then conduct a name-based search of federal and state databases. FBI searches include four federal databases:

- The National Crime Information Center (NCIC), which includes records regarding wanted persons (fugitives) and persons subject to protective/restraining orders;
- The Interstate Identification Index, which contains state criminal history records;
- The Department of Homeland Security's U.S. Immigration and Customs Enforcement databases, which contain records regarding non-U.S. citizens; and
- The NICS Index, which contains records of other persons determined to be prohibited under federal or state law from receiving or possessing firearms.[27] Notably, on April 16, 2012, the functionality of the NICS Index was expanded to include state-prohibiting records, thereby providing the NICS Section and state users with the ability to effectively and efficiently identify people prohibited from possessing guns by state, as well as federal, law through NICS, provided states have reported those records to the NICS Index.[28]

As noted above, a state POC search includes the four federal databases, and may include the state's independent criminal history database, mental health and other records.[29]

Once the initial search is complete, the FBI or POC notifies the dealer that the sale: (1) may proceed; (2) may not proceed; or (3) is delayed pending further investigation. If the transaction may proceed, NICS provides the dealer with a unique identification number which the dealer must record on Form 4473.[30] The NICS check is valid for a single transaction for up to 30 calendar days from the date NICS was initially contacted.[31]

If the dealer has not been notified within three business days that the sale would violate federal or state laws, the sale may proceed by default.[32] As noted above, many ineligible people obtain access to firearms because the FBI is not able to complete the background check within this time frame.

Brady Exemption: A person holding a state-issued permit allowing the person to acquire or possess firearms (e.g., a concealed weapons permit) is not required to undergo a background check if the permit was issued: (1) within the previous five years in the state in which the transfer is to take place;

and (2) after an authorized government official has conducted a background investigation to verify that possession of a firearm would not be unlawful.[33] Permits issued after November 30, 1998 qualify as exempt only if the approval process included a NICS check.[34] If the state-issued permit qualifies for the exemption, the permit-holder is not required by federal law to undergo a background check before purchasing a gun. As noted above, this exemption allows a prohibited person to acquire a firearm when the person falls into a prohibited category after issuance of the state permit and the state has not immediately revoked the permit.

***NICS Improvement Amendments Act of 2007*:** In January 2008, President Bush signed into law the NICS Improvement Amendments Act of 2007, which, among other things, provided financial rewards and penalties to encourage states to provide to NICS information relevant to whether a person is prohibited from purchasing or possessing firearms.[35] The Act also authorized the Attorney General to make grants to the states for use in establishing and upgrading the states' ability to report information to NICS and to perform background checks pursuant to the Brady Act.[36]

According to the Government Accountability Office, 15 states received NICS Act grants during at least one fiscal year from 2009-2011.[37]

SUMMARY OF STATE LAWS GOVERNING BACKGROUND CHECKS

The strongest state laws regarding background checks are those that apply to both licensed and unlicensed dealers. For information about such background check laws, see our summary on Universal Background Checks & the Private Sale Loophole. The summary that follows below describes how states have implemented the federal requirement that only applies when a licensed dealer sells or transfers a firearm.

As listed below, about half the states have a law governing the scope and procedure for a background check when a firearm is purchased from a licensed dealer, with 17 states applying these laws to sales of all types of firearms.[38] An additional nine states address the background check for purchase of handgun, but not a long gun (rifle or shotgun), from a licensed dealer. Minnesota addresses the background check for purchase of a handgun or assault weapon from a licensed dealer. All but five of these laws (Alabama, Delaware, Georgia, Indiana, and New Hampshire) impose requirements beyond the requirements of federal law, as described below.[39]

Alabama[40]

California[41]
Colorado[42]
Connecticut[43]
Delaware[44]
District of Columbia[45]
Florida[46]
Georgia[47]
Hawaii[48]
Illinois[49]
Indiana *(handguns only)*[50]
Iowa *(handguns only)*[51]

Maryland *(handguns only)*[52]
Massachusetts[53]
Michigan *(handguns only)*[54]
Minnesota *(handguns and certain assault weapons only)*[55]
Nebraska *(handguns only)*[56]
New Hampshire *(handguns only)*[57]
North Carolina *(handguns only)*[58]
Oregon[59]
Pennsylvania[60]
Rhode Island[61]
Tennessee[62]
Utah[63]
Virginia[64]
Washington *(handguns only)*[65]
Wisconsin *(handguns only)*[66]

Description of State Laws Governing Background Checks

1. *State Points of Contact*: Background checks conducted by state or local authorities are more thorough than those performed by the FBI because states can access their independent own databases in addition to databases maintained by NICS. As noted above, states where state or local authorities conduct the background check are known as "point of contact" or "POC" states. Thirteen states use a state or local POC for all firearm transfers.[67] Eight states use a state or local POC for handgun background checks only, using the FBI for background checks on long gun transfers.[68] The remaining 29 states and the District of Columbia process all background checks through the FBI.[69]

POC States for All Firearms
California
Colorado
Connecticut
Florida
Hawaii (via a Brady exemption)*
Illinois
Nevada
New Jersey†
Oregon
Pennsylvania
Tennessee
Utah
Virginia

* Hawaii acts as a POC state for all firearm purchases because state law requires a gun dealer to ensure that the purchaser has the permit that state law requires for the purchase of any firearm, and which

qualifies the purchaser for an exemption from the background check at the point of sale under federal law (a "Brady exemption"). County police chiefs in Hawaii must conduct a background check, including a search of NICS, prior to issuing a permit. In the other states that act as POCs for all firearm purchases, the dealer must contact a state or local agency to conduct the background check when the sale occurs.

† Although no state statute explicitly requires New Jersey to act as a POC, New Jersey authorities have chosen to do so.[70] In addition, New Jersey requires the purchaser of a firearm to obtain a permit prior to the purchase; a background check is conducted prior to issuance of a permit.[71] However, unlike Hawaii's permit, New Jersey's permit does not exempt the holder from the federally required background check at the point of sale. As a result, a dealer in New Jersey must contact the Division of State Police, which conducts the federally-required NICS check when the sale is conducted, and must also ensure that the purchaser has the permit that is required under state law.

POC States for Handguns: The following five states act as POC states for handguns only, because dealers must contact a state or local agency at the time of sale of a handgun. The state or local agency conducts the background check, including a search of NICS. In these states, dealers who are transferring long guns must contact the FBI directly for a NICS check. In Nebraska, a background check is not required at the point of sale of a firearm if the purchaser has already obtained a transferee permit, after a background check. The transferee permit qualifies the holder for an exemption from the federal background check requirement.

Maryland
Nebraska
New Hampshire
Washington
Wisconsin

POC States for Handguns via a Brady Exemption: The following three states act as POC states for all handgun sales because state law requires every handgun purchaser to obtain a permit from a state or local agency prior to purchasing a handgun. Under federal law, the permit qualifies the holder for an exemption from the federal background check at the point of sale, in part because the state or local agency conducts a background check, including a search of NICS, before issuing the permit. Permit holders in these three partial POC states, like all holders of a permit that exempts the person from the federal background check requirement, may buy both handguns and long guns without a background check at the point of sale.

Iowa
Michigan
North Carolina

2. *States that Issue Permits that Qualify the Holder for an Exemption from a NICS Check*: Pursuant to 18 U.S.C. § 922(t)(3), twenty-two states issue permits or licenses that exempt the holder from the federal background check requirement at the point of sale.[72]

States that Issue Permits or Licenses that Qualify the Holder for an Exemption from a NICS Check[73]

Alaska (concealed weapons permits)
Arizona (concealed weapons permits)
Arkansas (concealed weapons permits)
California ("entertainment firearms permits" only)
Georgia (concealed weapons permits)
Hawaii (permits to acquire and licenses to carry)
Idaho (concealed weapons permits)
Iowa (permits to acquire a handgun and concealed weapons permits)
Kansas (concealed weapons permits issued on or after 7/1/10)
Kentucky (concealed weapons permits)
Michigan (licenses to purchase a pistol and concealed pistol licenses)
Mississippi (concealed weapons permits, but not security guard permits)
Montana (concealed weapons permits)
Nebraska (handgun purchase certificates and concealed handgun permits)
Nevada (concealed weapons permits issued on or after 7/1/11)
North Carolina (permits to purchase a handgun and concealed handgun permits)
North Dakota (concealed weapons permits)
South Carolina (concealed weapons permits)
Texas (concealed weapons permits)
Utah (concealed weapons permits)
Washington (concealed weapons permits issued on or after 7/22/11)
Wyoming (concealed weapons permits)

3. ***Laws Requiring or Authorizing the State to Act as a Point of Contact:*** Connecticut and Illinois have laws requiring the states to act as POCs. California, Colorado, New Hampshire have laws explicitly authorizing the state to act as a POC, although the New Hampshire state agency has chosen to act as a POC for handgun sales only. California law requires the state to act as a POC if funding is available, which it is. Indiana's law requires the state to act as a POC if federal funds are available to assist the state in participating in NICS. However, Indiana is not currently acting as a POC.

4. ***Laws Detailing the Procedure for a Background Check in POC States:*** Seventeen of the 21 POC states have laws explaining the procedure for the background check. These laws typically require the purchaser to fill out a firearm transfer application form (or an application for a Brady-exempt permit to purchase), present photo identification, and pay a fee. The dealer must then transmit the application to a state agency that conducts the background check. If the transfer is approved, the agency transmits an approval number to the dealer, who is prohibited from transferring the firearm until an approval number is received or the statutory time period has expired. Michigan, Nevada, New Hampshire and New Jersey are the only POC states without laws that describe the procedure in this manner.

In California, dealers must obtain the purchaser's name, date of birth, and driver's license or identification number electronically from the magnetic strip on the license or ID card. When a purchaser or transferee seeks to obtain a handgun, he or she must present additional documentation

indicating California residency.[74] Virginia also requires all firearm purchasers to present additional documentation establishing residency.

5. ***Background Check Laws in Non-POC states:***

A. States That Incorporate the Federal Requirement: Four states (Alabama, Delaware, Georgia, and Indiana) that do not act as POCs nevertheless facilitate enforcement of the federal background check requirement through a state law that reiterates that requirement. Indiana law also spells out that the dealer and purchaser must use Form 4473, the purchaser must present documentation of Indiana residency, and the dealer must contact NICS directly. Indiana's law appears to apply only to handguns, although federal law requires that a similar procedure be used for long guns as well.

B. Independent State Background Check Requirements at the Point of Sale: Minnesota and Rhode Island do not function as POCs, but have their own independent background check requirements.[75] In these states, the dealer must contact the FBI directly for the federally required background check, and must also contact a state or local agency for the background check required by the state. In Rhode Island, a firearm purchaser must fill out a state form, which the seller must forward to the local police authority. The local police authority must then conduct a background check on the purchaser. If the seller receives no disqualifying information from the local police authority within the state's seven-day waiting period, state law allows him or her to transfer the firearm.[76]

In Minnesota, if a person wishes to acquire a handgun or semiautomatic military-style assault weapon from a federally licensed dealer but does not have a state-issued "transferee permit" or a permit to carry a handgun, Minnesota law requires the dealer to file a report with the local police chief or sheriff, who then performs a background check.[77] Since Minnesota is not a POC state and no Minnesota-issued permit qualifies the holder for a Brady exemption, the federal law requiring the dealer to contact the FBI directly for a NICS check also applies.

C. State Background Checks Prior to Issuance of a Permit to Purchase: Massachusetts is not a POC state, and an administrative regulation confirms that dealers must contact NICS directly prior to sale of a firearm.[78] However, Massachusetts requires a license for the purchase of any firearm, and requires dealers to verify the validity of a potential transferee's license prior to transferring a firearm through electronic contact with a state database. Similarly, the District of Columbia does not function as a POC, but firearm purchasers must first obtain a registration certificate, after an extensive background check. See our summary on Licensing Gun Owners & Purchasers for more information about licensing requirements.

6. ***State Laws Addressing the Problem of "Default Proceeds"*****:**[79] As noted above, if an FFL has not been notified within three business days after initiating a background check that a sale would violate federal or state laws, the sale may proceed by default. These sales by default, known as "default proceeds," allow many prohibited purchasers to buy guns. Several states have taken measures to extend the time allowed for completion of a background check, so that firearms cannot be transferred by default when a background check cannot be completed within three days.

A. Time for Background Check under State Background Check Laws: The background check laws in several POC states extend the time allowed for a background check. In California, all firearm transfers are subject to a 10-day waiting period.[80] If the California Department of Justice ("DOJ") cannot determine within the 10-day period whether the prospective purchaser is prohibited from possessing a firearm, DOJ may notify the dealer and prospective purchaser of this fact and obtain up to a total of 30 days to complete the background check. [81]

Maryland gives the Secretary of State Police seven days in which to approve or disapprove the transfer of a handgun. Maryland also prohibits the transfer of a handgun if the application is placed on hold because of an open disposition of criminal proceedings.

Washington allows five days to complete a background check on prospective handgun purchasers. However, if records indicate that a prospective purchaser has an arrest for a potentially disqualifying offense, a hold may be placed on the transaction for up to 30 days, pending receipt of the disposition, or longer upon a judicial order for good cause.[82]

In Tennessee, the Bureau of Investigation must deny a transfer if the background check reveals that the purchaser has been charged with a crime for which the purchaser, if convicted, would be prohibited from possessing a firearm, and either there has been no final disposition of the case, or the final disposition is not noted. However, the transfer may go forward if the Bureau receives written notice from the court indicating that no final disposition information is available.[83]

Pennsylvania law allows the State Police to temporarily delay a firearm transfer to determine whether a misdemeanor conviction involved domestic violence that would disqualify the purchaser under federal law.

B. Time for a Background Check under Licensing Laws: State laws that require a person to obtain a license or certificate before purchasing a firearm can provide law enforcement with longer periods of time to conduct a background check on the applicant. In the District of Columbia, a dealer cannot deliver a firearm unless the buyer has obtained a registration certificate from the Chief of Police. The Chief has 60 days from the date the application is received to determine "through inquiry, investigation, or otherwise," whether the applicant is entitled and qualified to receive a certificate. See our summary on Licensing Gun Owners & Purchasers for more information about licensing procedures.

7. The Scope of the Search: Certain states, such as Connecticut and Florida, require the agency conducting the background check to search any state or local records that are available. Other states are more specific about which records must be searched during a background check. Most state background check laws require a search of NICS and state criminal history records, as well as other records as described below.

***A. Mental Health Records*:** Although persons who have been adjudicated as mental defectives or involuntarily committed to mental institutions are prohibited by federal law from possessing firearms, not all mental health records have been reported to NICS. Detailed discussion of state laws governing mental health reporting is contained in our summary on Mental Health Reporting. As a result of the inadequacy of the states' reporting of mental health records to NICS, seven states

explicitly require a search of in-state mental health files as part of the background check process (California, Connecticut[84] Illinois, Massachusetts, Minnesota, New York,[85] Oregon, Pennsylvania, and Washington). Three states (Hawaii, Minnesota, and New Jersey[86]) require the purchaser to authorize a search of mental health files as part of the background check process.[87] In Minnesota, the authorization also applies to certain alcohol and drug abuse records.

In Washington, a signed application to purchase a handgun constitutes "a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release, to an inquiring court or law enforcement agency, information relevant to the applicant's eligibility to purchase a pistol." This disclosure is mandatory.

B. Juvenile court records: As described in our Categories of Prohibited People, a number of states prohibit firearm purchase or possession by individuals with certain juvenile convictions. In order to enforce these laws, Pennsylvania, Utah, and Wisconsin explicitly require a search of juvenile court records as part of a firearm purchaser background check. Colorado authorizes, but does not require, the disclosure of juvenile delinquency records for this purpose. Other states may include juvenile records in their definition of "criminal history records" or a similar term.[88]

C. Protective order and warrant information: Federal law and the laws in certain states prohibit firearm purchase or possession by individuals subject to domestic violence protective orders or for whom warrants have been issued. Wisconsin's law regarding the background check at the point of sale of a firearm and Massachusetts' law regarding the background check it conducts before issuing a firearms license both explicitly require a search for protective order records. The laws in Minnesota and Massachusetts also mention a search for outstanding warrants. Other states may conduct similar searches, although the laws are not explicit.

FEATURES OF A COMPREHENSIVE BACKGROUND CHECK LAW

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Universal background checks are required on all firearm purchasers (*California, Colorado, Connecticut, Delaware, New York, Rhode Island, District of Columbia; Maryland and Pennsylvania require universal background checks only for purchases of handguns*)[89]
- State acts as a Point of Contact for all firearm transfers *(13 states);* if the state does not act as a Point of Contact for all firearm transfers, the state requires an independent background check, utilizing state's independent records (*Minnesota (handguns and assault weapons), Rhode Island*)
- If the state requires a permit or certificate for the purchase of a firearm, the permit or certificate does not exempt the holder from a background check at the point of sale (*California (handguns), Connecticut, District of Columbia, Massachusetts, New Jersey, New York (handguns)*)
- Transfer of any firearm is prohibited until the background check process has been completed (*California*)

- Background check process includes search of all relevant in-state criminal records, mental health records (*seven states*), juvenile delinquency records (*Pennsylvania, Utah, Wisconsin*), warrants (*Massachusetts, Minnesota*) and protective order information (*Massachusetts, Wisconsin*)
- An applicant seeking to purchase a firearm must authorize disclosure of relevant mental files (*Hawaii, New Jersey*), including files related to drug and alcohol abuse (*Minnesota*)
- Mental health information and information about drug and alcohol abuse is reported to federal and state databases of prohibited purchasers[90]
- Criminal history information, including relevant juvenile delinquencies, warrants, and orders of protection, are reported to federal and state databases of prohibited purchasers
- Fee for background check is set at least at a level sufficient to cover administrative costs associated with background check system

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[1] Categories of persons who are prohibited from possessing firearms under federal and state law are detailed in our summary on Categories of Prohibited People.

[2] While federal law requires licensed dealers to conduct a background check on a gun purchaser, state laws often lack this requirement. State laws that mirror the federal law requiring dealers to conduct a background check enable local prosecution and incarceration of dealers who sell guns to individuals who have not undergone a background check. Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 11 (Sept. 2010), at http://www.tracetheguns.org/report.pdf. According to a report by Mayors Against Illegal Guns, states that do not have these laws are the source of crime guns at a 53% greater rate than states that do have such laws. *Id.*

[3] Bureau of Justice Statistics, U.S. Dep't of Justice, *Background Checks for Firearm Transfers, 2010 - Statistical Tables*, at http://bjsdata.ojp.usdoj.gov/content/pub/pdf/bcft10st.pdf. These statistics cover the period March 1, 1994 – Dec. 31, 2010, the most recent period for which this data is available.

[4] 18 U.S.C. § 922(t)(1).

[5] Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, *National Instant Criminal Background Check System (NICS) Operations 2012*, *at* http://www.fbi.gov/about-us/cjis/nics/reports/2012-operations-report.

[6] *Id*.

[7] U.S. General Accounting Office, *Gun Control: Implementation of the National Instant Criminal Background Check System* 13 (Feb. 2000), *at* http://www.gao.gov/new.items/g100064.pdf.

[8] Colleen L. Barry et al., *Perspective: After Newtown — Public Opinion on Gun Policy and Mental Illness,* 368 New Eng. J. Med. 1077-1081 (March 21, 2013) at http://www.nejm.org/doi/full/10.1056/NEJMp1300512?query=featured_home&&.

[9] Steven Sumner et al., *Firearm Death Rates and Association with Level of Firearm Purchase Background Check,* 35 Am. J. Prev. Med. 1 (July 2008), at http://www.ajpmonline.org/article/S0749-3797(08)00310-3/fulltext.

[10] *See* 28 C.F.R. § 25.4. Case law suggests that a federal statute requiring states to disclose records to the FBI would violate the Tenth Amendment. In *Printz v. U.S.*, 521 U.S. 898 (1997), a 5-4 decision, the Supreme Court struck down the interim provisions of the Brady Act obligating local law enforcement officers to conduct background checks on prospective handgun purchasers. The Court held that Congress cannot compel state officials to enact or enforce a federal regulatory program.

[11] Nat'l Consortium of Justice Information and Statistics, *Improving the National Instant Background Screening System for Firearm Purchases: Recommendations by SEARCH* 13, 19 (Feb. 2013), at http://www.search.org/files/pdf/ImprovingNICSforFirearmsPurchases.pdf.

[12] 18 U.S.C. § 922(g)(3); 27 C.F.R. § 478.11.

[13] Nat'l Consortium of Justice Information and Statistics, *Improving the National Instant Background Screening System for Firearm Purchases: Recommendations by SEARCH* 19 (Feb. 2013), at http://www.search.org/files/pdf/ImprovingNICSforFirearmsPurchases.pdf. *See also* United States General Accounting Office, GAO-12-684, *Gun Control—Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks* 20-24 (July 2012), *at* www.gao.gov/assets/600/592452.pdf.

[14] Mayors Against Illegal Guns, Fatal Gaps: *How Missing Records in the Federal Background Check System Put Guns in the Hands of Killers,* Nov. 2011, at http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_mimeo_revb.pdf.

[15] 18 U.S.C. § 922(g).
[16] *See* U.S. Dep't of Justice, *Information Needed to Enforce the Federal Prohibition Misdemeanor Crimes of Domestic Violence* (Nov. 2007), at http://www.ncdsv.org/images/MCDV_Info%20needed%20to%20enforce%20the%20firearm%20prohibition.pdf.
[17] *Gun Control: Implementation of the National Instant Criminal Background Check System, supra* note 9, at 12-13.
[18] Center for American Progress, *Recommendations for Executive Action to Combat Illegal Gun Trafficking and Gun Crime* 4 (June 10, 2013), at http://www.americanprogress.org/wp-content/uploads/2013/06/ExecActionGuns-4.pdf.
[19] *Id.*
[20] *Id.*
[21] Greenberg Quinlan Rosner Research & the Tarrance Group for the Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3, 6 (Apr. 10, 2008), at http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf.
[22] 18 U.S.C. § 922(s).
[23] Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Dep't of Justice, *Total NICS Background Checks,* at http://www.fbi.gov/about-us/cjis/nics/reports/total-nics-background-checks-1998_2013_monthly_yearly_totals-083113.pdf
[24] Bureau of Justice Statistics, U.S. Dep't of Justice, *Background Checks for Firearm Transfers, 2010 - Statistical Tables*, at http://bjsdata.ojp.usdoj.gov/content/pub/pdf/bcft10st.pdf. These statistics cover the period March 1, 1994 – Dec. 31, 2010, the most recent period for which this data is available.
[25] Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Dep't of Justice, *National Instant Criminal Background Check System (NICS),* (April 2012), at http://www.fbi.gov/about-us/cjis/nics/general-information/nics_overview.pdf.
[26] 27 C.F.R. § 478.124. The prospective purchaser completes a portion of Form 4473 by providing identifying information, including name, sex, home address, date and place of birth, etc., and signing and dating the form. *Id.*
[27] Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Dep't of Justice, *National Instant Criminal Background Check System (NICS) Operations 2012*, *at* http://www.fbi.gov/about-us/cjis/nics/reports/2012-operations-report.
[28] *Id.*
[29] Bureau of Justice Statistics, U.S. Dep't of Justice, *Background Checks for Firearm Transfers, 2010 - Statistical Tables* (Feb. 2013), at http://www.bjs.gov/content/pub/pdf/bcft10st.pdf.
[30] 27 C.F.R. § 478.102(a). After recording the unique identification number provided by NICS, the dealer records certain information about the firearm to be transferred, including the manufacturer, type, model, caliber or gauge and serial number. 27 C.F.R. § 478.124(c)(4). The dealer is required to retain Form 4473, regardless of whether the transaction is approved or denied or whether the firearm is actually transferred. 27 C.F.R. § 478.102.
[31] 27 C.F.R. § 478.102(c). The 30-day period covers only a single transaction as reflected on Form 4473. The transaction may, however, involve the transfer of multiple firearms.
[32] 18 U.S.C. § 922(t)(1).
[33] 18 U.S.C. § 922(t)(3); 27 C.F.R. § 478.102(d).
[34] 27 C.F.R. § 478.102(d).
[35] Pub. L. No. 110-180, §§ 102, 104, 121 Stat. 2559 (2008).
[36] *Id*., § 103(a), (b). In order to be eligible for these grants, a state must implement a "relief from disabilities" program meeting the Act's requirements, and allowing a person who has been adjudicated as a mental defective or committed to a mental institution to apply to the state for relief from the federal prohibition on purchase and possession of firearms and ammunition. *Id*., § 105(a)(1). For more information on the Act's application to records of persons with mental illness, see our summary on Mental Health Reporting.
[37] U.S. General Accounting Office, GAO-12-684, *Gun Control—Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks* (July 2012), at www.gao.gov/assets/600/592452.pdf..
[38] New Hampshire's law, while not explicitly requiring a background check, acknowledges the federal background check requirement by authorizing the state to act as a POC.
[39] As well as states with laws governing the background check that is required at the point of sale from a licensed dealer, the list that follows includes Hawaii, Iowa, Michigan, and North Carolina, because these states require certain firearm

purchasers to have a permit and the background check that occurs before these permits are issued takes the place of a background check at the point of sale from a licensed dealer under both state and federal law.

[40] Ala. Code §§ 13A-11-79, 41-9-649.

[41] Cal. Penal Code §§ 26815, 26825, 26845, 28100-28415.

[42] Colo. Rev. Stat. §§ 19-1-304(1)(a)(VII.5), (c)(II.5), (2)(a)(II.5), 24-33.5-424.

[43] Conn. Gen. Stat. §§ 29-33, 29-36l(d)(1), 29-37a(a), 29-37g(c).

[44] Del. Code Ann. Tit. 11, § 1448A.

[45] D.C. Code §§ 7-2502.01, 7-2502.03, 7-2502.04, 7-2502.05, 7-2502.07(a)-(b).

[46] Fla. Stat. § 790.065.

[47] Ga. Code Ann. §§ 16-11-171, 16-11-172.

[48] Haw. Rev. Stat. §§ 134-2, 134-3.5.

[49] 430 Ill. Comp. Stat. 65/3.1.

[50] Ind. Code Ann. §§ 35-47-2.5-1 – 35-47-2.5-15.

[51] Iowa Code §§ 724.16, 724.17 – 724.21A.

[52] Md. Code Ann., Pub. Safety §§ 5-117 - 5-126.

[53] Mass. Gen. Laws ch. 140, §§ 123, 129B, 131.

[54] Mich. Comp. Laws Serv. § 28.422.

[55] Minn. Stat. §§ 624.7131, 624.7132.

[56] Neb. Rev. Stat. § 69-2401-- 69-2423.

[57] N.H. Rev. Stat. Ann. § 159-D:1.

[58] N.C. Gen. Stat. §§ 14-402 - 14-404.

[59] Or. Rev. Stat. §§ 166.412, 166.432, 166.434.

[60] 18 Pa. Cons. Stat. §§ 6111 - 6111.3.

[61] R.I. Gen. Laws §§ 11-47-35, 11-47-35.2.

[62] Tenn. Code Ann. § 39-17-1316 .

[63] Utah Code § 76-10-526.

[64] Va. Code Ann. §§ 18.2-308.2:2, 52-4.4.

[65] Wash. Rev. Code Ann. §§ 9.41.090, 9.41.094, 9.41.097.

[66] Wis. Stat. § 175.35. See also Wis. Admin. Code Jus § 10.01-10.12.

[67] Federal Bureau of Investigation, *National Instant Criminal Background Check System Participation Map,* at http://www.fbi.gov/about-us/cjis/nics/general-information/participation-map.

[68] *Id.*

[69] *Id.*

[70] See N.J. Admin. Code §§ 13:54-3.12, 13:54-3.13(a)(6), 13.54-3.19.

[71] N.J. Stat. Ann. § 2C:58-3.

[72] Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice, *Permanent Brady Permit Chart* (August 26, 2011). The FBI determines whether a state's permitting process exempts purchasers from background checks, based on the statutory criteria set forth in 18 U.S.C. § 922(t)(3) and 27 C.F.R. § 478.102(d).

[73] Laws in Delaware, Florida, and Louisiana purport to exempt concealed weapons permit holders in those states from the background check requirement. Del. Code tit. 11, § 1448A(d)(5); Fla. Stat. § 790.065(1)(b); La. Rev. Stat. § 40:1379.3(T)(1). However, ATF does not recognize permit holders in these states as exempt. As a result, dealers in these states must conduct a background check even if the purchaser presents a concealed weapons permit.

[74] Sufficient documentation includes a utility bill from within the last three months, a residential lease, a property deed, military permanent duty station orders indicating assignment within California, or other evidence of residency as permitted by DOJ. Cal. Penal Code § 26845.

[75] In 2009, South Dakota repealed its background check law. See 2009 S.D. ALS 121, 4. However, South Dakota still prohibits sale of a handgun unless the purchaser presents evidence of identity. S.D. Codified Laws § 23-7-18.

[76] Concealed handgun license holders in Rhode Island are exempt from the Rhode Island background check requirement, but not the federal background check requirement.

[77] The identical background check must be run in order for the local police chief or sheriff to issue a transferee permit or permit to carry a handgun.

[78] 803 Mass. Code Regs. 10.06.

[79] The Law Center has not undertaken a comprehensive survey of state approaches to "default proceeds." The states noted provide examples of ways to address this issue.
[80] Cal. Penal Code §§ 26815, 27540, 28220-28225.
[81] Cal. Penal Code § 28220.
[82] Wash. Rev. Code Ann. § 9.41.090(3), (4).
[83] Alternatively, if the purchaser challenges a denial, the Bureau must proceed with efforts to obtain the final disposition information, and the purchaser may assist. If neither the purchaser nor TBI is able to obtain the final disposition information within 15 days, the Bureau must immediately notify the dealer that the transaction may go forward.
[84] Connecticut requires a search of certain records of the Department of Mental Health and Addiction Services before issuing a firearms license. Conn. Gen. Stat. § 29-38b(a).
[85] New York is not a POC state, and no Brady exemptions exist for licenses issued by New York. As a result, dealers in New York must contact NICS directly prior to the sale of every firearm. However, New York state law requires a license for the purchase of a handgun, and authorizes the release of mental health information for purposes of the background check that occurs before issuance of the license. New York licenses to possess handguns must be renewed every five years. N.Y. Penal Code § 400.00.
[86] New Jersey's law requiring authorization for a mental health check is part of its licensing law. N.J. Stat. Ann. § 2C:58-3e; N.J. Admin. Code § 13:54-1.4(b).
[87] Similarly, an administrative regulation in Maryland requires an applicant for the transfer of a handgun to authorize the disclosure of mental health records. Md. Code Regs. 29.03.01.03(A)(8). In addition, Illinois requires an applicant for a Firearm Owners Identification Card to authorize the release of mental health files prior to issuance of a Card. These Cards are valid for ten years. Although mental health files are searched during the background check at the point of sale in Illinois, no authorization is required at that time. 430 Ill. Comp. Stat. 65/4(3).
[88] *See, e.g.,* Fla. Stat. § 943.045. The Law Center has not conducted a comprehensive search to determine whether juvenile court records are included among criminal history records in all 50 states.
[89] Additional information on jurisdictions requiring universal background checks is contained in our summary on Universal Background Checks & the Private Sale Loophole.
[90] Additional information on access to mental health records for firearm purchaser background checks is contained in our summary on Mental Health Reporting.

Maintaining Records & Reporting Gun Sales

Background

Records of completed firearms sales and records of background checks of prospective firearms purchasers are critical tools for law enforcement. Through crime gun tracing, records of completed firearm sales can identify the last retail purchaser of a firearm that may have subsequently been used in a violent crime, and thus can lead to the identification and prosecution of violent criminals.[1] These records are most useful to law enforcement when they are collected in a central database and retained indefinitely, as they are under some of the state laws described below. Records of background checks of prospective firearms purchasers help law enforcement deter fraud and detect dealers who might be providing false information about the purchaser of a firearm.

Firearm Sales Records: Federal law requires licensed firearms dealers to maintain records of gun sales indefinitely, including information about the firearm(s) being purchased, as well as the purchaser.[2] Federal law prohibits the federal government from collecting firearm sales records in a central repository, however. **Without a central repository of all firearm sales records, gun tracing is a slow, cumbersome process.**

- As described in a report from the Government Accountability Office, the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) "must take a number of steps to trace a crime gun, including, as applicable, contacting the importer, manufacturer, and wholesaler of the firearm in order to identify the … retailer who sold the firearm to the first retail purchaser."[3]
- A 2010 report by the Washington Post found that a gun tracing investigation by ATF often involves making phone calls and poring over handwritten paperwork.[4]
- According to a 2013 report from the Center for American Progress, this "antiquated and inefficient system" means that "a firearms trace can take days, or even weeks, thereby frustrating criminal investigations."[5]

Centralized records of gun ownership would greatly increase the efficiency of the tracing process. These records would also help law enforcement retrieve firearms from persons who have become legally prohibited from possessing them, and could be used to alert law enforcement to the presence of guns at a private residence when they are responding to an emergency call.

In order for law enforcement to have complete information about gun ownership, however, Congress would need to close the private sale loophole, which allows guns to be sold by individuals who are not licensed firearms dealers. As detailed in our summary on Universal Background Checks & the Private Sale Loophole, unlicensed, private sellers may legally sell guns under federal law and are not required to maintain any records. As a result, collecting sales information from dealers falls short of a complete repository, except in jurisdictions that require private, unlicensed sellers to conduct transfers through licensed dealers. In a 2007 report, the International Association of Chiefs of Police (IACP) found that the absence of a recordkeeping requirement for private sales means that guns sold through such sales "become more difficult to trace if lost, stolen or criminally misused, making crimes involving them more difficult to solve."[6]

Background Check Records: Federally licensed firearm dealers are required to conduct background checks on prospective firearms purchasers to ensure that the firearm transfer would not violate federal or state law.[7] Although records of background checks do not identify the firearm to be purchased, these records can **help law enforcement deter fraud and detect dealers who might be providing false information** about the purchaser of a firearm. According to a 2004 report from the Office of the Inspector General (OIG), corrupt dealers may attempt to hide transfers to prohibited persons by falsifying information to the National Instant Criminal Background Check System (NICS), such as listing the prohibited buyer on the sales record but submitting to NICS the name of a person with a clean record.[8]

Until 2004, information on approved NICS background checks was retained by NICS for 90 days.[9] As described in our summary on Dealer Regulations, ATF lacks the resources to conduct frequent inspections of dealers, and few states adequately monitor dealers. Nevertheless, when ATF or state or local law enforcement inspected dealers prior to 2004, it could use background check records to verify that a dealer's transaction records match the information earlier submitted to NICS.[10]

As described below, approved purchaser information must now be destroyed after 24 hours, making it much easier for corrupt firearm dealers to avoid detection.[11] Some commentators have also noted that this destruction requirement makes it more difficult for law enforcement to identify and track straw purchasers who repeatedly buy guns on behalf of gun traffickers or criminals who wouldn't be able to pass a background check.[12]

Summary of Federal Law

Sales Records: Licensed firearms dealers are required to maintain records of the acquisition and sale of firearms indefinitely.[13] The dealer must record, "in bound form," the purchase or other acquisition of a firearm not later than the close of the next business day following the purchase or acquisition.[14] The dealer must similarly record the sale or other disposition of a firearm not later than seven days following the date of such transaction and retain Form 4473, the Firearms Transaction Record.[15] When a firearms business is discontinued, these records are delivered to the successor or, if none exists, to the Attorney General.[16]

A federally licensed firearms dealer must provide information from its records no later than 24 hours after receipt of a request by ATF for use in a criminal investigation.[17] However, federal law explicitly prohibits federal law enforcement agencies from: (1) using dealers' records of sales to establish a centralized system for the registration of firearms, firearm owners, or firearm transactions; or (2) requiring dealers' records of sales to be recorded in, or transferred to a centralized facility.[18] As a result, with very limited exceptions, records of firearm sales are not maintained at the federal level.[19]

Background Check Records: As of July 2004, approved purchaser information must be destroyed within 24 hours of the official NICS response to the dealer.[20] This destruction requirement has been imposed in appropriations bills as part of the so-called "Tiahrt Amendments," named after their chief proponent Rep. Todd Tiahrt (R-KS). As a result, ATF inspectors are no longer able to compare the information on file with the dealer to the information the dealer submitted to NICS.[21] For more information about the Tiahrt Amendments, see our summary on Gun Trafficking & Straw Purchases.[22]

The FBI maintains indefinitely the records of prospective purchasers whose applications are denied.[23]

SUMMARY OF STATE LAWS CONCERNING MAINTAINING RECORDS AND REPORTING GUN SALES

State laws governing retention of firearm sales records fall into the following categories: (1) laws that require sellers to retain sales records for a specified time period; and (2) laws that require firearms sales to be reported to law enforcement. Application of these laws to licensed dealers and private sellers is explained below. Many of these laws apply to the sale of handguns, but not long guns (rifles and shotguns).

Most state laws are silent with respect to the retention of background check records. However, nine states are required by statute to purge background check records after a short time period.

Description of State Laws Governing the Retention of Firearm Sales and Background Check Records

1. *States That Require Sellers to Retain Firearm Sales Records:* Nineteen states and the District of Columbia require sellers to maintain sales records reflecting the identity of the purchaser and the firearm purchased.[24] As shown in the chart below, some states have two laws on this subject, which apply in different situations depending on the type of firearm seller and the type of firearm being sold.

UNDER STATE LAW IN …	Sales Where Records Retained	Firearm Types Where Records Retained	Duration of Required Retention
AL	Dealer sales only	Handguns only	permanent
CA	All sales	All firearms	3 years
CO (2 laws)	Dealer sales	Handguns	unspecified
	Private sales	All firearms	
CT	All sales	All firearms	5 years
DE (2 laws)	Dealer sales	Handguns	unspecified
	Private sales	All firearms	
D.C.	All sales	All firearms	unspecified
FL	Dealer sales only	Handguns only	unspecified
IL (2 laws)	All sales	Handguns	unspecified
	All sales	All firearms	10 years
ME	Dealer sales only	All firearms	unspecified
MD (2 laws)	All sales	Handguns	3 years
	Dealer sales only	All firearms	unspecified
MA	Dealer sales only	All firearms	unspecified
MI (2 laws)	Dealer sales only	All firearms	unspecified
	Private sales	Handguns only	
NJ (2 laws)	Dealer sales only	All firearms	unspecified
	Private sales	Handguns only	

(chart cont'd)

UNDER STATE LAW IN …	Sales Where Records Retained	Firearm Types Where Records Retained	Duration of Required Retention
NY (2 laws)	Dealer sales	Handguns	unspecified
	Private sales	All firearms	
NC	Dealer sales only	Handguns	unspecified
OR	Dealer sales only	All firearms	5 years
PA (2 laws)	Dealer sales only	All firearms	20 years
	Private sales	Handguns only	
RI	All sales	All firearms	6 years
VT	Dealer sales only	Handguns only	6 years
WA	Dealer sales only	Handguns only	6 years

a. *States That Require Sellers to Retain Sales Records of All Firearms*

- *Licensed Dealers:* Eleven states (California,[25] Connecticut,[26] Illinois,[27] Maine,[28] Maryland,[29] Massachusetts,[30] Michigan,[31] New Jersey,[32] Oregon,[33] Pennsylvania[34] and Rhode Island[35]) and the District of Columbia[36] require licensed dealers to maintain records of sales of all firearms. Maine, Maryland, Massachusetts, Michigan, New Jersey, and the District of Columbia do not specify the period of retention. Retention periods in the other states range from three to twenty years.
- *Private Sellers:* Seven states (California,[37] Colorado,[38] Connecticut,[39] Delaware,[40] Illinois,[41] New York[42] and Rhode Island[43]) and the District of Columbia[44] require records to be maintained regarding private sales of all firearms. In Connecticut, Illinois and Rhode Island the private sellers are responsible for maintaining the record for five, ten, and six years respectively. California, Colorado, Delaware, New York and the District of Columbia require licensed dealers who process private transfers of firearms to create records of those transfers and maintain them indefinitely.

b. *States That Require Sellers to Retain Records of Handgun, But Not Long Gun, Sales*

- *Licensed Dealers:* Eight states (Alabama,[45] Colorado,[46] Delaware,[47] Florida,[48] New York,[49] North Carolina,[50] Vermont[51] and Washington[52]) require licensed dealers to maintain records of handgun sales, but not long gun sales. In Vermont and Washington, the retention period is six years. In Alabama, records must be retained permanently. The remaining states do not specify the period of retention.
- *Private Sellers:* Maryland requires private sellers to maintain handgun sales records for three years.[53] In Pennsylvania, all transfers of handguns must be conducted through licensed dealers or law enforcement, thereby ensuring that the recordkeeping requirements on licensed dealers will include records of private sales

of these firearms.[54] Michigan[55] and New Jersey[56] also require private sellers of handguns to retain a record of the sale indefinitely.

2. *States That Require Sellers to Report Firearm Sales to Law Enforcement:* Eleven states require sellers to report firearm sales information identifying the purchaser and firearm purchased to law enforcement. These state statutes do not specify the length of time law enforcement must retain the records. Law enforcement in the District of Columbia has access to information regarding purchasers of all firearms through its registration requirements.[57]

	Sales that Must be Reported	Firearm Types Where Sales Reported
AL	Dealer sales only	Handguns only
CA	All sales	All firearms
CT	All sales	All firearms
D.C.	All sales	All firearms
HI	All sales	All firearms
MD	All sales	Handguns only
MA	All sales	All firearms
MI	All sales	Handguns only
NJ	All sales	Handguns only
NY	All sales	Handguns only
PA	All sales	Handguns only
WA	Dealer sales only	Handguns only

a. *States That Require the Reporting of All Firearm Sales*

- *Licensed Dealers:* Four states – California,[58] Connecticut,[59] Hawaii,[60] and Massachusetts[61] – require dealers to report all firearm transactions to law enforcement.
- *Private Sellers:* Connecticut,[62] Hawaii[63] and Massachusetts[64] require the reporting of sales of all firearms by private sellers. In California, all firearm transfers must be conducted through licensed dealers, thereby ensuring that sales reporting requirements will include private sales.

b. *States That Require the Reporting of Handgun, But Not Long Gun, Sales:*

- *Licensed Dealers:* Seven states (Alabama,[65] Maryland,[66] Michigan,[67] New Jersey,[68] New York,[69] Pennsylvania,[70] and Washington[71]) require licensed dealers to report all handgun sales, but not long gun sales, to state or local law enforcement.[72]
- *Private Sellers:* Four states (Maryland,[73] Michigan,[74] New Jersey,[75] and Pennsylvania[76]) also require private sales of handguns, but not long guns, to be reported to law enforcement. In New York, law enforcement has access to information about individuals who have purchased handguns from private sellers through that state's licensing program.[77]

3. *States That Are Required by Statute to Purge Background Check Records*:[78] The following eight states specify short time limits after which firearm background check records must be purged, ranging from immediately upon approval of the application to sixty days after the application is approved.[79] In addition, Pennsylvania requires the State Police to destroy its records of sales of long guns (but not handguns) within 72 hours of the background check.[80]

Florida[81]
Nebraska[82]
New Hampshire[83]
Rhode Island[84]
Tennessee[85]
Utah[86]
Virginia[87]
Wisconsin[88]

FEATURES OF COMPREHENSIVE LAW REGARDING MAINTAINING RECORDS AND REPORTING GUN SALES

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Dealers are required to retain records of all firearms transfers *(11 states and the District of Columbia)*
- Private sellers are subject to similar recordkeeping requirements as licensed dealers, either because all transfers are conducted through licensed dealers *(California, Colorado, Delaware, New York, and the District of Columbia)*, or because the requirements separately are imposed on private sellers *(Connecticut, Illinois, Rhode Island)*
- The retention period, if not indefinite, is for a lengthy period of time *(Pennsylvania – 20 years, Illinois – 10 years)*
- Dealers and private sellers are required to report information on all firearm transfers to law enforcement *(California, Connecticut, Hawaii, and Massachusetts)*
- Law enforcement is required to retain firearm transfer information indefinitely
- Law enforcement is required to retain background check records indefinitely

[1] A system of firearm registration by owners also provides law enforcement with firearm ownership information that may be used to trace crime guns. Additional information on registration is contained in our summary on the Registration of Firearms.

[2] Dealers record sales information on a federal Firearms Transaction Record (ATF Form 4473). Additional information on ATF Form 4473 is contained in our summary on Background Check Procedures.

[3] U.S. Gov't Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 25 (June 2009), at http://www.gao.gov/products/GAO-09-709. The National Tracing Center (NTC) of ATF tracks the purchase histories of crime guns recovered by federal, state, local and international law enforcement agencies. In requesting a crime gun trace, a law enforcement agency provides ATF with information on the make, model and serial number of the firearm, and the circumstances of its recovery. In 2003, the NTC was able to identify the initial retail purchaser of a crime gun 50 to 60% of the time. Office of the Inspector General, U.S. Department of Justice, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, *Evaluation & Inspection Report*

I-2004-005 8-9 (July 2004), *at* http://www.usdoj.gov/oig/reports/ATF/e0405/final.pdf. After learning the identity of the initial retail purchaser, agents must then contact him or her to follow the chain of custody of the gun through any subsequent private sales.

[4] *See* Sari Horwitz and James V. Grimaldi, *ATF's Oversight Limited in Face of Gun Lobby*, Wash. Post, Oct. 26, 2010, at http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505823.html?sub=AR.

[5] Center for American Progress, *Blindfolded, and with One Hand Tied Behind the Back: How the Gun Lobby Has Debilitated Federal Action on Guns and What President Obama Can Do About It* (March 2013), at http://www.americanprogress.org/wp-content/uploads/2013/03/GunRidersBrief-7.pdf.

[6] Int'l Ass'n of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (2007), at http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87.

[7] Some states also require private sellers to conduct background checks on prospective purchasers. Additional information on private sales is contained in the section on Universal Background Checks & the Private Sale Loophole. Additional information on background checks is contained in the section on Background Check Procedures.

[8] *Evaluation & Inspection Report, supra* note 3, at x-xi; Center for American Progress, *Blindfolded, and with One Hand Tied Behind the Back* 4-5 (March 18, 2013), at http://www.americanprogress.org/wp-content/uploads/2013/03/GunRidersBrief-7.pdf.

[9] *Evaluation & Inspection Report, supra* note 3, at x.

[10] *Id.* at 51-54.

[11] *Id.* at x-xi; 51-54.

[12] Center for American Progress, *Blindfolded, and with One Hand Tied Behind the Back* 4-5 (March 18, 2013), at http://www.americanprogress.org/wp-content/uploads/2013/03/GunRidersBrief-7.pdf; Mayors Against Illegal Guns, *The Tiahrt Amendments,* at http://www.mayorsagainstillegalguns.org/html/federal/tiahrt.shtml.

[13] 18 U.S.C. § 923(g)(1)(A). *See also* 27 C.F.R. § 478.129 (stating that such records must be maintained for at least 20 years).

[14] 27 C.F.R. § 478.125(e).

[15] *Id.*; 27 C.F.R. § 478.124(b). If the sale is approved, NICS provides the dealer with a unique identification number. The dealer records this number and certain information about the firearm to be transferred, including the manufacturer, type, model, caliber or gauge and serial number, on Form 4473. *Id.*, 27 C.F.R. § 478.124(c). The dealer is required to retain Form 4473, regardless of whether the transaction is approved or denied or whether the firearm is actually transferred. 27 C.F.R. § 478.102.

[16] 18 U.S.C. § 923(g)(4).

[17] 18 U.S.C. § 923(g)(7), 27 C.F.R. § 478.25a. See Bureau of Alcohol, Tobacco, Firearms & Explosives, *National Tracing Center Fact Sheet* (Feb. 2013), at http://www.atf.gov/publications/factsheets/factsheet-national-tracing-center.html.

[18] 18 U.S.C. § 926.

[19] As described in our summary on the Registration of Firearms, ATF does maintain a limited registry of machine guns, short-barreled shotguns or rifles, and silencers, known as the National Firearms Registration and Transfer Record. Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice, *Brochure of the National Firearms Act Branch*, *at* http://www.atf.gov/pub/nfab (Feb. 23, 2006). Machine guns were banned in 1986, and it is unlawful to possess or transfer a machine gun unless it was lawfully owned prior to May 19, 1986. 18 U.S.C. § 922(o). The Act also includes, in a category defined as "any other weapon," certain smooth-bore handguns. 26 U.S.C. § 5845(a), (e). The vast majority of handguns are excluded.

[20] The requirement that approved purchaser information be destroyed within twenty-four hours has been included in appropriations bills funding the Department of Justice (which includes ATF and the FBI). *See* Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 617, 118 Stat. 3 (2004); Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, § 615, 118 Stat. 2809, 2915 (2005); Science, State, Justice, Commerce, and Related Appropriations Act of 2006, Pub. L. No. 109-108, § 611, 119 Stat. 2290, 2336 (2005); Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5, 121 Stat. 8 (2007); Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, 121 Stat. 1844 § 512 (2007); Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, § 511, 123 Stat. 524 (2008), Consolidated Appropriations Act 2010, Pub. L. No. 111–117, 123 Stat. 3128-3129 (2009); Consolidated and Further Continuing Appropriations Act 2012, Pub. L. No. 112-55, § 511, 125 Stat. 552 (2011). This language includes "futurity language" making these restrictions permanent until Congress makes an affirmative effort to remove them. See Center for American Progress, *Blindfolded, and with One Hand Tied Behind the Back* (March 18, 2013), at http://www.americanprogress.org/wp-content/uploads/2013/03/GunRidersBrief-7.pdf; Congressional Research Service, *Gun Control Legislation* 33 (Aug. 3, 2012), at

http://fpc.state.gov/documents/organization/196925.pdf. Each of these acts contains additional provisions which restrict disclosure of data obtained by ATF via crime gun traces.

[21] *Evaluation & Inspection Report, supra* note 3, at x-xi; 51-54.

[22] See also our webpage on the Tiahrt Amendments at http://smartgunlaws.org/federal-law-on-tiahrt-amendments/.

[23] 28 C.F.R. § § 25.9(a).

[24] Missouri makes it a state crime for a firearms dealer to violate the federal requirement to create a record of sale. *See* Mo. Rev. Stat. § 571.080 (referring to 18 U.S.C. § 922(b)). Tennessee and Wyoming laws are similar to Missouri. Tenn. Code § 39-17-1316; Wyo. Stat. Ann. § 6-8-203. Virginia requires dealers to retain a consent form from a firearms purchaser for two years, but this form does not include descriptive information about the firearm purchased. Va. Code Ann. § 54.1-4201. Wisconsin's law is similar to Virginia's, but it does not specify a time period. Wis. Stat. § 175.35.

[25] Cal. Penal Code §§ 11105, 11106, 28100-28215.

[26] Conn. Gen. Stat. §§ 29-31, 29-33(e), 29-37a(d), (f)(3).

[27] 430 Ill. Comp. Stat. 65/3(b), 720 Ill. Comp. Stat. 5/24-4.

[28] Me. Rev. Stat. Ann. tit. 15, § 455.

[29] Md. Code Ann., Pub. Safety §§ 5-101, 5-120, 5-145, Md. Code Regs. 29.03.01.09(D).

[30] Mass. Gen. Laws ch. 140, § 123.

[31] Mich. Comp. Laws §§ 28.422(5), 28.422a(2), 750.232

[32] New Jersey's statute regarding dealers' sales records refers to handguns, but an administrative regulation applies to all firearms. *See* N.J. Stat. Ann. §§ 2C:58-2b, 2C:58-3h, N.J. Admin. Code §§ 13:54-1.8(b), 13:54-3.14.

[33] Or. Rev. Stat. §§ 166.412(2)(f), 166.434.

[34] 18 Pa. Cons. Stat. §§ 6111(b)(1), (1.1), (1.4), (c), 6113(a)(5), (d), 37 Pa. Code § 33.111.

[35] R.I. Gen. Laws §§ 11-47-35(a)(2), 11-47-35.2(b)

[36] D.C. Code Ann. § 7-2504.04(a)(3), (b).

[37] Cal. Penal Code §§ 11105, 11106, 28100-28215.

[38] Colo. Rev. Stat. §§ 12-26-102, 12-26-103, 18-12-112.

[39] Conn. Gen. Stat. §§ 29-31, 29-33(e), 29-37a(d), (f)(3).

[40] Del. Code Ann. tit. 11, § 1448B, tit. 24, §§ 904, 904A.

[41] 430 Ill. Comp. Stat. 65/3(b), 720 Ill. Comp. Stat. 5/24-4.

[42] N.Y. Gen. Bus. Law § 898, N.Y. Penal Law §§ 265.00(3), 400.00(12).

[43] R.I. Gen. Laws §§ 11-47-35(a)(2), 11-47-35.2(b).

[44] D.C. Code Ann. § 7-2504.04(a)(3), (b).

[45] Ala. Code § 40-12-143.

[46] Colo. Rev. Stat. §§ 12-26-102, 12-26-103, 18-12-112.

[47] Del. Code Ann. tit. 11, § 1448B, tit. 24, §§ 904, 904A.

[48] Fla. Stat. §§ 790.065, 790.0655.

[49] N.Y. Gen. Bus. Law § 898, N.Y. Penal Law §§ 265.00(3), 400.00(12).

[50] N.C. Gen. Stat. § 14-406.

[51] Vt. Stat. Ann. tit. 13, § 4006.

[52] Wash. Rev. Code Ann. § 9.41.110(9).

[53] Md. Code Ann., Pub. Safety §§ 5-101, 5-120, 5-145, Md. Code Regs. 29.03.01.09(D)

[54] 18 Pa. Cons. Stat. §§ 6111(b)(1), (1.1), (1.4), (c), 6113(a)(5), (d), 37 Pa. Code § 33.111.

[55] Mich. Comp. Laws §§ 28.422(5), 28.422a(2), 750.232.

[56] N.J. Stat. Ann. §§ 2C:58-2b, 2C:58-3h.

[57] D.C. Code §§ 7-2502.08, 22-4510.

[58] Cal. Penal Code §§ 11105, 11106.

[59] Conn. Gen. Stat. §§ 29-33(e), 29-37a(d), (f)(3).

[60] Haw. Rev. Stat. § 134-2(f).

[61] Mass. Gen. Laws. ch. 140, §§ 123, 128A, 128B.

[62] Conn. Gen. Stat. §§ 29-33(e), 29-37a(d), (f)(3).

[63] Haw. Rev. Stat. § 134-2(f).

[64] Mass. Gen. Laws. ch. 140, §§ 123, 128A, 128B.

[65] Ala. Code § 13A-11-79.

[66] Md. Code Ann., Pub. Safety §§ 5-101(r), 5-120, 5-123(d), 5-124(e).

[67] Mich. Comp. Laws §§ 28.422(5), (6), 28.422a(2), (3).
[68] N.J. Stat. Ann. §§ 2C:58-2e, 2C:58-3h, N.J. Admin. Code §§ 13:54-1.8(b).
[69] N.Y. Penal Law §§ 265.00(3), 400.00(12).
[70] 18 Pa. Cons. Stat. §§ 6111(b)(1), 6111(b)(1.4).
[71] Wash. Rev. Code Ann. §§ 9.41.110(9), 9.41.129.
[72] In Oregon, dealers buying or accepting in trade used firearms are required to record the name of the person selling or trading the firearm, and the make, model and manufacturer's identification number of the firearm, and submit a copy of the record to local law enforcement. Or. Rev. Stat. § 166.427.
[73] Md. Code Ann., Pub. Safety §§ 5-101(r), 5-120, 5-123(d), 5-124(e).
[74] Mich. Comp. Laws §§ 28.422(5), (6), 28.422a(2), (3).
[75] N.J. Stat. Ann. §§ 2C:58-2e, 2C:58-3h, N.J. Admin. Code §§ 13:54-1.8(b).
[76] 18 Pa. Cons. Stat. §§ 6111(b)(1), 6111(b)(1.4).
[77] *See* N.Y. Penal Law § 400.00.
[78] An administrative regulation in Colorado requires the destruction of background check records within 24 hours. 8 Colo. Code Regs. § 1507-20.
[79] In addition, Oregon statutes provide that the state *may* retain records of background checks for no more than five years. Or. Rev. Stat. §§ 166.412, 166.434. Minnesota allows a person who has received a handgun or semiautomatic military-style assault weapon from a dealer to submit a request to law enforcement that no record be maintained of the transfer. Law enforcement must then return the report of the application for the transfer to that person. No state government employee or agency may thereafter maintain a record of the transfer. Minn. Stat. § 624.7132, subd. 10.
[80] 18 Pa. Cons. Stat. Ann. § 6111(b)(1.1)(v). *See Allegheny County Sportsmen's League v. Rendell,* 860 A.2d 10 (Pa. 2004) (holding that long gun sales records, but not handgun sales records, must be destroyed).
[81] Fla. Stat. Ann. §§ 790.335, 790.065(4)(a).
[82] Neb. Rev. Stat. Ann. § 69-2412.
[83] N.H. Rev. Stat. Ann. § 159-D:2.
[84] R.I. Gen. Laws §§ 11-47-35(a)(2), 11-47-35.2(b).
[85] Tenn. Code Ann. § 39-17-1316(j).
[86] Utah Code Ann. § 76-10-526(8).
[87] The Virginia State Police must retain background check records for approved purchasers of multiple handgun transactions for 12 months. Va. Code Ann. § 18.2-308.2:2(B)(3).
[88] Wis. Stat. § 175.35(2k)(ar).

Sales of Multiple Guns

Background

Laws limiting an individual's ability to purchase multiple firearms within a short span of time reduce gun trafficking. Interstate firearms trafficking flourishes, in part, because states regulate firearm sales differently and there is no federal limitation on the number of guns that an individual may purchase at any one time.[1] States with weaker firearms laws attract gun traffickers who make multiple purchases and resell those guns in states with stronger firearms laws.[2] See our summary on Gun Trafficking & Straw Purchases for additional information about gun trafficking.

Firearms sold in "multiple sales" are frequently used in crime. Federal law defines a "multiple sale" as the sale of two or more guns to the same purchaser within five business days.[3] ATF studies of tracing data have demonstrated that:

- 22% of all handguns recovered in crime in 1999 were originally purchased as part of a multiple sale;[4] and
- 20% of all handguns recovered in crime in 2000 were originally purchased as part of a multiple sale.[5]

Similarly, a study of the sale and subsequent criminal use of handguns sold in Maryland in the 1990s revealed that handguns sold in multiple sales accounted for about a quarter of crime guns and were up to 64% more likely to be used in crime than handguns sold in single sales.[6]

A more recent report from ATF, focusing on rifles and shotguns purchased in the U.S. and used in crimes in Mexico, also found that purchases of multiple firearms by people not licensed as firearms dealers are a "significant indicator" of firearms trafficking.[7] A case study of firearms trafficking by one cartel found that during a 15-month period, the cartel purchased 336 firearms, including 251 long guns, and all but one of those firearms was purchased from U.S. gun dealers as part of a multiple sale.[8]

Laws limiting multiple sales work. Virginia's one-gun-a-month law – which was in effect from 1993 to 2012 and prohibited the purchase of more than one handgun per person in any 30-day period – significantly reduced the number of crime guns traced to Virginia dealers. Virginia initially adopted its law after the state became recognized as a primary source of crime guns recovered in states in the northeastern U.S. After the law's adoption, the odds of tracing a gun originally acquired in the Southeast to a Virginia gun dealer (as opposed to a dealer in a different southeastern state) dropped by:

- 71% for guns recovered in New York;
- 72% for guns recovered in Massachusetts; and
- 66% for guns recovered in New Jersey, New York, Connecticut, Rhode Island and Massachusetts combined.[9]

Americans support laws limiting the number of guns a person may purchase in a given time frame. An April 2012 poll found that 69% of respondents support these laws.[10] A separate poll in the spring of 2008 found that 65% of Americans specifically favor limiting the number of handguns an individual is allowed to purchase to one gun per month.[11]

Summary of Federal Law

Federal law does not limit the number of guns a person may buy in any given time period, but does require federal firearm licensees ("FFLs") to report multiple sales of handguns to ATF and other specified law enforcement agencies.[12] "Multiple sales" are defined under federal law as the sale of two or more handguns by a federally licensed firearms dealer (FFL) to a non-FFL within five consecutive business days.[13] This reporting requirement was created to enable law enforcement to "monitor and deter illegal interstate commerce in pistols and revolvers by unlicensed persons,"[14] although there is no federal requirement that law enforcement do so.

In addition, because long guns have become Mexican cartels' "weapons of choice,"[15] in 2011 ATF began requiring FFLs in four states along the Mexican border (Arizona, California, New Mexico, and Texas) to report multiple sales of certain semiautomatic rifles.[16] More specifically, the reporting requirement applies to semiautomatic rifles with a caliber greater than .22 and the ability to accept a detachable magazine.[17] FFLs who are dealers or pawnbrokers must report to ATF whenever they sell or otherwise dispose of two or more such weapons to the same person at one time or during any five consecutive business days.[18]

The federal reporting requirements have aided ATF in combatting gun trafficking. According to the U.S. Department of Justice, "multiple sales reports provide ATF with timely, actionable leads that can enable it to more quickly identify suspected firearms traffickers and disrupt their operations."[19] During the first eight months after the long gun reporting requirement went into effect, ATF initiated 120 investigations based on multiple long gun sale reports and recommended prosecution of more than 100 defendants in 25 separate cases.[20]

Federal law does not *require* law enforcement to investigate the multiple sales or purchases of firearms that are reported, however. Moreover, federal law prohibits state and local law enforcement agencies from disclosing reports of multiple sales (other than those involving prohibited purchasers) and requires those agencies to destroy such reports and related records within 20 days of receipt.[21]

The federal multiple sales reporting requirement can also be evaded by gun traffickers in areas where there are no additional state or local laws. According to a report by the U.S. Government Accountability Office, "law enforcement officials noted traffickers are aware of how to avoid the federal reporting requirement by spreading out purchases of handguns at different FFLs. For example, traffickers can effectively purchase two or more guns within five business days without having such purchases reported as long as they purchase no more than one gun at any individual FFL."[22] States like California require all gun sales to be reported to state or local law enforcement, however, as described in our summary on Maintaining Records & Reporting Gun Sales.

SUMMARY OF STATE LAWS RESTRICTING PURCHASES OR SALES OF MULTIPLE FIREARMS

Three states (California, Maryland and New Jersey) and the District of Columbia have laws limiting handgun purchases or sales to one per month.[23]

1. *California:* California law prohibits any person from purchasing more than one handgun within any 30-day period. In addition, a licensed firearms dealer may not deliver a handgun to any person following notification from the California Department of Justice that the purchaser has applied to acquire a handgun within the preceding 30-day period. Finally, firearms dealers must conspicuously post in their licensed premises a warning, in block letters at least one inch in height, notifying purchasers of these restrictions.[24]

2. *District of Columbia*: A person may not register more than one handgun in the District during any 30-day period. Since every handgun must be registered, this amounts to a purchase and sale limitation of one handgun per 30-day period.[25] See our summary on the Registration of Firearms for more detail about the District's registration law.

3. *Maryland*: Maryland prohibits any person from purchasing more than one handgun or assault weapon within a 30-day period. Under limited circumstances, a person may be approved by the Secretary of the Maryland State Police to purchase multiple handguns or assault weapons in a 30-day period. Maryland also penalizes any dealer or other seller who knowingly participates in an illegal purchase of a handgun or assault weapon.[26] Maryland also bans most assault weapons; see our summary on Assault Weapons for more information.

4. *New Jersey:* New Jersey prohibits licensed firearms dealers from knowingly delivering more than one handgun to any person within any 30-day period. With limited exceptions, no person may purchase more than one handgun within any 30-day period.[27] New Jersey requires a handgun purchaser to obtain a separate permit for each handgun purchased, and present the permit to the seller. The seller must keep a copy of each permit presented. For more information about permits to purchase handguns and other licenses for gun owners and purchasers, see our summary on Licensing Gun Owners & Purchasers.

See our summary on Gun Trafficking & Straw Purchases for additional laws to prevent gun trafficking.

SELECTED LOCAL LAW

New York City

As noted above, efforts to restrict multiple purchases and sales of firearms generally focus on handguns, and usually limit purchases or sales to one per month. New York City, however, takes a more comprehensive approach. The City limits all firearm purchases (not just handguns) to one handgun and one rifle or shotgun every 90 days.[28] Before a sale can occur, the seller must check with the governmental authority that licensed the purchaser to ensure that the purchaser hasn't bought

another firearm within the previous 90 days. This restriction represents a powerful disincentive to gun traffickers, who prefer to buy and transport multiple weapons at one time. By preventing bulk sales, the City has taken an important step toward thwarting the accumulation of weapons in the hands of criminals.

MODEL LAW

The Law Center's September 2011 publication, *Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales*, includes a model law limiting firearm purchases to one per person every 90 days. For more information, contact the Law Center.

FEATURES OF A COMPREHENSIVE LAW RESTRICTING PURCHASES OR SALES OF MULTIPLE FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- The restriction applies to both multiple purchases and sales of specified classes of weapons *(California, Maryland, New Jersey)*
- The restriction on multiple sales applies to both licensed dealers and private sellers *(District of Columbia, Maryland)*
- A state agency maintains purchase information and must verify that the person has not purchased another weapon within the time period *(California, District of Columbia)*
- The restriction applies to all firearms *(New York City)* or at least handguns *(California, District of Columbia, Maryland, New Jersey),* and also may apply to other classes of weapons such as assault weapons and 50 caliber rifles, if they are not otherwise banned *(Maryland (assault weapons))*
- The most frequently used approach is to restrict multiple purchases or sales to no more than one per person per month *(California, District of Columbia, Maryland, New Jersey),* but stricter limitations may be used *(New York City limits purchases to one every 90 days)*

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[1] Douglas S. Weil & Rebecca C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, JAMA 1759, 1759-60 (1996).
[2] *Id.*
[3] 18 U.S.C. § 923(g)(3)(A).
[4] Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999) National Report* 40 (Nov. 2000).
[5] Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) National Report* 50 (July 2002).
[6] Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use*, Report to the National Institute of Justice 6, 83 (2007), at http://www.ncjrs.gov/pdffiles1/nij/grants/221074.pdf.
[7] U.S. Gov't Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 28 (2009), at http://www.gao.gov/new.items/d09709.pdf.
[8] U.S. Dept of Justice, Office of the Inspector General, *Review of ATF's Project Gunrunner* 38-39 (November 2010), at www.justice.gov/oig/reports/ATF/e1101.pdf.

[9] Douglas S. Weil & Rebecca Knox, *Evaluating the Impact of Virginia's One-Gun-A-Month Law*, The Center to Prevent Handgun Violence 1, 4-6 (Aug. 1995).
[10] Ipsos/Reuters Poll, Gun Rights & Regulations (April 2012), at http://www.ipsos- na.com/download/pr.aspx?id=11545. (Press Release at http://www.ipsos-na.com/news-polls/pressrelease.aspx?id=5586.)
[11] Greenberg Quinlan Rosner Research & the Tarrance Group for the Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 6, (Apr. 10, 2008), available at http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf.
[12] 18 U.S.C. § 923(g)(3)(A).
[13] *Id.*
[14] U.S. General Accounting Office, *Federal Firearms Licensee Data – ATF's Compliance with Statutory Restrictions* 11 (Sept. 1996), available at http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GGD-96-174/pdf/GAOREPORTS-GGD-96-174.pdf.
[15] U.S. Dep't of Justice, Office of the Inspector General, *Review of ATF's Project Gunrunner* 36 (November 2010), at www.justice.gov/oig/reports/ATF/e1101.pdf.
[16] *Letter from Charles Houser, Chief, Nat'l Tracing Ctr., to Fed. Firearms Licensees* 1 (Jul. 12, 2011), at http://www.scribd.com/doc/61159256/ATF-Multiple-Rifle-Sale-Reporting-Requirement-Letter. *See also* Agency Information Collection Activities; Proposed Collection Comments Requested: Report of Multiple Sale or Other Disposition of Certain Rifles, 76 Fed. Reg. 24,058, 24,058 (Apr. 29, 2011); Bureau of Alcohol, Tobacco, Firearms & Explosives, *Q&As for the Report of Multiple Sale or Other Disposition of Certain Rifles,* at http://www.atf.gov/files/firearms/industry/080911-qa-multiple-rifles.pdf.
[17] Agency Information Collection Activities; Proposed Collection Comments Requested: Report of Multiple Sale or Other Disposition of Certain Rifles, 76 Fed. Reg. 24,058, 24,058 (Apr. 29, 2011); *Letter from Charles Houser, Chief, Nat'l Tracing Ctr., to Fed. Firearms Licensees* 1 (Jul. 12, 2011), at http://www.scribd.com/doc/61159256/ATF-Multiple-Rifle-Sale-Reporting-Requirement-Letter.
[18] *Id.*
[19] U.S. Dep't of Justice, Office of the Inspector General, *Review of ATF's Project Gunrunner* 36 (November 2010), at www.justice.gov/oig/reports/ATF/e1101.pdf. According to ATF officials, "information ATF is able to maintain on certain firearms purchases, such as information on some multiple firearms purchases, enables ATF to more quickly trace those firearms if they turn up in crime because the information is already entered into a searchable database." U.S. Gov't Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 25 (June 2009), at http://www.gao.gov/products/GAO-09-709.
[20] Alan Berlow, Center for Public Integrity, *Current Gun Debate May Not Help Beleaguered ATF* (Feb. 11, 2013), at http://www.publicintegrity.org/2013/02/11/12155/current-gun-debate-may-not-help-beleaguered-atf.
[21] 18 U.S.C. § 923(g)(3)(B).
[22] U.S. Gov't Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 28 (June 2009), at http://www.gao.gov/products/GAO-09-709.
[23] South Carolina enacted a one-handgun-a-month law but repealed the provision in 2004. Virginia also enacted a one-handgun-a-month law but repealed the provision in 2012, due to strong lobbying by the firearms industry and National Rifle Association.
[24] Cal. Penal Code §§ 26835, 27535, 27540. This restriction does not apply to sales between private persons, even if they are processed as required through a licensed dealer. Cal. Penal Code § 27535.
[25] D.C. Code Ann. § 7-2502.03(e).
[26] Md. Code Ann., Pub. Safety §§ 5-128(a), (b), 5-129, 5-144.
[27] N.J. Stat. Ann. §§ 2C:58-2(a)(7), 2C:58-3(i), 2C:58-3.4.
[28] N.Y. Admin. Code § 10-302.1.

Waiting Periods

Background

Laws imposing waiting periods require that a specified number of days elapse between the time a firearm is purchased and it is physically transferred to the purchaser. The goals of a waiting period are to: (1) give law enforcement officials sufficient time to perform a background check; and (2) provide a "cooling off" period to help guard against impulsive acts of violence.

There is no federal waiting period. As described below, federal law allows a dealer to deliver a firearm to a purchaser as soon as a background check is completed, or after three business days even if a background check has not been completed. Each year, over 3,000 ineligible persons receive firearms through this default provision. The FBI has determined that in 2012, the number was as high as 3,722.[1] The average time it takes for the FBI to determine that illegal purchasers are ineligible to receive firearms is 25 days.[2] As a result, **the FBI has recommended extending the research time to complete background checks** to reduce the number of prohibited people who are able to purchase firearms by default.[3] For more information on this issue, see our summary on Background Check Procedures.

Waiting periods also help reduce suicides and other impulsive acts of violence. Suicides are frequently impulsive acts, and approximately 90% of people who have lived through a suicide attempt do not subsequently die in suicides.[4] A person who attempts suicide by a method other than a firearm is much more likely to live than a person who uses a firearm.[5]

- Approximately 50% of suicides in the U.S. are committed with a gun.[6]
- More than 90% of all suicide attempts with a firearm, if serious enough to require hospital treatment, result in death.[7]
- Suicide attempts by jumping, by comparison, carry a 34% fatality rate; suicide attempts by drug poisoning carry a 2% fatality rate.[8]

Americans strongly support waiting periods for firearm purchases. A December 2011 poll found that 74% of people without a firearm in the home support a five-day waiting period for the purchase of firearms, while 66% of non-NRA gun-owners and 50% of NRA members support this measure.[9]

Summary of Federal Law

There is no federal waiting period. Under the National Instant Criminal Background Check System (NICS), a dealer may transfer a firearm to a prospective purchaser as soon as he or she passes a background check.[10] If the FBI is unable to complete a background check within three business days, the dealer may complete the transfer by default.[11]

Federal law does not require private sellers to perform background checks on gun purchasers. Accordingly, persons purchasing firearms from private sellers may take immediate possession of their weapons, unless state or local law provides otherwise.[12]

SUMMARY OF STATE LAWS GOVERNING WAITING PERIODS

Ten states and the District of Columbia have waiting periods that apply to the purchase of some or all firearms.[13] See our summary on Background Check Procedures for state laws that prohibit gun sales or transfers until a background check is completed.

Additional states require firearm purchasers to obtain a license or permit prior to the purchase of a firearm. Licensing laws of this kind play a similar role to waiting period laws. See our summary on Licensing Gun Owners & Purchasers for information about licensing laws.

States Imposing Waiting Periods for Purchases of All Firearms

State (*Waiting Period)*
California (10 days)[14]
District of Columbia (10 days)[15]
Hawaii (14 days)[16]
Illinois (24 hours) (long guns); 72 hours (handguns)[17]
Rhode Island (7 days)[18]

States Imposing Waiting Periods for Purchases of Handguns and Assault Weapons

State (Waiting Period)
Minnesota (7 days)[19]

States Imposing Waiting Periods for Handguns Only

State (Waiting Period)[20]
Florida (3 days)[21]
Iowa (3 days)[22]
Maryland (7 days)[23]
New Jersey (7 days)[24]
Wisconsin (48 hours)[25]

Description of State Laws Governing Waiting Periods

In addition to the District of Columbia, ten states currently have laws requiring waiting periods: California, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Jersey, Rhode Island, and Wisconsin.

1. *States Imposing a Waiting Period on All Firearm Purchases:* California, Rhode Island and the District of Columbia impose a statutory waiting period on all firearm purchases. Subject to limited exceptions, California and the District of Columbia require a ten-day waiting period for all firearm purchases.[26] Rhode Island imposes a seven-day waiting period for all purchases of firearms unless the purchaser is a concealed handgun license holder. However, in Rhode Island, the seller must deliver the

firearm to the purchaser if within seven days he or she does not receive background check information that would disqualify the potential buyer from purchasing the firearm.

In Hawaii, all firearm purchases require issuance of a permit. No permit may be issued earlier than 14 calendar days after the date of the application, except for sales to state or federally licensed dealers, persons with a license to carry a handgun, or where a firearm is brought into the state and registered in accordance with the state's registration statute.[27] All permits must be issued or the application denied before the twentieth day from the date of application. Permits issued for long guns can be used for subsequent purchases of long guns for one year from date of issuance.

In Illinois, it is unlawful for anyone to deliver a firearm prior to the expiration of the statutory waiting periods, which are 24 hours for long guns and 72 hours for handguns. For transfers through licensed dealers and at gun shows, the Department of State Police must approve the transfer or inform the seller of the applicant's ineligibility within these waiting periods. The waiting periods begin to run at the time an application to purchase the firearm is made. "Application" is defined to mean "when a buyer and seller reach an agreement to purchase a firearm." Non-residents of Illinois who purchase long guns at gun shows are not subject to these waiting periods.

2. *States Imposing a Waiting Period on Purchases of Handguns and Assault Weapons:* Minnesota imposes a seven-day waiting period on transfers of handguns and assault weapons from the day the dealer delivers a transfer report to the police chief or sheriff.[28] The police chief or sheriff may waive part of the waiting period in writing if he or she finds that the transferee requires access to a handgun or assault weapon because of a threat to the life of the transferee or a member of the transferee's household. The waiting period does not apply to transfers by private sellers, or to transfers to individuals with a transferee permit or a permit to carry a handgun.

3. *States Imposing Waiting Periods on Purchases of Handguns Only:* Florida, Iowa, Maryland, New Jersey, and Wisconsin have waiting periods for handgun purchases only.[29]

a. *48 hours:* Wisconsin prohibits federally licensed firearms dealers from transferring any handgun to any person until 48 hours have elapsed from the time the dealer has received confirmation that the Department of Justice has obtained the request for a record search.[30]

b. *3 days:* Florida[31] imposes a mandatory three-day waiting period, excluding weekends and legal holidays, between the retail purchase and delivery of any handgun. In Iowa, no handgun may be transferred until the transferee obtains a permit to purchase the handgun, which becomes valid three days after the date of application.[32]

c. *7 days:* In Maryland, any person who transfers a handgun must wait seven days following the time a prospective purchaser completes an application to purchase the firearm and the application is forwarded to the Secretary of the Maryland State Police. Similarly, New Jersey prohibits retail firearms dealers from delivering a handgun to any person unless the person possesses a valid permit to purchase a handgun and at least seven days have elapsed since the date of application for the permit. The time period to obtain the permit itself can be as long as 30 days (45 days for non-residents)[33] while the permit application is processed.

d. *Exceptions:* Among states with statutory waiting periods only for handguns, Florida and Iowa exempt concealed weapons permit holders from these waiting periods. Florida also exempts persons trading in another handgun. Most states exempt sales to law enforcement.

MODEL LAW

The Law Center's September 2011 publication, *Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales*, includes a model law imposing a ten-day waiting period prior to the sale of a firearm. For more information, contact the Law Center.

FEATURES OF COMPREHENSIVE LAW GOVERNING WAITING PERIODS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Waiting period is established for all firearm purchases, of sufficient duration to allow a cooling-off period prior to the purchaser taking possession of the firearm *(California, District of Columbia-10 days, Hawaii-14 days, Rhode Island-7 days)*
- Permits to carry firearms in public do not exempt a purchaser from the waiting period *(California, Illinois, Maryland, New Jersey, Wisconsin, District of Columbia)*
- Transfer of firearms is prohibited until the background check process has been completed, regardless of whether the waiting period has elapsed *(Maryland)*[34]

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[1] Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Dep't of Justice, *National Instant Criminal Background Check System (NICS) Operations 2012*, at http://www.fbi.gov/about-us/cjis/nics/reports/2012-operations-report.

[2] U.S. General Accounting Office, *Gun Control: Implementation of the National Instant Criminal Background Check System* 13 (Feb. 2000), at http://www.gao.gov/new.items/g100064.pdf.

[3] *Id.*

[4] Matthew Miller et al., *Suicide Mortality in the United States: The Importance of Attending to Method in Understanding Population-Level Disparities in the Burden of Suicide,* 33 Ann. Rev. Pub. Health 393 (2012).

[5] Matthew Miller et al., *The Epidemiology of Case Fatality Rates for Suicide in the Northeast,* 43 Annals Of Emergency Med. 723, 726 (2004).

[6] Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Injury Mortality Reports, 1999-2010, for National and Regional* (Sept. 2012), http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html.

[7] *Id.*

[8] *Id.*

[9] John Sides, *Gun owners vs. the NRA: What the polling shows,* Wash. Post (Dec. 2012) at http://www.washingtonpost.com/blogs/wonkblog/wp/2012/12/23/gun-owners-vs-the-nra-what-the-polling-shows/. Similarly, a survey conducted for the New England Journal of Medicine in January 2013 found that 76% of Americans, including 67% of gun owners and 47% of NRA members, support giving law enforcement up to 5 business days, if needed, to complete a background check for gun buyers. Colleen L. Barry et al., *Perspective: After Newtown — Public Opinion on Gun Policy and Mental Illness,* 368 New Eng. J. Med. 1077-1081 (March 21, 2013) at http://www.nejm.org/doi/full/10.1056/NEJMp1300512?query=featured_home&&.

[10] 18 U.S.C. § 922(t)(1).

[11] *Id.*

[12] Detailed information about private sales is contained in our summary on Universal Background Checks & the Private Sale Loophole.
[13] South Dakota repealed its 48-hour waiting period for the purchase of a handgun in 2009. 2009 S.D. ALS 122. Connecticut currently imposes a two-week waiting period on long gun sales, but a law that will become effective April 1, 2014 replaces that waiting period with a licensing requirement. *See* Conn. Gen. Stat. § 29-37a(g). Connecticut already imposes a licensing requirement on handgun sales.
[14] Cal. Penal Code §§ 26815(a), 26950-27140, 27540(a), 27600-27750.
[15] D.C. Code Ann. § 22-4508.
[16] Haw. Rev. Stat. Ann. § 134-2(e). Hawaii's waiting period does not apply to subsequent purchases of long guns during the year following an initial purchase.
[17] 720 Ill. Comp. Stat. 5/24-3(A)(g).
[18] R.I. Gen. Laws §§ 11-47-35(a)(1), 11-47-35.1, 11-47-35.2.
[19] Minn. Stat. § 624.7132, subds. 4, 12. Minn. Stat. § 624.7132, subd. 4 is unclear with respect to the length of the waiting period, referring both to a "five business day waiting period" and a "seven day waiting period."
[20] South Dakota repealed its 48-hour waiting period for the purchase of a handgun in 2009. 2009 S.D. ALS 122.
[21] Florida's three-day waiting period excludes weekends and legal holidays. Fla. Stat. Ann. § 790.0655(1); Fla. Const. art. VIII, § 5(b).
[22] Iowa Code § 724.20.
[23] Md. Code Ann., Pub. Safety §§ 5-123 - 5-125. Maryland's waiting period applies to the transfer of "regulated firearms," which are defined as handguns and assault weapons, but the transfer of assault weapons will soon be generally banned. *See* Md. Code, Crim. Law § 4-303 (as amended by 2013 Md. S.B. 281, effective October 1, 2013).
[24] N.J. Stat. Ann. §§ 2C:58-2a(5)(a), 2C:58-3f.
[25] Wis. Stat. §§ 175.35(2)(d), 175.35(2g)(c)4.c.
[26] In California, if the California Department of Justice ("DOJ") cannot determine within the ten-day period whether the prospective purchaser is prohibited from possessing a firearm, DOJ may notify the dealer and prospective purchaser of this fact and obtain up to a total of 30 days to complete the background check. *See* Cal Penal Code § 28220(f).
[27] Hawaii requires registration of all firearms. Firearms brought into the state must be registered within three days of arrival. Haw. Rev. Stat. Ann. § 134-3(a). Additional information on Hawaii's registration requirements is contained in our summary on the Registration of Firearms.
[28] In Minnesota, with certain limited exceptions, if a person wishes to acquire a handgun or assault weapon from a federally licensed dealer, but does not have a transferee permit or a permit to carry, then the dealer must file a report with the police chief or sheriff, after which time the police chief or sheriff will conduct a background check of the prospective purchaser. Minn. Stat. § 624.7132.
[29] In addition, dealers in Washington are prohibited from transferring a handgun to a purchaser until five business days have elapsed from the time of receipt of the application to purchase unless a background check is completed beforehand. Wash. Rev. Code Ann. § 9.41.090(1)(c). Furthermore, dealers must await the completion of a background check for up to 60 days for anyone without a valid Washington driver's license or state identification card, or for anyone who has been a resident for less than 90 consecutive days prior to the dealer's receipt of the application to purchase. *Id.* However, these waiting periods do not apply to concealed handgun license holders. Wash. Rev. Code Ann. § 9.41.090(1).
[30] In Wisconsin, if the initial background check indicates a felony charge without a recorded disposition, the 48-hour waiting period is extended to the end of the third complete working day commencing after the day on which the finding is made. The Department must notify the firearms dealer of the extension as soon as practicable. During the extended period, the Department is to make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable.
[31] Florida's constitution authorizes counties to enact three to five-day waiting periods, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within the county. "Sale" is defined to include gun shows and other events open to the public outside of retail firearms establishments. Concealed weapons permit holders are not subject to such waiting periods when purchasing a firearm. Fla. Const. art. VIII, § 5(b). .
[32] After the Iowa permit is issued, the holder may purchase additional handguns without a waiting period for the duration of the permit (one year).
[33] Note that federally licensed dealers may not sell handguns to out-of-state residents. Additional information on transfer restrictions imposed on federally licensed firearms dealers is contained in our summary on Dealer Regulations.

[34] Maryland has addressed the problem of "default proceeds" under federal law, which results when a firearm is transferred at the end of the waiting period, even if the background check has not been completed. Additional information about the problem of default proceeds and the approaches used to address the problem is contained in our summary on Background Check Procedures.

Part 3: Gun Owner Responsibilities

Introduction

This Part focuses on laws that impose responsibilities on gun owners regarding their ownership or purchase of a firearm. It begins with a section describing laws that require gun owners or purchasers to obtain a license, and then continues with a section describing laws that require firearms to be registered. The third and final section describes laws that require gun owners to report lost or stolen firearms. Laws regarding the storage of firearms are described in Part 5.

Licensing of Gun Owners & Purchasers

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Registration of Firearms

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Licensing Gun Owners & Purchasers

Background

Licensing laws facilitate responsible gun ownership by requiring a person to obtain a license before purchasing a firearm. Although licensing laws vary, the most comprehensive laws require all gun owners to possess a license and regularly renew it. These licenses may only be issued or renewed after the applicant has undergone a background check and safety training, and has passed written and performance-based tests showing that the applicant knows how to safely load, fire and store a gun, and has knowledge of relevant firearms laws.

Licensing laws are one method for closing the "private sale loophole" and ensuring that every person who purchases or possesses a gun has undergone a background check. Other states close the private sale loophole by requiring a background check at the point of sale of a firearm. For more information about this issue, see our summary on Universal Background Checks & the Private Sale Loophole. Licensing laws that require periodic renewal can also help law enforcement confirm that a gun owner remains eligible to possess firearms, and can facilitate the removal of firearms from people who have become ineligible.

Training and testing requirements in licensing laws are designed to ensure that gun owners understand relevant firearms laws, and know how to safely store and handle firearms. Proper storage and handling of firearms help reduce the shocking number of unintentional shootings, firearms thefts, and incidents in which unauthorized persons, such as children and criminals, gain access to firearms every year. For statistics regarding these problems, see our summary on Safe Storage & Gun Locks.

Licensing laws also help prevent the trafficking of crime guns, and make it more difficult for criminals, juveniles and other prohibited purchasers to obtain guns.

- A September 2010 report by Mayors Against Illegal Guns found that states that require purchase permits for all handgun sales are the sources of guns recovered from crimes in other states at less than one-third the rate of states that do not have such laws.[1]
- A 2001 study analyzing firearm tracing data from 25 U.S. cities revealed that states with some form of both registration and licensing systems have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place.[2]

In 2007, Missouri repealed its requirement that handgun purchasers obtain a permit after a background check. Since that repeal:

- The share of crime guns recovered in Missouri that were originally purchased in-state has grown by 25%;
- A key indicator of crime gun trafficking – the share of guns that were recovered at crime scenes within two years of their original sale – has doubled; and
- The crime gun murder rate in the state has risen nearly 25%.[3]

Public opinion polls show that Americans strongly support licensing laws. A national survey conducted in January 2013 found that 77.3% of Americans (including 59.4% of gun owners) support requiring people to obtain a license from a local law enforcement agency before buying a gun to verify their identity and ensure that they are not legally prohibited from having a gun.[4] The licensing of handgun owners receives even more support, with 85% of respondents – including 73% of gun owners – in a 2001 nationwide poll favoring laws requiring handgun purchasers to obtain a permit before buying a handgun.[5] In that poll, 70% of the respondents mistakenly believed that a system of licensing and registration already exists.[6] For information about registration laws, see our summary on the Registration of Firearms.

Summary of Federal Law

Federal law does not require licensing of gun owners or purchasers.

For information about the exemption that federal law provides for certain license holders to the background check required when a firearm is purchased from a licensed dealer, see our summary on Background Check Procedures.

SUMMARY OF STATE LAWS GOVERNING LICENSING OF GUN OWNERS OR PURCHASERS[7]

In general, licensing laws fall into two broad categories. Eleven jurisdictions mandate that prospective firearm purchasers obtain a permit or license prior to the purchase of at least some firearms. These laws are sometimes known as "permit to purchase" licensing schemes. Illinois and Massachusetts, on the other hand, require a "license to own" a firearm, and New York requires a license to own a handgun. Unlike a permit to purchase, a license to own a firearm must remain valid for as long as the person owns the firearm. The District of Columbia's registration requirement also functions as a license requirement.

Any of these forms of licensing requirement can be used to impose a background check requirement. See our summary on Universal Background Checks & the Private Sale Loophole for further information. Both permits to purchase and licenses to own firearms can also be used to ensure that firearm owners or purchasers have undergone adequate safety training or testing.

State Licensing Requirements for Gun Purchase or Possession

State	Type of Firearms	Type of license	Safety training or exam required	Duration
California[8]	All firearms	Permit to purchase	Yes	5 years[9]
Connecticut[10]	All firearms and ammunition	Permit to purchase	Yes	5 years

(chart cont'd)

State	Type of Firearms	Type of license	Safety training or exam required	Duration
District of Columbia[11]	All firearms	Registration	Yes	3 years
Hawaii[12]	All firearms	Permit to purchase	Yes (handguns)	10 days
			No (long guns)	1 year
Iowa[13]	Handguns	Permit to purchase	No	1 year
Illinois[14]	All firearms	License to own	No	10 years
Maryland[15]	Handguns	Permit to purchase	Yes	10 years
Massachusetts[16]	All firearms and ammunition devices	License to own	Yes	6 years
		Permit to purchase (handguns only)	Yes	10 days
Michigan[17]	Handguns	Permit to purchase[18]	No	30 days
Nebraska[19]	Handguns	Permit to purchase	No	3 years
New Jersey[20]	All firearms	Permit to purchase[21]	No	So long as eligible (long guns)
				90 (handguns)[22]
New York[23]	Handguns	License to own	No	5 years
North Carolina[24]	Handguns	Permit to purchase	No	5 years
Rhode Island[25]	Handguns	Permit to purchase	Yes	unspecified

Minnesota offers an optional permit to purchase handguns and semiautomatic military-style assault weapons; this permit only exempts the holder from the state requirement of a background check prior to the purchase of such weapons from a federally licensed dealer.[26] See our summary on Background Check Procedures for more information.

Description of State Laws Governing Licensing of Gun Owners or Purchasers
For citations to these laws, please see the chart above.

1. *States Requiring Licenses for Purchasers or Owners of All Firearms:* The laws described below require licenses to possess and/or permits to purchase for all firearms. California, Connecticut, Hawaii and New Jersey require permits to purchase all firearms. Illinois requires a license to purchase and possess all firearms. Massachusetts requires a license to possess all firearms and a permit to purchase handguns. Each state's licensing scheme has unique elements, which are described below.

California – Permit to Purchase: California requires a Firearm Safety Certificate ("FSC") prior to purchase of any firearm. The FSC is valid for 5 years. This requirement is currently only applicable to handguns, but will become applicable to all firearms as of January 1, 2015.

- **Duration:** California Firearm Safety Certificates are valid for five years from the date of issue.
- **No Limit on Number of Firearms Purchased:** California does not impose any limit on the number of firearms that may be purchased by the holder of a permit or certificate.

Connecticut – Permit to Purchase:[27] Connecticut requires a person who wishes to purchase or receive a handgun to obtain either a permit to carry a handgun or a handgun eligibility certificate. Connecticut requires a person who wishes to purchase or receive a long gun to obtain a long gun eligibility certificate, a permit to carry a handgun, or a handgun eligibility certificate. Permits and certificates may be revoked in the event the holder becomes disqualified.

- **Duration:** Connecticut permits and certificates are valid for five years from the date of issue.
- **No Limit on Number of Firearms Purchased:** Connecticut does not impose any limit on the number of firearms that may be purchased by the holder of a permit or certificate.

District of Columbia – Registration: Details about D.C.'s registration requirements for all firearms can be found in our summary on the Registration of Firearms.

Hawaii – Permit to Purchase: In Hawaii, anyone wishing to acquire a firearm must obtain a permit from the county chief of police.[28] As part of the application process, applicants undergo a background check and must sign a waiver allowing access to mental health records. Permits may not issue until at least 14 days have passed after the date of application, and all permits must be issued or denied before the 20th day from the date of application. (Several exceptions to the 14-day waiting period exist, including transfers to law enforcement officers, persons licensed to carry a handgun, and sales to licensed dealers.) Permits may be revoked for good cause. When a firearm is purchased, the permit is used as a record of the purchase, and must be sent with a description of the firearm purchased, to the issuing authority.

- **Duration:** Permits to acquire a handgun are valid for 10 days from the date of issue, and long gun permits are valid for one year from date of issue.
- **Single Purchase:** Handgun purchases are limited to one handgun per permit.

Illinois – License to Purchase or Possess: In Illinois, no person may acquire or possess any firearm or ammunition without a valid Firearm Owner's Identification (FOID) card. Each applicant for a FOID card is required to complete an application and "submit evidence" to the Department of State Police (DSP) that she or he is not a prohibited purchaser.[29] The DSP has the authority to revoke a FOID card if the holder becomes a prohibited purchaser. Effective January 1, 2014, a private person who sells or transfers a firearm must contact DSP to verify the validity of the purchaser's FOID card.

- **Duration:** FOID cards are valid for ten years from the date of issue.
- **No Limit on Number of Firearms Purchased:** Illinois does not impose any limit on the number of firearms that may be purchased by the holder of a FOID card.

Massachusetts – License to Possess and Permit to Purchase: In Massachusetts, all firearm possessors are required to obtain either a Firearm Identification (FID) card or a Class A or B license to carry a firearm. FID card holders are permitted to purchase and possess rifles or shotguns, excluding large capacity weapons.[30] A Class A license allows the licensee to purchase and possess all types of lawful firearms; a Class B license is limited to "non-large capacity" handguns and any rifle or shotgun, but does not permit carrying concealed, loaded handguns in a public place.[31] All applicants must undergo a background check. The licensing authority has 40 days to approve or deny the application. A FID card or Class A or B license must be revoked or suspended if the holder becomes disqualified from obtaining the card or license.

To purchase a handgun in Massachusetts, a FID card holder must also obtain a permit to purchase. A permit to purchase is issued at the discretion of the licensing authority for a "proper purpose," following a background check.

- **Duration:** FID cards and Class A and Class B licenses are valid for 6 years; permits to acquire handguns are valid for 10 days.
- **Single Purchase:** Handgun purchases are limited to one handgun per permit. However, there is no limit on the number of firearms that may be purchased with a Class A or Class B license, or on the number of non-large capacity rifles or shotguns that may be purchased with a FID Card.

New Jersey – Permit to Purchase: In New Jersey, all handgun purchasers must obtain a permit to purchase a handgun. Purchasers of rifles or shotguns are required to obtain a Firearms Purchaser Identification Card (FPIC). Both require the applicant to undergo a background check and waive confidentiality relating to any institutional confinement for a mental or psychiatric condition. New Jersey law also provides that no handgun transfer permit or FPIC may be issued where the transfer would not be in the interest of the public health, safety or welfare. In addition, the applicant must be of "good character and good repute in the community" where he or she lives. The FPIC or permit must be issued within 30 days of application, or 45 days if the applicant is a non-resident. A FPIC may be revoked by a superior court after a hearing with notice, upon a finding that the holder no longer qualifies for the FPIC.

- **Duration:** Handgun purchase permits in New Jersey are valid for 90 days, and may be extended for an additional 90 days for good cause. New Jersey FPICs are valid as long as the holder remains eligible to possess a firearm.
- **Single Purchase:** Handgun purchases are limited to one handgun per permit and one handgun per 30 day-period.[32]

2. *States Requiring Licenses or Permits for Handguns Only:* Iowa, Maryland, Michigan, Nebraska, New York, North Carolina and Rhode Island all require licenses or permits for purchase or possession of handguns only.[33]

Iowa: Iowa requires an annual permit to acquire pistols or revolvers. Permits may be revoked in the event the holder becomes disqualified.

Maryland: Maryland requires that a person obtain a permit before the person buys, rents, or receives a handgun. A permit is valid for 10 years.

Michigan: Michigan requires either a license to carry a concealed handgun or a handgun purchase license, although a person who purchases a handgun from a licensed dealer does not need either license. A handgun purchase license is valid for 30 days.

Nebraska: Nebraska issues handgun certificates, although handgun purchasers outside Omaha who purchase from licensed dealers or who have a concealed weapons permit do not need a handgun certificate. Purchasers from private sellers must obtain a handgun certificate. Handgun certificates are valid for 3 years.

New York: New York requires a license to purchase or possess a handgun.[34] Handgun licenses in New York must be recertified every 5 years, and must specify the weapon by caliber, make, model, manufacturer's name and serial number. Specific provisions apply to permits in New York City, where the duration is 3 years, and in Nassau, Suffolk and Westchester Counties, where the duration is 5 years.

North Carolina: North Carolina requires a handgun purchaser to obtain either a permit to purchase a handgun or a concealed handgun permit. Both are valid for 5 years. The handgun purchase permit is valid for purchase of a single handgun, and must be revoked if the person becomes ineligible.

Rhode Island: Rhode Island requires a pistol/revolver safety certificate issued by the state Department of Environmental Management. The certificate remains valid indefinitely.

3. *States Requiring Safety Training or a Safety Exam Prior to Issuance of a License or Permit:* California, Connecticut, D.C., and Massachusetts require safety training or testing before a license or permit is issued. Massachusetts requires safety training of all applicants for a Firearm Identification (FID) card, Class A or Class B license, or permit to purchase a handgun. Applicants must submit a basic firearms safety certificate issued following a course that includes instruction on: (1) the safe use, handling and storage of firearms; (2) methods for securing and childproofing firearms; (3) the

applicable laws relating to the possession, transportation and storage of firearms; and (4) knowledge of operation, potential dangers and basic competency in the ownership and usage of firearms.

In the District of Columbia, an applicant to register a firearm must complete a firearms training and safety class and demonstrate knowledge about firearms laws, safe storage of firearms, and requirements for storage.

California requires anyone purchasing a handgun to obtain a Firearm Safety Certificate (FSC) prior to purchase. To obtain a FSC, the applicant must pass a written safety test. In addition, subject to limited exceptions, all firearm purchasers are required to perform a safe handling demonstration with the firearm being purchased in the presence of a certified instructor. California law specifies various safe handling tasks the prospective purchaser must perform based on the type of firearm to be purchased.

Connecticut requires safety training prior to issuance of any firearm permit. More specifically, in Connecticut, applicants for a handgun eligibility certificate, a permit to carry a handgun, or a long gun eligibility certificate must successfully complete an approved course in the safety and use of firearms.

Hawaii, Maryland, and Rhode Island also require safety training or a safety exam prior to issuance of a handgun license or permit. Hawaii requires handgun permit applicants to complete an approved course that focuses on: (1) the safe use, handling and storage of firearms and firearms safety in the home; and (2) state firearms laws. Maryland applicants must complete an approved firearm safety training course that includes instruction on state firearms law, home firearm safety, handgun mechanisms and operation, and an orientation component that demonstrates the person's safe operation and handling of a firearm. In Rhode Island, anyone wishing to purchase a handgun who does not have a concealed handgun license and is not a member of law enforcement must complete a basic two-hour handgun safety course.[35]

SELECTED LOCAL LAW

New York City

As noted above, while state law in New York requires a person to obtain a permit for the purchase or possession of a handgun, this requirement does not apply to rifles or shotguns. In New York City, however, a rifle or shotgun permit is required for the purchase or possession of rifles or shotguns. Permits are issued following a background check, and are valid for three years. Permits are renewed automatically unless the police commissioner has reason to believe the applicant's status has changed since the previous application. Permits may be revoked and weapons seized upon evidence that the holder of the permit has become disqualified. A rifle or shotgun permit is also required for possession of rifle or shotgun ammunition and a rifle or shotgun ammunition feeding device.[36]

MODEL LAW

The Law Center's September 2011 publication, *Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales*, includes a model law requiring the licensing of firearm owners. For more information, contact the Law Center.

FEATURES OF A COMPREHENSIVE LAW LICENSING GUN OWNERS OR PURCHASERS[37]

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- License is required for possession of any firearm *(D.C., Illinois, Massachusetts)*, and must be shown prior to purchase of any firearm (*California, Connecticut, Hawaii, New Jersey*)
- License must be shown prior to purchase of a firearm from any seller, even if the seller is not a licensed dealer *(6 states and D.C. -- any firearm; 7 states -- handguns only)*
- License conditions include:
    - Thorough background check *(Connecticut, D.C., Hawaii, Illinois, Massachusetts, New Jersey – all firearms; Iowa, Michigan, New York and North Carolina also require background checks, but only for handgun licenses)*
    - Safety training *(Connecticut, D.C., Massachusetts – all firearms; Hawaii, Maryland, and Rhode Island also require safety training, but only for handgun licenses)*
    - Hands-on testing, including firing testing, to demonstrate safe use of firearms
    - Written testing to demonstrate knowledge of applicable firearm laws *(California and D.C. require testing on firearms laws)*
- License has finite duration *(California, Connecticut, D.C., Hawaii, Illinois, Massachusetts– all firearms; Iowa, Maryland, Michigan, New Jersey and North Carolina also have licenses of finite duration, but only for handguns)*
- Renewal process includes background check and testing as described above *(Massachusetts)*
- Licensee is required to report theft or loss of license and firearms[38]
- License is subject to revocation in cases where licensee becomes a prohibited purchaser *(Connecticut, D.C., Hawaii, Illinois, Massachusetts, New Jersey – all firearms; Iowa also provides for revocation under these circumstances, but only for handgun licenses)*, or fails to comply with applicable federal, state and local firearms laws
- Fee for license is set at a level sufficient to cover administrative costs associated with licensing system
- Firearm seller or transferor must obtain a copy of the purchaser's license, record a description of the firearm purchased, and forward this record to law enforcement[39]
- Additional requirements are imposed for handgun permit to purchase:
    - Short duration applies to handgun permit to purchase *(Hawaii – 10 days, Massachusetts – 10 days, Michigan – 30 days, New Jersey – 90 days)*
    - Permit to purchase is limited to one handgun per permit *(Hawaii, Massachusetts, New Jersey, North Carolina)*

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[1] Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 17 (2010), available at http://www.tracetheguns.org/report.pdf. According to this report, states that require handgun purchase permits often require that a prospective gun buyer visit a law enforcement agency to obtain the permit – which may deter criminals and traffickers from applying. The report also suggests that the enhanced background checks these laws may impose on license applicants make it more difficult for gun traffickers to obtain firearms. *Id. See also* Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking* 14 (Dec. 2008), at http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf.

[2] Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 Inj. Prevention 184, 188-89 (2001). The study included jurisdictions with concealed carry permits and dealer

sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

[3] Mayors Against Illegal Guns, *The Impact of Eliminating Missouri's Background Check Requirement,* at http://libcloud.s3.amazonaws.com/9/5d/f/1990/MAIG_-_Lessons_from_Missouri0713.pdf.

[4] Colleen L. Barry et al., *Perspective: After Newtown — Public Opinion on Gun Policy and Mental Illness,* 368 New Eng. J. Med. 1077-1081 (March 21, 2013) at http://www.nejm.org/doi/full/10.1056/NEJMp1300512?query=featured_home&&.

[5] Press Release, The Educational Fund to Stop Gun Violence, *New Poll Finds American Voters Overwhelmingly Support Handgun Licensing and Registration, Criminal Background Checks* (June 12, 2001), *at* http://www.commondreams.org/news2001/0612-05.htm. *See* Lois Hess, Editorial, *Bush Undermining Gun Control Laws*, Balt. Sun, July 31, 2001, at 11A, at http://www.commondreams.org/views01/0731-03.htm (82% of respondents supported laws requiring the licensing and registration of handguns).

[6] *Id.*

[7] This summary does not include a description of states issuing permits to carry concealed weapons, nor does it include a discussion of state background check requirements. These topics are addressed in our summaries on Concealed Weapons Permitting and Background Check Procedures.

[8] Cal. Penal Code §§ 16370, 16670, 26840-26859, 31610-31700.

[9] In California, universal background checks help to ensure that prohibited persons would not be permitted to purchase firearms, notwithstanding the long duration of the Firearm Safety Certificate (FSC). To address the problem posed by gun owners who could fall into a prohibited category while the FSC remains valid, the state maintains a Prohibited Armed Persons File, an on-line database that allows the California Department of Justice to cross-reference information on persons who own or possess a firearm against a list of individuals who have become ineligible to own or possess firearms. Cal. Penal Code §§ 30000, 30005. This information may be shared with a limited group of public and private entities and individuals, including law enforcement, for the purpose of determining if persons are armed yet prohibited from possessing firearms. Cal. Penal Code § 30000.

[10] Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36i, 29-37a, 29-38g – 29-38j.

[11] D. C. Code Ann. §§ 7-2502.01 - 7-2502.10; D.C. Mun. Regs. tit. 24, D.C. Mun. Regs. tit. 24, §§ 2311 – 2320.

[12] Haw. Rev. Stat. Ann. §§ 134-2, 134-13.

[13] Iowa Code §§ 724.15 – 724.20.

[14] 430 Ill. Comp. Stat. 65/1 – 65/15a.

[15] Md. Code Ann. Pub. Safety § 5-117.1. 2013 Md. SB 281 (Approved by the Governor May 16, 2013).

[1616] Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E, 131P.

[17] Mich. Comp. Laws §§ 28.422, 28.422a.

[18] Michigan's permit requirement appears to apply to purchase but not possession, although Michigan's law says that the license is required to "purchase, carry, possess, or transport a pistol." The word "possess" was added in 2008. 2008 Mich. ALS 195 (effective January 7, 2009). However, the law also says, "A license is void unless used within 30 days after the date it is issued." Mich. Comp. Laws § 28.422. In addition, individuals who obtain a handgun from a licensed dealer after a background check are exempt from the license requirement. Mich. Comp. Laws § 28.422a.

[19] Neb. Rev. Stat. Ann. §§ 69-2404, 69-2407, 69-2409.

[20] N.J. Stat. Ann. § 2C:58-3.

[21] New Jersey's law appears to prohibit "possession" without a permit, but exempts possession in the home or place of business from this requirement, making this prohibition apply primarily to guns in public. *See* N.J. Stat. §§ 2C:39-5, 2C:39-6(e).

[22] New Jersey's handgun permit may be extended for an additional 90 days upon a showing of good cause.

[23] N.Y. Penal Law §§ 400.00 – 400.01.

[24] N.C. Gen. Stat. §§ 14-402 – 14-404.

[25] R. I. Gen. Laws §§ 11-47-35 – 11-47-35.1.

[26] Minn. Stat. §§ 624.7131, 624.7132.

[27] Connecticut's permit requirement for long gun purchases will take effect on April 1, 2014.

[28] Hawaii also requires registration of all firearms. Registration requirements are outlined in the summary on the Registration of Firearms.

[29] Illinois prohibits any person who has been a patient in a mental institution within the past five years from obtaining a FOID card, with certain exceptions. Upon request by the Department of State Police, the applicant must sign a release

waiving any right to confidentiality and requesting the disclosure to the Department of State Police of limited mental health institution admission information. 430 Ill. Comp. Stat. 65/4.

[30] Massachusetts defines "large capacity weapon" to include assault weapons, certain semi-automatic weapons, and certain large capacity rotating-cylinder firearms.

[31] A Class A license allows the licensee to purchase, rent, lease, borrow, possess and carry all types of lawful firearms, including both large and non-large capacity handguns, rifles, shotguns, and feeding devices and ammunition for these firearms. Mass. Gen. Laws ch. 140, § 131(a).

[32] For limits on the number of firearms that may be purchased over a specified time period, see our summary on Sales of Multiple Firearms.

[33] State laws in Nebraska, Iowa, Michigan, New York and North Carolina explicitly require a background check prior to issuance of the requisite handgun license or permit. The handgun licensing systems in Maryland, and Rhode Island are designed primarily to ensure the handgun owner has undergone the required safety training; those three states have other laws that require a background check before sale of a handgun.

[34] In New York, in addition to passing a background check to verify that the applicant is not prohibited from possessing a firearm, no one may possess a handgun unless he or she is of "good moral character" and presents "no good cause" for denial of the license.

[35] Rhode Island's concealed handgun licensing process includes a requirement that the applicant pass a target shooting test. R.I. Gen. Laws § 11-47-15. Rhode Island does not require firing training or testing for other handgun licensees. Likewise, none of the other states listed above requires such training as part of its safety training or certification. Hawaii includes firing training as one of several options available to applicants to satisfy the firearms safety training requirement. Haw. Rev. Stat. Ann. § 134-2(g).

[36] New York, N.Y., Admin. Code § 10-131, 10-303 et seq., Rules tit. 38, § 3-01 et seq.

[37] The most comprehensive system of regulating the purchase, possession and ownership of firearms combines licensing of gun owners with registration of all firearms. Additional information on the registration of firearms, including the features of comprehensive registration laws, is contained in our summary on the Registration of Firearms.

[38] See our summary on Reporting Lost or Stolen Firearms for further information about this requirement.

[39] *See, e.g.,* Haw. Rev. Stat. § 134-2. See our summary on Maintaining Records and Reporting Gun Sales for more information about these laws.

Registration of Firearms

Background

Firearm registration laws require individuals to record their ownership of a firearm with a designated law enforcement agency. These laws enable law enforcement to identify, disarm, and prosecute violent criminals and people illegally in possession of firearms. Registration systems also create accountability for firearm owners and discourage illegal sales.

Firearm registration laws can lead to the identification and prosecution of violent criminals by helping law enforcement quickly and reliably "trace" (identify the source of) firearms recovered from crime scenes. Firearm registration laws create comprehensive records of firearm ownership, which include a full description of each firearm and identify the owner. Comprehensive registration laws also require a firearm to be re-registered whenever title to the firearm is transferred, and law enforcement to be notified whenever the weapon is lost or stolen. As a result, registration laws help law enforcement quickly and reliably identify the owner of any firearm used in a crime.

Additional information on crime gun tracing, firearm sales reporting requirements and retention of firearm sales records is contained in our summary on Maintaining Records & Reporting Gun Sales.

Firearm registration laws also help law enforcement retrieve firearms from persons who have become legally prohibited from possessing them through criminal convictions or other prohibitions. Comprehensive registration laws require gun owners to renew their registration annually or explain why they should no longer be legally responsible for the weapon. During the renewal process, owners undergo additional background checks to ensure that they have not fallen into a class prohibited from possessing firearms. The renewal process, therefore, creates an opportunity for law enforcement to remove illegally possessed firearms.

In addition, registration laws help reduce illegal firearm sales and transfers by creating accountability for gun owners. A firearm owner who knows that law enforcement has the ability to trace the firearm back to him or her may be deterred from transferring the firearm to a potentially dangerous individual, and may be encouraged to store his or her firearm safely so as to prevent unauthorized access or theft. Registration laws also help deter "straw purchases," in which an eligible person purchases a firearm on behalf of an ineligible person or a person who wants to avoid having the gun traced back to him or her. For more information about straw purchases, see our summary on Gun Trafficking & Straw Purchases.

Information generated by firearm registration systems can also help protect law enforcement officers responding to an incident by providing them with information about whether firearms may be present at the scene and, if so, how many and what types.

Registration laws are most effective when combined with laws requiring licensing of firearm owners and purchasers.[1] A 2001 study analyzing the firearm tracing data of crime guns recovered in 25 U.S. cities revealed that states with some form of both registration and licensing have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place.[2] This data suggests that licensing and registration laws make it more

difficult for criminals, juveniles and other prohibited purchasers to obtain guns, and help ensure that firearm owners remain eligible to possess their weapons. For more information on licensing laws, see our summary on Licensing Gun Owners & Purchasers.

The American public strongly supports laws requiring gun registration. A nationwide survey conducted in January 2011 found that 66% of respondents favor laws requiring every gun owner to register each gun he or she owns as part of a national gun registry.[3] A poll conducted in May 2001 found that 70% of respondents mistakenly believe that a registration system already exists in the United States.[4]

Summary of Federal Law

There is no comprehensive national system of gun registration. In fact, federal law prohibits the use of the National Instant Criminal Background Check System (NICS) to create any system of registration of firearms or firearm owners.[5]

A limited system of federal firearms registration was created by the National Firearms Act, 26 U.S.C. § 5801 *et seq*. The National Firearms Act was enacted in 1934 to impose an excise tax and registration requirements on a narrow category of firearms, including machine guns, short-barreled shotguns or rifles, and silencers.[6]

In 1986, Congress banned the transfer and possession of machine guns not already in lawful circulation.[7] Machine guns that were lawfully owned prior to the ban's effective date may continue to be owned and transferred provided they are registered in accordance with requirements of the National Firearms Act ("NFA").[8] It is also unlawful for a licensed dealer to sell a short-barreled rifle or shotgun to any person, except as specifically authorized by the Attorney General consistent with public safety and necessity, and these weapons must also be registered under the NFA.[9]

With its provisions effectively limited to pre-ban machine guns and transfers of short-barreled rifles and shotguns that are specifically authorized by the Attorney General, the registration system created by the National Firearms Act falls far short of a comprehensive registration system.

For information about the federal law relating to firearms tracing, see our summary on Gun Trafficking & Straw Purchases.

SUMMARY OF STATE LAWS CONCERNING THE REGISTRATION OF FIREARMS

Six states and the District of Columbia require registration of some or all firearms. Hawaii and the District of Columbia require the registration of all firearms, and New York requires the registration of all handguns through its licensing law.[10] Hawaii, New York and four other states also have a registration system for certain highly dangerous firearms, such as assault weapons. These states generally ban such firearms, but allow the continued possession of grandfathered weapons if they were owned before the ban was adopted and are registered. For more information about such laws, see our summaries on Assault Weapons, 50 Caliber Weapons, and Large Capacity Ammunition Magazines.

Additional states require the reporting of firearm sales and transfers to a state or local agency, which maintains these records. For information about such laws, see our summary on Maintaining Records & Reporting Gun Sales. California and Maryland also require new residents to report certain firearms that they bring into the state.

Conversely, eight states have statutes prohibiting them from maintaining a registry of firearms except in limited circumstances.

States that Require Registration of All Firearms
District of Columbia[11]
Hawaii[12]

States that Require Registration of Handguns
New York[13]

States that Require New Residents to Report Their Firearms
California[14]
Maryland[15] (handguns and assault weapons)

States that Require Registration of Pre-Ban Assault Weapons, 50 Caliber Rifles, or Large Capacity Magazines
California[16] (assault weapons and 50 caliber rifles)
Connecticut[17] (assault weapons and large capacity ammunition magazines)
Hawaii[18] (assault weapons)
Maryland[19] (assault weapons)
New Jersey[20] (assault weapons)
New York[21] (assault weapons)

States that Prohibit Registries of Firearms
Delaware[22]
Florida[23]
Georgia[24]
Idaho[25]
Rhode Island[26]
South Dakota[27]
Vermont[28]

Description of State Laws Concerning Gun Registration

1. ***States That Require Registration of All Firearms*****:** Only Hawaii and the District of Columbia require the registration of all firearms.

Hawaii requires registration of all firearms with the county police chief within five days of acquisition. The registration must include: (1) the name of the manufacturer and importer; (2) the model, type of

action, caliber or gauge, and serial number of the firearm; and (3) the source from which the firearm was obtained, including the name and address of the previous registrant. In addition, every person who brings a firearm into Hawaii must register the firearm within three days of the arrival of either the person or the firearm, whichever arrives later.[29] Hawaii does not require renewal of the registration. Hawaii also has a licensing scheme, requiring that all firearm purchasers obtain a permit prior to acquisition.[30]

The District of Columbia's registration law limits the availability of many classes of firearms within the District. While the District requires a valid registration certificate for every gun that is purchased, sold, transferred, or possessed in the District,[31] many classes of especially dangerous firearms may not be registered. For example, sawed-off shotguns, machine guns, short-barreled rifles, assault weapons, .50 BMG rifles, and "unsafe firearms" as defined by District law, may not be registered.

The District of Columbia requires that an application for registration be made prior to taking possession of a firearm from a licensed dealer or any person or organization holding a registration certificate for the firearm. In addition to providing detailed identifying information about the registration applicant and the firearm, applicants are also required to provide detailed information concerning: 1) whether the applicant has ever been denied any firearm-related license, permit or registration certificate and, if so, the reasons for such denial; 2) the applicant's role in any mishap involving a firearm, including the date, place, time, circumstances, and names of the persons injured or killed; 3) if the applicant has applied for other registration certificates; and 4) where the firearm generally will be kept. Applicants undergo a background check conducted by the Chief of Police.

Registration applicants are required to complete a written exam and a firearms safety course. Registered owners are required to notify the Chief of Police of the loss, theft, or destruction of the registration certificate or of a registered firearm. Registrants must also notify the Chief of the sale, transfer, or other disposition of the firearm within two business days of such sale, transfer or disposition, and must return the registration certificate for any firearm that has been lost, stolen, destroyed, or otherwise disposed of or transferred.[32] Firearm registrations in the District must be renewed every three years.

2. States that Require Registration of Handguns: New York generally requires anyone wishing to possess a handgun to first obtain a license, following a background check. The license must specify the weapon by caliber, make, model, manufacturer's name and serial number, and must indicate if the handgun may be carried on the person or possessed in a particular location. A license holder may apply at any time to his or her licensing officer for amendment of the license to include more weapons or to cancel weapons held under license. As of January 15, 2013, such license must be "recertified" with the division of state police every five years. The recertification form requests the license holder's name, date of birth, gender, race, residential address, social security number, all firearms possessed by such license holder, email address (at the option of the license holder) and an affirmation that such license holder is not prohibited from possessing firearms. A failure to recertify results in the revocation of the license.

3. States that Require Reporting of Gun Sales or Transfers: Many states require the reporting of firearm sales and transfers to a state or local agency, which maintains these records. For information about such laws, see our summary on Maintaining Records & Reporting Gun Sales.

4. States that Require New Residents to Report Their Firearms: California and Maryland require new residents to provide a report regarding firearms they own to law enforcement. More specifically, any handgun owner who moves into California from out-of-state on or after January 1, 1998 or any firearm owner who moves into California on or after January 1, 2014 is deemed a "personal firearm importer." Within 60 days, the person must sell or transfer the firearm through a licensed dealer or to a sheriff or police department, or provide a report to DOJ regarding the firearm. Maryland enacted a similar law in 2013 that requires any new resident to register all handguns or assault weapons within 90 days of moving into the state.

5. States that Require Registration of Pre-Ban Assault Weapons, 50 Caliber Rifles, and/or Large Capacity Magazines: Six states (California, Connecticut, Hawaii, Maryland, New Jersey, and New York) have banned assault weapons,[33] but allow continued possession of such weapons if they were lawfully owned on a specified date and are registered, except that grandfathered assault long guns in Maryland do not need to be registered. In California (the only state that currently bans the possession of 50 caliber rifles) any person who lawfully possessed a 50 caliber rifle before January 1, 2005, must have registered it no later than April 30, 2006 in order to retain possession of the firearm.[34]

In 2013, Connecticut enacted legislation which bans large capacity ammunition magazines (capable of holding more than 10 rounds), and requires persons lawfully possessing such magazines prior to January 1, 2014 to apply with the state before January 1, 2014 in order to maintain possession. A person moving into the state with a large capacity magazine must apply to maintain possession within 90 days.

6. *States That Prohibit Registration of Some or All Firearms:* Eight states are explicitly prohibited by law from maintaining a registry of any firearms. However, many of these prohibitions contain general categories of exceptions, such as records relating to persons who have been convicted of a crime. Delaware,[35] Florida,[36] Georgia,[37] Idaho,[38] Rhode Island,[39] South Dakota,[40] and Vermont[41] prohibit keeping any registry of privately owned firearms. Pennsylvania prohibits any registry of long guns.[42]

MODEL LAW

The Law Center's September 2011 publication, *Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales*, includes a model law requiring the registration of firearms. Please contact the Law Center for further information.

FEATURES OF A COMPREHENSIVE FIREARM REGISTRATION LAW[43]

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Registration is required for all firearms prior to taking possession, or, in the case of firearms already owned or brought into the jurisdiction, immediately after the firearm is brought into the jurisdiction or the effective date of the law *(District of Columbia; Hawaii requires registration within 5 days of acquisition of firearm and within 3 days of moving into the state with a firearm)*
- Registration includes: name, address and other identifying information about the owner of the firearm; names of manufacturer and importer; model, type of action, caliber or gauge, and serial number of firearm; and name and address of source from which firearm was obtained *(Hawaii, District of Columbia)*
- Registered owners are required to renew registration annually, including submitting to a background check *(D.C. requires renewal every three years; New York requires handgun licensees to recertify their licenses every five years)*
- Registered owners are required to report any loss, theft or transfer of the registered firearm to law enforcement within a short time of the event and to turn in their registration card or certificate upon loss, theft or transfer *(District of Columbia)*
- Registered owners are required to store all firearms safely and securely
- Additional restrictions may include limitations on where registered firearms may be possessed and to whom they may be transferred (particularly relevant for certain classes of firearms such as assault weapons, 50 caliber rifles, and large capacity magazines)

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[1] Conceptually, licensing is directed to the owner or purchaser of the firearm, while registration is directed to the weapon itself. As shown in this analysis, some jurisdictions incorporate elements of licensing in their registration laws, and vice versa.

[2] Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 Inj. Prevention 184, 188-89 (2001). The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

[3] American Viewpoint and Momentum Analysis for Mayors Against Illegal Guns, *Results From A National Survey of 1003 Registered Voters* (January 2011), at http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_poll_01_18_2011.pdf.

[4] Lake, Snell, Perry & Associates, Inc. Poll, *Educational Fund to Stop Gun Violence* (May 15-21, 2001), at http://www.commondreams.org/news2001/0612-05.htm.

[5] 18 U.S.C. § 926(a); 28 C.F.R. § 25.9(b)(3).

[6] 26 U.S.C. § 5845(a). The Act also includes, in a category defined as "any other weapon," certain smooth-bore handguns. 26 U.S.C. § 5845(a), (e). The vast majority of handguns are excluded.

[7] 18 U.S.C. § 922(o). *See also* 18 U.S.C. § 922(b)(4). Transfers to or by, or possession by, federal, state or local government agencies are exempt.

[8] *Id.* The National Firearms Act requires each importer, manufacturer, or dealer in firearms covered by the Act to register annually. 26 U.S.C. § 5802. In addition, anyone wishing to manufacture, make, import, or transfer such weapons must first register them. 26 U.S.C. § 5841(b). The transferee of any of these weapons cannot take possession until the Secretary approves the transfer and registration of the weapon to the transferee. 26 U.S.C. § 5841(c). The registry includes: (1) an identification of the firearm; (2) the date of registration; and (3) the identification and address of the person entitled to possess the firearm. 26 U.S.C. § 5841(a). *See also* 27 C.F.R. §§ 479.101, 479.105.

[9] 18 U.S.C. § 922(b)(4).

[10] New York's licensing law functions as a handgun registration system, with handgun owners being required to recertify their licenses every five years.

[11] D.C. Code Ann. §§ 7-2502.01-7-2502.10; D.C. Mun. Regs. tit. 24, §§ 2311- 2320.

[12] Haw. Rev. Stat. Ann. §§ 134-3, 134-4.

[13] N.Y. Penal Law § 400.00(10), 400.02.

[14] Cal. Penal Code §§ 17000, 27560.

[15] Md. Code Ann., Pub. Safety §§ 5-143.

[16] Cal. Penal Code §§ 30510-30530, 30600-30675, 30900-30965.
[17] Conn. Gen. Stat. § 53-202d(a), 53-202p(a)(1), 53-202q.
[18] Haw. Rev. Stat. Ann. §§ 134-3, 134-4. Hawaii bans assault pistols, but not assault long guns.
[19] Md. Code Ann., Crim. Law § 4-303. Maryland bans both assault pistols and assault long guns, but only grandfathered assault pistols must be registered.
[20] N.J. Stat. Ann. §§ 2C:39-5f, 2C:58-12.
[21] N.Y. Penal Law §§ 265.00(22)(e)-(f), 265.00(23), 400.00(16-a).
[22] Del. Code Ann. tit 24, § 904A.
[23] Fla. Stat. Ann. § 790.335.
[24] Ga. Code Ann. § 16-11-129(a).
[25] Idaho Const., art. 1, § 11.
[26] R.I. Gen. Laws § 11-47-41.
[27] S.D. Codified Laws § 23-7-8.6.
[28] Vt. Stat. Ann. tit. 20, § 8(b)(3)(B).
[29] Hawaii's registration statute also provides that all registration data that identify the registrant's name or address shall be confidential, except for use by law enforcement or a use mandated by court order.
[30] Hawaii's permitting laws are described in our summary on Licensing Gun Owners & Purchasers.
[31] Note: These registration requirements do not apply to anyone holding a valid firearms dealer license, so long as the firearm is acquired in the normal course of business, stored at the dealer's business location, and is not for the dealer's personal use or protection.
[32] Law enforcement personnel, members of the military, licensed dealers and non-residents participating in lawful firearm-related recreational activities are exempt from the registration requirements.
[33] Hawaii bans assault pistols, but not assault long guns. D.C. bans assault weapons and does not allow the continued possession of pre-ban assault weapons.
[34] D.C. did not grandfather 50 caliber rifles owned or possessed at the time the ban was adopted. Additional information on assault weapons, 50 caliber rifles, and large capacity magazines is contained in our summaries on Assault Weapons, Fifty Caliber Weapons, and Large Capacity Ammunition Magazines, respectively.
[35] Del. Code Ann. tit 24, § 904A. Delaware's registration prohibition does not apply to person's prohibited from possessing a firearm as defined under Delaware law.
[36] Fla. Stat. Ann. § 790.335. Florida's prohibition does not apply to records relating to licenses to carry concealed firearms. Florida law contains a number of other exceptions to the prohibition, including but not limited to: records of firearms that have been used in committing a crime, records relating to any person who has been convicted of a crime, records of firearms that have been reported stolen, or records that must be retained by firearm dealers under federal law.
[37] Ga. Code Ann. § 16-11-129(a). Georgia's registration prohibition applies to the application process to obtain a license to carry and prohibits the application form from requesting information that could be used as a *de facto* registration.
[38] Idaho Const., art. 1, § 11. Idaho's prohibition is part of the state's constitution and mandates that "No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition."
[39] R.I. Gen. Laws § 11-47-41. Rhode Island's prohibition does not apply to firearms that have been used in committing any crime of violence, or to any person who has been convicted of a crime of violence.
[40] S.D. Codified Laws § 23-7-8.6.
[41] Vt. Stat. Ann. tit. 20, § 8(b)(3)(B).
[42] 18 Pa. Cons. Stat. § 6111.4. Although Pennsylvania's statute appears to prohibit the state from maintaining a registry of any firearms, the Pennsylvania Supreme Court ruled in *Allegheny County Sportsmen's League v. Rendell*, 860 A.2d 10 (Pa. 2004), that the statute did not prohibit Pennsylvania's database of handgun sales.
[43] The most comprehensive system of regulating the purchase, possession and ownership of firearms combines licensing of gun owners with registration of all firearms. Additional information on licensing of firearm owners is contained in our summary on Licensing Gun Owners & Purchasers.

Reporting Lost or Stolen Firearms

Background

Laws that require firearm owners to report lost or stolen firearms serve several public safety functions. These laws help deter gun trafficking and discourage straw purchasing, as well as facilitate the return of lost or stolen guns to their lawful owners. They also help law enforcement disarm individuals who become ineligible to possess firearms.

Laws requiring the reporting of lost or stolen guns deter gun trafficking (the diversion of firearms from the legal to illegal market) by providing law enforcement with indicators of trafficking and straw purchasing.[1] When a gun is found at a crime scene and traced by law enforcement back to the original purchaser, that individual may falsely claim that the gun was lost or stolen to hide his or her involvement in trafficking. Reporting laws put law enforcement on notice of individuals who repeatedly: (1) fail to file reports yet claim that their guns were lost or stolen after they are recovered from a crime scene; or (2) report their guns lost or stolen, indicating that the person may be trafficking firearms.

Reporting laws also make gun owners more accountable for their weapons and make it easier for law enforcement to locate a lost or stolen firearm and return it to its owner. Timely reporting of gun thefts and losses also enables police to trace guns more effectively, and makes the successful prosecution of users of stolen guns more likely.

In addition, reporting laws help disarm persons prohibited from possessing firearms.[2] When a person who legally owned a gun falls into a prohibited category, it is crucial for law enforcement to be able to remove the firearm from his or her possession. For example, a gun owner who becomes the subject of a domestic violence restraining order is not permitted under federal law to continue to possess firearms. However, when ordered to surrender a firearm by law enforcement or a judge, the owner may falsely claim it has been lost or stolen. Mandatory reporting laws deter this behavior.

Stolen guns also supply the market for crime guns. Data from the U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") indicates that more than 173,000 guns were reported lost or stolen by persons other than federally licensed dealers in 2012.[3] Survey research indicates that at least 500,000 firearms are stolen annually from residences, however.[4] This discrepancy shows that most lost or stolen firearms are not reported.

Many stolen guns are used to commit subsequent crimes. A U.S. Department of the Treasury study revealed that nearly a quarter of ATF gun trafficking investigations involved stolen firearms and were associated with over 11,000 trafficked firearms. Ten percent of the investigations involved guns stolen from residences.[5]

Significantly, laws requiring the reporting of lost and stolen firearms are associated with a reduction in gun trafficking. One study found that states without mandatory lost or stolen reporting laws export two and a half times more crime guns across state lines than jurisdictions with such laws.[6] See our summary on Gun Trafficking & Straw Purchases for more information.

The public overwhelmingly supports laws requiring the reporting of lost or stolen firearms. A nationwide poll in 2011 found that 94% of Americans favor laws to require the reporting of lost or stolen firearms.[7]

Summary of Federal Law

Federal law does not require individual gun owners or other lawful possessors of firearms to report the loss or theft of a firearm to law enforcement.

Federal law does, however, require licensed firearms dealers to report the loss or theft of any firearm from the dealer's inventory to the U.S. Attorney General or local law enforcement within 48 hours of discovering the loss or theft.[8] For more information about dealer regulations and firearms missing from dealers' inventories, see our summary on Dealer Regulations.

SUMMARY OF STATE LAWS GOVERNING THE REPORTING OF LOST OR STOLEN FIREARMS

Nine states and the District of Columbia require firearm owners to report the loss or theft of their firearms to law enforcement. In addition, Maryland has a requirement that only applies to handguns and assault weapons. New Jersey has also adopted a relevant law, as described below.

Mandatory Loss/Theft Reporting
Connecticut[9]
Delaware[10]
District of Columbia[11]
Illinois[12]
Maryland[13] (handguns and assault weapons only)
Massachusetts[14]
Michigan[15] (thefts only)
New Jersey[16]
New York[17]
Ohio[18]
Rhode Island[19]

Civil Liability for Stolen Firearms
New Jersey[20]

Description of State Laws Governing Reporting of Lost or Stolen Firearms:
Please see the list above for citations to these laws.

1. States that Require Loss/Theft Reporting: In New York and Rhode Island, owners must report the loss or theft of any firearm to local law enforcement within 24 hours of discovery. In New York, the report must include "the facts and circumstances of the loss or theft," including whether ammunition

was stolen as well. Local law enforcement in New York then reports the information to the State Police.

New Jersey requires gun owners to report the loss or theft of any firearm to local law enforcement where the loss or theft occurred (or to the Superintendent of State Police if the locality has no police force) within 36 hours of discovery. Connecticut requires firearm owners to report to local law enforcement within 72 hours of when they discovered or should have discovered the loss or theft. Local law enforcement in Connecticut reports the information to the State Police. Similarly, Illinois requires a firearm owner to report to law enforcement within 72 hours of obtaining knowledge of the loss or theft of a firearm, and law enforcement must enter this information into a state-wide database. The Maryland law only applies to handguns and assault weapons and requires reporting to local law enforcement within 72 hours of when the owner first discovers the loss or theft; local law enforcement must then enter this information into state and federal databases.

In Massachusetts, firearm owners are required to report the loss or theft of any firearm "forthwith" to the State Police and the local licensing authority. Penalties for a violation of the Massachusetts law include suspension or permanent revocation of the owner's firearm identification card or license to carry firearms. Ohio law also penalizes anyone who knowingly fails to report "to law enforcement authorities forthwith" the loss or theft of any firearm "in the person's possession or under the person's control." Similarly, the District of Columbia's law applies to any registered firearm and applies "immediately" upon discovery of the loss or theft. The owner must report the circumstances of the loss or theft, if known, in writing. Registration certificates are revoked if the owner fails to report a lost or stolen firearm a second time, and the person becomes prohibited from possessing a firearm for five years.

Michigan's law applies only to thefts of firearms, which must be reported within five days of discovery to a "police agency having jurisdiction over that theft."[21] Delaware's law requires firearm owners to report the loss or theft of the firearm within seven days of discovery of the loss or theft to either local or state law enforcement.

2. Civil Liability for Stolen Firearms: In New Jersey, if a registered assault weapon is used in the commission of a crime, the registered owner of that weapon is civilly liable for any damages resulting from that crime. This liability does not apply if the assault weapon was stolen and the registered owner reported the theft to law enforcement within 24 hours of his or her knowledge of the theft.

SELECTED LOCAL LAW

Sacramento, California

In 2007, the City of Sacramento, California joined the rising number of California localities that have enacted ordinances requiring firearm owners to report lost or stolen firearms. Sacramento's ordinance makes it unlawful for any person who owns or possesses a firearm to "knowingly or negligently" fail to report such loss or theft. The person must report this information to the Sacramento Police Department within 48 hours of when the person "knew or should have known" that the firearm was

lost or stolen. This requirement applies when the owner or possessor resides in the City, or the theft or loss of the firearm occurred in the City. A violation of this requirement is a misdemeanor.[22]

MODEL LAW

The Law Center's September 2011 publication, *Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales*, includes a model law requiring the reporting of lost or stolen firearms. Please contact the Law Center for further information.

FEATURES OF COMPREHENSIVE LAW REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Firearm owners are required to report the loss or theft of any firearm as soon as possible after discovery, either immediately or within 24 hours of discovery *(Massachusetts, Ohio, District of Columbia – immediately; New York, Rhode Island – within 24 hours)*
- The duty to report is triggered at the time the firearm owner knew or should have known that the firearm was lost or stolen *(Connecticut, Sacramento)*
- Owners of firearms lost or stolen (and not recovered) within a designated time period prior to the adoption of the law must report to law enforcement within a reasonable period[23]
- Reporting requirements should apply to all firearm types *(Connecticut, Delaware, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island, District of Columbia, Sacramento)*
- Lost and stolen firearms are reported to local and state law enforcement *(Connecticut, Massachusetts, New York)*
- Firearm owners are subject to civil liability for failure to report a lost or stolen firearm that is later used in crime *(New Jersey -- assault weapons only)*
- Reporting of lost or stolen firearms is a condition of any license or registration required by the jurisdiction, and license/registration is subject to revocation for failure to report *(District of Columbia, Massachusetts)*

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[1] Straw purchasers play a special role in gun trafficking. A "straw purchase" occurs when the actual buyer of a firearm uses another person, a "straw purchaser," to execute the paperwork necessary to purchase a firearm from a federally licensed firearms dealer. People who are prohibited from purchasing firearms and people who do not want to be identified through crime gun tracing often obtain firearms through straw purchases. [2] See our summary on Categories of Prohibited People for information about these prohibitions.

[3] Bureau of Alcohol, Tobacco & Firearms, U.S. Department of Justice, *2012 Summary: Firearms Reported Lost or Stolen* 4 (June 2013), at https://www.atf.gov/sites/default/files/assets/Firearms/2012-summary-firearms-reported-lost-and-stolen-2.pdf.

[4] Bureau of Alcohol, Tobacco & Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* xi, 41 (June 2000), at http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf.

[5] *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, *supra* note 3, at 11, 41.

[6] A crime gun is "exported" from one state to another if it was sold to a retail consumer in one state and then recovered after being used in a crime in a different state. Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 22-23 (September 2010), at http://www.tracetheguns.org/report.pdf.

[7] American Viewpoint and Momentum Analysis for Mayors Against Illegal Guns, *Results From A National Survey Of 1003 Registered Voters* (January 2011), at http://gunvictimsaction.org/wp-content/uploads/2011/01/MAIG_poll_presentation_1_18_11.pdf. *See also* Mayors Against Illegal Guns, *New Polls In Five Bellwether States Show Overwhelming Support To Fix Gun Background Check System* (March 2011), (showing similar results from polls in five bellwether states – Arizona, Colorado, Indiana, Ohio and Virginia); Mayors Against Ilegal Guns, *Gun Owners Poll* (July 2012), at http://www.joycefdn.org/assets/1/7/MAIGpoll072012.pdf (showing that 68% of gun owners support lost and stolen reporting laws).

[8] 18 U.S.C. § 923(g)(6).

[9] Conn. Gen. Stat. § 53-202g.

[10] Del. Code tit. 11, § 1461.

[11] D.C. Code Ann. § 7-2502.08(a), (e).

[12] 720 Ill. Comp. Stat. 5/24-4.1.

[13] Md. Code Ann., Pub. Safety § 5-146. See 2013 Md. S.B. 281 (effective October 1, 2013).

[14] Mass. Gen. Laws ch. 140, § 129C.

[15] Mich. Comp. Laws § 28.430.

[16] N.J. Stat. Ann. § 2C:58-19.

[17] N.Y. Penal Law § 400.10.

[18] Ohio Rev. Code Ann. § 2923.20(A)(5).

[19] R.I. Gen. Laws § 11-47-48.1.

[20] N.J. Stat. Ann. § 2C:58-12(g).

[21] Mich. Comp. Laws § 28.430(1).

[22] Sacramento, Cal., Municipal Code § 9.32.180.

[23] Los Angeles's ordinance required owners of firearms lost or stolen within five years prior to the adoption of the ordinance to report the loss or theft within 60 days of the law's adoption. Los Angeles, Cal., Municipal Code ch. V, art. 5, § 55.12 (effective December 3, 2006).

Part 4: Classes of Weapons

Introduction

This Part examines laws regulating particular kinds of weapons. The first section describes military-style assault weapons, and the second section describes large capacity magazines, which attach the a firearm and hold large numbers of bullets. The third section describes fifty caliber weapons, and the fourth section describes non-powder guns, such as BB guns. The fifth and final section describes laws regulating ammunition sales and types.

Assault Weapons

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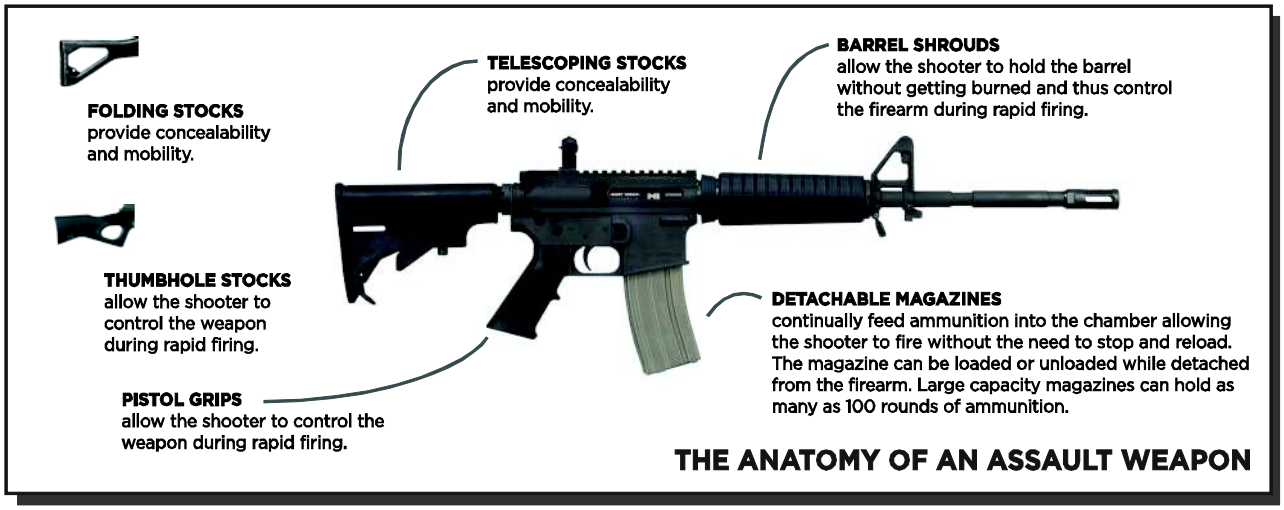
Assault Weapons

Background

Assault weapons are a class of semi-automatic firearms that are designed to kill humans quickly and efficiently. As the diagram below shows, the **military features that clearly distinguish assault weapons from standard sporting firearms** enable shooters to spray large amounts of ammunition quickly while retaining control of the weapons.[1]



Assault weapons have been used in many high-profile shooting incidents, including the 2012 mass shooting at Sandy Hook Elementary School in Newtown, Connecticut, the 2012 Aurora, Colorado movie theater shooting and the 1999 Columbine High School massacre in that state, as well as the 1993 office shooting at the 101 California Street building in San Francisco.[2] In fact, a review of 62 mass shootings between 1982 and 2012 by Mother Jones found that assault weapons were recovered in almost a quarter of them.[3] A review of mass shootings between January 2009 and January 2013 by Mayors Against Illegal Guns found that **incidents where assault weapons or large capacity ammunition magazines were used resulted in 135% more people shot and 57% more killed**, compared to other mass shootings.[4]

In addition, a joint report by scholars in Mexico and the United States found that semi-automatic assault rifles sold in the U.S. are the most sought after and widely used weapons by Mexican drug trafficking organizations.[5]

A study analyzing FBI data shows that 20% of the law enforcement officers killed in the line of duty from 1998 to 2001 were killed with assault weapons.[6] Anecdotal evidence from law enforcement leaders suggests that military-style assault weapons are increasingly being used against law enforcement by drug dealers and gang members.[7] In response, law enforcement agencies are upgrading their arsenals to include more assault weapons.[8] A 2007 report by the International Association of Chiefs of Police recommended that Congress enact an effective ban on military-style assault weapons in order to curb the ability of criminals to "outgun" law enforcement officers.[9]

Assault weapons are a relatively new class of firearms. During the 1980s, the firearms industry sought to reverse a decline in consumer demand for guns by developing and marketing new types of weapons based on military designs, including assault weapons.[10]

A strong majority of Americans, including gun owners, consistently support laws prohibiting assault weapons. For example, a poll conducted in December 2012 found that 62% of Americans favored banning military-style assault weapons.[11] In another survey, 67% of *Field & Stream* readers polled did not consider assault weapons to be legitimate sporting guns.[12]

Summary of Federal Law

The Lapsed Federal Assault Weapons Ban: In 1994, Congress adopted the Violent Crime Control and Law Enforcement Act of 1994, which made it "unlawful for a person to manufacture, transfer, or possess" a semiautomatic assault weapon.[13] The law was adopted with a sunset clause, however, and expired in 2004, despite overwhelming public support for its renewal. Thus, **semi-automatic, military style weapons that were formerly banned under the federal law are now legal unless banned by state or local law.**

The 1994 Act defined the phrase "semiautomatic assault weapon" to include 19 named firearms and copies of those firearms, as well as certain semi-automatic rifles, pistols and shotguns with at least two specified characteristics from a list of features.[14] The federal ban also prohibited the transfer and possession of any new large capacity ammunition magazine.[15] Additional information about large capacity ammunition magazines is contained in our summary on Large Capacity Ammunition Magazines.

Despite its limited duration, studies show that **the federal assault weapon ban resulted in a marked decrease in the use of assault weapons and large capacity ammunition magazines in crime.** One study found that in several major cities, the share of recovered crime guns that were assault weapons declined by at least 32% after the federal ban was adopted.[16] Another study found that the expiration of the federal assault weapon ban likely contributed to increased drug-trafficking related violence in Mexico, which often involves semi-automatic assault rifles sold in the U.S, as noted above. The authors of that study found that after the federal ban expired, there was a 40% increase in homicide rates in areas in Mexico along the Texas, New Mexico and Arizona borders compared to areas along the California border. [17] California bans assault weapons under state law while the other border states do not.

The 1994 Act did suffer from notable limitations, however. The two-feature test and the inclusion of some features that were purely cosmetic in nature created a loophole that allowed manufacturers to successfully circumvent the law by making minor modifications to the weapons they already produced. The law also did not prohibit the continued transfer or possession of assault weapons manufactured before the law's effective date. Manufacturers took advantage of this loophole by boosting production of assault weapons in the months leading up to the ban, creating a legal stockpile of these items.

The Ban on the Importation of Non-Sporting Firearms and Their Parts: Federal law prohibits any person from importing a firearm unless authorized by the U.S. Attorney General.[18] The Attorney

General must authorize the importation of any firearm that "is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms."[19] Federal law also prohibits any person from assembling from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation.[20]

In 1998, ATF announced that semiautomatic rifles capable of accepting large capacity ammunition magazines "are not generally recognized as particularly suitable for or readily adaptable to sporting purposes and are therefore not importable."[21] However, a 2011 report by three U.S. Senators found that, "Since the Clinton Administration's efforts, the Gun Control Act of 1968's prohibition against non-sporting firearms has not been aggressively enforced, and many military-style, non-sporting rifles have flowed into the United States civilian market."[22]

SUMMARY OF STATE ASSAULT WEAPON LAWS

Seven states and the District of Columbia have enacted laws banning assault weapons: California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey and New York. In addition, Minnesota and Virginia regulate assault weapons.[23]

Assault weapon bans can be categorized according to: (1) the definition(s) of "assault weapon"; (2) the activities that are prohibited; (3) whether pre-ban weapons are grandfathered; (4) whether grandfathered weapons must be registered; and (5) how transfer and possession of grandfathered weapons are treated.

State Assault Weapon Bans

State	List Banned by Name	Generic Feature Definition (**Bold** Indicates One-Feature Test)	Requires Registration of Grandfathered Weapons	Prohibits Transfer of Grandfathered Weapons	Limits Places or Requires License
California[24]	Yes	**Yes**	Yes	Yes	Yes
Connecticut[25]	Yes	**Yes**	Yes	Yes	Yes
D.C.[26]	Yes	**Yes**	N/A[27]	N/A	N/A
Hawaii (assault pistols only)[28]	No	Yes	Yes	Yes	No
Maryland[29]	Yes	Yes	No[30]	Yes	No
Massachusetts[31]	Yes	Yes	No	No	Yes (license)
New Jersey[32]	Yes	No[33]	Yes	No	Yes (license)
New York[34]	No	**Yes**	Yes	Yes	No

States that Regulate, But Do Not Ban, Assault Weapons

Minnesota[35]
Virginia[36]

Description of State Laws Banning Assault Weapons
For additional citations, please see the chart above.

1. ***Definition:*** Some state assault weapon bans prohibit specific weapons by listing them by name. Some bans list features that, when present, make a gun an assault weapon. The latter are known as generic feature tests. Generic feature tests, emphasizing high capacity and enhanced control during firing, are intended to identify assault weapons based on the military features that enhance a weapon's lethality. Generic feature tests that require a weapon to have only one of a list of features are more comprehensive than those that require two. A one-feature test captures more assault weapons and makes it harder for the gun industry to evade the law by modifying banned weapons.

California, Connecticut, New York, and the District of Columbia have the most comprehensive approaches to defining assault weapons. California law bans roughly 75 assault weapon types, models and series by name and provides a one-feature generic test for rifles and pistols. Connecticut bans roughly 70 assault weapon types, models, and series by name and uses a one-feature generic test for rifles and pistols.[37] The District of Columbia includes a list of assault weapon types, models and series by name that closely follows the California list, and provides a one-feature generic test for rifles, pistols and shotguns. The District also allows its Chief of Police to designate a firearm as an assault weapon based on a determination that the firearm would pose the same or similar danger to the residents of the District as other assault weapons. New York has adopted a one-feature test for assault pistols, shotguns, and rifles.

New Jersey bans roughly 65 assault weapon types, models and series and copies of those weapons by name and uses a one-feature generic test for shotguns. Connecticut and New Jersey also ban parts that may be readily assembled into an assault weapon.

The generic feature tests in other bans, including the expired federal ban, are two-feature tests. Massachusetts use the definition of "assault weapon" from the expired federal law, including both the two-feature test and the federal law's list of banned weapons. Hawaii only bans assault pistols, but not assault rifles or shotguns, and uses the two-feature definition from the federal law, but does not include a list of named weapons. Maryland uses its own two-feature test and list of named weapons.

2. ***Prohibited Activities*****:** Assault weapon bans vary as to which activities are prohibited. California prohibits the broadest range of activities. Both California and Connecticut prohibit possession, distribution, importation, transportation, and keeping or offering for sale of assault weapons.[38] In addition, California prohibits the manufacture and transfer of assault weapons, while Connecticut also prohibits giving an assault weapon to another person. New Jersey and New York laws prohibit the manufacture, transportation, sale, shipping, transfer, disposing and possession of assault weapons. Maryland prohibits the possession, sale, offering for sale, transfer, purchase, receipt, or transportation into the state of assault weapons.

3. ***Grandfathering*****:** Assault weapon bans differ in their treatment of pre-ban weapons. The District of Columbia does not allow the possession of pre-ban weapons. Every state with a ban grandfathers pre-ban weapons. However, California, Connecticut, Hawaii, New Jersey and New York also require registration of such weapons.[39] New Jersey's law is particularly strong because only

assault weapons with a legitimate target-shooting purpose may be registered (effectively requiring over 60 models, types and series of assault weapons to be transferred out of state, rendered inoperable, or surrendered to law enforcement). Maryland required registration of grandfathered assault pistols but not assault long guns. See our summary on the Registration of Firearms for information about registration systems.

California, Connecticut, Hawaii, Maryland, and New York prohibit transfer of all or most grandfathered weapons. Only California and Connecticut limit the places where a grandfathered weapon may be possessed.[40] In Massachusetts and New Jersey, grandfathered weapons may only be sold and possessed if the owner has a license. See our summary on Licensing Gun Owners & Purchasers for information about licensing systems.

Description of State Regulations Governing Assault Weapons

1. *Minnesota:* Minnesota prohibits the possession of "semiautomatic military-style assault weapons" by persons under 18 years of age, as well as other prohibited persons, and imposes additional restrictions on transfers through firearms dealers.

2. *Virginia:* Virginia limits the knowing and intentional possession and transportation of certain semi-automatic "assault firearms" to citizens and permanent residents age 18 and older. These weapons may not be carried, loaded, in public places in certain cities and counties. Virginia also imposes a general ban on the importation, sale, possession and transfer of the "Striker 12" and semi-automatic folding stock shotguns of like kind, but does not refer to them as "assault firearms."

District of Columbia Tort Liability Law Governing Assault Weapons

The District of Columbia imposes strict tort liability on manufacturers, importers and dealers of assault weapons for all direct and consequential damages that arise from injury or death due to the discharge of an assault weapon in the District (with limited exceptions).[41]

SELECTED LOCAL LAW

Cook County, Illinois

Adopted by Cook County, Illinois, in 1993, the Blair Holt Assault Weapons Ban prohibits the manufacture, sale, transfer, or possession of an assault weapon or large capacity magazine in Cook County, Illinois. The Ban was adopted in 1993, but was amended and renamed in memory of Blair Holt, a 16-year-old boy who was shot and killed as a bystander when gang violence erupted on a bus in 2007. The law includes an extensive list of prohibited assault weapon types, models and series, and provides a one-feature test identifying other rifles, shotguns, and pistols as assault weapons. The law defines a large capacity magazine as any ammunition feeding device with the capacity to accept more than ten rounds. The 1993 ordinance enacting this law provided that any person who was legally in possession of an assault weapon or large capacity magazine at that time had 90 days to: (1) remove it from the County; (2) modify it so it was rendered either inoperable or so changed that it would fall outside the definition of "assault weapon" or "large capacity magazine;" or (3) surrender it to law

enforcement. Only law enforcement officers and members of the military are now allowed to possess assault weapons or large capacity magazines in the County.[42]

MODEL LAW

The Law Center has drafted a *Model Law to Ban Assault Weapons and Large Capacity Magazines*. Please contact the Law Center for further information.

FEATURES OF A COMPREHENSIVE LAW BANNING ASSAULT WEAPONS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Definition of assault weapon is based on the generic features that characterize assault weapons (*California, Connecticut, New York, and the District of Columbia have the most comprehensive definitions*)
- Definition of assault weapon is based on a one-feature test (*New York, the District of Columbia and Cook County each use a one-feature test for shotguns, rifles, and pistols; New Jersey uses a one-feature test for shotguns; California and Connecticut use a one-feature test for rifles and pistols*)
- Although a generic feature test is the most comprehensive approach, if the law also includes a list of banned weapons by name, it provides a mechanism authorizing an appropriate governmental official or agency to add new and/or modified models to the list (*District of Columbia*)
- Definition extends to parts that may be readily assembled into an assault weapon (*Connecticut and New Jersey*)
- Prohibited activities include possession, sale, purchase, transfer, loan, pledge, transportation, distribution, importation, and manufacture of assault weapons (*California has the broadest prohibition*)
- Pre-ban weapons are not grandfathered and instead are to be rendered inoperable or removed from the jurisdiction (*District of Columbia, Cook County; New Jersey grandfathered only a small category of assault weapons*)
- Alternatively, if pre-ban weapons are grandfathered, there is a registration mechanism for grandfathered weapons, with strict limits on their transferability, use and storage [43] *(California, Connecticut, Hawaii, New Jersey, New York)*

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[1] Different laws may define assault weapons based on the presence of different military-style features. The features identified on the diagram are drawn from the Law Center's model assault weapons law, available from the Law Center upon request.

[2] For more information about these tragedies, *see* Mark Follman, Gavin Aronsen & Deanna Pan, *A Guide to Mass Shootings in America*, Mother Jones (July 20, 2012), at http://www.motherjones.com/politics/2012/07/mass-shootings-map.

[3] Mark Follman et al., *More Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines*, Mother Jones (Feb. 27, 2013), at http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazines-mass-shootings-feinstein.

[4] For some of the mass shootings included in the analysis, information about the types of firearms and ammunition magazines used remains unknown. Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings* 1 (Jan. 2013), at http://libcloud.s3.amazonaws.com/9/56/4/1242/analysis-of-recent-mass-shootings.pdf.

[5] Colby Goodman & Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges*, *in Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime* 185 (Eric L. Olson, David A. Shirk & Andrew Selee eds., 2010), at http://www.wilsoncenter.org/sites/default/files/Shared%20Responsibility%2012.22.10.pdf.

[6] Violence Policy Center, *"Officer Down" — Assault Weapons and the War on Law Enforcement, Section One: Assault Weapons, the Gun Industry, and Law Enforcement* (May 2003), at http://www.vpc.org/studies/officeone.htm.

[7] International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 26 (2007), at https://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87. According to a survey by the Police Executive Research Forum, "Thirty-seven percent of the police agencies responding to PERF's survey reported that they have seen noticeable increases in criminals' use of assault weapons" since the expiration of the federal ban." Police Executive Research Forum, *Guns and Crime: Breaking New Ground by Focusing on the Local Impact* 2 (May 2010), at http://policeforum.org/library/critical-issues-in-policing-series/GunsandCrime.pdf.

[8] *See, e.g.,* Susan Candiotti, *Cops Find Themselves in Arms Race with Criminals,* Cable News Network (Nov. 6, 2007), at http://www.cnn.com/2007/US/11/05/cops.guns/index.html (last visited July 1, 2013); Kevin Johnson, *Police Needing Heavier Weapons,* USA Today, Feb. 19, 2007, at 1A, at http://usatoday30.usatoday.com/news/nation/2007-02-19-police-weapons_x.htm.

[9] *See Taking a Stand: Reducing Gun Violence in Our Communities*, *supra* note 7, at 26-27.

[10] Violence Policy Center, *The Militarization of the U.S. Civilian Firearms Market* 9-11*,* 29 (June 2011), at http://www.vpc.org/studies/militarization.pdf. According to one study, Americans owned an estimated 1.5 million assault weapons as of 1994, but there is no current data about the number of these weapons privately owned today. Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, Report to the National Institute of Justice, U.S. Department of Justice 1 (June 2004), at https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf.

[11] CNN/ORC International Poll, *December 17-18 – Gun Rights* 3 (Dec. 2012), at http://i2.cdn.turner.com/cnn/2012/images/12/19/cnnpoll.december19.4p.pdf. The public also overwhelmingly supported the renewal of the federal assault weapons ban when it expired in 2004. Seventy-seven percent of likely 2004 presidential election voters supported renewal of the federal assault weapon ban, while only 21% opposed renewal. Third Way, *Taking Back the Second Amendment: Seven Steps Progressives* Must *Take to Close the Gun Gap* 5 (Jan. 2006), at http://content.thirdway.org/publications/20/Third_Way_Memo_-_Taking_Back_The_Second_Amendment.pdf . *See also* Consumer Federation of America, *Consumers Strongly Support Renewing and Strengthening the Federal Assault Weapons Ban* 3 (Feb. 2004) (65% of Americans favored strengthening federal assault weapon ban, including 51% of gun owners).

[12] Field & Stream, *The 2003 National Hunting Survey* (July 2003), at http://www.fieldandstream.com/articles/hunting/2002/06/2003-national-hunting-survey.

[13] 18 U.S.C. § 922(v)(1). All references to sections of the Violent Crime Control and Law Enforcement Act of 1994, codified at 18 U.S.C. § 921 *et seq.,* are to the sections as they appeared on September 12, 2004.

[14] 18 U.S.C. § 921(a)(30).

[15] 18 U.S.C. §§ 921(a)(31), 922(w)(1). The federal law defined "large capacity ammunition feeding device" as "a magazine, belt, drum, feed strip, or similar device…that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition." 18 U.S.C. § 921(a)(31)(A). However, "attached tubular device[s] designed to accept, and capable of operating only with, .22 caliber rimfire ammunition" were exempted from the definition. 18 U.S.C. § 921(a)(31)(B).

[16] Koper, *supra* note 10, at 49. Another study analyzed data kept by the Virginia State Police and found a clear decline in the percentage of crime guns that were equipped with large capacity ammunition magazines after the federal ban was enacted. The percentage reached a low of 10% in 2004 and then steadily climbed after Congress allowed the ban to expire; by 2010, the percentage was close to 22%. *About the Project: The Hidden Life of Guns*, Wash. Post, Jan. 22, 2011, at http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204243.html; David S. Fallis & James V. Grimaldi, *Virginia Data Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post, Jan. 23, 2011, at http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html.

[17] Arindrajit Dube, Oeindrila Dube, & Omar Garcia Ponce, *Cross-Border Spillover: U.S. Gun Laws and Violence in Mexico* (August 13, 2012). APSA 2012 Annual Meeting Paper, at SSRN: http://ssrn.com/abstract=2108854.
[18] 18 U.S.C. §§ 922(l), 925(d)(3). Federal law also prohibits any person from knowingly receiving a firearm that was imported without authorization. 18 U.S.C. § 922(l).
[19] 18 U.S.C. 925(d)(3).
[20] 18 U.S.C. § 922(r). The law also prohibits the importation of "any frame, receiver, or barrel of such firearm which would be prohibited if assembled." 18 U.S.C § 925(d)(3).
[21] Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles* 3 (Apr. 1998), at http://www.atf.gov/files/publications/download/treas/treas-study-on-sporting-suitability-of-modified-semiautomatic-assault-rifles.pdf. Previously, in 1989, ATF used this authority to limit the importation of certain semiautomatic assault rifles. *Id.* at 2.
[22] Senators Dianne Feinstein, Charles Schumer & Sheldon Whitehouse, *Halting U.S. Firearms Trafficking to Mexico*, Report to the U.S. Senate Caucus on Int'l Narcotics Control 13 (June 2011), at http://www.feinstein.senate.gov/public/index.cfm?Fuseaction=Files.View&FileStore_id=beaff893-63c1-4941-9903-67a0dc739b9d. "Many of the Romanian-manufactured AK-47s that found their way to Mexico have been imported into the United States from Europe as a whole firearm or in parts as a kit despite a U.S. ban on the importation of semi-automatic assault rifles." Colby Goodman & Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges*, *in Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime* 186 (Eric L. Olson, David A. Shirk & Andrew Selee eds., 2010), at http://www.wilsoncenter.org/sites/default/files/Shared%20Responsibility%2012.22.10.pdf.
[23] Ohio also requires a special permit for the possession of a semi-automatic firearm designed or specially adapted to fire more than 31 rounds without reloading. *See* Ohio Rev. Code §§ 2923.11(D), (E), (K), (L), 2923.17-2923.20. In addition to having one of the country's strongest assault weapons bans, Connecticut also prohibits the sale or retail transfer of any semi-automatic centerfire rifle that has or accepts a magazine with a capacity exceeding five rounds to any person under twenty-one years of age. Conn. Gen. Stat. § 29-37a(b)(2).
[24] Cal. Penal Code §§ 16350, 16790, 16890, 30500-31115.
[25] Conn. Gen. Stat. §§ 53-202a – 53-202o.
[26] D.C. Code Ann. §§ 7-2501.01(3A), 7-2502.02(a)(6), 7-2505.01, 7-2505.02(a), (c).
[27] The District of Columbia did not grandfather pre-ban assault weapons.
[28] Haw. Rev. Stat. Ann. §§ 134-1, 134-4, 134-8.
[29] Md. Code Ann., Crim. Law §§ 4-301 – 4-306; Md. Code Ann., Pub. Safety § 5-101 – 5-143.
[30] Maryland required the registration of assault pistols, which were banned in the state many years before Maryland banned assault long guns.
[31] Mass. Gen. Laws ch. 140, §§ 121, 122, 123, 131, 131M.
[32] N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13.
[33] New Jersey does use a one-feature test for shotguns.
[34] N.Y. Penal Law §§ 265.00(22), 265.02(7), 265.10, 400.00(16-a).
[35] Minn. Stat. §§ 624.712 – 624.7141.
[36] Va. Code Ann. §§ 18.2-287.4, 18.2-308.2:01, 18.2-308.2:2, 18.2-308.7, 18.2-308.8.
[37] California's definition of assault weapon also includes a semi-automatic, centerfire rifle or pistol with a fixed magazine capacity exceeding 10 rounds; a semi-automatic, centerfire rifle less than 30 inches in length; and a semi-automatic shotgun with two listed features, or the ability to accept a detachable magazine, or a revolving cylinder. New Jersey also bans semi-automatic rifles with a fixed magazine capacity exceeding 15 rounds.
[38] In 2006 California amended its law to make possession of an assault weapon a public nuisance. Cal. Penal Code § 30800.
[39] Registration is critical to any law that exempts pre-ban weapons. Without such a provision, it would be nearly impossible to enforce a possession ban because there would be no way to determine the date an individual acquired possession of a banned weapon.
[40] California and Connecticut allow possession of a grandfathered assault weapon only at, or when being transported among: the possessor's property or workplace; the property of an expressly-consenting owner; a licensed gun dealer (for service or repair); certain target ranges; licensed shooting clubs; or an exhibition, display or education project about firearms approved by law enforcement or a recognized firearm-education entity. Cal. Penal Code § 30945; Conn. Gen. Stat.

§ 53-202d(f). California also allows possession of a grandfathered assault weapon on publicly owned land, provided it is specifically permitted by the managing authority. Cal. Penal Code § 30945.

[41] D.C. Code Ann. §§ 7-2551.01 – 7-2551.03. In 2005, Congress passed and the President signed into law the Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA grants firearms dealers and others immunity from some civil lawsuits, with certain exceptions. 15 U.S.C. § 7903(5)(A)(ii),(iii).

[42] Cook County, Illinois Code of Ordinances §§ 54-211 – 54-213.

[43] See our summary on the Registration of Firearms for features of comprehensive registration laws. The most comprehensive system of regulating the purchase, possession and ownership of firearms combines registration of firearms with licensing of gun owners. Additional information on licensing of firearm owners is contained in our summary on Licensing Gun Owners & Purchasers.

Large Capacity Ammunition Magazines

Background

Large capacity magazines, some of which can hold up to 100 rounds of ammunition, significantly increase a shooter's ability to injure and kill large numbers of people quickly because they enable the individual to fire repeatedly without needing to reload. The time required to reload can be critical in enabling victims to escape and law enforcement or others to intervene.

Although the statutory definitions vary, magazines with a capacity of more than 10 rounds of ammunition are generally considered "large capacity" magazines. While large capacity magazines are typically associated with semi-automatic assault weapons or machine guns, such devices are generally available for any semi-automatic firearm that accepts a detachable magazine.

Large capacity ammunition magazines are the common thread uniting all of the high-profile mass shootings in America.[1] The shooter who killed 20 children and 6 adults at Sandy Hook Elementary School in Newtown, Connecticut in 2012 equipped his assault weapon with 30-round magazines, which enabled him to fire 154 rounds in less than five minutes.[2] The gunman in Tucson, Arizona who killed six people and injured 13 others, including U.S. Representative Gabrielle Giffords, in a supermarket parking lot in 2011, used a handgun equipped with a 33-round magazine. His shooting spree was only interrupted when he was tackled by a bystander as he finally stopped to reload his weapon.[3]

Large capacity magazines were also used in the assault weapons massacres in a movie theater in Aurora, Colorado in 2012, at Columbine High School in 1999, on a military base in Fort Hood, Texas in 2009, and in an office building at 101 California Street in San Francisco in 1993.[4] Moreover, the shooter who killed 67 people at a summer camp in Norway in 2011 stated in his written manifesto that he purchased 30-round ammunition magazines via mail order from a dealer in the United States.[5]

In fact, a review of 62 mass shootings between 1982 and 2012 by Mother Jones found that large capacity ammunition magazines were recovered in 50% of them.[6] A review of mass shootings between January 2009 and January 2013 by Mayors Against Illegal Guns found that incidents where assault weapons or large capacity ammunition magazines were used resulted in 135% more people shot and 57% more killed, compared to other mass shootings.[7]

Large capacity magazines are a relatively new phenomenon. Prior to the 1980s, the most popular type of handgun was the revolver, which typically holds six rounds of ammunition in a rotating cylinder. During the 1980s, however, the firearms industry began mass producing and marketing semiautomatic pistols, which can accept ammunition magazines.[8] In 1980, semiautomatic pistols accounted for only 32% of the 2.3 million handguns produced in America.[9] By 2008, however, such pistols accounted for 76% of the 1.8 million handguns produced that year.[10]

Bans on large capacity ammunition magazines are often adopted in concert with bans on assault weapons. However, large capacity ammunition magazine bans reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity ammunition magazine, including a

firearm that is not an assault weapon.[11] Crime data also suggests that a ban on large capacity magazines would have a greater impact on gun crime than a ban on assault weapons alone.[12]

Polling consistently shows that a strong majority of Americans support laws banning large capacity ammunition magazines. For example, in a 2012 survey for CNN, 62% of those polled supported such laws.[13]

Summary of Federal Law

In 1994, Congress adopted the Violent Crime Control and Law Enforcement Act, making it unlawful to transfer or possess a "large capacity ammunition feeding device" not lawfully possessed on or before the law's enactment.[14] The law also banned the manufacture, transfer and possession of semi-automatic assault weapons. See our summary on Assault Weapons for more information. The law was adopted with a sunset clause, however, and expired in 2004, despite overwhelming public support for its renewal. Thus, large capacity ammunition magazines and assault weapons that were formerly banned under the federal law are now legal unless banned by state or local law.

The 1994 Act defined "large capacity ammunition feeding device" as "a magazine, belt, drum, feed strip, or similar device…that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition."[15] The ban contained a loophole, however, allowing for the continued transfer and possession of large capacity ammunition magazines manufactured or possessed on or before enactment of the law.

Manufacturers took advantage of this loophole in the months leading up to the ban by boosting production of the magazines. As a result, they continued to be readily available – and legal – nationwide even during the time the 1994 Act was in effect, except where specifically banned by state or local law. Additionally, because most magazines do not have any identifying marks to indicate when they were manufactured, it was difficult to distinguish those made before or after the ban.[16]

Despite these limitations, evidence indicates that **the federal ban worked to reduce the use of large capacity magazines in crime.** A Washington Post study analyzed data kept by the Virginia State Police and found a clear decline in the percentage of crime guns that were equipped with large capacity ammunition magazines after the federal ban was enacted.[17] The percentage reached a low of 10% in 2004 and then steadily climbed after Congress allowed the ban to expire; by 2010, the percentage was close to 22%.[18]

Similarly, since the end of the federal ban, the Los Angeles Police Department has recovered significantly greater numbers of large capacity ammunition magazines, from 38 in 2003 to anywhere from 151 to 940 each year between 2004 and 2010.[19]

SUMMARY OF STATE LAWS BANNING LARGE CAPACITY AMMUNITION MAGAZINES

Eight states and the District of Columbia have enacted laws banning large capacity ammunition magazines: California, Colorado, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey and New York. All of these jurisdictions except Colorado also ban assault weapons.

State that Bans LCAMs	*For Use w/ Which Firearms*	*Legal Magazine Capacity Limit*	*Prohibited Acts for LCAMs*	*Treatment of Pre-Owned LCAMs*
California[20]	All Firearms	10 rounds	Manufacture, importation, keeping for sale, offering and exposing for sale, giving, and lending	Allowed (like all LCAMs. There is no ban on possession.)
Colorado[21]	All Firearms	15 rounds	Sale, transfer and possession	Allowed ("grandfathered")
Connecticut[22]	All Firearms	10 rounds	Distribution, importation, keeping for sale, offering and exposing for sale, purchase, and possession	Allowed but must be registered.
D.C.[23]	All Firearms	10 rounds	Possession, sale and other transfer	Not allowed
Hawaii[24]	Handguns Only	10 rounds	Manufacture, possession, sale, barter, trade, gift, transfer, and acquisition	Not allowed
Maryland[25]	All Firearms	10 rounds	Manufacture, sale, offering for sale, purchase, receipt and transfer	Allowed (like all LCAMs. There is no ban on possession.)
Massachusetts[26]	All Firearms	10 rounds	Sale, offering for sale, transfer and possession	Allowed ("grandfathered")
New Jersey[27]	All Firearms	15 rounds	Manufacture, transportation, shipment, sale, disposal, and possession	Not allowed
New York[28]	All Firearms	10 rounds	Manufacture, transportation, disposal and possession	Not allowed

Description of State Laws Banning Large Capacity Ammunition Magazines
For citations to these laws, please see the chart above.

Large capacity ammunition magazine bans can be broken down into the following general categories:

1. ***States that Ban Large Capacity Magazines for Use with Any Firearm:*** Seven states (California, Colorado, Connecticut, Maryland, Massachusetts, New Jersey and New York) and the District of Columbia all ban large capacity ammunition magazines for use with any firearm.

2. ***State that Bans Large Capacity Magazines for Use with Handguns Only:*** Hawaii prohibits the manufacture, transfer and possession of large capacity magazines designed for or capable of use with a handgun.

3. ***Definition of Large Capacity Magazine:*** State laws vary as to how the term "large capacity magazine" is defined. California, Connecticut, Hawaii, Maryland, Massachusetts, New York, and the District of Columbia define a large capacity magazine as a magazine that is capable of holding more than 10 rounds.[29] Colorado and New Jersey define a large capacity magazine as a magazine capable of holding more than 15 rounds.

4. ***Prohibited Activities:*** Hawaii, New Jersey and New York have the most comprehensive prohibitions, banning possession, manufacture, and transfer (including sale) of large capacity magazines. New Jersey allows possession of large capacity magazines by a person who has registered a grandfathered assault weapon and uses the magazine in connection with competitive shooting matches sanctioned by the Director of Civilian Marksmanship of the U.S. Department of the Army.[30]

Other states ban various combinations of activities related to large capacity magazines. Colorado, Massachusetts and the District of Columbia ban possession and transfer; California bans manufacture, transfer and importation; and Maryland bans manufacture and transfer. Connecticut bans distribution, importation, purchase, transfer and possession.

5. ***Magazines Owned at the Time of the Ban:*** State laws that ban the possession of large capacity ammunition magazines vary in their approach to large capacity magazines already in the possession of private individuals at the time a ban was adopted.

a. ***States that Do Not Grandfather Pre-Ban Magazines:*** The District of Columbia, Hawaii,[31] New Jersey, and New York do not generally allow for the continued possessions of large capacity magazines obtained before these states enacted a ban. As a result, these jurisdictions effectively required any large capacity magazine owned at the time the ban was enacted to be destroyed or transferred to a dealer, law enforcement, or out of state. New York extends a 30-day grace period to any individual in possession of such a magazine manufactured before September 13, 1994 who is unaware that it is illegal. This individual is not required to dispose of the magazine until he or she is notified by law enforcement or county licensing officials that possession is unlawful. Once they receive notice, they have 30 days to surrender or "lawfully dispose" of illegal magazines.

b. ***States that Grandfather Pre-Ban Magazines:*** The Connecticut ban does not apply to large capacity magazines that were lawfully possessed before January 1, 2014, but lawful owners of such magazines must register them with the State Department of Emergency Services and Public Protection within a specified period. The Colorado ban does not apply to magazines that were lawfully possessed before July 1, 2014, and the Massachusetts ban exempts magazines that were lawfully possessed on September 13, 1994 (the date the federal ban took effect), but neither Colorado nor Massachusetts required the registration of pre-ban magazines. California and Maryland do not prohibit possession of large capacity magazines, although manufacture and transfer are banned. As a result, individuals who possessed such magazines before these states' bans may continue to possess them.

6. ***States that Require Identification Markings for Magazines Manufactured After the Law:*** As noted above, enforcement of laws grandfathering pre-ban magazines is difficult because most magazines do not contain any markings to identify those that were manufactured before or after the effective date of the ban. As a result, the Colorado law requires manufactures to include a permanent stamp or marking on all large capacity magazine produced after July 1, 2013. These markings must indicate that the magazine was manufactured after the date the ban went into effect and must be conspicuously engraved or cast on the outer surface of the magazine.

7. ***Bans on "Conversion" or "Repair" Kits*****:** In 2013, California explicitly banned the use of "conversion" or "repair" kits that allow the purchaser to construct home-made large capacity ammunition magazines from spare parts.

SELECTED LOCAL LAW

See the description in our summary on Assault Weapons of the Blair-Holt Assault Weapons Ban in Cook County, Illinois. This law includes a ban on large capacity ammunition magazines.

MODEL LAW

The Law Center has drafted a *Model Law to Ban Assault Weapons and Large Capacity Magazines*. Please contact the Law Center for further information.

FEATURES OF A COMPREHENSIVE LAW BANNING LARGE CAPACITY AMMUNITION MAGAZINES

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Definition of "large capacity ammunition magazine" includes magazines capable of holding more than 10 rounds *(Hawaii, California, Connecticut, Maryland, Massachusetts, New York, District of Columbia)*
- Ban applies to large capacity ammunition magazines for use with all firearms *(California, Colorado, Connecticut, Maryland, Massachusetts, New Jersey, New York, District of Columbia)*
- Prohibited activities include possession, sale, purchase, transfer, loan, pledge, transportation, distribution, importation, and manufacture of large capacity ammunition magazines *(Hawaii,*

New Jersey, and New York are the most comprehensive, banning manufacture, transfer and possession)

- No allowance for pre-ban magazines *(District of Columbia, Hawaii, New Jersey, New York)*; alternatively, if pre-ban magazines are grandfathered, the owner must register them before a specified date *(Connecticut)*
- If the manufacturing of large capacity magazines is permitted, all magazines manufactured after the adoption of the ban must be identified by distinct and legible markings *(Colorado)*
- "Conversion" or "repair" kits that can be used to build large capacity ammunition magazines from spare parts are prohibited *(California)*

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[1] *See* Violence Policy Center, *Mass Shootings in the United States Involving High-Capacity Ammunition Magazines*, at http://www.vpc.org/fact_sht/VPCshootinglist.pdf.

[2] Mary Ellen Clark & Noreen O'Donnell, *Newtown School Gunman Fired 154 Rounds in Less than 5 Minutes*, Reuters, Mar. 28, 2013, at http://www.reuters.com/article/2013/03/28/us-usa-shooting-connecticut-idUSBRE92R0EM20130328.

[3] Sam Quinones & Nicole Santa Cruz, *Crowd Members Took Gunman Down*, L.A. Times, Jan. 9, 2011, at http://articles.latimes.com/2011/jan/09/nation/la-na-arizona-shooting-heroes-20110110.

[4] *Id.* For more information about these tragedies, *see* Mark Follman, Gavin Aronsen,& Deanna Pan, *A Guide to Mass Shootings in America*, Mother Jones (July 20, 2012), at http://www.motherjones.com/politics/2012/07/mass-shootings-map.

[5] Stephanie Condon, *Norway Massacre Spurs Calls for New U.S. Gun Laws,* CBSNews.com (July 28, 2011), at http://www.cbsnews.com/8301-503544_162-20085056-503544.html.

[6] Mark Follman et al., *More Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines*, Mother Jones (Feb. 27, 2013), at http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazines-mass-shootings-feinstein.

[7] For some of the mass shootings included in the analysis, information about the types of firearms and ammunition magazines used remains unknown. Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings* 1 (Jan. 2013), at http://libcloud.s3.amazonaws.com/9/56/4/1242/analysis-of-recent-mass-shootings.pdf.

[8] Violence Policy Center, *Backgrounder on Glock 19 Pistol and Ammunition Magazines Used in Attack on Representative Gabrielle Giffords and Others* 1 (Jan. 2011), at http://www.vpc.org/fact_sht/AZbackgrounder.pdf.

[9] *Id.*

[10] *Id.* at 2.

[11] As of 1994, 21% of civilian-owned handguns and 18% of all civilian-owned firearms were equipped with magazines that could hold 10 or more rounds. Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, Report to the National Institute of Justice, U.S. Department of Justice 6, 18 (June 2004), at https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf. Assault weapons make up only about 1% of the firearms estimated to be in civilian hands. Bureau of Justice Statistics Selected Findings, U.S. Department of Justice, *Firearms, Crime, and Criminal Justice: Guns Used in Crime* 6 (July 1995), at http://bjs.gov/content/pub/pdf/GUIC.PDF.

[12] In 1994, guns equipped with large capacity magazines were involved in 14% to 26% of gun crimes, while assault weapons were only used in 6%. Koper, *supra* note 11, at 19. Additionally, a survey of police departments conducted by the Police Executive Research Forum found that "38 percent of the police departments reported noticeable increases in criminals' use of semiautomatic weapons with high-capacity magazines" since the expiration of the federal ban. Police Executive Research Forum, *Guns and Crime: Breaking New Ground by Focusing on the Local Impact* 2 (May 2010), at http://policeforum.org/library/critical-issues-in-policing-series/GunsandCrime.pdf.

[13] CNN/ORC International Poll, *December 17-18 – Gun Rights* 3 (Dec. 2012), at http://i2.cdn.turner.com/cnn/2012/images/12/19/cnnpoll.december19.4p.pdf.

[14] 18 U.S.C. § 922(w)(1), (2). All references to sections of the Violent Crime Control and Law Enforcement Act of 1994, codified at 18 U.S.C. § 921 *et seq.,* are to the sections as they appeared on September 12, 2004.

[15] 18 U.S.C. § 921(a)(31)(A). However, "attached tubular device[s] designed to accept, and capable of operating only with, .22 caliber rimfire ammunition" were exempted from the definition. 18 U.S.C. § 921(a)(31)(B).

[16] Importation of Ammunition Feeding Devices with a Capacity of More Than 10 Rounds, 61 Fed. Reg. 39, 320 (July 29, 1996) (amending 27 C.F.R. § 178.119).
[17] *About the Project: The Hidden Life of Guns*, Wash. Post, Jan. 22, 2011, at http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204243.html; David S. Fallis & James V. Grimaldi, *Virginia Data Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post, Jan. 23, 2011, at http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html.
[18] *Id.*
[19] Press, Release, Citizens Crime Commission of New York City, *NYC & LA City Councils Introduce Rezo for Federal Ban on Large Capacity Ammunition Magazines* 2 (Mar. 2, 2011), at http://www.nycrimecommission.org/pdfs/CrimeCmsnNYCLACouncils.pdf.
[20] Cal. Penal Code § 16350, 16740, 16890, 32310-32450.
[21] Colo. Rev. Stat. §§ 18-12-301, 18-12-303.
[22] Conn. Gen. Stat. §§ 53-202p, 53-202q.
[23] D.C. Code Ann. § 7-2506.01(b).
[24] Haw. Rev. Stat. Ann. § 134-8(c),
[25] Md. Code Ann., Crim. Law § 4-305.
[26] Mass. Gen. Laws ch. 140, §§ 121, 131M.
[27] N.J. Stat. Ann. §§ 2C:39-1(y), 2C:39-3(j), 2C:39-9(h).
[28] N.Y. Penal Law §§ 265.00(23), 265.02(8), 265.10, 265.11, 265.20(7-f), 265.36-265.37.
[29] A law New York adopted in 2013 would also prohibit the manufacture or sale of any magazine that can hold more than seven rounds, and the possession of any magazine that can hold more than seven rounds if it was obtained after January 15, 2013. However, this law has been suspended and will not go into effect without further legislative action. See 2013 N.Y. ALS 1 § 58, as amended by 2013 N.Y. ALS 57 Part FF § 4. As enacted, the law prohibits the possession of any magazine that is actually holding more than seven rounds, except at a shooting range. In December 2013, however, a federal district court struck down this provision as violating the Second Amendment, while upholding several other provisions of the state's regulation of assault weapons and large capacity magazines. *N.Y. State Rifle & Pistol Ass'n v. Cuomo,* 2013 U.S. Dist. LEXIS 182307 (W.D.N.Y. Dec. 31, 2013).
[30] Additional information on New Jersey's assault weapon ban is contained in the summary on Assault Weapons.
[31] When Hawaii enacted its law in 1992, it allowed individuals in possession of magazines that could accept 20 or fewer rounds to keep them for the following two years. This grandfathering provision expired in July 1, 1994, so individuals in possession of magazines that could accept more than 10 rounds were required to dispose of them before that date.

Fifty Caliber Weapons

Background

Considered among the most destructive weapons legally available to civilians in the United States, 50 caliber rifles are military firearms, used by armed forces across the globe, that combine long range, accuracy, and massive power.[1]

A 50 caliber rifle can hit a target accurately from distances of 1,000 to 2,000 yards, depending on the skill of the shooter, and can reach targets at a longer range, sacrificing accuracy.[2] **Designed for use in urban combat situations, these weapons can penetrate structures and destroy or disable light armored vehicles, radar dishes, helicopters, stationary and taxiing airplanes, and other "high-value" military targets.[3]**

Despite their deadly power, or perhaps because of it, 50 caliber rifles are proliferating on the civilian market. Because they are considered long guns, however, they are subject to less regulation than handguns.[4] In fact, under federal law and the laws of nearly all states, any 18-year-old who passes a background check may purchase a 50 caliber rifle.[5] Moreover, because federal law and the laws of most states do not require private sellers to conduct background checks, 50 caliber rifles may easily be purchased by criminals at gun shows and elsewhere.

Federal law enforcement officials have identified cases of criminal use of 50 caliber rifles "with a nexus to terrorism, outlaw motorcycle gangs, international and domestic drug trafficking, and violent crime."[6] Fifty caliber rifles sold in the United States have also been identified as one of the "guns of choice" of Mexican drug cartels, and have been used "to assassinate Mexican police and other government officials traveling in armored vehicles."[7]

A 2007 report by the International Association of Chiefs of Police (IACP) recommended that Congress ban 50 caliber sniper rifles.[8] Additionally, 85% of Americans support laws restricting the sale of 50 caliber rifles.[9]

The destructive power of the 50 caliber rifle can be magnified by the use of certain types of ammunition that are legal under federal law (although banned in some states). In addition to the standard "ball" round of 50 caliber ammunition, armor-piercing,[10] incendiary, and combination armor-piercing and incendiary ammunition for 50 caliber rifles can significantly enhance their destructive capacity,[11] particularly against chemical and industrial facilities[12] and civil aviation targets.[13]

Although most of the data regarding 50 caliber firearms relates to rifles, the industry also has introduced 50 caliber handguns. Smith & Wesson, for example, manufactures a handgun that can fire a 50 caliber round and that may be capable of penetrating the highest grade of concealable body armor typically worn by law enforcement officers.[14]

Summary of Federal Law

Federal law does not regulate 50 caliber rifles. Federal legislation to regulate or ban 50 caliber rifles has been introduced several times since 1999, but these efforts have been unsuccessful.

SUMMARY OF STATE LAWS REGARDING 50 CALIBER WEAPONS

California and the District of Columbia ban 50 caliber rifles. Connecticut bans a single model of 50 caliber rifle. Maryland imposes various regulations on transfers of 50 caliber rifles. No state bans 50 caliber handguns.

For laws banning fifty caliber cartridges, see our summary on Ammunition Regulations.

Description of State Laws Banning and/or Regulating 50 Caliber Rifles

1. *California:*

a. *Prohibited Activities*: California's 50 caliber ban prohibits a wide range of activities; it applies to manufacture, possession, distribution, and importation of 50 caliber rifles, as well as sale, offering for sale, and transfer.[15]

b. *Definition of Banned Weapon:* California's ban on 50 caliber rifles defines the banned weapons based on the type of cartridge they are capable of firing. California's ban prohibits "50 caliber BMG rifles" which are defined as any "center fire rifle that can fire a .50 BMG cartridge." A BMG cartridge is then defined in detail based on specific length and diameter.[16]

c. *Grandfathering:* The California law provides that in order to retain possession of a 50 caliber rifle, any person who lawfully possessed such a weapon prior to January 1, 2005 must have registered it no later than April 30, 2006.[17] See our summary on the Registration of Firearms for features of comprehensive registration laws.

2. *District of Columbia*: The District deems .50 BMG rifles unregisterable, thereby prohibiting the possession, sale or other transfer of these firearms.[18] The District does not allow the continued possession of such rifles possessed prior to the ban's enactment.

3. *Connecticut:* Connecticut bans the possession, distribution, importation, transportation, and keeping or offering for sale of the "Barrett Light-Fifty model 82A1," which is included in the state's definition of assault weapon.[19] Connecticut required the registration of assault weapons owned prior to the ban's enactment.[20]

4. *Maryland:* Maryland is the only other state that in some manner regulates the 50 caliber rifle, including the "Barrett light .50 cal. semi-auto" in the list of assault weapons defined as "regulated firearms." Transfers of regulated firearms are subject to enhanced background checks, minimum age restrictions and waiting periods. Moreover, firearms dealers and private/secondary sellers must

comply with additional regulations when transferring a regulated firearm, and purchasers are limited to the purchase of one regulated firearm per month.[21]

SELECTED LOCAL LAW

San Francisco, California

An ordinance adopted by the City and County of San Francisco, California in 2004 prohibits the sale or transfer of any "50 caliber firearm or 50 caliber cartridge." "50 caliber firearm" is defined as any firearm capable of firing a center-fire 50 caliber cartridge, and includes 50 caliber handguns. The ordinance has been superseded by state law with respect to 50 caliber rifles, but continues in effect with respect to 50 caliber handguns and cartridges.[22]

FEATURES OF A COMPREHENSIVE LAW BANNING 50 CALIBER WEAPONS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Ban applies to 50 caliber rifles *(California, District of Columbia),* 50 caliber handguns, and 50 caliber cartridges *(San Francisco)*
- Prohibited activities include possession, sale, purchase, transfer, loan, pledge, transportation, distribution, importation, and manufacture of 50 caliber rifles *(California bans manufacture, possession, distribution, importation, sale, offering for sale, and transfer)*
- Pre-ban weapons are not grandfathered and instead are to be rendered inoperable or removed from the jurisdiction *(District of Columbia)*
- Alternatively, if pre-ban firearms are grandfathered, there is a registration mechanism for grandfathered firearms, with strict limits on transferability, use and storage of pre-ban weapons[23] *(California)*

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[1] Violence Policy Center, *Voting From the Rooftops: How the Gun Industry Armed Osama bin Laden, Other Foreign and Domestic Terrorists, and Common Criminals with 50 Caliber Sniper Rifles* 7-12 (Oct. 2001), at http://www.vpc.org/graphics/rooftop.pdf.

[2] *Id*. at 8.

[3] Violence Policy Center, *Clear and Present Danger: National Security Experts Warn About the Danger of Unrestricted Sales of 50 Caliber Anti-Armor Sniper Rifles to Civilians* (July 2005), at http://www.vpc.org/studies/50danger.pdf.

[4] *Id.* at 5; Violence Policy Center, *One Shot, One Kill: Civilian Sales of Military Sniper Rifles* 41-42 (May 1999), at http://www.vpc.org/graphics/snipcov2.pdf; *Voting from the Rooftops*, *supra* note 1, at 62-68.

[5] 18 U.S.C. § 922(b)(1), (c)(1). By contrast, federally licensed dealers can only sell or transfer handguns to persons age 21 or older. 18 U.S.C. § 922(x)(1), (3), (5).

[6] Office of Special Investigations, U.S. General Accounting Office, *Weaponry: Availability of .50 Caliber Semiautomatic Rifles* 6-7 (June 30, 1999), at http://www.gao.gov/assets/90/88915.pdf. *See also* Violence Policy Center, *Criminal Use of the 50 Caliber Sniper Rifle Fact Sheet* (2013), at http://www.vpc.org/snipercrime.htm (last visited July 8, 2013).

[7] Violence Policy Center, *Iron River: Gun Violence and Illegal Firearms Trafficking on the U.S.-Mexico Border* 20 (Apr. 2009), at http://www.vpc.org/studies/ironriver.pdf. *See* Colby Goodman & Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges*, *in Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime* 187 (Eric L. Olson, David A. Shirk & Andrew Selee eds., 2010), at http://www.wilsoncenter.org/sites/default/files/Shared%20Responsibility%2012.22.10.pdf.

[8] International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 27 (Sept. 2007), at https://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87.
[9] Tom W. Smith, National Opinion Research Center (NORC)/University of Chicago, *Public Attitudes Towards the Regulation of Firearms* 3 (Mar. 2007) (discussing the results of the "2006 General Social Survey" NORC/University of Chicago), at http://www-news.uchicago.edu/releases/07/pdf/070410.guns.norc.pdf.
[10] For additional information on armor-piercing ammunition, see the section on Ammunition Regulation.
[11] *Voting From the Rooftops*, *supra* note 1, at 12-20.
[12] *See generally* Violence Policy Center, *Sitting Ducks: The Threat to the Chemical and Refinery Industry from 50 Caliber Sniper Rifles* (Aug. 2002), at http://www.vpc.org/studies/duckcont.htm.
[13] *See generally* Violence Policy Center, *Just Like Bird Hunting: The Threat to Civil Aviation From 50 Caliber Sniper Rifles* (Jan. 2003), at http://www.vpc.org/graphics/birdhuntingstudy.PDF.
[14] Violence Policy Center, *Vest Buster: The .500 Smith & Wesson Magnum – The Gun Industry's Latest Challenge to Law Enforcement Body Armor* 19 (June 2004), at http://www.vpc.org/graphics/S&W500%20final.pdf.
[15] Cal. Penal Code §§ 16790, 30500-31115. California's ban on 50 caliber rifles was adopted after a number of local cities and counties in California imposed local bans on these weapons. *See, e.g.,* Los Angeles, Cal., Municipal Code ch. V, art. 5, § 55.18; San Francisco, Cal., Police Code art. 9, § 613.10-1.
[16] Under the definition of "destructive device," California also bans the possession, sale, offer for sale, and knowing transportation of incendiary and tracer ammunition that is equal to or less than .60 caliber, for use in rifles, including .50 caliber rifles. Cal. Penal Code §§ 16460, 18710, 18730. Connecticut also bans distribution, transportation, importation, sale and transfer of armor piercing or incendiary 50 caliber bullets. Conn. Gen. Stat. § 53-202l.
[17] Registration is critical to any law that exempts pre-ban weapons. Without such a provision, it would be nearly impossible to enforce a possession ban because there would be no way to determine the date an individual acquired possession of a banned weapon.
[18] D.C. Code Ann. §§ 7-2502.02(a)(7), 7-2505.01, 7-2505.02(a), (c).
[19] Conn. Gen. Stat. § 53-202a(1)(A)(i).
[20] Conn. Gen. Stat. §§ 53-202a – 53-202o.
[21] Md. Code Ann., Pub. Safety §§ 5-101(r)(2)(ix), 5-102 – 5-143.
[22] San Francisco, Cal., Police Code art. 9 § 613.10-1.
[23] See our summary on the Registration of Firearms for features of comprehensive registration laws. The most comprehensive system of regulating the purchase, possession and ownership of firearms combines registration of firearms with licensing of gun owners. Additional information on licensing of firearm owners is contained in our summary on Licensing Gun Owners & Purchasers.

Non-Powder Guns

Background

Non-powder guns, including BB, air and pellet guns, are inherently dangerous weapons that can inflict potentially severe or lethal injuries, particularly on children. According to one study, there are an estimated 3.2 million BB/pellet guns sold in the U.S. each year.[1] Because non-powder guns expel projectiles (usually made of metal or hard plastic) through the force of air pressure, CO_2 pressure, or spring action, they are different from firearms, which use gunpowder to generate energy to launch a projectile.

The Centers for Disease Control and Prevention have compiled national data on non-powder gun injuries which illustrate the inherent danger of these weapons. Between 2001 and 2011, non-powder guns injured 209,981 people nationwide, including 145,423 children age 19 or younger.[2] In 2011 alone, 16,451 injuries – including 10,288 injuries to children age 19 and younger – resulted from the use of non-powder guns.[3] According to the Consumer Product Safety Commission, BB guns and pellet rifles cause an average of four deaths per year.[4]

Because non-powder guns are designed to discharge projectiles, often at high speeds and with significant force, they should not be confused with toy guns. Both non-powder and toy guns, however, are often designed to appear almost indistinguishable from actual firearms, and may be mistaken for firearms by law enforcement or others.[5] According to a New York Times investigation, "In recent years, dozens of police officers in Texas, California, Maryland, Florida and elsewhere have shot children and adults armed with what they believed were handguns but that were determined later to be BB guns or other types of air pistols."[6]

Summary of Federal Law

Although there are no federal laws regulating their transfer, possession or use, non-powder guns are, unlike firearms, regulated by the Consumer Product Safety Commission (CPSC).[7] Hence, non-powder guns are subject to generalized statutory limitations involving "substantial product hazard[s]" and articles that create "a substantial risk of injury to children."[8] The CPSC has not adopted specific mandatory regulations in this area, although the BB gun industry has adopted voluntary standards regarding non-powder guns.[9]

Federal law prevents states from prohibiting the sale of traditional BB or pellet guns, but explicitly allows states to prohibit the sale of these weapons to minors.[10] Courts have interpreted these provisions to allow states to impose other regulations on the sale of traditional BB or pellet guns so long as the regulations fall short of prohibitions on sale.[11]

Additionally, federal law regulates the design of "look-alike firearms," which include "toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles."[12] Every look-alike firearm must: (1) have a permanently-affixed blaze orange plug inserted in the firearm's barrel; (2) have a similar marking on the exterior of the barrel; (3) be constructed entirely of transparent or translucent

materials; or (4) be covered in certain bright colors.[13] This federal law supersedes any state or local law which provide for markings or identification that are inconsistent with these requirements.[14]

SUMMARY OF STATE LAWS REGULATING NON-POWDER GUNS

The following jurisdictions regulate the transfer, possession or use of non-powder guns to some degree:

California[15]
Colorado[16]
Connecticut[17]
Delaware[18]
District of Columbia[19]
Florida[20]
Illinois[21]
Maine[22]
Massachusetts[23]
Michigan[24]
Minnesota[25]
Mississippi[26]
New Hampshire[27]
New Jersey[28]
New York[29]
North Carolina[30]
North Dakota[31]
Oklahoma[32]
Pennsylvania[33]
Rhode Island[34]
South Dakota[35]
Virginia[36]
Washington[37]
Wisconsin[38]

Description of State Laws Regulating Non-Powder Guns

Although additional regulations exist, non-powder gun regulations can generally be broken down into the following categories:

1. ***Defining All Non-Powder Guns as Firearms***: New Jersey and Rhode Island take this approach, which generally ensures that all non-powder guns are kept out of the hands of children (absent direct adult supervision), and that felons and other individuals prohibited from possessing firearms are similarly barred from possessing non-powder guns.[39]

2. ***Treating Certain Non-Powder Guns as Firearms***: Illinois and Michigan define high-power and/or large caliber non-powder guns as firearms. Illinois excludes from the definition of firearms non-powder

guns of .18 caliber or less and non-powder guns with a muzzle velocity of less than 700 feet per second. Michigan excludes the following non-powder guns from the definition of firearms: smooth bore rifles or handguns designed and manufactured exclusively for propelling BB's, not exceeding .177 caliber by gas or air.

3. ***Defining Non-Powder Guns as Dangerous Weapons***: Connecticut, Delaware and North Dakota list some or all non-powder guns as dangerous weapons. However, dangerous weapon laws tend to be much less comprehensive than laws regulating firearms. In Connecticut, it is unlawful to carry a dangerous weapon, although various exceptions exist for BB guns.[40] It is also unlawful to transport a dangerous weapon in a vehicle without a permit. Delaware prohibits possession of dangerous weapons, which are defined to include certain large caliber BB or air guns. North Dakota applies enhanced penalties for the improper use or possession of dangerous weapons.

4. ***Regulating Non-Powder Guns with Respect to Minors***: Most states that regulate non-powder guns do so by prohibiting transfers to children or by prohibiting/limiting where the guns can be possessed or used, although the restrictions are often inapplicable with parental consent or adult supervision. Depending on the state, the term "child" is defined as being anywhere from under 18 years of age to under 12 years of age. A number of states also criminalize the use or possession of non-powder guns on or near school property, or provide that such use or possession shall be grounds for expulsion.

<u>States that Impose Age Restrictions on Possession, Use, or Transfer of Non-Powder Guns</u>

California
Delaware
District of Columbia
Florida
Illinois
Maine
Massachusetts
Michigan
Minnesota
New York
North Carolina
Pennsylvania
Virginia

<u>States that Explicitly Regulate Possession of Non-Powder Guns on School Grounds</u>

California
Colorado
Connecticut
Delaware
Minnesota
Mississippi
New Hampshire

New York
North Carolina
South Dakota
Virginia
Washington
Wisconsin

SELECTED LOCAL LAW

New York City

New York City prohibits the sale or possession of any air pistol or air rifle (defined as any instrument in which the propelling force is air or a spring) without an appropriate license. Persons who are licensed by the city to sell air pistols and rifles may do so only if they deliver the weapons to a location outside the city or the transferee has an air pistol or rifle license. However, the use of air pistols and rifles in connection with "an amusement licensed by the department of consumer affairs" or at a shooting range is also permitted. Air pistol or rifle dealers must keep records detailing the name and address of each purchaser and the place of delivery for each sale.[41]

FEATURES OF COMPREHENSIVE LAW REGULATING NON-POWDER GUNS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Strict limits are imposed on the possession and sale of non-powder guns within the jurisdiction *(New York City)*
- If the sale and possession of non-powder guns are permitted within the jurisdiction, the most comprehensive approach is to define all non-powder guns as firearms, so that restrictions on purchase and possession by minors, felons and other prohibited purchasers will apply *(New Jersey, Rhode Island)*
- Alternatively, with respect to high-power and large caliber non-powder guns only:
    - all high-power and large caliber non-powder guns are defined as firearms, so that restrictions on purchase and possession by minors, felons and other prohibited persons will apply *(Illinois, Michigan)*
    - all transfers of high-power and large caliber non-powder guns are required to be made through a licensed firearms dealer, and the dealer is required to report all transfers to law enforcement
    - there is a registration mechanism for owners of high-power and large caliber non-powder guns
- Minors are prohibited from possessing non-powder guns unless under direct adult supervision

[1] M. H. Nguyen et al., *Trends in BB/Pellet Gun Injuries in Children and Teenagers in the United States*, *1985-99*, 8 Inj. Prev. 185, 185 (Sept. 2002), at http://injuryprevention.bmj.com/content/8/3/185.full.pdf+html.

[2] National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS) Nonfatal Injury 2001-2011*, at http://webapp.cdc.gov/sasweb/ncipc/nfirates2001.html.
[3] *Id.*
[4] U.S. Consumer Product Safety Commission, *CPSC Safety Alert: BB Guns Can Kill* (Jan. 1, 2012), at http://www.cpsc.gov/cpscpub/pubs/5089.pdf. From July 1993 to July 2003, non-powder guns caused 40 deaths nationwide. Jennifer E. Keller et al., *Air-Gun Injuries: Initial Evaluation and Resultant Morbidity*, 70 Am. Surg. 484, 484 (June 2004).
[5] Press Release, U.S. Consumer Product Safety Commission, *CPSC Chairman Challenges Toy Industry to Stop Producing Look-Alike Guns* (Oct. 17, 1994), at http://www.cpsc.gov/CPSCPUB/PREREL/PRHTML95/95009.html.
[6] Manny Fernandez, *Texas Death Offers Grim Reminder That Gun Replicas Can Fool Police*, N.Y. Times, Jan. 8, 2012, at http://www.nytimes.com/2012/01/09/us/teenagers-death-a-reminder-of-gun-replicas-dangers.html.
[7] *See* 15 U.S.C. § 2052(a)(5)(E) (exempting firearms from the definition of "consumer product" subject to the authority of the Commission); Rev. Rul. 67-453, 1967-2 C.B. 378 (stating that air rifles and air pistols are not part of that exemption); CPSC Advisory Opinion No. 127; *CPSC Safety Alert: BB Guns Can Kill*, (Jan. 1, 2012), at http://www.cpsc.gov/CPSCPUB/PUBS/5089.pdf; *CPSC Recall Alert: Air Rifles Recalled by Air Venturi Due to Ability to Fire With Safety Switch On* (Apr. 18, 2012), at http://www.cpsc.gov/en/Recalls/2012/Air-Rifles-Recalled-by-Air-Venturi-Due-to-Ability-to-Fire-With-Safety-Switch-On/ (Recalling certain air rifles because "[t]he safety switch can be overcome by pulling the trigger with force, allowing the rifle to fire, resulting in a serious injury or death.").
[8] 15 U.S.C. §§ 1274(c)(1), (2), and (e); 2064. The CPSC has taken at least one enforcement action against a manufacturer of a non-powder gun on the grounds that the gun created a "substantial product hazard" and "a substantial risk of injury" to children. *See* Daisy Manufacturing Co; Complaint, 66 Fed. Reg. 56,082 (Nov. 6, 2001) (alleging that non-powder guns manufactured by Daisy Manufacturing Co. present a substantial product hazard and a substantial risk of injury to children); Daisy Manufacturing Company Provisional Acceptance of Settlement Agreement and Order, 68 Fed. Reg. 68,876 (Dec. 10, 2003) (accepting on behalf of the Consumer Product Safety Commission a consent agreement that imposed a series of labeling requirements on non-powder guns).
[9] *See* ASTM Subcommittee on Standards, American Society for Testing and Materials, *Standard Consumer Safety Specification for Non-Powder Guns*, at http://www.astm.org/Standards/F589.htm; ASTM Subcommittee on Standards, American Society for Testing and Materials, *Standard Consumer Safety Specification for Non-Powder Gun Projectiles and Propellants*, at http://www.astm.org/Standards/F590.htm. *See also* S.K. Presnell, *Comment: Federal Regulation of BB Guns: Aiming to Protect Our Children,* 80 N.C. L. Rev. 975, 1001 (2002).
[10] 15 U.S.C. § 5001(g)(ii).
[11] *See Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Christie*, 2010 U.S. Dist. LEXIS 59139 (D. N.J. 2010) (upholding the application of New Jersey's one-gun-a-month law to BB guns); *State v. Rackis*, 755 A.2d 649 (N.J. Super. Ct. App. Div. 2000) (upholding the application of New Jersey's permitting requirement to BB guns). *But see Coal. of N.J. Sportsmen v. Florio*, 744 F. Supp. 602 (D. N.J. 1990) (holding that New Jersey's assault weapon ban could not be applied to the sale of BB guns).
[12] 15 U.S.C. § 5001(c).
[13] 15 U.S.C. § 5001(b); 15 C.F.R. § 272.1 *et seq.*
[14] 15 U.S.C. § 5001(g).
[15] Cal. Penal Code §§ 171.7, 626.10, 16250, 16700, 19910-19915, 20150-20180; Cal. Gov't Code § 53071.5.
[16] Colo. Rev. Stat. §§ 22-33-102(4)(b), 22-33-106(1)(d)(I).
[17] Conn. Gen. Stat. §§ 29-38, 53-206(a), 53a-3(6), 53a-217b.
[18] Del. Code Ann. tit. 11, §§ 1445, 1457.
[19] D.C. Mun. Regs. tit. 24, §§ 2301 – 2302.
[20] Fla. Stat. Ann. § 790.22.
[21] 430 Ill. Comp. Stat. 65/1.1, 720 Ill. Comp. Stat. 5/24.8-0.1 – 8-6.
[22] Me. Rev. Stat. tit. 17-A, § 554.
[23] Mass. Gen. Laws ch. 269, §§ 12A, 12B.
[24] Mich. Comp. Laws §§ 750.222(d), 752.891.
[25] Minn. Stat. §§ 609.66, 624.7181.
[26] Miss. Code Ann. § 97-37-17(4), (5).
[27] N.H. Rev. Stat. Ann. § 193:13.
[28] N.J. Stat. Ann. §§ 2C:39-1(f), 2C:39-5b, 2C:39-6e.

[29] N.Y. Penal Law §§ 265.05, 265.06.
[30] N.C. Gen. Stat. §§ 14-316, 14-269.2, 153A-130.
[31] N.D. Cent. Code §§ 12.1-01-04(6), 62.1-01-01(1).
[32] Okla. Stat. tit. 21, § 1283.
[33] 18 Pa. Cons. Stat. § 6304.
[34] R.I. Gen. Laws § 11-47-2(3).
[35] S.D. Codified Laws § 13-32-7.
[36] Va. Code Ann. §§ 15.2-915.4, 22.1-277.07.
[37] Wash. Rev. Code Ann. § 9.41.280(1)(e).
[38] Wis. Stat. § 948.61. *See also In the Interest of Michelle A.D.*, 512 N.W.2d 248 (Wis. Ct. App. 1994) (finding that a BB gun is a dangerous weapon).
[39] See also *State v. Fleming*, 724 N.W.2d 537 (Minn. Ct. App. 2006) (finding a BB gun fell within the definition of "firearm."
[40] Other states, such as Illinois and Minnesota, also restrict the carrying of BB guns in public places. California prohibits displaying a BB gun in a public place, with certain exceptions.
[41] New York, N.Y., Admin. Code § 10-131(b).

Ammunition Regulation

Background

Without ammunition, firearms are no more dangerous than any blunt object, causing some scholars to refer to ammunition as the "actual agent of harm" in gun violence.[1] **While firearm sales are subject to various federal restrictions, however, ammunition sales are not.** Under federal law, for example:

- Firearms sellers must generally be licensed as dealers;[2]
- People purchasing guns from licensed dealers must present ID and pass a background check;
- Licensed dealers must retain records of gun sales;
- Handgun sales across state lines must be processed by a local seller;[3] and
- High volume handgun sales are regulated.[4]

No similar federal laws apply to ammunition purchasers or sellers.

The absence of federal ammunition regulations drew national attention in the wake of the 2012 mass shooting at a movie theater in Aurora, Colorado, which left 12 people dead and 58 injured. While the shooter purchased his firearms at local gun stores, he ordered his ammunition cache – 3,000 rounds each of handgun and rifle ammunition and 350 shotgun shells, as well as a 100-round magazine – from online retailers over the course of several months prior to the shooting.[5]

Laws regulating the purchase and possession of ammunition help limit access by dangerous individuals. Law enforcement agencies in Sacramento and Los Angeles, California, for example, successfully used local ammunition recordkeeping ordinances to identify and prosecute criminals by comparing records of ammunition sales against records from California's database identifying convicted felons and other prohibited people.

Between January 16 and December 31, 2008, the Sacramento ordinance led to the identification of 156 prohibited persons who had purchased ammunition (124 of whom had prior felony convictions), 48 search warrants and 26 additional probation or parole searches. In addition, the ordinance led to 109 felony charges, 10 federal court indictments, 37 felony convictions and 17 misdemeanor convictions. The law allowed law enforcement to seize a total of 84 firearms, including seven assault weapons, and thousands of rounds of ammunition. For further details, see the description of Sacramento's ordinance below.

Similarly, the Los Angeles ordinance led to 30 investigations, 15 search warrants, nine arrests, and the confiscation of 24 handguns, 12 shotguns, and nine rifles that were illegally possessed between 2004 and the first half of 2006. It also resulted in 39 investigations in 2007, and at least 24 investigations in 2008. A two-month study of Los Angeles' ordinance found that prohibited purchasers accounted for nearly 3% of all ammunition purchasers over this period, acquiring roughly 10,000 rounds of ammunition. The study noted that a background check at the time of the transaction would have largely eliminated sales at retail outlets to these individuals.[6]

The lack of strong ammunition laws in the United States also substantially impedes efforts to stop ammunition trafficking to Mexico. As one report explained, "because rounds of ammunition, unlike firearms[,] can only be used once and have a relatively shorter life span, [drug trafficking organizations] engaging in fighting are often in constant need of more rounds. As such, ammunition poses just as much or more of a threat to Mexican authorities and civilians" as firearms.[7]

Americans support laws regulating ammunition sales. A survey conducted by Fox News in January 2013 found that 80% of respondents supported laws requiring background checks on purchasers of ammunition.[8]

In addition to the benefits of regulating the sale and possession of ammunition, safe storage of ammunition is an important way to help reduce suicide and unintentional firearm injury. A 2005 study found that keeping a firearm unloaded and locked, with the ammunition stored separately, significantly decreased the risk of suicide and unintentional firearm injury and death involving both long guns and handguns.[9]

Moreover, certain types of ammunition, such as armor-piercing handgun ammunition, 50 caliber rounds and Black Talon bullets, pose a particular danger to the public and to law enforcement, and serve no legitimate sporting purpose. Strict controls on the manufacture, transfer and possession of these types of ammunition can help promote public safety. Further details about particular types of ammunition are included in the state law section below.

Ammunition serialization is a law enforcement tool that could assist in solving gun-related crimes. A system implementing ammunition serialization or coding would require manufacturers to stamp a unique microscopic code or serial number on all bullets and cartridge cases.[10] At the time of purchase, the code or serial number would be recorded along with the purchaser's information by a licensed dealer. Later, when a bullet or cartridge case is found at a crime scene, the bullet or spent cartridge could be quickly traced back to the purchaser. This would aid law enforcement investigations into shooting crimes and deter the use of guns in these crimes.

Microstamping laws, which require all firearms to be designed so that they each imprint a unique alpha-numeric code on the cartridge case when they are fired, are also an excellent law enforcement tool. California's microstamping law went into effect on May 17, 2013. For more information, see our summary on Microstamping & Ballistic Identification.

Summary of Federal Law

For decades, federal law regulated firearms and ammunition similarly. At present, however, federal law governing ammunition is limited to a prohibition on sales to and purchases by certain categories of persons, and a prohibition on the manufacture, importation and sale of armor-piercing ammunition.

***Prohibited Purchasers*:** Federal prohibited purchaser categories for firearms also apply to ammunition. For a list of these categories, see our summary on Categories of Prohibited People. Federal law does not require ammunition sellers to conduct background checks to determine if a prospective ammunition purchaser falls into a prohibited category, however.

***Minimum Age*:** Federal minimum age laws governing firearms also apply to ammunition used for those firearms. For further details, see our summary on the Minimum Age to Purchase or Possess Firearms. Federal law does not require ammunition sellers to verify that a prospective purchaser is of legal age to purchase or possess ammunition.

***Licensing*:** Federal law requires any person engaged in importing or manufacturing ammunition to obtain a license from the Attorney General.[11] Federal law also requires anyone engaged in the business of importing, manufacturing or selling firearms to obtain a license.[12] For the information about the licensing of firearms dealers, see our summary on Dealer Regulations. Federal law does not require a license to sell, purchase, or possess ammunition.

***Armor-Piercing Ammunition*:** Federal law prohibits the manufacture, importation, sale or delivery of armor-piercing ammunition, with very limited exceptions.[13] Licensed dealers are prohibited from "willfully" transferring armor-piercing ammunition.[14] Federally licensed dealers, to the extent they may transfer armor-piercing ammunition, must keep a record of any transfer.[15]

Armor-piercing ammunition, sometimes referred to as metal-piercing ammunition, is ammunition that is designed primarily to penetrate metal or armor, including body armor commonly worn by police officers. Under federal law, armor-piercing ammunition is defined as any projectile or projectile core that may be used in a handgun and that is constructed entirely from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium.[16] In addition, armor-piercing ammunition is defined as a full jacketed projectile "larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile."[17]

The Firearm Owners' Protection Act of 1986

The federal Gun Control Act of 1968 imposed a series of regulations on ammunition manufacturers, dealers and purchasers – including dealer licensing and recordkeeping requirements, as well as a ban on interstate mail-order sales – but most of these provisions were repealed by Congress in 1986 at the behest of the NRA.[18] While none of these provisions has been reenacted by Congress, several proposals to regulate ammunition, including some which would require background checks, impose taxes on ammunition sales, or require sellers to report the sale of a certain volume of ammunition to single purchaser, have been introduced over the past several decades.[19]

SUMMARY OF STATE LAWS REGULATING AMMUNITION

States have enacted a variety of laws regulating ammunition. The strongest laws, such as those in Connecticut, New York, and D.C., require a background check or license for the purchase or possession of ammunition, and impose licensing or other requirements on sellers of ammunition. Additional states restrict access to ammunition by certain categories of dangerous people or people under a certain age. A larger number of states have enacted bans similar to the federal ban on armor-piercing ammunition, or regulate other specific kinds of unusually dangerous ammunition.

Description of State Laws Regulating Ammunition

1. State Laws Requiring a Background Check or License before the Purchase or Possession of Ammunition:

New York enacted a groundbreaking law in 2013 that will require every "commercial transfer" of ammunition, including sales by firearms dealers and other ammunition vendors to individuals, to be preceded by a background check through a statewide license and record database. The law will become effective 30 days after the State Police certifies that the database is operational.[20]

D.C. generally prohibits the possession of ammunition unless the person is at a firearm safety class or possesses a registration certificate for a firearm. Licensed dealers may generally transfer ammunition only to the registered owner of a firearm of the same caliber or gauge as the ammunition, or to a nonresident of the District who provides proof that the weapon is lawfully possessed and is of the same gauge or caliber as the ammunition to be purchased.[21]

Four states (Connecticut, Illinois, Massachusetts, and New Jersey) require a license for all ammunition purchasers or possessors and require a background check before issuance of a license. Illinois requires residents to obtain a valid Firearm Owner's Identification (FOID) card before they can lawfully purchase or possess ammunition.[22] Massachusetts also requires a firearm permit or license to purchase or possess ammunition, with different types of licenses entitling the holder to purchase and possess different kinds of ammunition.[23] New Jersey generally prohibits any person from acquiring any handgun ammunition unless the transferee possesses a permit and first exhibits the permit to the seller or transferor.[24] In 2013, Connecticut enacted a law that authorizes a state agency to issue "ammunition certificates," and prohibits the sale or transfer of ammunition unless the transferee presents a firearms purchase or carry permit or an ammunition certificate. Ammunition certificates are issued by the state after a background check, and must be renewed every five years.[25]

For further information about these and other laws requiring gun owners or purchasers to obtain a license, see our summary on Licensing Gun Owners & Purchasers.

***2. State Laws Regulating Ammunition Sellers and/or the Sale of Ammunition*:** The following jurisdictions impose licensing or other requirements on sellers of ammunition:

California
District of Columbia
Maryland
Massachusetts
Minnesota
New Jersey (through administrative regulations)[26]
New York
Washington

Licensing requirements: Massachusetts requires anyone selling ammunition to obtain a license,[27] and D.C. requires all persons who regularly engage in the business of selling ammunition to obtain a license.[28] New York requires anyone engaged in the business of selling ammunition to register with the State Police, unless he or she already has a firearms dealer license.[29] Washington requires firearms dealers to obtain a license to transfer firearms and ammunition,[30] and Maryland requires any person engaging in the business of "loading or reloading small arms ammunition" to obtain a license.[31]

Record-keeping requirements: D.C. requires ammunition dealers to keep a record of all ammunition received into inventory and/or sold or transferred, including the brand and number of rounds of each caliber or gauge and the registration certificate number of the firearm for which the ammunition is purchased. The records are subject to inspection by the police department on demand. All transfers must be made in person, and the purchaser is also required to sign a receipt which is maintained by the dealer for one year.[32] In 2009, California enacted a similar record-keeping law regarding sales of handgun ammunition,[33] and an administrative regulation in New Jersey requires ammunition sellers to create and maintain records of ammunition sales.[34] The law that New York enacted in 2013 also imposes a sales record-keeping requirement regarding all ammunition, and requires that records of ammunition sales be transmitted to the State Police, which may maintain these records for up to one year.[35]

Store display and accessibility restrictions: D.C. prohibits licensed ammunition dealers from displaying any ammunition in windows visible from a street or sidewalk, and all ammunition must be kept in a securely locked place except when being shown to a customer.[36] Minnesota prohibits the display of centerfire metallic-case handgun ammunition for sale to the public in a manner that makes the ammunition directly accessible to persons under age 18, unless the display is under observation of the seller or the seller's employee or agent, or the seller takes reasonable steps to exclude underage persons from the immediate vicinity of the display.[37] The California law mentioned above also prohibits vendors from displaying handgun ammunition in a manner that allows it to be accessible to the public without the assistance of an employee.[38]

Additional information on features of comprehensive laws regulating firearms dealers and ammunition sellers is contained in our summary on Dealer Regulations.

3. State Laws Restricting Access to Ammunition by Certain Categories of People[39]

The following jurisdictions limit access to ammunition by certain categories of people. These laws vary in their approach, with some states only prohibiting someone from knowingly providing ammunition to these individuals, and other states generally prohibiting the purchase or possession of ammunition by these individuals.

State	***People whose access to ammunition is restricted***
California	All the same categories as firearms[40]
Connecticut	All the same categories as long guns[41]
Delaware	All the same categories as firearms[42]
District of Columbia	All the same categories as firearms[43]
Florida	All the same categories as firearms[44]
Hawaii	All the same categories as firearms[45]
Illinois	All the same categories as firearms[46]
Louisiana	Some of the same categories as firearms[47]
Maryland	All the same categories as firearms[48]
Massachusetts	All the same categories as firearms[49]
Michigan	Some of the same categories as firearms[50]
Missouri	Intoxicated people[51]
Nevada	All the same categories as firearms[52]
New Jersey (handgun ammunition only)	All the same categories as firearms[53]
New York (handgun ammunition only)	All the same categories as handguns[54]
South Carolina	Some of the same categories as firearms[55]
Tennessee	Intoxicated people[56]
Texas	Some of the same categories as firearms[57]
Virginia	Some of the same categories as firearms[58]

See our summary on Categories of Prohibited People for more information on the categories of people ineligible to purchase or possess firearms.

***4. State Laws Imposing a Minimum Age Regarding Ammunition*:** The following jurisdictions impose a minimum age regarding ammunition. These state laws generally have exceptions for minors who have the consent of a parent or guardian. Like the laws mentioned above, these laws vary in their approach, with some states only prohibiting someone from knowingly providing ammunition to underage individuals, and other states generally prohibiting the purchase or possession of ammunition by underage individuals.

State	***Minimum age for purchase/possession of ammunition***	***Applies to ammunition for …***
Arizona[59]	18	All firearms
California[60]	21	Handguns
	18	Long guns
Connecticut[61]	18	All firearms
Delaware[62]	18	All firearms
District of Columbia[63]	21	All firearms
Idaho[64]	16	All firearms
Illinois[65]	21	All firearms
Iowa[66]	21	Handguns
	18	Long guns
Maine[67]	16	All firearms
Maryland[68]	21	Handguns or assault weapons
	18	Long guns
Massachusetts[69]	21	Handguns or large capacity weapons
	18	Long guns
Minnesota[70]	18	All firearms
New Hampshire[71]	16	All firearms
New Jersey[72]	21	Handguns
New York[73]	21	Handguns
	16	All firearms
Rhode Island[74]	18	All firearms
Vermont[75]	16	All firearms

To compare this chart with similar laws restricting underage people from access to firearms, see our summary on the Minimum Age to Purchase or Possess Firearms.

***5. State Laws Regulating Certain Types of Unreasonably Dangerous Ammunition*:**
Many states regulate the sale, purchase, possession, use, manufacture, importation and/or transportation of certain types of ammunition that pose particular threats to public safety and serve no reasonable hunting, target shooting, or self-defense purpose.

***a. Armor-Piercing Ammunition*:** The following states and D.C. ban the manufacture, transfer, purchase, and/or possession of armor-piercing or metal-piercing ammunition, commonly defined as ammunition made of specific materials and designed to be fired in a handgun and to penetrate metal or armor, including body armor commonly worn by police officers.

Alabama[76]
California[77]
Connecticut[78]
District of Columbia[79]
Florida[80]
Hawaii[81]
Illinois[82]
Indiana[83]
Kansas[84]
Kentucky[85]
Louisiana[86]
Maine[87]
Michigan[88]
Mississippi[89]
Nevada[90]
New Jersey[91]
North Carolina[92]
Oklahoma[93]
Rhode Island[94]
South Carolina[95]
Texas[96]

Additional states criminalize, or provide enhanced sentences for, the use or possession of armor-piercing ammunition in the commission or attempted commission of crimes, or criminalize the discharge, but not the sale or possession, of armor-piercing ammunition.

b. Other Unusually Dangerous Ammunition

As described below, certain states have enacted laws prohibiting the following kinds of unusually dangerous ammunition:

- **Large Caliber Ammunition:** D.C. prohibits the sale or possession of ammunition for a 50 caliber rifle.[97] Connecticut bans distribution, transportation or importation into the state, keeping or offering for sale, or giving away of any incendiary 50 caliber bullet, defined as a 50 caliber bullet designed for or generally recognized as having a specialized capability to ignite upon impact.[98] California prohibits any person, firm or corporation from selling, offering for sale, possessing or knowingly transporting any fixed ammunition greater than 60 caliber.[99] For more information about large caliber firearms, see our summary on Fifty Caliber Weapons.

- **Exploding Ammunition:**[100] Eight states (California,[101] Florida,[102] Hawaii,[103] Illinois,[104] Iowa,[105] Missouri,[106] New York[107] and Tennessee[108]) prohibit the manufacture, transfer, purchase, and/or possession of bullets or projectiles that are designed to explode, segment or detonate upon impact with a target.

- **Flechette Ammunition:** Three states (California,[109] Florida[110] and Illinois[111]) prohibit the manufacture, transfer, purchase, and/or possession of flechette ammunition, which are shells that expel two or more pieces of solid metal wire, or two or more solid dart-type projectiles.

- **Dragon's Breath & Bolo Shell Ammunition:** Three states, Florida, Illinois and Iowa, prohibit the manufacture, transfer, purchase, and/or possession of dragon's breath ammunition. Dragon's breath ammunition is a type of shotgun shell that contains exothermic pyrophoric mesh metal as the projectile and that is designed for the sole purpose of throwing or spewing a flame or fireball to simulate a flamethrower.[112] Florida and Illinois also prohibit the sale or possession of bolo shells. A bolo shell is another type of shotgun shell that expels as projectiles two or more metal balls connected by solid metal wire.[113]

- **Hollow Nose or Dum-Dum Ammunition:**[114] New Jersey prohibits hollow nose or dum-dum ammunition, which are terms associated with bullets designed to expand on impact. New Jersey generally prohibits possession of any hollow nose or dum-dum bullet except in one's home.[115] These terms are not specifically defined under New Jersey law.

6. Other State Laws Regulating Ammunition: Various other state laws regulating ammunition are discussed throughout this publication. Most state laws addressing firearms fail to address ammunition. Where state ammunition laws do exist, however, these laws often mirror states laws regarding firearms. For example, our summary on Domestic Violence and Firearms details laws that restrict access to ammunition by certain domestic abusers. As detailed in our summary on Local Authority to Regulate Firearms, many state laws limiting local authority to regulate firearms also limit local authority to regulate ammunition.

SELECTED LOCAL LAW

Sacramento, California

In 2007, the City of Sacramento enacted an ordinance requiring sellers of ammunition to record information about each ammunition purchaser, including his or her thumbprint, and to electronically transmit this information to the Sacramento Police Department ("SPD").[116] SPD cross-references the information in these records with information in a state database identifying people prohibited from possessing firearms. In August 2008, SPD issued a report regarding implementation of this ordinance, stating that SPD "has successfully utilized the information obtained to arrest numerous persons for firearms violations and seize dozens of illegally possessed weapons."[117] The report also noted that the ordinance "does not prevent or delay a sale of ammunition at the point of sale," and the electronic system for transfer of purchaser information has proven to be secure, effective and reliable.[118] Then, in January 2009, SPD compiled yearlong data regarding the effects of the ordinance. SPD found that, in 2008, the ordinance led to the identification of 156 persons illegally purchasing ammunition, including

124 convicted felons, the seizure of 84 firearms, and numerous criminal convictions.[119] Sixteen other communities in California have enacted similar ordinances.

FEATURES OF A COMPREHENSIVE LAW REGULATING AMMUNITION

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Ammunition dealers are required to conduct a background check on all purchasers to ensure that ammunition is not sold to prohibited persons *(New York)*
- License is required for purchase and possession of ammunition *(Illinois, Massachusetts, and D.C.)*, and possession of ammunition is limited to the caliber of firearm the person is licensed to possess *(D.C.)*
- All ammunition sellers are required to be licensed firearms dealers *(Massachusetts)*
- Ammunition sellers are required to maintain records of all ammunition sales, and make such information available to law enforcement *(New York and D.C.)*
- Ammunition sellers are required to take security precautions to reduce the risk of theft *(Minnesota and D.C)*
- People prohibited from purchasing or possessing firearms are also prohibited from purchasing or possessing ammunition *(8 states and D.C.)*
- Minimum age of 21 is imposed for purchase or possession of handgun ammunition; *(7 states and D.C.)* minimum age of 18 is imposed for purchase or possession of long gun ammunition *(10 states and D.C.)*
- Manufacture, transfer, purchase and possession of specific types of unreasonably dangerous ammunition are prohibited (*24 states and D.C.)*
- Ammunition must be stored in a locked container separate from firearms when not in use in the home

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[1] George E. Tita et al., *The Criminal Purchase of Firearm Ammunition*, 12 Inj. Prev. 308, 308 (Oct. 2006), at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563465/pdf/308.pdf.

[2] Unfortunately, most of the federal restrictions for firearms sales by licensed dealers do not also apply to sales by private sellers. See our summary on Universal Background Checks & the Private Sale Loophole for more information on this dangerous loophole.

[3] Under federal law, a handgun purchased over the Internet or via mail-order from a seller in a different state must be shipped to a dealer in the purchaser's home state. A person may purchase or otherwise acquire a rifle or shotgun, in person, at a licensee's premises in any state, provided the sale complies with state laws applicable in the state of sale and the state where the purchaser resides. A person may borrow or rent a firearm in any state for temporary use for lawful sporting purposes. 18 U.S.C § 922(a)(3), (5), (b)(3).

[4] Federal law requires federally licensed dealers to report multiple sales of handguns to ATF and other specified law enforcement agencies. 18 U.S.C. § 923(g)(3).

[5] *See* Law Center to Prevent Gun Violence, *America's Ammunition Crisis: Few Laws Exist to Prevent Purchases by Dangerous People Online and in Stores*, July 30, 2012, at http://smartgunlaws.org/americas-ammunition-crisis-few-laws-exist-to-prevent-purchases-by-dangerous-people-online-and-in-stores/.

[6] *The Criminal Purchase of Firearm Ammunition, supra* note 1, at 310.

[7] Colby Goodman & Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges*, *in Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime* 198 (Eric L. Olson, David A.

Shirk & Andrew Selee eds., 2010) , at http://www.wilsoncenter.org/sites/default/files/Shared%20Responsibility%2012.22.10.pdf.

[8] Dana Blanton, *Fox News poll: Twice as Many Favor More Guns over Banning Guns to Reduce Crime*, FoxNews.com (Jan. 18, 2013), at http://www.foxnews.com/politics/2013/01/18/fox-news-poll-twice-as-many-favor-more-guns-over-banning-guns-to-reduce-violent/.

[9] David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711, 712-13 (Feb. 2005), at http://jama.jamanetwork.com/article.aspx?articleid=200330.

[10] James P. Sweeney, *Lockyer Wants Handgun Ammo Branded*, San Diego Union-Tribune, Oct. 6, 2004, at A-1. *See also* Jeremiah Marquez, *Calif. AG Wants ID Codes on Handgun Ammo*, Associated Press Online, Oct. 8, 2004.

[11] 18 U.S.C. § 923(a).

[12] *Id*.

[13] 18 U.S.C. §§ 921(a)(17), 922(a)(7), (8); 27 C.F.R. § 478.37. Specific exceptions exist for armor-piercing ammunition that is manufactured for certain federal and state government divisions, exportation, or testing. 18 U.S.C. §§ 921(a)(17)(C), 922(a)(7), 922(a)(8); 27 C.F.R. § 478.37. The Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) may also exempt certain armor-piercing ammunition primarily intended for sporting or industrial purposes. 27 C.F.R. § 478.148.

[14] See 27 C.F.R. § 478.99(e).

[15] 18 U.S.C. § 922(b)(5).

[16] 18 U.S.C. § 921(a)(17); 27 C.F.R. § 478.11.

[17] *Id*. The Attorney General is required to furnish information to each licensed dealer defining which projectiles are considered armor-piercing ammunition as defined in 18 U.S.C. § 921(a)(17)(B). 18 U.S.C. § 923(k). The federal definition of armor-piercing ammunition, which is based on its content and weight, rather than on the ammunition's actual performance against body armor, has been criticized because it fails to halt the manufacture and sale of all types of ammunition that can penetrate body armor. Violence Policy Center, *Sitting Ducks: The Threat to the Chemical and Refinery Industry From 50 Caliber Sniper Rifles* 20 (Aug. 2002), *available at* http://www.vpc.org/studies/duckcont.htm. *See also* Violence Policy Center, *Vest Buster: The .500 Smith & Wesson Magnum – The Gun Industry's Latest Challenge to Law Enforcement Body Armor* 25 (June 2004), *available at* http://www.vpc.org/graphics/S&W500%20final.pdf. The existing ban on armor-piercing ammunition can be made more effective by adopting performance standards that require ammunition to be tested for its ability to penetrate bullet-resistant vests and body armor, as opposed to the existing standard based on the bullet's content. *Sitting Ducks, supra*. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 27 (Sept. 2007).

[18] Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213; Firearms Owners' Protection Act, 99 Pub. L. No. 308, 100 Stat. 449 (1986). Recordkeeping continues to be required for transfers of armor-piercing ammunition.

[19] In the mid-1990s, Congress, led by Senator Daniel Patrick Moynihan and then-Representative Charles Schumer, debated several proposals to regulate ammunition. The most far reaching of these bills would have reinstated the ban on mail-order sales of ammunition, brought ammunition under the Brady Act (requiring background checks at the time of transfer), limited the number of rounds a person could own, required ammunition dealer licensing with high licensing fees, placed strict sales restrictions on specific types of handgun ammunition disproportionately used in crime, and imposed high taxes on all ammunition. To date, none of these proposals has been adopted. For more information about these proposals, *see* Brendan J. Healey, *Plugging the Bullet Holes in U.S. Gun Law: An Ammunition-Based Proposal for Tightening Gun Control*, 32 J. Marshall L. Rev. 1 (Fall 1998), at http://www.saf.org/LawReviews/Healey1.htm; Scott D. Dailard, *The Role of Ammunition in a Balanced Program of Gun Control: A Critique of the Moynihan Bullet Bills*, 20 J. Legis. 19 (1994), at http://www.saf.org/LawReviews/Dailard1.htm. In the wake of the Aurora shooting, Senator Frank Lautenberg and Representative Carolyn McCarthy introduced legislation to restore federal regulation of ammunition sales. The Stop Online Ammunition Sales Act would require ammunition dealers to be licensed and to maintain ammunition sales records. Under the proposal, dealers would also be obligated to report large volume sales and buyers would be required to present photo identification when purchasing ammunition. Law Center to Prevent Gun Violence, *America's Ammunition Crisis: Few Laws Exist to Prevent Purchases by Dangerous People Online and in Stores*, July 30, 2012, at http://smartgunlaws.org/americas-ammunition-crisis-few-laws-exist-to-prevent-purchases-by-dangerous-people-online-and-in-stores/. After the shooting at Sandy Hook Elementary School, Senator Richard Blumenthal introduced legislation requiring ammunition purchasers to pass background checks, in addition to reinstating the currently-repealed ammunition provisions of the Gun Control Act of 1968.

[20] N.Y. Penal Law § 400.03.

[21] D.C. Code Ann. §§ 7-2505.02, 7-2506.01.

[22] 430 Ill. Comp. Stat. 65/2(a)(2), (b) 65/4, 65/8.
[23] Mass. Gen. Laws ch. 140, §§ 129B, 129C, 131, 131A, 131E.
[24] N.J. Stat. Ann. § 2C:58-3.3.
[25] Conn. Gen. Stat. §§ 29-38k – 29-38n.
[26] N.J. Admin. Code Title 13, Chapter 54.
[27] Mass. Gen. Laws ch. 140, §§ 122B, 124.
[28] D.C. Code Ann. §§ 7-2504.01 – 7-2504.08.
[29] N.Y. Penal Law §§ 265.00(24), 400.03.
[30] Wash. Rev. Code Ann. §§ 9.41.010, 9.41.110(3). A 1994 opinion by the Washington Attorney General concluded that a person who sells ammunition but does not also deal in firearms is not defined as a "dealer," and thus is not required to obtain a license under Wash. Rev. Code Ann. § 9.41.110. 1994 Op. Att'y Gen. Wash. No. 22 (Dec. 13, 1994), 1994 Wash. AG LEXIS 71.
[31] Md. Code Ann., Pub. Safety § 11-105(b)(1), (d).
[32] D.C. Code Ann. §§ 7-2504.01 – 7-2504.08, 7-2505.02. D.C. also prohibits the manufacture of ammunition. D.C. Code Ann. § 7-2504.01.
[33] Cal. Penal Code §§ 16300, 30306, 30312, 30347-30362. A California Court of Appeals invalidated this law in November 2013 on the grounds that its definition of "handgun ammunition" was unconstitutionally vague. *Parker v. California,* 221 Cal. App. 4th 340 (Cal. Ct. App. 2013).
[34] N.J. Admin. Code § 13:54-3.14.
[35] N.Y. Penal Law § 400.03.
[36] D.C. Code Ann. § 7-2504.07.
[37] Minn. Stat. § 609.663.
[38] Cal. Penal Code §§ 16300, 30306, 30312, 30347-30362.
[39] Federal law provides the minimum standards for the purchase or possession of ammunition. The transfer or possession of ammunition in all states is still governed by federal law, unless a state has adopted stricter standards.
[40] Cal. Penal Code § 30305.
[41] Conn. Gen. Stat. §§ 29-38g – 29-38n.
[42] Del. Code Ann. tit. 11 § 1448.
[43] D.C. Code Ann. §§ 7-2505.02, 7-2506.01.
[44] Fla. Stat. Ann. §§ 790.23 – 790.235.
[45] Haw. Rev. Stat. Ann. § 134-7.
[46] 430 Ill. Comp. Stat. 65/2, 65/8.
[47] La. Rev. Stat. § 14:95.1.2. Louisiana prohibits the transfer of ammunition to a felon who is prohibited from possessing a firearm under Louisiana law.
[48] Md. Code Ann., Pub. Safety § 5-133.1 (effective Oct. 1, 2013).
[49] Mass. Gen. Laws ch. 140, §§ 129B, 129C, 131, 131A, 131E.
[50] Mich. Comp. Laws §§ 750.223(3), 750.224f. Michigan has stronger criteria for a person to obtain handgun purchase license. Mich. Comp. Laws § 28.422(3).
[51] Mo. Rev. Stat. § 571.060.
[52] Nev. Rev. Stat. Ann. § 202.362(1).
[53] N.J. Stat. Ann. §§ 2C:58-3, 2C:58-3.3.
[54] N.Y. Penal Law §§ 265.05, N.Y. Penal Law § 270.00(5), 400.00. New York prohibits a firearms dealer from selling any ammunition designed exclusively for use in a handgun to a person not authorized to possess a handgun. N.Y. Penal Law § 270.00(5). As noted above, however, an entity may engage in the business of selling ammunition without a firearms dealer license, so long as it registers with the State Police.
[55] S.C. Code § 16-23-500. South Carolina has stronger criteria for the possession of handguns. See S.C. Code Ann. § 16-23-30.
[56] Tenn. Code Ann. § 39-17-1303(a)(2).
[57] Tex. Penal Code Ann. § 46.06(a)(3) – (4).
[58] Va. Code § 18.2-308.2. Virginia also prohibits the purchase or possession of firearms by additional categories. Va. Code §§ 18.2-308.1:1 – 18.2-308.1:5, 18.2-308.2 – 18.2-308.2:01(b).
[59] Ariz. Rev. Stat. §§ 1-215(22), 13-3109.
[60] Cal. Penal Code §§ 16300, 29650-29655, 30300.

[61] Conn. Gen. Stat. § 29-38k.
[62] Del. Code Ann. tit. 11, § 1445(4).
[63] D.C. Code Ann. §§ 7-2502.01, 7-2502.03(a)(1), 7-2502.06(a), 7-2505.02(d). People ages 18 to 20 may obtain a registration certification for a firearm, and therefore become eligible to possess ammunition, in certain limited circumstances. *See* D.C. Code Ann. § 7-2502.03.
[64] Idaho Code Ann. § 18-3308.
[65] 430 Ill. Comp. Stat. 65/2, 65/4. People ages 18 to 20 may obtain a Firearm Owner's Identification Card, and therefore become eligible to possess ammunition, in certain limited circumstances. *See* 430 Ill. Comp. Stat. 65/4.
[66] Iowa Code § 724.22(1)-(5).
[67] Me. Rev. Stat. Ann. tit. 17-a, § 554(1)(B).
[68] Md. Code Ann., Pub. Safety § 5-134(d).
[69] Mass. Gen. Laws ch. 140, § 130.
[70] Minn. Stat. § 609.66.
[71] N.H. Rev. Stat. Ann. § 644:15.
[72] N.J. Stat. Ann. § 2C:58-3.3c.
[73] N.Y. Penal Law §§ 265.05, N.Y. Penal Law § 270.00(5), 400.00. New York prohibits a firearms dealer from selling any ammunition designed exclusively for use in a handgun to a person not authorized to possess a handgun. N.Y. Penal Law § 270.00(5). A person under age 21 is not authorized to possess a handgun. N.Y. Penal Law § 400.00. As noted above, however, an entity may engage in the business of selling ammunition without a firearms dealer license, so long as it registers with the State Police.
[74] R.I. Gen. Laws §§ 11-13-3(a), 11-47-31(a), 11-47-32.
[75] Vt. Stat. Ann. tit. 13, § 4007.
[76] Ala. Code § 13A-11-60.
[77] Cal. Penal Code §§ 16660, 30315, 30320.
[78] Conn. Gen. Stat. § 53-202l.
[79] D.C. Code Ann. §§ 7-2501.01(13A), 7-2505.02, 7-2507.06(a)(3).
[80] Fla. Stat. § 790.31.
[81] Haw. Rev. Stat. Ann. § 134-8.
[82] 720 Ill. Comp. Stat. 5/24-2.1, 5/24-2.2.
[83] Ind. Code Ann. § 35-47-5-11.
[84] Kan. Stat. Ann. § 21-6301(a)(6).
[85] Ky. Rev. Stat. Ann. §§ 237.060(7), 237.080.
[86] La. Rev. Stat. Ann. §§ 40:1810 – 40:1812.
[87] Me. Rev. Stat. Ann. tit. 17-A, § 1056.
[88] Mich. Comp. Laws § 750.224c.
[89] Miss. Code Ann. § 97-37-31.
[90] Nev. Rev. Stat. Ann. § 202.273.
[91] N.J. Stat. Ann. §§ 2C:39-3(f), 2C:39-9(f)(1).
[92] N.C. Gen. Stat. § 14-34.3.
[93] Okla. Stat. tit. 21, §§ 1289.19 – 1289.22.
[94] R.I. Gen. Laws § 11-47-20.1.
[95] S.C. Code Ann. § 16-23-520.
[96] Tex. Penal Code §§ 46.01(12), 46.05(a)(6).
[97] D.C. Code Ann. §§ 7-2501.01(13A), 7-2505.02, 7-2507.06(a)(3).
[98] Conn. Gen. Stat. § 53-202l.
[99] Cal. Penal Code § 18735.
[100] Exploding bullets, sometimes referred to as "frangible" bullets, are designed to explode, segment or detonate upon impact with a target. *See* GlobalSecurity.org, Military Munitions, Frangible Ammunition, http://www.globalsecurity.org/military/systems/munitions/frangible.htm (last visited Dec. 9, 2013).
[101] California Penal Code §§ 16460(a), 18710, 18730. California prohibits the possession, sale, offer for sale, or knowing transportation of a "destructive device," defined to include "[a]ny projectile containing any explosive or incendiary material" and any "explosive missile." California Penal Code §§ 18900-18910 provide for the limited issuance of permits to possess or transport any destructive device, issued at the discretion of the California Department of Justice.

[102] Fla. Stat. § 790.31.
[103] Haw. Rev. Stat. Ann. § 134-8.
[104] 720 Ill. Comp. Stat. 5/24-1(a)(11); 720 Ill. Comp. Stat. 5/24-3.1(a)(6).
[105] Iowa Code §§ 724.1-724.3.
[106] Mo. Rev. Stat. § 571.020.
[107] N.Y. Penal Law § 265.01(7).
[108] Tenn. Code Ann. § 39-17-1304(b).
[109] Cal. Penal Code §§ 16570, 30210.
[110] Fla. Stat. § 790.31.
[111] 720 Ill. Comp. Stat. 5/24-2.1, 5/24-2.2.
[112] *See* Fla. Stat. Ann. § 790.31; Iowa Code §§ 724.1-724.3, 720 Ill. Comp. Stat. 5/24-2.1, 5/24-2.2.
[113] *See* Fla. Stat. Ann. § 790.31(1)(e); 720 Ill. Comp. Stat. 5/24-2.1, 5/24-2.2.
[114] Hollow nose, or hollow point, bullets have a cavity in the nose of the projectile, which causes the bullet to expand once it hits a target and inflict greater damage than a bullet without such a point. Black Talon bullets are a notorious type of hollow point bullet that, despite much media attention, have not been regulated. Black Talon rounds are distinct from other hollow point bullets because they possess a special barbed configuration designed to deploy on impact with a target and expand the size of wound tracts to maximize tissue trauma. Firearms Tactical Institute, *Winchester Black Talon Revisited, Tactical Briefs #12* (Dec. 1998), *at* http://www.firearmstactical.com/briefs12.htm. Although Black Talons do not fit under the federal definition of armor-piercing ammunition, publicity about their dangers, including their use in the 101 California Street shooting in San Francisco in 1993, drove the manufacturer, Winchester, voluntarily to pull the bullets from the civilian market and market Black Talons exclusively to law enforcement. Winchester is not legally barred from selling Black Talons on the civilian market, however. Judy Pasternak, *Column One; Taking Aim at Exotic Bullets; Lawmakers Move to Regulate the Ammunition Industry, as the Market Grows for Vicious Rounds Like Blammo Ammo. But Some Gun Experts & Police Say Such Controls Could be Duds,* L.A. Times, Jan. 11, 1994, at A1, at http://articles.latimes.com/1994-01-11/news/mn-10677_1_ammunition-industry.
[115] N.J. Stat. Ann. § 2C:39-3(f).
[116] Sacramento, Cal., City Code, Chapters 5.64, 5.66.
[117] Sacramento Chief of Police Rick Braziel et al., *Report to Council, Ammunition Sales Records Study* (Aug. 12, 2008), at http://sacramento.granicus.com/MetaViewer.php?view_id=8&clip_id=1590&meta_id=155275.
[118] *Id.*
[119] These statistics were obtained from Captain Jim Maccoun, Office of Technical Services, Sacramento Police Department on January 27, 2009. For the statistics for the period between January 16 and June 29, 2008, see *id.*

Part 5: Consumer & Child Safety

Introduction

This Part examines laws to keep guns out of the hands of young people, especially children, and to mandate that guns meet safety standards. It begins with a section regarding laws that restrict gun sales to young people or establish a minimum age to possess firearms. The second section describes laws requiring the safe storage of firearms and the use or sale of gun locks. The third section addresses firearms that can only be operated by an authorized user, and the fourth section describes laws penalizing those who provide children access to firearms. The fifth and final section describes laws that mandate that guns meet certain safety standards and include particular safety features.

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Minimum Age to Purchase or Possess Firearms

Background

Laws imposing minimum age requirements for the possession and purchase of firearms are intended to decrease access to firearms by young people and, correspondingly, to decrease the number of suicides, homicides, and unintentional shootings among that population.

- Every day in the U.S., guns cause the deaths of nine people under the age of 21;[1]
- In 2010, 3,459 people under age 21 died from gunshot wounds;[2]
    - Of these deaths, 2,329 were classified as homicides, 936 as suicides, and 150 as the result of unintentional shootings;[3] and
- Firearms were used in 38% of suicide deaths among individuals under age 21 in 2010.[4]

Laws that prohibit unsupervised possession or purchase of firearms by children and young people can prevent tragedies. Based on data from the FBI, 18 to 24 year-olds account for a disproportionate percentage of arrests for homicide and violent crime in general.[5] A survey of convicted gun offenders in 13 states found that nearly a quarter of them would have been prohibited from obtaining firearms at the time of the crime if the minimum legal age for possessing any type of firearm was 21 years.[6] Yet, as described below, federal law and the laws in most states continue to allow unsupervised access to firearms by individuals in these age groups.[7]

Additional information about laws preventing child access to firearms is included in our summary on Child Access Prevention.

Summary of Federal Minimum Ages

Federal law in this area distinguishes between long guns (rifles and shotguns) and handguns, and between gun possession and gun sales. Federal law also distinguishes between licensed and unlicensed gun sellers.

Minimum Age for Gun Sales and Transfers:

Under federal law -	**Handguns**	**Long Guns**
Licensed firearms dealers	*Dealers may not sell or deliver a handgun or ammunition for a handgun to any person the dealer has reasonable cause to believe is under age **21**.*[8]	*Dealers may not sell or deliver a long gun or ammunition for a long gun, to any person the dealer has reasonable cause to believe is under age **18**.*[9]
Unlicensed persons	*Unlicensed persons may not sell, deliver or otherwise transfer a handgun or handgun ammunition to any person the transferor has reasonable cause to believe is under age **18**, with certain exceptions*.*[10]	*Unlicensed persons may sell, deliver, or otherwise transfer a long gun or long gun ammunition to **a person of any age**.*

Minimum Age for Gun Possession:

Federal law prohibits, with certain exceptions*, the possession of a handgun or handgun ammunition by any person under the age of 18.[11] Federal law provides no minimum age for the possession of long guns or long gun ammunition.

***Exceptions:**

Federal law provides exceptions for the temporary transfer and possession of handguns and handgun ammunition for specified activities, including employment, ranching, farming, target practice and hunting.[12]

SUMMARY OF STATE LAWS GOVERNING THE MINIMUM AGE TO PURCHASE AND POSSESS FIREARMS

Several states and the District of Columbia impose minimum age requirements that extend beyond those contained in federal law. Those states generally fall into these categories:

- States imposing a minimum age for handgun purchases, from licensed or unlicensed sellers;
- States imposing a minimum age for long gun purchases, from licensed or unlicensed sellers;
- States imposing age requirements for possession of handguns that are stricter than federal law; and
- States imposing a minimum age for possession of long guns.

Minimum Ages for Firearms

State	Purchase of Handgun[13]	Purchase of Long Gun	Possession of Handgun[14]	Possession of Long Gun
Alaska[15]	18	18		16[16]
Arizona[17]	18	18		
Arkansas[18]	18	18		
California[19]	21	18		
Connecticut	21[20]	18[21]	21[22]	
Delaware	21[23]	18[24]		
District of Columbia[25]	21	21	21[26]	21[27]
Florida[28]	18	18		18[29]
Hawaii[30]	21	21	21	18
Idaho[31]	18	18		18[32]
Illinois[33]	21	21	21[34]	21[35]
Indiana				18[36]
Iowa[37]	21	18	21	18
Louisiana[38]	18	18		
Maine[39]	18	16		
Maryland[40]	21[41]	18	21[42]	
Massachusetts[43]	21	18[44]	21[45]	
Michigan				18[46]
Minnesota				16[47]
Mississippi[48]	18			
Missouri[49]	18	18		
Montana				14[50]
Nevada[51]	18			18[52]
New Jersey[53]	21	18	21	18
New Mexico			19[54]	
New York[55]	21		21[56]	16[57]
North Dakota[58]	18			
Ohio[59]	21	18		
Oklahoma[60]	18	18		18
Oregon[61]	18	18		18[62]
Pennsylvania[63]	18	18		18[64]
Rhode Island[65]	21	18		18[66]
South Carolina[67]	18			
Texas[68]	18	18		
Utah				18[69]
Vermont[70]	16	16		
Washington				18[71]
Wisconsin[72]	18	18		18[73]

Description of State Laws Governing Minimum Age to Purchase and Possess Firearms
For citations to these laws, please see the chart above.

1. *States Imposing Minimum Age Requirements for All Firearm Purchases:* Although federal law prohibits licensed dealers from selling long guns to persons under 18, there is no federal regulation of the sale of long guns by unlicensed dealers to minors. Similarly, while federal law prohibits handgun sales by licensed dealers to persons under 21, unlicensed dealers are prohibited only from selling handguns to persons under 18. As listed above, many states have imposed a minimum age for the purchase of all firearms, regardless of whether they are purchased from a licensed firearms dealer.

2. *States with Stricter Minimum Age Requirements for Possession of Handguns than Federal Law:* Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, New Mexico, New York, and the District of Columbia impose minimum age requirements for the possession of handguns which are stricter than the federal minimum of 18. Connecticut, Hawaii, Illinois, Iowa, Massachusetts, New Jersey, New York and the District of Columbia[74] allow handgun possession only by persons 21 or older; New Mexico requires persons to be at least 19 in order to possess a handgun. Maryland provides that persons must be at least 21 to possess "regulated firearms," defined as handguns and assault weapons.

3. *States Imposing Minimum Age Requirements for Possession of Long Guns:* While federal law prohibits federally licensed firearms dealers from selling a long gun to anyone under 18, there is no federal minimum age for possession of a long gun. Some states have closed this gap, and impose a minimum age at which persons can possess any firearms (including long guns). Montana limits long gun possession to children 14 and over. Alaska, Minnesota and New York limit possession of long guns to persons age 16 and over. Florida, Hawaii, Idaho, Indiana, Iowa, Michigan, Nevada, New Jersey, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Washington and Wisconsin limit possession of long guns to persons 18 or over. Many of these laws contain exceptions which allow younger children to possess long guns where the minor's parent or guardian is present, or when the minor is engaged in hunting or target shooting.

In Illinois, persons must obtain a Firearm Owners Identification or "FOID" card in order to lawfully purchase or possess a long gun. Persons must be 21 or older to be eligible to obtain a FOID card, or have written consent of a parent or guardian. Likewise, in the District of Columbia, no one under the age of 21 may obtain a registration certificate, which prevents such individuals from lawfully possessing a firearm, although the Chief of Police may issue a registration certificate to an applicant between the ages of 18 and 21 years old if the application is accompanied by a notarized statement of the applicant's parent or guardian.

SELECTED LOCAL LAW

New York City

As noted above, New York State limits handgun purchase or possession to people age 21 or older, but does not impose a minimum age for purchase or possession of rifles and shotguns. In New York City, however, no person under age 21 may be granted a permit or license to purchase, possess or carry any

firearm, with certain exceptions. It is also unlawful to transfer a firearm to any person under age 21 unless he or she is exempted. A person under 21 may carry, fire or use a rifle or shotgun without being subject to the permit requirement if he or she is in the presence of, or under the direct supervision of, a permit holder, or engaged in a military drill, competition, or target practice at a firing range.[75]

FEATURES OF A COMPREHENSIVE LAW ESTABLISHING THE MINIMUM AGE TO PURCHASE AND POSSESS FIREARMS

The features listed below are intended to provide a framework from which policy options may be debated. A jurisdiction considering new legislation should consult with counsel.

- Minimum age of 21 is imposed for all handgun sales, from licensed or unlicensed sellers *(California, Connecticut Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, New York, Ohio, Rhode Island, District of Columbia)*
- Minimum age of 18 is imposed for all long gun sales, from licensed or unlicensed sellers *(22 states and the District of Columbia)*
- Minimum age of 21 is imposed for possession of handguns *(Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, New York, and the District of Columbia)*
- Minimum age of 18 is imposed for possession of long guns *(16 states and the District of Columbia)* Younger teens are allowed to possess long guns only under direct adult supervision

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[1] Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Injury Mortality Reports, 1999-2010, for National, Regional, and States* (Sept. 2010), http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html. Note: Users must agree to data use restrictions on the CDC site prior to accessing data).

[2] *Id.*

[3] *Id.* The circumstances for the remaining 44 deaths were unclear. Recent research on unintentional shooting deaths has found that such shootings "occurred roughly twice as often as the records indicate, because of idiosyncrasies in how such deaths are classified by the authorities." More specifically, many shooting deaths that were counted as homicides were committed unintentionally. *See* Michael Luo & Mike McIntire, *Children and Guns: The Hidden Toll,* N.Y. Times (Sept. 28, 2013), at http://www.nytimes.com/2013/09/29/us/children-and-guns-the-hidden-toll.html?ref=michaelluo&_r=0

[4] *Id.*

[5] U.S. Dep't of Justice & Fed. Bureau of Investigation, *Crime in the United States 2012, Table 38: Arrests by Age,* at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/38tabledatadecoverviewpdf.

[6] K. Vittes et al., *Legal Status and Source of Offenders' Firearms in States with the Least Stringent Criteria for Gun Ownership,* 19 Inj. Prev. 26 (2013).

[7] For more information about the disproportionate impact of gun violence on young people, including the impact on young people as perpetrators of gun violence, see Center for American Progress, *Young Guns: How Gun Violence Is Devastating the Millennial Generation* (Feb. 2014), at http://www.americanprogress.org/wp-content/uploads/2014/02/CAP-Youth-Gun-Violence-report.pdf.

[8] 18 U.S.C. § 922(b)(1), (c)(1).

[9] 18 U.S.C. § 922(b)(1), (c)(1).

[10] 18 U.S.C. § 922(x)(1), (5).

[11] 18 U.S.C. § 922(x)(2), (5).

[12] 18 U.S.C. § 922(x)(3).

[13] This chart only includes state laws imposing a minimum age for purchase of a firearm if the law applies to sales by both licensed and unlicensed sellers.

[14] This chart does not reflect state laws imposing a minimum age for possession of a handgun that is equivalent to, or weaker than, the federal minimum age of 18.

[15] Alaska Stat. § 11.61.210(a)(6).

[16] Alaska Stat. § 11.61.220(a)(3).
[17] Ariz. Rev. Stat. § 13-3109.
[18] Ark. Code Ann. §§ 5-73-101(9), 5-73-109.
[19] Cal. Penal Code § 27505(a).
[20] Conn. Gen. Stat. § 29-34(b).
[21] Conn. Gen. Stat. § 29-37a(b), (c).
[22] Conn. Gen. Stat. § 29-36f.
[23] Del. Code Ann. tit. 24, § 903.
[24] Del. Code Ann. tit. 11, § 1445.
[25] D.C. Code Ann. §§ 7-2502.03, 7-2507.06(a)(1), 22-4507.
[26] D.C. Code Ann. § 7-2502.03(a)(1).
[27] *Id*.
[28] Fla. Stat. Ann. §§ 790.17(2), 790.18.
[29] Fla. Stat. Ann. § 790.22(3).
[30] Haw. Rev. Stat. Ann. § 134-2(d).
[31] Idaho Code Ann. § 18-3302A.
[32] Idaho Code Ann. § 18-3302E.
[33] 430 Ill. Comp. Stat. 65/3(a), 65/4.
[34] 430 Ill. Comp. Stat. 65/4(a)(2)(i), 720 Ill. Comp. Stat. 5/24-3.1.
[35] 430 Ill. Comp. Stat. 65/2(a)(1), 65/4(a)(2)(i).
[36] Ind. Code Ann. §§ 35-47-10-3, 35-47-10-5.
[37] Iowa Code § 724.22.
[38] La. Rev. Stat. Ann. § 14:91.
[39] Me. Rev. Stat. Ann. tit. 17-A, §§ 554-A, 554-B.
[40] Md. Code Ann., Pub. Safety § 5-134.
[41] Maryland's minimum age requirement under the "handguns" column applies to "regulated firearms," which are defined as handguns and assault weapons. When Maryland strengthened its assault weapons law in 2013, it grandfathered in certain weapons.
[42] Md. Code Ann., Pub. Safety § 5-133(d). Maryland's minimum age requirement applies to "regulated firearms," which are defined as handguns and assault weapons.
[43] Mass. Gen. Laws ch. 140, § 130.
[44] Massachusetts' minimum age for the purchase of large capacity rifles and shotguns is 21 and older. Large capacity weapon" includes assault weapons and most firearms capable of holding more than 10 rounds of ammunition or more than five shotgun shells (either directly, or via a large capacity feeding device).
[45] Mass. Gen. Laws ch. 140, § 131.
[46] Mich. Comp. Laws § 750.234f.
[47] Minn. Stat. § 97B.021(a). Minnesota allows possession of long guns by persons who are 14 or 15 and have a firearms safety certificate. Minn. Stat. § 97B.021(b)(4).
[48] Miss. Code Ann. § 97-37-13. Mississippi also prohibits any person from selling deadly weapons to persons under 18. Deadly weapons include any rifle with a barrel of less than 16 inches in length, or any shotgun with a barrel of less than 18 inches in length. Miss. Code Ann. § 97-37-1.
[49] Mo. Rev. Stat. § 571.060. Missouri's statute prohibits "recklessly" selling firearms to persons under 18 without parental consent.
[50] Mont. Code Ann. § 45-8-344.
[51] Nev. Rev. Stat. Ann. § 202.310.
[52] Nev. Rev. Stat. Ann. § 202.300(1).
[53] N.J. Stat. Ann. § 2C:58-6.1.
[54] N.M. Stat. Ann. § 30-7-2.2.
[55] N.Y. Penal Law § 400.00(1), (12).
[56] N.Y. Penal Law § 400.00(1)(a).
[57] N.Y. Penal Law § 265.05.
[58] N.D. Cent. Code § 62.1-03-02.
[59] Ohio Rev. Code Ann. § 2923.21.

[60] Okla. Stat. tit. 21, § 1273.
[61] Or. Rev. Stat. §§ 166.250(1)(c)(A), 166.470.
[62] Or. Rev. Stat. § 166.250.
[63] 18 Pa. Cons. Stat. § 6110.1.
[64] Pennsylvania's possession prohibition refers to handguns and to rifles and shotguns of a specified length. It does not encompass all long guns.
[65] R.I. Gen. Laws §§ 11-47-30, 11-47-35(a).
[66] R.I. Gen. Laws § 11-47-33.
[67] S.C. Code Ann. § 16-23-30.
[68] Tex. Penal Code Ann. § 46.06(a)(2).
[69] Utah Code Ann. § 76-10-509.
[70] Vt. Stat. Ann. tit. 13, § 4007.
[71] Wash. Rev. Code Ann. § 9.41.040(2)(a)(iii).
[72] Wis. Stat. § 948.60(2)(b).
[73] Wis. Stat. § 948.60(2)(a).
[74] The District's Chief of Police may issue a registration certificate to an applicant between the ages of 18 and 21 years old who is otherwise qualified *if* the application is accompanied by a notarized statement from the applicant's parent or guardian stating that: 1) the applicant has the permission of his parent or guardian to own and use the firearm to be registered; and 2) the parent or guardian assumes civil liability for all damages resulting from the actions of such applicant in the use of the firearm to be registered. D.C. Code Ann. § 7-2502.03(a)(1). This type of registration certificate expires on the person's 21st birthday. D.C. Code Ann. § 7-2502.03(a)(1)(B).
[75] New York, N.Y., Charter §§ 462-464; Admin. Code § 10-303 et seq.

Safe Storage & Gun Locks

Background

Every year, firearms cause thousands of unintentional deaths and injuries. Recent research on unintentional shooting deaths has found that such shootings "occurred roughly twice as often as the records indicate, because of idiosyncrasies in how such deaths are classified by the authorities."[1] Nevertheless, between 1999 and 2010, over 8,300 people in the United States were reported as dying from unintentional shootings, including 2,383 children and young people ages 0-21.[2] On average, over 16,000 individuals in the United States are treated each year in hospital emergency rooms for unintentional gunshot wounds,[3] and a 1991 study found that 8% of unintentional shooting deaths resulted from shots fired by children under the age of six.[4]

Unsafe storage of firearms is a public health and safety issue in the United States. A 2000 study of firearm storage patterns in U.S. homes found that "[o]f the homes with children and firearms, 55% were reported to have 1 or more firearms in an unlocked place," and 43% reported keeping guns without a trigger lock in an unlocked place.[5] A 2005 study on adult firearm storage practices in U.S. homes found that over 1.69 million children and youth under age 18 are living in homes with loaded and unlocked firearms.[6] In addition, 73% of children under age 10 living in homes with guns reported knowing the location of their parents' firearms.[7] For more information about children and firearms, see our summary on Child Access Prevention.

The presence of unlocked guns in the home increases the risk not only of unintentional gun injuries but of intentional shootings as well. A 1999 study found that more than 75% of the guns used in youth suicide attempts and unintentional injuries were stored in the residence of the victim, a relative, or a friend.[8] At least two studies have found that the risk of suicide increases in homes where guns are kept loaded and/or unlocked.[9]

In July 2004, the U.S. Secret Service and U.S. Department of Education published a study examining 37 school shootings from 1974-2000. That study found that in more than 65% of the cases, the attacker got the gun from his or her own home or that of a relative.[10]

The U.S. General Accounting Office has estimated that 31% of accidental deaths caused by firearms might be prevented by the addition of two devices: a child-proof safety lock and a "loading indicator," a safety device that indicates whether a firearm is loaded and a round remains in the chamber.[11] A study released in 2005 found that the practices of keeping firearms locked, unloaded, and storing ammunition in a locked location separate from firearms serve as a "protective effect" and may assist in reducing youth suicide and unintentional injury in homes with children and teenagers where guns are stored.[12]

The safe storage of firearms also helps prevent firearms from being stolen. Firearms stolen from residences play a significant role in gun trafficking. For more information, see our summary on Reporting Lost & Stolen Firearms.

Firearm locking devices include a wide range of disabling devices designed to keep unauthorized users from gaining access to guns and to make unintentional deaths and injuries less likely. These mechanisms include: 1) internal locks, which are normally mounted in the grip of the gun, and either lock the manual thumb safety into place or internally secure the hammer; and 2) external trigger locks, the most common of which cover the trigger mechanism on either side with two metal or plastic pieces that clamp around the trigger guard and completely cover the trigger.

Americans strongly support laws requiring the safe storage of firearms. A national survey conducted in January 2013 found that 67.2% of respondents support laws requiring gun owners to lock up any guns in the home when not in use to prevent handling by children or teenagers without adult supervision.[13]

Summary of Federal Law

In October 2005, as part of the Protection of Lawful Commerce in Arms Act, Congress passed and the President signed into law legislation making it unlawful for any licensed importer, manufacturer or dealer to sell or transfer any handgun unless the transferee is provided with a secure gun storage or safety device.[14] The law includes various exceptions, including transfers to other federal firearms licensees, law enforcement officers, and federal, state or local agencies.[15] The legislation does not apply to transfers by private sellers, and does not require that transferees use the device.

The law also immunizes any person who is in lawful possession and control of a handgun and who uses a secure gun storage or safety device with the handgun, from a "qualified civil liability action."[16] "Qualified civil liability action" is defined as a civil action for damages resulting from the criminal or unlawful misuse of a handgun by a third party if: 1) the handgun was accessed by another person who did not have the authorization of the lawful possessor; and 2) at the time the handgun was accessed it had been made inoperable by the use of a secure gun storage or safety device.[17]

There are no current federal standards for locking devices.[18] On January 16, 2013, President Obama signed a series of executive orders to address gun violence and school safety in the wake of the Newtown, Connecticut school massacre in December 2012. One of these orders calls for the Consumer Product Safety Commission to review the effectiveness of gun locks and gun safes, including existing voluntary industry standards, and take any steps that may be warranted to improve the standards. As stated by the President: "We also need to make sure that gun locks and gun safes work as intended. Several gun locks have been subject to recall due to their failure to function properly; that is not acceptable."[19]

SUMMARY OF STATE LAWS GOVERNING THE SAFE STORAGE OF FIREARMS

Eleven states have laws concerning firearm locking devices. Massachusetts is the only state that generally requires that all firearms be stored with a lock in place; California, Connecticut, and New York impose this requirement in certain situations. Other state laws regarding locking devices are similar to the federal law, in that they require locking devices to accompany certain guns manufactured, sold, or transferred. Five of the eleven states also set standards for the design of locking devices or require them to be approved by a state agency for effectiveness.

States Requiring Locking Devices on Some or All Firearms

State	*Firearms Must Be Kept Locked*	*Locks Must Accompany Dealer Sales*	*Locks Must Accompany Private Sales*	*Locks Must Meet Standards or Be Approved*
California[20]	Sometimes	Yes	Yes	Yes
Connecticut[21]	Sometimes	Handguns only	Handguns only	Yes
Illinois[22]		Handguns only		
Maryland[23]		Handguns only		Yes
Massachusetts[24]	Yes	Handguns and assault weapons only[25]	Handguns and assault weapons only	Yes
Michigan[26]		Yes		
New Jersey[27]		Handguns only	Handguns only	
New York[28]	Sometimes	Yes		Yes
Ohio[29]		Offer only		
Pennsylvania[30]		Handguns only		
Rhode Island[31]		Handguns only		

Description of State Laws Regarding the Safe Storage of Firearms

1. *States Requiring that All Firearms be Stored with a Locking Device in Place:* Massachusetts requires that all firearms be stored with a locking device in place. The state bars storing or keeping any firearm unless it is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device. This requirement does not apply to any firearm "carried by or under the control of the owner or other lawfully authorized user."

New York enacted a law in 2013 that requires a firearm owner to keep his or her firearm locked if he or she lives with a convicted felon, a domestic abuser, or a person with a federally prohibitive mental health history. California enacted a similar law that requires a firearm owner to keep his or her firearm in a locked container or secured with a locking device if he or she lives with a person prohibited under state or federal law from possessing a firearm. Connecticut's law is also similar, but it only applies to loaded firearms.

The District of Columbia has established a strong, yet non-binding, policy that each firearm registrant should keep any firearm in his or her possession unloaded and either disassembled or secured by a trigger lock, gun safe, locked box, or other secure device.[32]

A number of states require safe storage of firearms in circumstances where children are likely to access the firearms. These laws are discussed in our summary on Child Access Prevention.

2. *States Requiring Locking Devices with All Firearms Manufactured, Sold or Transferred in the State:* California has the most comprehensive laws with respect to firearm locking devices. In California, all firearms manufactured in the state, or sold or transferred by a state licensed dealer, including private transfers conducted through licensed dealers, must include or be accompanied by a firearm safety device approved by the California Department of Justice. A firearm safety device is defined as "a device other than a gun safe that locks and is designed to prevent children and other unauthorized users from firing a firearm. The device may be installed on a firearm, be incorporated into the design of the firearm, or prevent access to the firearm." Sales and transfers by licensed dealers are exempt if the purchaser provides proof of ownership of an approved safety device or gun safe meeting state standards.

In Massachusetts, any handgun or assault weapon sold without a safety device designed to prevent discharge by unauthorized users is considered to be defective. The sale of such a weapon constitutes a breach of warranty and an unfair or deceptive trade act or practice.[33]

3. *States Requiring Locking Devices on All Firearms Transferred by Licensed Dealers:* New York prohibits retail sales of firearms without a locking device, which may be an external device or integrated in the design of the firearm. Michigan prohibits licensed dealers from selling a firearm unless the sale includes a trigger lock or gun case or other storage container. This does not apply if the purchaser presents to the dealer at the time of sale of the firearm a trigger lock, gun case or storage container, together with a copy of the receipt for the trigger lock or storage container. In Ohio, at the time of sale of any firearm, a dealer must offer to sell the purchaser a trigger lock, gun lock or gun locking device appropriate for that firearm.

4. *States Requiring Locking Devices with Handgun Sales:* Connecticut and New Jersey require locking devices on all handguns sold. The laws in four other states (Illinois, Maryland, Pennsylvania and Rhode Island) are similar to federal law, and require trigger locks only on all handguns sold by retail dealers. New Jersey prohibits the delivery of a handgun to any person unless it is accompanied by a trigger lock or locked gun case, gun box, container or other secure facility. Similarly, in Connecticut, all handguns sold or transferred (other than at wholesale) must be equipped with a trigger lock or other locking device.

In Illinois, the device may be an external safety device or an integrated mechanical safety device. Maryland's statute provides that handguns manufactured after Jan. 1, 2003, must have an integrated mechanical safety device. (Both Illinois and Maryland define "integrated mechanical safety device" as a disabling or locking device that is built into the handgun and designed to prevent the handgun from being discharged unless the device has been deactivated). In Rhode Island, licensed retail dealers may

not deliver any handgun to a purchaser without providing a trigger lock or other safety device designed to prevent unauthorized users from operating the handgun. In Pennsylvania, sales of handguns by licensed dealers must be accompanied by a locking device. "Locking device" is defined as either: 1) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; or 2) a device that is incorporated into the design of a firearm and designed to prevent the operation of the firearm by anyone not having access to the device.

5. *States that Set Standards for Locking Devices or Maintain a Roster of Approved Devices:* California has the most comprehensive standards for locking devices. Through rules promulgated by the Attorney General, California requires testing of and sets standards for firearm locking devices. Locking devices are tested by certified laboratories, and those found to meet standards are listed in a roster of approved devices that may be sold in the state. The state may randomly retest samples to ensure continued compliance. California prohibits any person from keeping, offering, or exposing for commercial sale, or commercial selling, any firearm safety device that is not listed on the roster.

Maryland and Massachusetts maintain rosters of approved locking devices. In Maryland, the list of "Approved Integrated Mechanical Safety Devices" is issued by the state Handgun Roster Board. In Massachusetts, safety devices must be approved by the Colonel of the Department of State Police.

The New York State Police has also promulgated general standards for locking devices, requiring, among other things, that the device must: 1) open only by either a numeric combination, key, magnetic key or electronic key; and 2) be constructed with such quality of workmanship and material that it may not be pried open easily, removed or otherwise defeated by the use of "common household tools." Similarly, Connecticut law requires that locking devices be constructed of material strong enough to prevent them from being easily disabled, and must be accessible by key or electronic or mechanical accessory specific to the locking device to prevent unauthorized removal.

SELECTED LOCAL LAW

New York City

New York City requires any lawful owner or custodian of a firearm to render his or her weapon inoperable by use of a safety locking device while the weapon is out of his or her immediate possession or control.[34] New York City also requires the inclusion of a safety locking device with the transfer of a firearm. The city prohibits the transfer of any firearm without a "safety locking device," defined as "a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user."[35] In addition, no person may obtain a firearm without purchasing or obtaining a safety locking device at the same time.

FEATURES OF A COMPREHENSIVE LAW REGARDING THE SAFE STORAGE OF FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- All firearms are required to be kept disabled with a locking device except when an authorized user is carrying it on his or her person or has the firearm under his or her immediate control *(Massachusetts, New York City)*
- Locking devices are required on all firearms manufactured, sold or transferred in the jurisdiction *(California)*
- Standards are set for locking devices *(California, Connecticut, New York)*
- Locking devices are tested and approved by a certified independent lab before they may be sold in the jurisdiction *(California)*
- A roster is maintained of approved locking devices *(California, Massachusetts; Maryland maintains a roster of approved locking devices, but only for handguns)*

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[1] *See* Michael Luo & Mike McIntire, *Children and Guns: The Hidden Toll*, N.Y. Times (Sept. 28, 2013), at http://www.nytimes.com/2013/09/29/us/children-and-guns-the-hidden-toll.html?ref=michaelluo&_r=0.

[2] Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Injury Mortality Reports, 1999-2010, for National, Regional, and States* (Sept. 2013), http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html. Note: Users must agree to data use restrictions on the CDC site prior to accessing data).

[3] Karen E. Gotsch et al., *CDC Surveillance Summary No. SS-2, Surveillance for Fatal and Nonfatal Firearm-Related Injuries – United States 1993-1998* 2 (Apr. 13, 2001), *at* http://www.cdc.gov/mmwr/pdf/ss/ss5002.pdf.. *See also*, National Center for Injury Prevention & Control, U.S. Centers for Disease Control & Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS) Nonfatal Injury Reports, 2001-2011*, at http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html.

[4] U.S. General Accounting Office, *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented* 17 (Mar. 1991).

[5] Mark A. Schuster et al., *Firearm Storage Patterns in U.S. Homes with Children*, 90 Am. J. Pub. Health 588, 590 (Apr. 2000), at http://www.rand.org/content/dam/rand/pubs/reprints/2005/RAND_RP890.pdf.

[6] Catherine A. Okoro et al., *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings from the Behavioral Risk Factor Surveillance System, 2002*, 116 Pediatrics e370, e371-e372 (Sept. 2005), *at* http://pediatrics.aappublications.org/cgi/content/full/116/3/e370.

[7] Frances Baxley & Matthew Miller, *Parental Misperceptions About Children and Firearms*, 160 Archives Of Pediatric & Adolescent Med. 542, 544 (2006).

[8] David C. Grossman, Donald T. Reay & Stephanie A. Baker, *Self-Inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of the Firearm*, 153 Arch. Pediatr. Adolesc. Med. 875, 875 (Aug. 1999), at http://archpedi.jamanetwork.com/article.aspx?articleid=347593.

[9] Matthew Miller & David Hemenway, *The Relationship Between Firearms and Suicide: A Review of the Literature*, 4 Aggression & Violent Behavior 59, 62-65 (1999) (summarizing the findings of multiple studies).

[10] U.S. Secret Service & U.S. Dep't of Education, *The Final Report & Findings of the Safe School Initiative – Implications for the Prevention of School Attacks in the United States* 27 (July 2004), at http://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf.

[11] *Accidental Shootings, supra* note 5, at 17.

[12] David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (2005), at http://depts.washington.edu/hiprc/pdf/LockboxJAMA.pdf.

[13] Colleen L. Barry et al., *Perspective: After Newtown — Public Opinion on Gun Policy and Mental Illness,* 368 New Eng. J. Med. 1077-1081 (March 21, 2013) at http://www.nejm.org/doi/full/10.1056/NEJMp1300512?query=featured_home&&.
[14] 18 U.S.C. § 922(z)(1). A "secure gun storage or safety device" is defined under 18 U.S.C. § 921(a)(34) as:
(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; (B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or (C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.
[15] 18 U.S.C. § 922(z)(2).
[16] 18 U.S.C. § 922(z)(3)(A).
[17] 18 U.S.C. § 922(z)(3)(C).
[18] The federal Consumer Product Safety Act, which imposes health and safety standards on consumer products, *exempts* firearms and ammunition from its requirements. 15 U.S.C. § 2052(a)(5)(E), referencing 26 U.S.C. § 4181 *et seq*. Therefore, the Consumer Product Safety Commission (CPSC) has no authority to mandate that firearms include locking devices. Locking devices themselves, however, are not exempt, and therefore the CPSC has the authority to adopt national safety standards for locking devices.
[19] The White House, *Now is the Time: The President's Plan to Protect Our Children and Our Communities by Reducing Gun Violence* 10, Jan. 16, 2013, at http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf.
[20] Cal. Penal Code §§ 16540, 16610, 16870, 23635-23690, 31910(a)(1), (b)(1), 25135, 32000;
Cal. Code Regs. tit. 11, §§ 4093 – 4099.
[21] Conn. Gen. Stat. §§ 29-33(d), 29-37b, 29-37i.
[22] 720 Ill. Comp. Stat. 5/24-9.5.
[23] Md. Code Ann., Pub. Safety § 5-132.
[24] Mass. Gen. Laws ch. 140, §§ 131K, 131L(a); 940 Mass. Code Regs. 16.02, 16.04 – 16.07.
[25] An entity responsible for the manufacture, importation or sale as an inventory item or consumer good of these weapons that does not include or incorporate a locking device shall be individually and jointly liable to any person who sustains personal injury or property damage resulting from the failure to include or incorporate such a device. Mass. Gen. Laws ch. 140, §§ 131K.
[26] Mich. Comp. Laws § 28.435.
[27] N.J. Stat. Ann. § 2C:58-2a(5)(d), (e).
[28] N.Y. Gen. Bus. Law § 396-ee; New York Penal Law § 265.45; N.Y. Comp. Codes R. & Regs. tit. 9, § 471.2.
[29] Ohio Rev. Code Ann. § 2923.25.
[30] 18 Pa. Cons. Stat. § 6142.
[31] R.I. Gen. Laws § 11-47-60.3.
[32] D.C. Code Ann. § 7-2507.02(a).
[17] California and Massachusetts also require internal safety features on handguns, including chamber load indicators and/or magazine safety disconnect mechanisms. These provisions are discussed in our summary on Design Safety Standards.
[34] New York, N.Y., Admin. Code §§ 10-311, 10-312(a).
[35] The ordinance provides the following two examples of acceptable safety locking devices: 1) a trigger lock that prevents a weapon from firing without a key; and 2) a "combination handle, which prevents the use of the weapon without the alignment of the combination tumblers."

Personalized or Owner-Authorized Firearms

Background

"Personalized" firearms, also known as "smart" or "owner-authorized" guns, incorporate technology preventing their use except by authorized users. **Personalized guns are designed to prevent shootings, both intentional and unintentional, by children, thieves, and other unauthorized users.** A 2003 study analyzing data from seven years of unintended firearm deaths or deaths of undetermined intent found that 37% of the deaths could have been prevented by a smart gun.[1] Personalized guns also render firearms useless to criminals who gain access to law enforcement weapons during the course of an arrest or other encounter.

For research and statistics regarding child and unauthorized access to guns, which would be prevented by personalized firearms, see our summary on Safe Storage & Gun Locks.

The technology incorporated into personalized firearms can generally be divided into two categories: token-based technologies and biometric technologies. Token-based technologies require the use of an additional item, such as a ring or watch, to activate the firearm, and include radio frequency and magnetic identifiers. Biometric technologies utilize unique features of individuals to identify the user of a gun, including fingerprints and grip recognition.[2]

In response to an order from President Obama, the National Institute of Justice ("NIJ") produced a report in June 2013 evaluating the readiness of personalized firearm technology. The report found that, although personalized guns were not yet available commercially, numerous prototypes have been created, and at least three models of these firearms could be described as "commercializable," or "production-ready."[3] At least one personalized handgun system entered the U.S. market in 2013: the Armatix iP1, which includes a handgun and a watch containing a radio frequency identifier that the user must wear to activate the handgun.[4]

Americans overwhelmingly support laws requiring that firearms incorporate user-recognition technology. A 2001 survey found that 73.6% of Americans favor a requirement that all new models of handguns be personalized.[5]

Summary of Federal Law

Federal law does not set any safety or design standards for domestically manufactured firearms. Most consumer products are regulated by the Consumer Product Safety Commission (CPSC), established in 1972 by the Consumer Product Safety Act. The statutory definition of the term "consumer product," however, specifically excludes firearms and ammunition.[6] Accordingly, the CPSC currently has no authority to require gun manufacturers to produce personalized guns or otherwise improve the safety of their products.

SUMMARY OF STATE LAWS CONCERNING PERSONALIZED OR OWNER-AUTHORIZED FIREARMS

Maryland, Massachusetts, and New Jersey are the only states that have laws addressing personalized gun technology.

1. *Maryland*: A "personalized handgun" is defined under Maryland law as any handgun manufactured with technology incorporated into the design allowing the handgun to be fired only by a person who is the authorized user of the handgun, and preventing any of the handgun's safety characteristics from being easily deactivated. Maryland's Handgun Roster Board is required to review the status of personalized handgun technology and report its findings to the Governor and the General Assembly annually.[7]

2. *New Jersey*: In 2002, New Jersey adopted a law that will eventually require smart gun technology to be incorporated into all handguns sold in the state. New Jersey defines a "personalized handgun" as: "[A] handgun which incorporates within its design, and as part of its original manufacture, technology which automatically limits its operational use and which cannot be readily deactivated, so that it may only be fired by an authorized or recognized user."[8]

Until the Attorney General finds that personalized gun technology is available, he or she is required to report to the Governor and the Legislature every six months regarding the availability of personalized handguns for retail sales purposes.[9]

Twenty-three months after the Attorney General finds that smart handguns are available for retail sale, the Attorney General and the Superintendent of State Police must begin the process of promulgating a list of such handguns that may be sold in New Jersey. This process must be completed within six months.[10]

Six months after the initial list of handguns is approved, it will be unlawful for any licensed manufacturer, wholesaler, or retail firearms dealer to transport into New Jersey, sell, expose for sale, possess with the intent of selling, assign, or otherwise transfer a handgun unless it is a personalized handgun (excluding antique handguns and handguns used by law enforcement or military officers).[11]

3. *Massachusetts:* Massachusetts mentions personalized gun technology as an alternative to locking devices in its requirement that any handgun or large capacity weapon be sold with a safety device designed to prevent the discharge of such weapon by unauthorized users and approved by the State Police.[12] The State Police has not yet approved any form of personalized technology as sufficient to comply with this requirement.[13]

FEATURES OF A COMPREHENSIVE LAW REQUIRING PERSONALIZED OR OWNER-AUTHORIZED FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- An authorized governmental or law enforcement body is charged with monitoring progress in developing personalized firearm technology and reporting regularly to the appropriate authorities *(Maryland (annually), New Jersey (every six months))*
- When determined to be technologically feasible, personalized firearm technology is required for all handguns manufactured, sold, transferred or possessed in, or transported into, the jurisdiction *(New Jersey)*
- Standards are set for personalized firearms, and personalized firearms are tested and approved by a certified independent lab before they may be sold in the jurisdiction

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[1] Jon S. Vernick et al., *Unintentional and Undetermined Firearm Related Deaths: a Preventable Death Analysis for Three Safety Devices*, 9 Inj. Prevention 307, 307-08 (2003) (analyzing data from Maryland and Milwaukee). For additional background on personalized firearms, *see* Krista D. Robinson et al., *Personalized Guns: Reducing Gun Deaths Through Design Changes* (Johns Hopkins Center for Gun Pol'y & Res.) (Sept. 1996).

[2] National Institute of Justice, Dep't of Justice, *A Review of Gun Safety Technologies,* National Institute of Justice Research Report 24-27 (June 2013), at https://www.ncjrs.gov/pdffiles1/nij/242500.pdf.

[3] *Id.* at 3.

[4] Michael S. Rosenwald, '*We need the iPhone of guns': Will smart guns transform the gun industry?,* Wash. Post, Feb. 17, 2014, http://www.washingtonpost.com/local/we-need-the-iphone-of-guns-will-smart-guns-transform-the-gun-industry/2014/02/17/6ebe76da-8f58-11e3-b227-12a45d109e03_story.html.

[5] Tom W. Smith, *2001 National Gun Policy Survey of the National Opinion Research Center: Research Findings* (Dec. 2001), at http://www.norc.org/PDFs/publications/SmithT_Nat_Gun_Policy_2001.pdf.

[6] 15 U.S.C. § 2052(a)(1)(ii)(E). Note that locking devices for firearms are not, by themselves, exempt, and therefore the CPSC has the authority to adopt national safety standards for locking devices. It has not done so. Additional information about locking devices is contained in our summary on Safe Storage & Gun Locks.

[7] Md. Code Ann., Pub. Safety § 5-132.

[8] N.J. Stat. Ann. § 2C:39-1dd.

[9] N.J. Stat. Ann. § 2C:58-2.3.

[10] N.J. Stat. Ann. § 2C:58-2.4.

[11] N.J. Stat. Ann. § 2C:58-2a(5)(e).

[12] Mass. Gen. Laws ch. 140, §§ 131K.

[13] Massachusetts Executive Office of Public Safety and Security, *Approved Firearm Safety/Locking Devices,* at http://www.mass.gov/eopss/firearms-reg-and-laws/firearm-safety-locking-devices.html.

Child Access Prevention

Background

Child access prevention (CAP) laws impose criminal liability on adults who leave firearms accessible to children. Researchers have found that millions of children live in homes with easily accessible guns. Approximately one of three handguns is kept loaded and unlocked and most children know where their parents keep their guns.[1] In one 2006 study, 73% of children under age 10 living in homes with guns reported knowing the location of their parents' firearms, and 36% admitted they had handled the weapons; 39% of parents who reported that their children did not know the storage location of household guns and 22% of parents who reported that their children had never handled a household gun were contradicted by their children's reports. [2]

The presence of unlocked guns in the home increases the risk of both unintentional gun injuries and intentional shootings. One study found that more than 75% of the guns used in youth suicide attempts and unintentional injuries were stored in the residence of the victim, a relative, or a friend.[3] At least two studies have found that the risk of suicide increases in homes where guns are kept loaded and/or unlocked.[4]

In July 2004, the U.S. Secret Service and U.S. Department of Education published a study examining 37 school shootings from 1974-2000. That study found that in more than 65% of the cases, the attacker got the gun from his or her own home or that of a relative.[5]

For more information about the storage of firearms, see our summary on Safe Storage & Gun Locks.

Child access prevention laws have been shown to be effective at reducing unintentional firearm deaths among children.

- One study found that in twelve states where such laws had been in effect for at least one year, unintentional firearm deaths fell by 23% from 1990-94 among children under 15 years of age.[6]
- A 2004 study evaluating the association between CAP laws and suicides among youth found that such laws were associated with an 8.3% decrease in suicides among 14-17 year olds.[7]
- A 2005 study found that the practices of keeping firearms locked, unloaded, and storing ammunition in a locked location separate from firearms serve as a protective measure to reduce youth suicide and unintentional injury in homes with children and teenagers where guns are stored.[8]

Summary of Federal Law

There are no child access prevention laws at the federal level, and federal law does not generally require gun owners to safely store their guns. Federal law does, however, make it unlawful for any licensed importer, manufacturer or dealer to sell or transfer any handgun unless the transferee is provided with a "secure gun storage or safety device",[9] and immunizes the lawful owner of a handgun who uses a secure gun storage or safety device from certain civil actions based on the criminal or

unlawful misuse of the handgun by a third party.[10] For further details, see our summary on Safe Storage and Gun Locks.

Federal and state laws imposing a minimum age for the purchase and possession of firearms are discussed in our summary on the Minimum Age to Purchase and Possess Firearms.[11]

SUMMARY OF STATE CHILD ACCESS PREVENTION LAWS

Twenty-eight states and D.C. have enacted child access prevention laws.

States with Child Access Prevention Laws

California[12]
Colorado[13]
Connecticut[14]
Delaware[15]
District of Columbia[16]
Florida[17]
Georgia[18]
Hawaii[19]
Illinois[20]
Indiana[21]
Iowa[22]
Kentucky[23]
Maryland[24]
Massachusetts[25]
Minnesota[26]
Mississippi[27]
Missouri[28]
Nevada[29]
New Hampshire[30]
New Jersey[31]
North Carolina[32]
Oklahoma[33]
Pennsylvania[34]
Rhode Island[35]
Tennessee[36]
Texas[37]
Utah[38]
Virginia[39]
Wisconsin[40]

Description of State Child Access Prevention Laws

Child access prevention laws take a variety of forms. The strongest laws impose criminal liability when a minor gains access to a negligently stored firearm. The weakest merely prohibit persons from directly providing a firearm to a minor. There is a wide range of laws that fall somewhere between these extremes, including laws that impose criminal liability for negligently stored firearms, but only where the child uses the firearm and causes death or serious injury. Weaker laws impose penalties only in the event of reckless, knowing or intentional conduct by the adult. States also differ on the definition of "minor" for purposes of preventing access to firearms by children.

1. *Laws Imposing Criminal Liability when a Child Gains Access as a Result of Negligent Storage of a Firearm:* Fourteen states and the District of Columbia have laws that impose criminal liability on persons who negligently store firearms, where minors could or do gain access to the firearm. Typically, these laws apply whenever the person "knows or reasonably should know" that a child is likely to gain access to the firearm.

State Laws Based on Negligent Storage

California
Connecticut
District of Columbia
Florida
Hawaii
Illinois
Iowa
Maryland
Massachusetts
Minnesota
New Hampshire
New Jersey
North Carolina
Rhode Island
Texas

There are a number of variations in these types of laws, including whether the child must use the firearm, and whether the firearm must be loaded. The most significant variations are described below:

a. *States Imposing Criminal Liability for Allowing a Child to Gain Access:* The broadest laws apply regardless of whether the child even gains possession of the firearm. California, Massachusetts, Minnesota and the District of Columbia impose criminal liability in circumstances where a child *may* (Massachusetts) or *is likely to* (California, Minnesota, District of Columbia) gain access to a firearm. The laws in Hawaii,[41] Maryland, New Jersey, and Texas apply whenever a child gains access to an improperly stored firearm. In these states, it is not necessary for the child to use the firearm or cause any injury.

States Imposing Criminal Liability When a Child "May" or "Is Likely To" Gain Access to the Firearm

California
District of Columbia
Massachusetts
Minnesota

States Imposing Criminal Liability for Allowing a Child to Gain Access to the Firearm, Regardless of Whether the Child Uses the Firearm or Causes Injury

California
District of Columbia
Hawaii
Maryland
Massachusetts
Minnesota
New Jersey
Texas

b. *States Imposing Criminal Liability Only if Child Uses or Carries the Firearm:* Seven states require that the child carry or use the firearm in some way before criminal liability attaches. In Connecticut, Illinois, Iowa, and Rhode Island, the statute applies when the child uses the firearm to cause death or serious injury. Iowa, Florida, New Hampshire and North Carolina also impose criminal liability when the minor takes the firearm to a public place, and/or uses the firearm in a threatening manner. The New Hampshire and North Carolina statutes also impose criminal liability when the child uses the firearm in the commission of a crime.

States Imposing Criminal Liability Only if a Child Uses or Carries the Firearm

Connecticut
Florida
Illinois
Iowa
New Hampshire
North Carolina[42]
Rhode Island

c. *States Imposing Criminal Liability for Negligent Storage of Unloaded Firearms:* Hawaii, Massachusetts and the District of Columbia impose criminal liability even if the firearm is unloaded. In the case of handguns only, California imposes criminal liability when the child carries a loaded or unloaded handgun off-premises. All other states only impose criminal liability if the firearm is loaded.

States Imposing Criminal Liability for Negligent Storage of Unloaded Firearms

California
District of Columbia
Hawaii
Massachusetts

d. *Common Exceptions:* States allow several exceptions to their child access prevention laws. The most common exception applies where the firearm is stored in a locked container (California, Connecticut, District of Columbia, Florida, Hawaii, Illinois, Iowa, Minnesota, New Hampshire, New Jersey, North Carolina,[43] Rhode Island, Texas). Another common exception applies where the minor gains access to the firearm via illegal entry of the premises (California, Connecticut,

District of Columbia, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Hampshire, New Jersey, North Carolina, Rhode Island, Texas). Other exceptions include cases where the firearm is used for hunting, sport shooting or agricultural purposes, where the minor uses the gun in defense of self or others, where the firearm is used to aid law enforcement, or where the child has completed a firearm safety course.

2. *States Preventing Persons from Intentionally, Knowingly and/or Recklessly Providing Firearms to Minors:* Several states impose a weaker standard for criminal liability when a child is allowed to access a firearm. Fourteen states prohibit persons from intentionally, knowingly, and/or recklessly providing some or all firearms to children.

State Laws Prohibiting Intentional, Knowing or Reckless Provision of Firearms to Minors
Colorado
Delaware
Georgia
Indiana
Kentucky
Mississippi
Missouri
Nevada
Oklahoma
Pennsylvania
Tennessee
Utah
Virginia
Wisconsin

a. *All firearms:* Indiana, Missouri, Nevada,[44] Oklahoma, Pennsylvania and Utah[45] laws apply to all firearms.

b. *All loaded firearms*: Delaware,[46] Wisconsin[47] and Virginia[48] prohibit persons from providing loaded firearms to children.

c. *Handguns only:* Colorado,[49] Georgia, Kentucky, Mississippi[50] and Tennessee laws only prohibit providing handguns to minors.

d. *Lesser standard for parents or guardians:* Georgia, Indiana, Kentucky, Oklahoma, Tennessee and Utah impose a lesser standard on parents and guardians, providing that parents may be guilty for providing firearms to children only where they know of a substantial risk that the minor will use the firearm to commit a crime.

3. *Definition of "Minor":* The age which triggers a state's child access prevention law varies, ranging from children under 14 to those under 18.

Under 18: California, Colorado, Delaware, District of Columbia, Georgia, Indiana, Kentucky, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Pennsylvania, Tennessee, Utah

Under 17: Texas

Under 16: Connecticut,[51] Florida, Hawaii, Maryland, New Hampshire, New Jersey, Rhode Island

Under 14: Illinois, Iowa, Virginia, Wisconsin

4. States Requiring that All Firearms be Stored with a Locking Device in Place: Massachusetts requires that all firearms be stored with locking devices in place to prevent accidental discharge. This type of law is another important means to protect children from gaining unauthorized access to firearms and causing death or injury.[52] Additional information about these kinds of laws is contained in our summary on Safe Storage & Gun Locks.

5. *States Imposing Civil Liability on Persons Who Fail to Store Firearms Properly:*[53] California imposes civil liability on the parent or guardian of a minor for damages resulting from the minor's discharge of a firearm, where the parent or guardian permitted the minor to have the firearm or left it accessible to the minor. Connecticut imposes strict liability in civil actions on persons who fail to store firearms securely, where a minor gains access and causes injury or death. In Illinois, when a minor under the age of 21 legally acquires a firearms license by obtaining the permission of a parent or guardian, that parent or guardian becomes liable for civil claims for damages resulting from the minor's use of firearms or ammunition. In Nevada, a parent or guardian is jointly and severally liable with the minor for civil damages caused by permitting the minor to possess a firearm, where the parent or guardian knows that the minor has a propensity to commit violent acts or has been previously adjudicated delinquent or has been convicted of a criminal offense, or knows or has reason to know that the minor intends to use the firearm for an unlawful purpose.[54]

FEATURES OF A COMPREHENSIVE CHILD ACCESS PREVENTION LAW

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Criminal liability is imposed on persons who negligently store firearms under circumstances where minors could gain access to the firearm, regardless of whether the minor actually gains access to or uses the firearm *(California, Massachusetts, Minnesota, District of Columbia)*
- Criminal liability is imposed on persons who negligently store firearms even when the firearm is unloaded *(Hawaii, Massachusetts, District of Columbia)*
- Civil liability for damages resulting from the discharge of a firearm is imposed on persons who negligently store firearms when a minor gains access[55]
- "Minor" is defined as a child under the age of 18 for long guns *(Colorado, Delaware, Indiana, Massachusetts, Minnesota, Missouri, Nevada, North Carolina, Oklahoma, Pennsylvania, Utah)*, and a person under the age of 21 for handguns, for purposes of the child access prevention law
- All firearms are required to be stored with a locking device in place *(Massachusetts)*

[1] Philip J. Cook & Jens Ludwig, U.S. Dep't of Justice, Nat'l Inst. of Justice, *Guns in America: National Survey on Private Ownership and Use of Firearms*, at 7 (1997).
[2] Frances Baxley & Matthew Miller, *Parental Misperceptions About Children and Firearms*, 160 Archives Of Pediatric & Adolescent Med. 542, 544 (2006).
[3] David C. Grossman, Donald T. Reay & Stephanie A. Baker, *Self-Inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of the Firearm*, 153 Arch. Pediatr. Adolesc. Med. 875, 875 (Aug. 1999).
[4] Matthew Miller & David Hemenway, *The Relationship Between Firearms and Suicide: A Review of the Literature*, 4 Aggression & Violent Behavior 59, 62-65 (1999) (summarizing the findings of multiple studies).
[5] U.S. Secret Service & U.S. Dep't of Education, *The Final Report & Findings of the Safe School Initiative – Implications for the Prevention of School Attacks in the United States* 27 (July 2004), at http://www2.ed.gov/admins/lead/safety/preventingattacksreport.pdf.
[6] Peter Cummings et al., *State Gun Safe Storage Laws and Child Mortality Due to Firearms*, 278 JAMA 1084, 1084 (Oct. 1997).
[7] Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws & Youth Suicides*, 292 JAMA 594, 596-98 (Aug. 2004).
[8] David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (2005), at http://depts.washington.edu/hiprc/pdf/LockboxJAMA.pdf.
[9] 18 U.S.C. § 922(z)(1). A "secure gun storage or safety device" is defined under 18 U.S.C. § 921(a)(34) as:
(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; (B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or (C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.
[10] 18 U.S.C. § 922(z)(3).
[11] Federal law prohibits federally licensed firearms dealers from transferring handguns to persons under age 21 and long guns to persons under age 18. It is also illegal for anyone to transfer a handgun to a person under age 18, with certain exceptions, such with the prior written consent of the minor's parent or guardian. 18 U.S.C. §§ 922(b)(1), 922(x)(1).
[12] Cal. Penal Code §§ 25000-25225; Cal. Civ. Code § 1714.3.
[13] Colo. Rev. Stat. § 18-12-108.7.
[14] Conn. Gen. Stat §§ 29-37i, 52-571g, 53a-217a.
[15] Del. Code Ann. tit. 11, §§ 603, 1456.
[16] D.C. Code Ann. § 7-2507.02(b)-(d).
[17] Fla. Stat. Ann. § 790.174.
[18] Ga. Code Ann. § 16-11-101.1.
[19] Haw. Rev. Stat. Ann. §§ 134-10.5, 707-714.5.
[20] 720 Ill. Comp. Stat. 5/24-9(a); 430 Ill. Comp. Stat. 65/4(c).
[21] Ind. Code Ann. §§ 35-47-10-3, 35-47-10-6.
[22] Iowa Code § 724.22(7).
[23] Ky. Rev. Stat. Ann. § 527.110.
[24] Md. Code Ann., Crim. Law § 4-104.
[25] Mass. Gen. Laws ch. 140, § 131L.
[26] Minn. Stat. § 609.666.
[27] Miss. Code Ann. §§ 97-37-14, 97-37-15.
[28] Mo. Rev. Stat. § 571.060.1(2).
[29] Nev. Rev. Stat. Ann. §§ 41.472, 202.300(1) – (3).
[30] N.H. Rev. Stat. Ann. § 650-C:1.
[31] N.J. Stat. Ann. § 2C:58-15.
[32] N.C. Gen. Stat. § 14-315.1.
[33] Okla. Stat. tit. 21, § 1273(B).
[34] 18 Pa.C.S. § 6110.1(c).
[35] R.I. Gen. Laws § 11-47-60.1.
[36] Tenn. Code Ann. §§ 39-17-1319, 39-17-1320.

[37] Tex. Penal Code Ann. § 46.13.
[38] Utah Code Ann. § 76-10-509.6.
[39] Va. Code Ann. § 18.2-56.2.
[40] Wis. Stat. § 948.55.
[41] While Haw. Rev. Stat. § 134-10.5 appears to criminalize negligent storage when a child is likely to gain access to a firearm, Haw. Rev. Stat. § 707-714.5 only provides penalties if the child actually gains access to a firearm.
[42] North Carolina's statute only applies to the negligent storage of firearms by persons who reside with a minor.
[43] In North Carolina, liability is imposed if the firearm is stored or left "in a condition that the firearm can be discharged."
[44] Nevada makes it a crime to "aid or knowingly permit" a child to possess a firearm, except for hunting, target practice or other purposes, under the immediate supervision of an authorized adult.
[45] Utah's law applies only to parents and guardians.
[46] In Delaware, the minor must use the firearm to cause death or serious injury.
[47] Wisconsin's law applies only where the minor uses the firearm to cause death or serious injury, or exhibits the firearm in a public place.
[48] Virginia also prohibits any person from knowingly authorizing a child under 12 to use a firearm, except when supervised by an adult.
[49] Colorado prohibits providing firearms other than handguns to minors without parental consent.
[50] Mississippi's statute applies only to parents and guardians.
[51] In 2013, Connecticut expanded its safe storage provisions to apply to persons other than minors. Now, a firearm owner must store any loaded firearm on premises under his or her control if he or she knows or reasonably should know that a resident of the premises: 1) is ineligible to possess a firearm under state or federal law; or 2) poses a risk of imminent personal injury to himself or herself or to other individuals,
[52] New York adopted a safe storage law in 2013, requiring that any owner or custodian of a firearm who resides with an individual who the owner or custodian knows or has reason to know is prohibited from possessing a firearm pursuant to specific possession prohibitions under federal law must securely store the firearm or render it incapable of being fired by use of an appropriate locking device. N.Y. Penal Law § 265.45. This law does not specifically apply to minors, however.
[53] In October 2005, as part of the Protection of Lawful Commerce in Arms Act (PLCAA), Congress passed and the President signed into law immunizing any person from a "qualified civil liability action" who is in lawful possession and control of a handgun and who uses a secure gun storage or safety device with the handgun. 18 U.S.C. § 922(z). "Qualified civil liability action" is defined as a civil action for damages resulting from the criminal or unlawful misuse of a handgun by a third party if: (A) the handgun was accessed by another person who did not have the authorization of the lawful possessor; and (B) at the time the handgun was accessed it had been made inoperable by the use of a secure gun storage or safety device. 18 U.S.C. § 922(z)(3).
[54] In addition, Hawaii imposes absolute liability on the owner of a firearm if the discharge of the firearm causes injury to any person or property. Haw. Rev. Stat. Ann. § 663-9.5.

Design Safety Standards for Firearms

Background

Federal law imposes no design safety standards on domestically produced firearms. As a result, many firearms are manufactured and sold in the U.S. without undergoing appropriate safety testing and without including basic safety features. Poorly constructed firearms play a significant role in unintentional shootings and are disproportionately associated with criminal misuse, especially by juveniles and young adults.[1]

Between 2005 and 2010, almost 3,800 people were killed and over 95,000 people were injured in unintentional shootings in the U.S. Over 42,000 victims of unintentional shootings during this period were under 25 years of age, and more than 1,300 of these children and young adults died.[2] As stated in an October 2012 study from the Johns Hopkins Center for Gun Policy and Research, "Although unintentional or accidental shootings account for a small share of firearm related mortality and morbidity**, these deaths and injuries are highly preventable through proper design of firearms.**"[3]

Some firearms are equipped with a feature known as a "magazine disconnect mechanism" that prevents a firearm from discharging when the magazine is not attached. Other firearms are designed with a "loading indicator" that indicates when a gun is loaded. These features are important because a bullet can remain in the chamber even after the magazine is removed, leading a person to believe the gun is unloaded. Many firearms are still produced and sold without these safety features, however.

Furthermore, poorly constructed guns can fire even when the trigger hasn't been pulled, or do not fire when the trigger has been pulled. Guns of this kind are commonly referred to as "junk guns" or "Saturday Night Specials." These low-quality handguns are often composed of inferior metals or plastic and designed in ways to unreasonably reduce the costs of manufacture. Broadly speaking, these handguns are cheap, easily concealed, and more likely to misfire or malfunction than other firearms.

In the 1980s and 1990s, many junk guns were produced by the so-called "Ring of Fire" companies – a small group of gun manufacturers originally based in the Los Angeles area. After steadily increasing production during the 1980s, Ring of Fire companies manufactured one-third of all U.S. handguns produced in the early 1990s.[4] Five of the ten crime guns most frequently traced by ATF in 2000 were manufactured by Ring of Fire companies.[5] Numerous experts criticized the low quality of the guns produced by these companies in terms of design (based on their lack of basic safety features), materials and performance.[6] Because these guns were so poorly constructed, inaccurate, and unreliable, they were widely considered inappropriate for either personal protection or sporting purposes.[7]

The State of California responded to this public safety threat by adopting safety standards for handguns in 1999, and by 2003, five of the six original Ring of Fire companies had declared bankruptcy.[8] As described below, California and a few other states have continued to adopt strong laws in this area. Junk guns are, nevertheless, still widely available for sale in most states.[9]

There is evidence that legislation banning the sale of junk guns directly affects the number of firearm homicides. A 2002 study of Maryland's junk gun ban found that the law resulted in an 8.6% decrease in firearm homicides in the state – an average of 40 lives saved per year – between 1990 and 1998.[10]

Federal Law

As stated above, federal law imposes no health or safety requirements on domestically produced firearms. In fact, the federal Consumer Product Safety Act, which imposes health and safety standards on consumer products, exempts firearms and ammunition from its requirements.[11] Federal law does prohibit the importation of junk guns through a ban on importation of firearms not suited for "sporting purposes."[12] However, because the federal government does not regulate the safety of domestically-produced firearms, there is effectively a protected market for domestic models of junk guns.[13]

SUMMARY OF STATE DESIGN SAFETY STANDARDS

Seven states have enacted laws to address the regulatory void regarding domestic junk guns, establishing a series of design and safety tests or standards that handguns must meet before they can be lawfully manufactured, transferred and/or possessed: California, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, and New York. The District of Columbia also has established a roster of handguns that may be manufactured, sold, transferred, or possessed within, or imported into the District. The handguns on this roster meet the safety standards established in California, Maryland or Massachusetts.

California, Massachusetts and New York also require that all handguns have certain safety features.

States Regulating Junk Guns Through Handgun Design and Safety Standards

	Requires Drop Testing and Firing Testing	Imposes a Melting Point Test	Requires Specific Handgun Safety Features	Uses a List of Approved Handguns
California[14]	Yes		Yes	Yes
D.C.[15]				Yes
Hawaii[16]		Yes		
Illinois[17]		Yes		
Maryland[18]				Yes
Massachusetts[19]	Yes	Yes	Yes	Yes
Minnesota[20]		Yes		
New York[21]	Yes	Yes	Yes	

Description of State Design Safety Standards for Guns
For citations to these laws, please see the above chart.

1. ***Design and Safety Standards*****:** Design and safety standards are intended to ensure the structural integrity of the firearm and prevent it from misfiring or malfunctioning. Examples of design standards include drop testing, firing testing, and melting point testing, which must be conducted by a designated state agency or independent lab before a handgun may be manufactured and/or sold in the state. **Firing tests** are intended to confirm that a firearm remains structurally sound and does not malfunction after repeated firing. Typically, the test involves firing the handgun a specified number of times to ensure that it performs as intended, and then examining the firearm to confirm it is free from cracks or other defects. **Drop testing** is used to determine whether a handgun can fire when dropped, thereby exposing persons nearby to risk of injury. States typically require tests that examine firearms after being dropped onto a hard surface from a specified distance.

California, Massachusetts and New York have the most comprehensive schemes of design and safety standards for handguns.

California prohibits the manufacture or sale of any "unsafe handgun." An unsafe handgun is any handgun that lacks specified safety devices, that does not meet the state's firing requirement, or that does not meet the state's drop safety requirement, as determined by an independent lab certified by the state Attorney General. Junk guns sold through private sales are not required to comply with the state testing requirements.

Massachusetts prohibits licensed firearms dealers from transferring any handgun that does not appear on a roster of approved firearms. An "approved firearm" is a handgun that meets or exceeds various design and safety criteria, including drop testing, firing testing, and a melting point test. Tests are conducted by independent firearm testing laboratories approved by the Secretary of the Executive Office of Public Safety.[22] A 2006 amendment to Mass. Gen. Laws ch. 140, § 123 exempts owners of handguns lawfully owned or possessed under a license issued on or before October 21, 1998 from the testing requirements.

In New York, under rules promulgated by the Superintendent of State Police, all handguns manufactured or assembled in the state must first receive a certificate of compliance from the Superintendent of State Police. The certificate requires compliance with various safety standards, including drop testing, firing testing, and a melting point standard.

Melting point tests are another standard used to measure a handgun's design safety. These tests require that the working components of handguns be composed of metals with melting points above the heat generated by the ballistic forces when the handgun is fired (thus preventing the gun from being structurally weakened). Melting point standards also may include standards for density and tensile strength. Hawaii, Illinois, Massachusetts, Minnesota, and New York use melting point tests.

The designated melting point ranges from 800 to 1,000 degrees. Minnesota and Massachusetts also impose density and tensile strength standards.

2. ***Specific Safety Features Required:*** California, Massachusetts and New York also define as "unsafe handguns" those lacking certain specified safety features that protect users against unintended discharge. Such safety features include safeties to prevent accidental firing, chamber load indicators, and magazine disconnect mechanisms. A "chamber load indicator" is a device that plainly indicates that a cartridge is in the firing chamber. A "magazine disconnect mechanism" is a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the pistol.[23]

In California, as of January 1, 2006, an "unsafe handgun" includes any pistol that does not have either a chamber load indicator or a magazine disconnect mechanism. As of January 1, 2007, handguns in California are required to have both a chamber load indicator and, if they have a detachable magazine, a magazine disconnect mechanism. California is the only state that requires both a chamber load indicator and a magazine safety disconnect. As of January 1, 2010, California requires that all new semiautomatic pistols be equipped with microstamping technology in order to be sold in California. Detailed information on microstamping technology is contained in our summary on Microstamping & Ballistic Identification.

Massachusetts requires that all handguns be equipped with a safety device designed to allow use only by the owner or authorized user of the firearm. Massachusetts also requires all handguns with a mechanism to load cartridges via a magazine to have a chamber load indicator or magazine disconnect mechanism.

New York requires that all handguns be equipped with a safety device to prevent unintended firing.[24]

3. ***Use of Roster of Approved Handguns:*** California, Maryland and Massachusetts, as well as the District of Columbia, use rosters prepared and maintained by a state agency to list approved handgun models that satisfy the state's design and safety standards. In California, the Department of Justice ("DOJ") publishes and maintains a roster listing all handgun models that have been tested by a certified testing laboratory, determined not to be unsafe handguns, and that may be sold in California. The DOJ may retest up to 5% of handgun models listed on the roster annually. The Attorney General will remove from the roster any model that fails retesting. The DOJ also maintains a list of handguns removed from the state roster.

In Massachusetts, any person may petition the Secretary to place a handgun on or remove a handgun from the Roster, but must do so within 90 days of the Secretary's original decision concerning the handgun.

In Maryland, handguns may not be manufactured for distribution or sale if they are not included on Maryland's handgun roster. The handgun roster is compiled by the Handgun Roster Board, an entity of the Maryland State Police, which considers the handgun's concealability, ballistic accuracy, weight, quality of materials, quality of manufacture, reliability as to safety, caliber, detectability (vis-à-vis

airport and courthouse security equipment standards), and utility for legitimate sporting activities, self-protection, or law enforcement purposes.
In the District of Columbia, the Chief of Police shall review any additions or deletions to the California Roster of Handguns Certified for Sale, at a minimum, on an annual basis. For purposes of District law, the Chief is authorized to revise, by rule, the roster of handguns determined not to be unsafe and to prescribe by rule the firearms permissible under specific narrow exemptions of District law.

SELECTED LOCAL LAWS REGULATING JUNK GUNS

Los Angeles and San Francisco (and at least 54 other communities in California) adopted junk gun bans between 1996 and 2000. These local bans led directly to the state law (described above), which was adopted in 1991 and went into effect in 2001.

FEATURES OF A COMPREHENSIVE DESIGN SAFETY LAW FOR HANDGUNS[25]

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Drop testing and firing testing are required, and design safety standards are set, for all handgun models manufactured, transferred or possessed in the jurisdiction *(California, Massachusetts, New York)*
- Melting point testing is required, and standards are set, for all handgun models manufactured, transferred or possessed in the jurisdiction *(Hawaii, Illinois, Massachusetts, Minnesota, New York)*
- New models of handguns are required to be equipped with a chamber load indicator and, for handguns with detachable magazines, a magazine disconnect mechanism *(California)*
- A roster is created and regularly updated of approved handgun models that satisfy the jurisdiction's safety tests, and that lawfully may be manufactured, transferred or possessed in the jurisdiction *(California, D.C., Maryland, Massachusetts)*
- All testing is conducted by a certified independent lab *(California, Massachusetts)*

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[1] Garen Wintemute, *California's Guns and Crime: New Evidence* 7-8, Violence Prevention Research Program, University of California, Davis (May 1997); Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) – National Report* 15-16 (July 2002).
[2] Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Injury Mortality Reports, 1999-2010, for National, Regional, and States* (Dec. 2012), http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html; Nat'l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Nonfatal Injury Reports,* at http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html.
[3] Johns Hopkins Center for Gun Policy and Research, *The Case for Gun Policy Reforms in America,* October 2012, available at: http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/WhitePaper102512_CGPR.pdf.
[4] *See, e.g.,* Garen Wintemute, *Ring of Fire: The Handgun Makers of Southern California* ix, 11-17, Violence Prevention Research Program, University of California, Davis (1994).
[5] *Id.*
[6] *Id*. at 17-51.

[7] *Id.*
[8] Dick Dahl, *Campaign Seeks to Halt Gun Makers' Bankruptcy Ploy,* Join Together Online, May 28, 2004 (on file with author). Another Ring of Fire junk gun, the Raven .25-caliber semiautomatic – has not been manufactured since the Raven Arms manufacturing plant was destroyed by fire in 1991. *Id.*
[9] A brief survey of firearms available for sale through online retailers uncovers many handguns that are not listed on the current rosters of approved handguns in California, Maryland, and/or Massachusetts. Furthermore, certain advertisements for handguns specifically mention that these handguns are not available for sale in those states.
[10] Daniel W. Webster et al., *Effects of Maryland's Law Banning "Saturday Night Special" Handguns on Homicides,* 155 Am. J. Epidemiology 406, 409-411 (Mar. 2002). Another study on Maryland's ban showed that the law reduced the use of prohibited junk guns by criminals in Baltimore, finding that a junk gun prohibited in Maryland was more than twice as likely to be the subject of a law enforcement crime gun trace request in 15 other major U.S. cities combined than in Baltimore. Jon S. Vernick et al., *Effects of Maryland's Law Banning Saturday Night Special Handguns on Crime Guns*, 5 Inj. Prevention 259, 261-263 (Dec. 1999).
[11] 15 U.S.C. § 2052(a)(1)(ii)(E), referencing 26 U.S.C. § 4181.
[12] 18 U.S.C. § 925(d)(3). The Attorney General determines the criteria used to evaluate whether a particular handgun is one suitable for "sporting purposes." Under these guidelines, a pistol must have a positive manually operated safety device, a revolver must pass a safety test, and all firearms must have a certain number of safety features to be approved for importation, among other criteria. Bureau of Alcohol, Tobacco, & Firearms, U.S. Department of the Treasury, *ATF Form 4590*.
[13] A 2007 report by the International Association of Chiefs of Police (IACP) recommends that Congress enact legislation to allow federal health and safety oversight of the firearms industry. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 26 (Sept. 2007).
[14] Cal. Penal Code §§ 16380, 16900, 17140, 31900-32110; Cal. Code Regs. tit. 11, §§ 4047 – 4074.
[15] D.C. Code Ann. § 7-2505.04 ; D.C. Mun. Regs. tit. 24, § 2323.
[16] Haw. Rev. Stat. Ann. § 134-15(a).
[17] 720 Ill. Comp. Stat. 5/24-3(A)(h).
[18] Md. Code Ann., Pub. Safety, §§ 5-405, 5-406.
[19] Mass. Gen. Laws ch. 140, §§ 123, 131½, 131¾; 501 Mass. Code Regs §§ 7.01 – 7.16; 940 Mass. Code Regs. §§ 16.01 – 16.09.
[20] Minn. Stat. §§ 624.712, 624.716.
[21] N.Y. Penal Law § 400.00(12-a); N.Y. Comp. Codes R. & Regs. tit. 9, § 482.1 – 482.7.
[22] Massachusetts, through the initiative of its Attorney General, was the first state to utilize statutory powers under the state's consumer protection laws to implement gun safety regulations. *See* 940 Mass. Code Regs. § 16.00 *et seq.* These regulations were later codified by the state legislature. *Id.* Based on a detailed analysis of Illinois law, The Law Center has concluded that the Illinois Attorney General has similar authority. This analysis is contained in The Law Center's May 2003 report, *The Illinois Attorney General's Authority to Promulgate Handgun Safety Regulations Under the Consumer Fraud and Deceptive Business Practices Act*, *available at http://www.lcav.org/library/reports_analyses.asp.* Other states, including Alaska, Florida, Idaho, Iowa, Louisiana, Maine, Maryland, Missouri, Montana, Nebraska, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont and West Virginia, may have similar regulatory authority. *See* Legal Action Project, Center to Prevent Handgun Violence, *Targeting Safety* 18-38 (2001).
[23] *See* Cal. Penal Code § 16900.
[24] Pistols must have a "positive, manual or automatically operated safety device to prevent firing." Double-action revolvers must have a "safety feature, that when the trigger is in its most forward position, automatically allows the firing pin to retract to where it does not connect the primer of a cartridge." N.Y. Comp. Codes R. & Regs. tit. 9, § 482.5(f).
[25] A comprehensive design safety law for handguns may also include required locking devices. A detailed discussion of locking devices is contained in our summary on Safe Storage & Gun Locks.

Part 6: Guns in Public Places

Introduction

This Part examines laws regulating the carrying of guns outside the home. The first section describes permitting schemes for the carrying of concealed firearms and summarizes places where concealed firearms may generally be carried. The second section describes laws governing the carrying of firearms openly, and the last section describes laws governing guns in schools.

Carrying Concealed Weapons

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Open Carrying of Firearms

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Guns in Schools

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Carrying Concealed Weapons

Background

People carrying hidden, loaded handguns in public create unnecessary risks of intentional or accidental shootings. The presence of concealed guns increases the risk that everyday disagreements will escalate into shootouts, especially in places where disputes frequently occur—in bars, at sporting events, and in traffic. Permissive concealed carry laws violate the shared expectation that public places will be safe environments free from guns and gun violence.

Over the past 30 years, states across the country have dramatically weakened their laws regulating the carrying of concealed weapons by private citizens ("CCW laws"). These changes have significantly expanded the number of people who have permits to carry hidden, loaded handguns ("CCW permits") and the number of public locations in which they may be carried.[1]

Historically, most states either prohibited or severely limited concealed carrying.[2] Handgun carrying bans were among the earliest gun laws adopted by states; even legendary Old West frontier towns like Dodge City, Kansas, knew better than to allow the carrying of hidden pistols. In the twentieth century, some states granted law enforcement the discretion to issue CCW permits to persons who could demonstrate a legitimate need to carry a hidden gun in public, while other states continued to ban concealed carrying altogether. Over the past three decades, at the behest of the gun lobby, many states have overturned these longstanding laws in favor of permissive CCW permitting systems. A handful of states now even allow individuals to carry concealed without possessing any permit at all;[3] in these states, it is easier to legally carry a handgun than it is to legally drive a car.

Weak permitting systems allow dangerous people to carry guns. A Los Angeles Times analysis of Texas CCW holders, for example, found that between 1995 and 2000, more than 400 criminals – including rapists and armed robbers – had been issued CCW licenses under the state's permitting law.[4] A similar study by the South Florida Sun-Sentinel found that people licensed to carry guns in the first half of 2006 in Florida included more than 1,400 individuals who had pleaded guilty or no contest to felonies, 216 individuals with outstanding warrants, 128 people with active domestic violence injunctions against them, and six registered sex offenders.[5] An investigation by the Indianapolis Star regarding CCW permit holders in Indiana revealed similar problems with the state's permitting system.[6]

Weak laws regulating the carrying of concealed weapons have also been linked to increased gun trafficking. According to a September 2010 report by Mayors Against Illegal Guns, laws that deprive law enforcement of discretion regarding the issuance of concealed carry permits are the source of crime guns recovered in other states at more than twice the rate of states that grant law enforcement such discretion.[7]

Claims that permissive CCW laws lead to decreases in crime – by helping permit holders fight off criminals and deterring would-be attackers – are simply untrue. On the contrary, CCW permit holders threaten public safety, even when they may be trying to assist in a dangerous situation. During the

2011 Tucson shooting, for example – where the shooter killed six people and injured 14 others, including Congresswoman Gabrielle Giffords – an individual carrying a concealed weapon almost drew his gun against a man who had wrestled the shooter's gun away, thinking erroneously that the man was actually the shooter.[8]

No credible statistical evidence exists to show that permissive CCW laws reduce crime.[9] In fact, the evidence suggests that permissive CCW laws may actually increase the frequency of some types of crime, like assault.[10] This research confirms the common sense conclusion that **more guns create more opportunities for injury and death, not fewer**.[11]

Another study of Texas' permissive concealed carry law found that between January 1, 1996 (when the law first took effect) and August 31, 2001, Texas concealed handgun license holders were arrested for 5,314 crimes, including murder, rape, kidnapping and theft.[12] The investigation found that some license holders had been arrested for more than two crimes per day, and for more than four drunk driving offenses per week. From 1996 to 2000, license holders were arrested for weapons-related crimes at a rate 81% higher than that of the state's general population age 21 and older.[13]

According to a Violence Policy Center analysis of news reports, **CCW permit holders have killed at least 14 law enforcement officers and 622 private citizens since May 2007**.[14] These tragic incidents include 27 mass shootings and 39 murder-suicides.

Claims that guns are used defensively millions times every year have also been widely discredited.[15] Even when a gun is used in self-defense, which is rare, the research shows that it is no more likely to reduce a person's chance of being injured during a crime than various other forms of protective action.[16] One study suggests that carrying a firearm may actually increase a victim's risk of firearm injury during the commission of a crime.[17]

In a 2010 nationwide poll, a majority of Americans opposed laws allowing people to carry concealed, loaded handguns in public places.[18] Additionally, **there is near-universal agreement that a variety of public spaces should be gun-free.** According to a nationwide poll, nine out of ten Americans oppose laws allowing guns on college campuses, or in bars, restaurants, stadiums, hospitals, or government buildings.[19]

Summary of Federal Law

Federal law provides that certain law enforcement officers may carry concealed firearms. Any "qualified law enforcement officer" with proper agency-issued identification may carry a concealed firearm.[20] The term "qualified law enforcement officer" is defined as any employee of a governmental agency who:

- Is authorized to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;
- Is authorized by the agency to carry a firearm;

- Is not the subject of any disciplinary action by the agency;
- Meets the standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- Is not prohibited by federal law from receiving a firearm.[21]

Under federal law, any "qualified retired law enforcement officer" with proper identification may also carry a concealed firearm.[22] The term "qualified retired law enforcement officer" is defined as an individual who:

- Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;
- Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
- Either:
    - Before retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or
    - Retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
- Has a nonforfeitable right to benefits under the retirement plan of the agency;
- During the most recent 12-month period, has met, at the expense of the individual, the state's standards for training and qualification for active law enforcement officers to carry firearms;
- Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- Is not prohibited by federal law from receiving a firearm.[23]

Both statutes supersede state and local laws regarding concealed carry by law enforcement except in certain circumstances. States are not precluded from allowing private persons or entities to prohibit or restrict the possession of concealed firearms on their property by current or retired law enforcement. States also are not precluded from prohibiting or restricting the possession of firearms by current or retired law enforcement on any state or local government property, installations, buildings, bases or parks.

Significantly, a person holding a state-issued permit allowing the person to acquire or possess firearms (e.g., a concealed weapons permit) is not required to undergo a background check if the permit was issued: (1) within the previous five years in the state in which the transfer is to take place; and (2) after an authorized government official has conducted a background investigation to verify that possession of a firearm would not be unlawful.[24] Permits issued after November 30, 1998 qualify as exempt only if the approval process included a NICS check.[25]

This exemption threatens public safety because it allows a prohibited person to acquire a firearm when the person falls into a prohibited category after issuance of the state permit and the state has not

immediately revoked the permit. Under the federal exemption, no background check is required and the seller would have no way to learn that the prospective purchaser is prohibited from possessing firearms. For more information about this exemption, see our summary on Background Check Procedures.

SUMMARY OF STATE LAWS REGARDING THE CARRYING OF CONCEALED WEAPONS

Every state allows the carrying of concealed weapons in some form.[26] Among the 46 states that require a state-issued permit in order to carry concealed weapons in public ("CCW" permit), nine states have "may issue" laws, which grant the issuing authority wide discretion to deny a CCW permit to an applicant if, for example, the authority believes the applicant lacks good character or lacks a good reason for carrying a weapon in public. The other 37 states have "shall issue" laws, which require the issuing authority to grant most CCW permit requests. "Shall issue" laws can be further subdivided between 17 states that provide no discretion to the issuing authority, and 20 states which provide the issuing authority a limited amount of discretion. The remaining four states (Alaska, Arizona, Vermont, and Wyoming) allow the carrying of concealed weapons without a permit.

Nearly every state places some restrictions on where concealed firearms may be carried, including restrictions in bars, schools, and hospitals, and at public sporting events.

<u>"May Issue" States</u>

California[27]
Connecticut[28]
Delaware[29]
Hawaii[30]
Maryland[31]
Massachusetts[32]
New Jersey[33]
New York[34]
Rhode Island[35]

<u>Limited Discretion "Shall Issue" States</u>

Alabama[36]
Arkansas[37]
Colorado[38]
Georgia[39]
Illinois[40]
Indiana[41]
Iowa[42]
Kansas[43]
Maine[44]
Michigan[45]

Minnesota[46]
Missouri[47]
Montana[48]
New Hampshire[49]
North Dakota[50]
Oregon [51]
Pennsylvania[52]
South Dakota[53]
Utah[54]
Virginia[55]

No Discretion "Shall Issue" States:

Florida[56]
Idaho[57]
Kentucky[58]
Louisiana[59]
Mississippi[60]
Nebraska[61]
Nevada[62]
New Mexico[63]
North Carolina[64]
Ohio[65]
Oklahoma[66]
South Carolina[67]
Tennessee[68]
Texas[69]
Washington[70]
West Virginia[71]
Wisconsin[72]

No CCW Permit Is Required

Alaska[73]
Arizona[74]
Vermont[75]
Wyoming[76]

Description of State Laws Governing the Carrying of Concealed Weapons

1. *"May" Versus "Shall" Issue Laws*

"May issue" laws give full discretion to the issuing official to grant or deny the permit, based on the guidance of various statutory factors. Even if the general requirements are met, a permit does not

have to be issued. This kind of law allows permitting authorities to consider factors that may not have been included in the language of a state's CCW permitting statutes. Nine states have "may issue" laws.

In "shall issue" states, law enforcement officials are required to issue a permit to anyone who meets certain minimal statutory requirements (e.g., that the person is not a convicted felon or mentally incompetent). Among states with shall issue laws, 17 states provide the issuing authority no discretion to deny a permit if the person meets these requirements. In contrast, 20 states have "shall issue" statutes, but still give issuing authorities some degree of discretion to deny a permit if, for example, there is reasonable suspicion to believe that the applicant is a danger to self or others. These "limited discretion" states fall into a separate category that lies between pure "shall issue" and pure "may issue" states.

As noted above, the remaining four states (Alaska, Arizona, Vermont and Wyoming) now allow the carrying of concealed weapons without a permit.

2. Qualifications for Concealed Weapons Permits

While every state has its own unique CCW permitting system, there are several standards which are more commonly utilized. The strongest laws require CCW applicants to demonstrate good cause as to why the applicant needs a permit. Eleven states have this requirement. In addition, eight "may issue" states also require the applicant to be of good character before a permit is issued. In roughly half the states, CCW applicants are also required to demonstrate some level of knowledge of firearm use and/or safety.

a. *States Requiring a Showing of Good Cause*

Eight of the nine "may issue" states and three limited discretion "shall issue" states require a showing of need or a proper purpose for the applicant to carry a concealed firearm. California, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, New York and Rhode Island require CCW permit applicants to demonstrate good cause or a justifiable need to carry a concealed weapon. In California, for example, good cause exists to issue a CCW permit when there is a clear and present danger to the applicant or the applicant's spouse, family, or employees. Generally, a credible threat to the applicant's safety, which cannot be alleviated through other legal channels, constitutes good cause when applying for a CCW permit. Maryland requires an applicant to demonstrate "a good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger." New York requires an applicant to demonstrate "proper cause," and New Jersey allows a court to issue a permit only if it is satisfied that the applicant "has a justifiable need to carry a handgun."

Other states further delineate the circumstances that constitute good cause or justifiable need: Massachusetts and Rhode Island require the applicant to show a "good reason" to fear injury to his or her person or property, or any other proper reason for carrying a concealed firearm. Delaware issues concealed weapons licenses only "for personal protection or the protection of the person's property." Hawaii grants licenses to carry concealed weapons "[i]n an exceptional case, when an applicant shows

reason to fear injury to the applicant's person or property." Connecticut is the only "may issue" state that does not require the applicant to demonstrate a reason for a permit.

Three "shall issue" states, Indiana, New Hampshire and North Dakota, require an applicant to show a "proper purpose" or a valid reason for carrying a concealed firearm. Under the laws in these states, the reason may include self-protection, the protection of others, or a work-related need.

States that Require a Showing of Good Cause for Issuance of a Concealed Weapons Permit

California
Delaware
Hawaii
Indiana
Maryland
Massachusetts
New Jersey
New Hampshire
New York
North Dakota
Rhode Island

b. *States Requiring Applicants to be of Good Character or a Suitable Person, or Allowing for Denial When There is Reason to Believe a Person is Dangerous*

Eight "may issue" and four limited discretion "shall issue" states (Georgia, Indiana, Maine and New Hampshire) require the licensing authority to consider the character of the applicant. Connecticut, Hawaii, Massachusetts, New Hampshire and Rhode Island allow permits to be issued only to "suitable persons." California, Delaware, Georgia, Maine and New York require the licensing authority to find that the applicant is of "good moral character." New Jersey requires that three "reputable persons" who have known the applicant for at least three years certify that the applicant is of "good moral character and behavior." Delaware also requires that the applicant include with his or her application a certificate signed by five "respectable citizens" of the county in which the applicant resides stating that the applicant is of good moral character, has a reputation for peace and good order, and that possession of a concealed deadly weapon by the applicant is necessary for the protection of the applicant or the applicant's property. Indiana requires the applicant be of good character and reputation.

The remaining 16 limited discretion "shall issue" states do not technically have a "good character" requirement, but allow a CCW application to be denied to a person who is not categorically ineligible if law enforcement can show a documented reason to believe the person is dangerous.

States that Require Applicants to be of Good Character or a Suitable Person
California
Connecticut

Delaware
Georgia
Hawaii
Indiana
Maine
Massachusetts
New Hampshire
New Jersey
New York
Rhode Island

States Without a "Character" Requirement that Allow Denials When There is Reason to Believe the Person is Dangerous

Alabama
Arkansas
Colorado
Illinois
Iowa
Kansas
Michigan
Minnesota
Missouri
Montana
North Dakota
Oregon
Pennsylvania
South Dakota
Utah
Virginia

c. *States Requiring Applicants to Demonstrate Knowledge of Firearm Use and/or Safety*

More than half of the states require a CCW permit applicant to demonstrate that they have received training in firearm use and/or safety. The state of Kansas, for example, requires CCW applicants to complete an eight-hour firearms use/safety course approved by the state attorney general. Among "may issue" states, California, Connecticut, Delaware, Hawaii, Massachusetts, New Jersey and Rhode Island require applicants to complete a firearm safety course, or otherwise demonstrate their qualification to use a firearm safely. Delaware's firearm safety training requirement, which applies to the applicant's initial CCW license only, is particularly strong, and specifies that the training course must include instruction regarding:

- Knowledge and safe handling of firearms and ammunition;
- Safe storage of firearms and ammunition and child safety;

- Safe firearms shooting fundamentals;
- Federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms;
- State laws pertaining to the use of deadly force for self-defense; and
- Techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

Delaware also requires that the training include live fire shooting exercises on a range, including the expenditure of a minimum of 100 rounds of ammunition, and identification of ways to develop and maintain firearm shooting skills. Finally, Rhode Island requires applicants to obtain a certification that they are qualified to use a handgun of a caliber equal to or larger than the one they seek to carry. The certification can be obtained by passing a firing test conducted by a range officer or pistol instructor. Such thorough training requirements help ensure that only highly trained individuals are allowed to carry concealed firearms in public areas.

Among "shall issue" states, Kansas, Kentucky, Michigan, North Carolina, South Carolina and Texas require live firing as part of the firearm training component of the law.

States Requiring CCW Applicants to Demonstrate Knowledge of Firearm Use and/or Safety: [77]

Arkansas
California
Connecticut
Colorado
Delaware
Hawaii
Iowa
Florida
Kansas
Kentucky
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Jersey
New Mexico
North Carolina
Ohio
Oklahoma
Oregon
Rhode Island
South Carolina
Tennessee
Texas
Utah
West Virginia

3. *States Limiting the Locations where Concealed Weapons May be Carried*

Almost every state imposes at least some restrictions on the locations in which concealed weapons may be carried. The majority of states prohibit concealed weapons on school property, in prisons or jails, courthouses and other government buildings. A smaller number of jurisdictions prohibit concealed weapons in a wide range of other locations, including places of worship (Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, Texas, Utah, Virginia and Wyoming); bars or other establishments which serve alcohol on their premises (Alaska, Florida, Illinois,

Kentucky, Louisiana, Michigan, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Texas, Washington and Wyoming); polling places (Arizona, Arkansas, Florida, Kansas, Louisiana, Mississippi, Missouri, Nebraska, South Carolina and Texas); public sporting events (Kansas, Michigan, Missouri, Nebraska, North Dakota and Oklahoma); hospitals and/or medical facilities (Michigan, Missouri, Nebraska, South Carolina and Texas); sites where gambling is permitted (Indiana, Michigan, Missouri, North Dakota, Oklahoma and Pennsylvania); and mental health facilities (Kansas, Ohio, Pennsylvania and Washington).

4. *Other Restrictions on Permits*

State concealed weapons permits vary in duration and renewal processes. The strongest laws limit the duration of permits and require applicants for renewal of a permit to undergo a complete background check and complete safety training and testing. Strong state laws also require the immediate revocation of a permit if the permit-holder becomes ineligible for the permit or violates a law regarding firearms.

State laws also vary regarding the carrying of concealed weapons by individuals who have obtained a permit from a different state. The strongest state laws limit the carrying of concealed weapons to individuals who have obtained a permit from that state. Other states limit carrying to individuals with permits from states that have similar requirements for their permits. The states with the weakest laws allow carrying by individuals with permits from any state that recognizes that state's permit, or by individuals with permits from any state.

FEATURES OF COMPREHENSIVE CCW LAWS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- A license or permit to carry is required *(46 states)*
- Law enforcement has full discretion to issue permits (*nine states are pure "may issue" states)* based on strict guidelines, including, but not limited to, a showing of both:
    - Good moral character *(12 states),* and
    - Good cause for requesting a CCW permit *(11 states)*
- In addition to background checks, applicants are required to have safety training and to pass written and hands-on tests demonstrating knowledge of firearm laws and safety *(29 states require some form of firearm training/knowledge)*
- Permits are of limited duration and may be renewed only upon satisfaction of all conditions and testing, including background checks
- Permits are subject to revocation in cases where holder becomes a prohibited purchaser or fails to comply with applicable federal, state and local firearms laws
- Restrictions are placed on the locations where carrying concealed weapons is allowed, prohibiting the carrying of concealed weapons in sensitive areas such as schools, courthouses, hospitals, mental health institutions, and public sporting events.

[1] For more about this issue, see the Law Center to Prevent Gun Violence's publications *Guns in Public Places: The Increasing Threat of Hidden Guns in America*, at http://smartgunlaws.org/guns-in-public-places-the-increasing-threat-of-hidden-guns-in-america/, and *America Caught in the Crossfire: How Concealed Carry Laws Threaten Public Safety*, at http://smartgunlaws.org/america-caught-in-the-crossfire-how-concealed-carry-laws-threaten-public-safety/. The Law Center has also published a model law regulating the carrying of firearms in public places. For more information, see http://smartgunlaws.org/model-gun-laws/.

[2] For a more detailed discussion of this history, see *Guns in Public Places: The Increasing Threat of Hidden Guns in America*, at http://smartgunlaws.org/guns-in-public-places-the-increasing-threat-of-hidden-guns-in-america/.

[3] Alaska, Arizona, Vermont and Wyoming.

[4] William C. Rempel & Richard A. Serrano, *Felons Get Concealed Gun Licenses Under Bush's 'Tough' Gun Law*, L.A. Times, Oct. 3, 2000, at A1, *at* http://articles.latimes.com/2000/oct/03/news/mn-30319.

[5] Megan O'Matz, *In Florida, It's Easy to Get a License to Carry a Gun*, South Florida Sun-Sentinel, Jan. 28, 2007, at 1A.

[6] Mark Alesia et al., *Should These Hoosiers Have Been Allowed to Carry a Gun in Public?,* Indianapolis Star, Oct. 11, 2009, *at* http://www.indystar.com/article/20091011/NEWS14/910110365/Should-these-Hoosiers-been-allowed-carry-gun-public-.

[7] Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 18-19 (Sept. 2010), at http://www.tracetheguns.org/report.pdf. The report noted that CCW permit holders in one state are often allowed, under reciprocity agreements with other states, to carry guns in those states, and are often exempt from laws designed to impede drug trafficking (such as one-gun-a-month laws, intended to prohibit individuals from buying guns in bulk and reselling them on the black market).

[8] William Saletan, *Friendly Firearms*, Slate (Jan. 11, 2011), at http://www.slate.com/articles/health_and_science/human_nature/2011/01/friendly_firearms.single.html.

[9] Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1193, 1285, 1296 (2003); Ian Ayres & John J. Donohue III, Comment, *The Latest Misfires in Support of the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1371, 1397 (2003).

[10] John J. Donohue II, et al., *The Impact of Right-To-Carry Laws and the NRC Report: Lessons for the Empirical Evaluation of Law and Policy,* 13 Am Law Econ Rev 565 (Fall 2011).

[11] States with higher rates of household firearm ownership have significantly higher homicide victimization rates. Matthew Miller, Deborah Azrael & David Hemenway, *Rates of Household Firearm Ownership and Homicide Across US Regions and States, 1988-1997*, 92 Am. J. Pub. Health 1988, 1991-92 (Dec. 2002), *at* http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.92.12.1988.

[12] Violence Policy Center, *License to Kill IV: More Guns, More Crime* 2 (June 2002), at http://www.vpc.org/graphics/ltk4.pdf.

[13] *Id.* at 5.

[14] Violence Policy Center, *Concealed Carry Killers* (March 2014), at http://www.vpc.org/ccwkillers.htm.

[15] The most famous of these claims, that guns are used defensively 2.5 million times annually, is based on a study that suffers from several fatal methodological flaws, including its reliance on only 66 responses in a telephone survey of 5,000 people, multiplied out to purportedly represent 200 million American adults. David Hemenway, *Policy and Perspective: Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 J. Crim. L. & Criminology 1430, 1432 (1997).

[16] David Hemenway, *Private Guns, Public Health* 78 (2004).

[17] Charles C. Branas, Therese S. Richmond, Dennis P. Culhane, Thomas R. Ten Have & Douglas J. Wiebe, *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034 (Nov. 2009), *at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2759797/pdf/2034.pdf.

[18] Lake Research Partners for the Brady Center to Prevent Gun Violence, *Findings from a National Survey of 600 Registered Voters* (Apr. 26-28, 2010), at http://www.lakeresearch.com/news/Brady/Public.Brady.pdf. The American Bar Association has recognized the dangers of weak concealed carry laws. On August 8, 2011, the Association's House of Delegates adopted a resolution expressing its support for laws giving law enforcement broad discretion to determine whether a permit or license to engage in concealed carry should be issued, and its opposition to laws limiting such discretion.

[19] David Hemenway, Deborah Azrael & Matthew Miller, *National Attitudes Concerning Gun Carrying in the United States*, 7 Inj. Prev. 282, 283 (Dec. 2001), at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1730790/pdf/v007p00282.pdf.

[20] 18 U.S.C. § 926B.

[21] 18 U.S.C. § 926B(c).

[22] 18 U.S.C. § 926C.

[23] 18 U.S.C. § 926C(c).
[24] 18 U.S.C. § 922(t)(3); 27 C.F.R. § 478.102(d).
[25] 27 C.F.R. § 478.102(d).
[26] Washington, D.C. prohibits the open or concealed carry of firearms and does not issue permits or licenses to carry a firearm. D.C. Code Ann. § 22-4504.
[27] Cal. Penal Code §§ 25400-25700, 26150-26225.
[28] Conn. Gen. Stat. §§ 29-28 – 29-30, 29-32, 29-32b, 29-35, 29-37.
[29] Del. Code Ann. tit. 11, §§ 1441, 1442.
[30] Haw. Rev. Stat. Ann. § 134-9.
[31] Md. Code Ann., Pub. Safety §§ 5-301 – 5-314.
[32] Mass. Gen. Laws ch. 140, §§ 131, 131C, 131P; ch. 269, § 10.
[33] N.J. Stat. Ann. §§ 2C:58-3, 2C:58-4, 2C:39-5.
[34] N.Y. Penal Law §§ 265.01, 265.20, 400.00.
[35] R.I. Gen. Laws §§ 11-47-8 – 11-47-18.
[36] Ala. Code § 13A-11-75.
[37] Ark. Code Ann. §§ 5-73-119, 5-73-120, 5-73-122, 5-73-301 – 5-73-319.
[38] Colo. Rev. Stat. §§ 18-12-203, 18-12-215.
[39] Ga. Code Ann. § 16-11-126 – 16-11-130.
[40] 430 Ill. Comp. Stat. 66/1 – 66/110 (effective Jan. 2014).
[41] Ind. Code Ann. §§ 35-47-2-1 – 35-47-2-6,
35-47-6-1, 35-47-6-1.3, 35-47-9-1, 35-47-9-2. Indiana issues lifetime licenses to carry a handgun. The lifetime license carries no additional requirements (other than a higher fee). Ind. Code Ann. §§ 35-47-2-3, 35-47-2-4.
[42] Iowa Code §§ 724.4, 724.4B, 724.7 – 724.13.
[43] Kan. Stat. Ann. §§ 12-4516, 75-7c01 – 75-7c18.
[44] Me. Rev. Stat. Ann. tit. 25, §§ 2001-A – 2006.
[45] Mich. Comp. Laws §§ 28.421a – 28.429c.
[46] Minn. Stat. § 624.714.
[47] Mo. Rev. Stat. §§ 571.101 – 571.121.
[48] Mont. Code Ann. §§ 45-8-321 – 45-8-329.
[49] N.H. Rev. Stat. Ann. §§ 159:6 – 159:6-f, 159:19.
[50] N.D. Cent. Code §§ 62.1-04-01 – 62.1-04-05, 62.1-02-04 – 62.1-02-05.
[51] Or. Rev. Stat. §§ 166.291 – 166.297, 166.370.
[52] 18 Pa. Cons. Stat. §§ 6106, 6109, 912, 913; 55 Pa. Code §§ 3270.79, 3280.79, 3800.101, 6400.86.
[53] S.D. Codified Laws §§ 23-7-7 – 23-7-8.6, 22-14-23, 13-32-7.
[54] Utah Code Ann. §§ 53-5-701 – 53-5-710, 76-8-311.1, 76-8-311.3, 76-10-529, 76-10-530.
[55] Va. Code Ann. §§ 18.2-308 – 18.2-308.015, 18.2-283, 18.2-283.1, 18.2-287.01.
[56] Fla. Stat. Ann. §§ 790.01, 790.015, 790.06, 790.0601.
[57] Idaho Code Ann. §§ 18-3302, 18-3302C, 18-3302D.
[58] Ky. Rev. Stat. Ann. §§ 237.110, 527.020.
[59] La. Rev. Stat. Ann. §§ 40:1379.1, 40:1379.3, 40:1379.3.1.
[60] Miss. Code Ann. §§ 45-9-101, 97-37-17.
[61] Neb. Rev. Stat. Ann. §§ 28-1202, 69-2427 – 69-2449.
[62] Nev. Rev. Stat. Ann. §§ 202.3653 – 202.369.
[63] N.M. Stat. Ann. §§ 29-19-1 – 29-19-13, 30-7-2.4, 30-7-3, 30-7-13.
[64] N.C. Gen. Stat. §§ 14-415.10 – 14-415.24, 14-269.2, 14-269.3, 14-277.2.
[65] Ohio Rev. Code Ann. §§ 2923.11 – 2923.1213.
[66] Okla. Stat. tit. 21, §§ 1277, 1290.1 – 1290.26.
[67] S.C. Code Ann. §§ 23-31-210 – 23-31-240, 16-23-20, 16-23-420, 16-23-430, 16-23-460, 16-23-465.
[68] Tenn. Code Ann. §§ 39-17-1351 – 39-17-1360, 39-17-1309.
[69] Tex. Gov't Code Ann. §§ 411.171 – 411.208, Tex. Penal Code Ann. §§ 30.06, 46.15, 46.02, 46.03, 46.035. An amendment to Texas's CCW law, effective Sept. 1, 2007, allows residents to carry concealed firearms without a permit when they are

traveling in a private vehicle, and on their person when traveling to and from their premises and their vehicle. Tex. Penal Code §§ 46.02, 46.15. Firearms in vehicles must be hidden from plain view. *Id.*

[70] Wash. Rev. Code Ann. §§ 9.41.070 – 9.41.075, 9.41.097, 9.41.280, 9.41.300, 9.41.800.

[71] W. Va. Code §§ 61-7-4 – 61-7-7, 61-7-11a, 61-7-14.

[72] Wis. Stat. § 175.60.

[73] Alaska Stat. § 11.61.220(a).

[74] Ariz. Rev. Stat. § 13-3112. On April 16, 2010, Arizona's governor signed into law a bill that allows any individual age 21 or over to carry a firearm concealed on his or her person in public without a license or permit.

[75] Vt. Stat. Ann. tit. 13, §§ 4004, 4016.

[76] Wyo. Stat. Ann. § 6-8-104. As of July 8, 2011, anyone who meets the requirements to obtain a Wyoming CCW permit can legally carry a firearm in any place that is not specifically prohibited, without having to have a valid permit.

[77] As of July 8, 2011, anyone who meets the requirements to obtain a Wyoming CCW permit can legally carry a firearm in any place that is not specifically prohibited, without having to have a valid permit. For those who still choose to apply for a CCW permit, Wyoming requires applicants to demonstrate familiarity with a firearm, through completion of certain safety or training courses, or by past experience using a firearm through participation in an organized handgun shooting competition or military service.

Open Carrying of Firearms

Background

In recent years, Americans have been shocked to see images of gun-toting individuals openly carrying firearms in public places like coffee shops, restaurants, public parks and at political rallies. Many of these people identify themselves as part of a growing "open carry movement," a collection of grassroots groups nationwide whose confrontational style has drawn criticism even from the mainstream gun lobby.[1]

While most states have adopted licensing systems to regulate the concealed carrying of firearms, the recent surge in open carrying has exposed weak state laws around the country that permit this dangerous conduct.

Open carry advocates seek to normalize the carrying of firearms in public places, and often use open carrying to protest what they see as unjust state firearms laws. While members of the open carry movement argue that they are just "exercising their rights," **the open carrying of firearms intimidates the public, wastes law enforcement resources, and creates opportunities for injury and death due to the accidental or intentional use of firearms.**

Open carrying poses particular challenges for law enforcement officers who must respond to 911 calls from concerned citizens about people carrying guns in public. A press release issued by the San Mateo County, California, Sheriff's Office describes the significant challenges that open carrying creates:

> Open carry advocates create a potentially very dangerous situation. When police are called to a "man with a gun" call they typically are responding to a situation about which they have few details other than that one or more people are present at a location and are armed. Officers may have no idea that these people are simply "exercising their rights." Consequently, the law enforcement response is one of "hypervigilant urgency" in order to protect the public from an armed threat. Should the gun carrying person fail to comply with a law enforcement instruction or move in a way that could be construed as threatening, the police are forced to respond in kind for their own protection. It's well and good in hindsight to say the gun carrier was simply "exercising their rights" but the result could be deadly. Simply put, it is not recommended to openly carry firearms.[2]

Claims that open carrying is needed for self-defense are belied by the available research. Even when a gun is used in self-defense, which is rare, research shows that it is no more likely to reduce a person's chance of being injured during a crime than various other forms of protective action.[3] One study suggests that carrying a firearm may actually increase a victim's risk of firearm injury during the commission of a crime.[4] Instead of improving safety, open carrying needlessly increases the likelihood that everyday interpersonal conflicts will turn into deadly shootouts.

In addition, in states that allow open carrying without a permit, law enforcement officers may be prohibited from demanding identification when stopping an individual who is openly carrying a firearm.[5] Without identification, those officers are unable to confirm whether the individual is eligible to possess a firearm under federal or state law.

Summary of Federal Law

Federal law does not restrict the open carrying of firearms in public, although specific rules may apply to property owned or operated by the federal government.

SUMMARY OF STATE OPEN CARRY LAWS

Three states (California, Florida, and Illinois) and the District of Columbia prohibit the carrying of any firearm openly in public. Another three states (New York, South Carolina, and Texas) prohibit the open carrying of a handgun, but not a long gun, and another three states (Massachusetts, Minnesota, and New Jersey) prohibit the open carrying of a long gun, but not a handgun. In the remaining states, the open carrying of firearms is generally allowed, although some states require the person to first obtain a permit or license.

Please note that open carry laws frequently have exceptions. In states that allow open carrying, most still prohibit open carrying in some specific locations such as schools, state-owned businesses, places where alcohol is served, and on public transportation, among many other locations. The lists below are meant only to reflect whether open carry is generally allowed or prohibited.

Description of State Laws Governing the Open Carrying of Firearms

1. ***Open Carrying of Handguns****:* Only six states, California, Florida, Illinois New York, South Carolina, and Texas, as well as the District of Columbia, prohibit the open carrying of handguns in public places. Thirty-one states allow the open carrying of a handgun without any license or permit, although in some cases the gun must be unloaded.[6] Thirteen states require some form of license or permit in order to openly carry a handgun. See our summary on Carrying Concealed Weapons for details about these licenses and permits.

States that Prohibit Open Carrying of Handguns
California[7]
District of Columbia[8]
Florida[9]
Illinois[10]
New York[11]
South Carolina[12]
Texas[13]

States that Require a Permit or License to Openly Carry Handguns
Connecticut[14]
Georgia[15]
Hawaii[16]
Indiana[17]
Iowa[18]
Maryland[19]
Massachusetts[20]

Minnesota[21]
New Jersey[22]
Oklahoma[23]
Rhode Island[24]
Tennessee[25]
Utah[26]

States that Otherwise Restrict the Open Carrying of Handguns
Alabama[27]
Alaska[28]
Arkansas[29]
Michigan[30]
Missouri[31]
North Dakota[32]
Pennsylvania[33]
Virginia[34]
Washington[35]

2. ***Open Carrying of Long Guns****:* Six states, California, Florida, Illinois, Massachusetts, Minnesota and New Jersey, as well as the District of Columbia, generally ban the open carrying of long guns (rifles and shotguns). In the 44 remaining states, openly carrying a long gun is legal, although in three of these states, Iowa, Tennessee and Utah, the long gun must be unloaded.[36] In addition, Virginia and Pennsylvania limit the ability to openly carry long guns in certain cities.[37] In a majority of states, it is legal for an individual to openly carry a loaded firearm in public without a permit.

States that Prohibit Open Carrying of Long Guns
California[38]
District of Columbia[39]
Florida[40]
Illinois[41]
Massachusetts[42]
Minnesota[43]
New Jersey[44]

States that Restrict, But Do Not Prohibit, the Open Carrying of Long Guns
Iowa[45]
Michigan[46]
Pennsylvania[47]
Tennessee[48]
Utah[49]
Virginia[50]

FEATURES OF A COMPREHENSIVE LAW REGULATING OPEN CARRYING

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- The open carrying of any kind of firearm is prohibited, and no exception is made for permit-holders (*California, Florida, Illinois*)
- If a comprehensive ban on open carrying is not possible:
    - Open carrying is limited to permit-holders *(13 states require a permit to openly carry a handgun; Minnesota and New Jersey require a permit to openly carry a long gun)*;
    - Firearms that are openly carried must be unloaded *(North Dakota requires openly carried handguns to be unloaded; Iowa, Tennessee, and Utah require openly carried long guns to be unloaded);* and
    - The open carrying of firearms is subject to certain location restrictions,[51] including a prohibition against open carrying in specific densely populated cities *(Pennsylvania, Virginia)*

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[1] "'I'm all for open-carry laws,' said Alan Gottlieb, founder of the Second Amendment Foundation, a gun rights advocacy organization in Washington State. 'But I don't think flaunting it is very productive for our cause. It just scares people.'" Ian Urbina, *Locked, Loaded, and Ready to Caffeinate*, N.Y. Times, March 8, 2010, at A11.

[2] San Mateo County Sheriff's Office, "Unloaded Open Carry," Jan. 14, 2010, available at http://www.calgunlaws.com/wp-content/uploads/2012/09/San-Mateo-County-Sheriffs-Office_Unloaded-Open-Carry.pdf.

[3] David Hemenway, *Private Guns, Public Health* 78 (2004).

[4] Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034 (2009).

[5] *See St. John v. McColley,* 653 F. Supp. 2d 1155, 1161 (D.N.M. 2009) (finding an investigatory detention violated the Fourth Amendment where the plaintiff arrived at a movie theater openly carrying a holstered handgun, an act which is legal in New Mexico); *Brown v. Texas,* 443 U.S. 47 (finding that an arrest for failure to provide identification upon a demand from law enforcement violated the Fourth Amendment when the officers lacked sufficient grounds for the initial investigatory detention).

[6] *See, e.g.,* N.D. Cent. Code, § 62.1-03-01(1).

[7] Cal. Penal Code §§ 26350, 25850.

[8] *See* D.C. Code § 22-4504.01.

[9] Fla. Stat. Ann. § 790.053(1). Florida allows a person who is licensed to carry a concealed firearm to "briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense." *Id*.

[10] 720 Ill. Comp. Stat. 5/24-1(a)(10). The Firearm Concealed Carry Act, adopted in 2013, provides that an individual with a license to carry a concealed firearm may carry a loaded or unloaded concealed firearm, fully concealed or partially concealed, on or about his or her person. 430 Ill. Comp. Stat. 66/10(c)(1).

[11] N.Y. Penal Law § 265.01(1). New York has a permitting system under N.Y. Penal Law § 400.00(2), but does not have a category that allows for a permit to openly carry a handgun.

[12] South Carolina's statute criminalizing the carrying of handguns, whether openly or concealed, has no exception for a person carrying openly with a concealed weapons permit. *See* S.C. Code Ann. § 16-23-20(12). *See also* S.C. Code Ann. § 23-31-217.

[13] Tex. Penal Code §§ 46.02(a) 46.035(a), (b).

[14] Conn. Gen. Stat. §§ 29-28(b), 29-35(a).

[15] Per Ga. Code Ann. § 16-11-127(c), license holders may openly carry a handgun anywhere except in specifically-defined locations under Georgia Code Ann. § 16-11-127(b), (c).

[16] Under Hawaii Rev. Stat. Ann. § 134-9(a), in an "exceptional case" a chief of police may issue a permit to carry an unconcealed handgun for possession only in that county.
[17] Ind. Code Ann. § 35-47-2-1(a).
[18] Iowa Code § 724.4(1), (4)(i).
[19] Md. Code Ann., Crim. Law § 4-203(a), (b)(2).
[20] Mass. Gen. Laws Ch. 140, § 131.
[21] Minn. Stat. § 624.714.
[22] N.J. Rev. Stat. § 2C:39-5(b); N.J. Rev. Stat. § 2C:58-4(a).
[23] Okla. Stat. tit. 21, §§ 1289.6, 1290.1 – 1290.26. See http://www.ok.gov/governor/OpenCarryFAQ.html.
[24] R.I. Gen. Laws § 11-47-18(a).
[25] Tenn. Code Ann. § 39-17-1308(a)(2).
[26] Utah Code Ann. § 76-10-523(2)(a). A person may carry an unloaded handgun in public without a permit. Utah Code Ann. § 76-10-505(1)(b).
[27] Based on *K.J. v. State*, 690 So. 2d 541 (Ct. Crim. App. 1997), the law "does not prohibit carrying an unlicensed pistol if the pistol is unconcealed and the person is on foot." *Id*. at 544. Alabama Code § 13A-11-52 provides that "no person shall carry a pistol about his person on private property not his own or under his control unless the person possesses a valid concealed weapon permit or the person has the consent of the owner or legal possessor of the premises." This statute, revised in 2013, now bans open carrying of a handgun on another person's private property, unless with a CCW permit or consent of the property owner, and would appear to allow open carrying on public property.
[28] There are some location restrictions in Alaska. *See* Alaska Stat. § 11.61.220(a)(2)-(4).
[29] It is unlawful to carry a handgun openly if the purpose is to attempt to "unlawfully employ" it against another person. Ark. Code Ann. § 5-73-120(a). *But see* Ark. Op. Att'y Gen. 2013-047, 2013 Ark. AG LEXIS 58 (July 8, 2013) (opining that a recent amendment to Arkansas law does not, by itself, authorize open carry).
[30] While Michigan Comp. Laws § 28.422(1) appears to ban open carrying of a handgun without a permit, a Michigan State Police legal update from October 26, 2010, states that open carrying without a permit is lawful.
[31] Missouri Rev. Stat. § 571.037, adopted in 2012, allows a person with a valid concealed carry endorsement or concealed carry permit, and who is lawfully carrying a firearm in a concealed manner, to "briefly and openly display the firearm to the ordinary sight of another person" in a non-threatening manner. No other laws prohibit open carrying in Missouri.
[32] In North Dakota, a person may openly carry a handgun during daylight hours, as long as the gun is unloaded. N.D. Cent. Code § 62.1-03-01(1). If the person has a concealed weapons permit, he or she may carry the handgun loaded at any time of day. N.D. Cent. Code § 62.1-03-01(2)(a).
[33] Open carrying of handguns is allowed everywhere in the state except Philadelphia. 18 Pa. Cons. Stat. Ann. § 6108. Any person licensed to carry a firearm in Pennsylvania is exempt from the open carrying prohibition in Philadelphia. *Id*.
[34] In Virginia, the open carrying of certain handguns is prohibited in specific populous cities and counties. *See* Va. Code Ann. § 18.2-287.4.
[35] Open carrying in Washington is subject to certain location limits under Wash. Rev. Code § 9.41.300.
[36] *See* Iowa Code § 724.4(1), Tenn. Code Ann. § 39-17-1308(a)(1), and Utah Code Ann. § 76-10-505(1)(b).
[37] *See* 18 Pa. Cons. Stat. § 6108 (open carrying of long guns prohibited in Philadelphia); Va. Code Ann. § 18.2-287.4.
[38] Cal. Penal Code § 26400(a).
[39] *See* D.C. Code § 22-4504.01.
[40] Fla. Stat. Ann. § 790.053(1).
[41] 720 Ill. Comp. Stat. 5/24-1(a)(10).
[42] Massachusetts generally bans the open carrying of long guns. Mass. Gen. Laws ch. 140, § 129C. Massachusetts permits the open carrying of long guns with the proper permit(s) or license(s). Mass. Gen. Laws ch. 140, § 131.
[43] Minnesota generally prohibits the open carrying of long guns. Minn. Stat. § 624.7181, subd. 2. Concealed weapons permit holders are exempt. Minn. Stat. § 624.7181, subd. 1(b)(3).
[44] New Jersey allows the open carrying of a long gun with a proper permit. N.J. Rev. Stat. § 2C:39-5(c).
[45] Iowa prohibits the open carrying of loaded long guns. Iowa Code § 724.4(1).
[46] Michigan allows the open carrying of long guns, but with specific location limits. Mich. Comp. Laws § 750.234d(1). Concealed weapons permit holders are exempt from these location limits. Mich. Comp. Laws § 750.234d(2)(c).
[47] Open carrying is allowed throughout Pennsylvania except in Philadelphia. 18 Pa. Cons. Stat. § 6108.
[48] In Tennessee, a person may openly carry a long gun if it is unloaded. Tenn. Code Ann. § 39-17-1308(a)(1).

[49] Utah prohibits the open carrying of loaded long guns. Utah Code Ann. § 76-10-505(1)(b). This prohibition on carrying loaded long guns does not apply to concealed weapons permit holders. Utah Code Ann. § 76-10-523(2)(a).
[50] Virginia prohibits the open carrying of certain types of loaded rifles and shotguns in specific populous cities and counties. *See* Va. Code Ann. § 18.2-287.4.
[51] See our summary on Carrying Concealed Weapons regarding restrictions on the locations where firearms may be carried.

Guns in Schools

Background

Guns have no place in our nation's schools. The tragedies that took place at Sandy Hook Elementary School,[1] Columbine High School[2] and Virginia Tech[3] demonstrate the devastating effect guns have on schools and their surrounding communities. Calls to arm teachers and faculty at elementary and high schools and to allow college students to possess guns on campus will only lead to more gun deaths and injuries, not less. Federal and state laws that prohibit guns at schools and pose harsh penalties for gun possession, in contrast, help keep our children and educators safe.

Guns in Elementary and Secondary (K-12) Schools

School shootings shock us because schools are generally safe havens from the gun violence that is so frequent elsewhere.[4] A joint report issued by the U.S. Departments of Education and Justice found that in each school year from 1992 to 2006, at least 50 times as many murders of young people ages 5-18 occurred away from school than at school, and at least 140 times as many youth suicides were committed off school property than at school.[5] Approximately 1% of all homicides among school-age children happen on school grounds or on the way to and from school or during a school sponsored event.[6] During the 2010–2011 school year, there was approximately one homicide or suicide of a school-age youth at school per 3.5 million enrolled students.[7]

Federal and state laws deeming schools gun-free zones have significantly reduced gun violence in these places. School-associated student homicide rates decreased significantly after the federal laws restricting guns in schools were adopted in the early 1990s,[8] and fewer students are carrying guns.[9]

Proposals offered by the gun lobby to repeal the federal Gun-Free School Zones Act and arm teachers as a solution to curb those rare instances of gun violence at school are dangerous and counter-productive.[10] Teachers are not trained law enforcement officers – their purpose is to be educators and role models.

Gun violence prevention measures for our schools should focus on educating kids about the dangers of firearms, and reminding gun-owning parents to safely own and secure firearms and ammunition, rather than on arming teachers. A study of 37 school shootings in 26 states found that in nearly two-thirds of the incidents, the attacker got the gun from his or her own home or that of a relative.[11] For more information about the safe storage of firearms, see our summary on Safe Storage & Gun Locks.

Guns on College and University Campuses

America's college and university campuses are also generally safe havens from gun violence.[12] As described below, in nearly every state, legislators or the governing bodies of public colleges and universities have exercised their authority to prohibit or significantly restrict gun possession on most or all areas of school property.[13] Moreover, as described in the summary on the Minimum Age to Purchase or Possess Firearms, students under age 21 in many states are not allowed to carry handguns

on campus because those states prohibit the possession of handguns by persons under that age.

As a result of these laws, few students have access to guns on campus, making campuses safe learning environments:

- Less than 2% of college students report being threatened with a gun while at school.[14]

- There were 11,920 total gun homicides in the U.S. in 2003,[15] but only 10 total murders or non-negligent homicides on the nation's college campuses.[16]

- Violent crime for college students age 18 to 24 declined significantly between 1995 and 2002.[17] College students are less likely than non-students to be victims of crime: though crime rates declined for both students and non-students alike, by 2002 only 41 of every 1,000 students were victims of violent crime, while 56 out of 1,000 non-students were victimized that year.[18] Students living on college campuses are less likely to be victimized than when living off-campus – over 90% of victimizations occur off-campus.[19]

Gun-owning college students have a greater propensity for engaging in risky, sometimes violent, behavior than non-gun-owning students. A 2002 study from the Journal of American College Health found that students who owned guns were more likely than non-gun-owning students to binge drink and then engage in risky activities "such as driving when under the influence of alcohol, vandalizing property, and having unprotected intercourse." [20]

Allowing guns on campus would likely lead to more campus homicides and suicides. Young adults between the ages of 18-25 experience the highest rate of serious mental illness.[21] Between 9% and 11% of college students seriously considered suicide in the previous school year,[22] and about 1,100 college students commit suicide each year.[23] When a gun enters this mix, a suicide attempt becomes considerably more lethal, as 85% of gun suicide attempts are fatal.[24]

These facts belie any need for students, faculty and visitors to carry guns on campus for self-defense or any other reason.[25] There is no credible statistical evidence to suggest that the presence of students carrying guns, particularly concealed handguns, will reduce violence on our college campuses.[26]

Finally, forcing guns onto our college campuses would pose additional concerns, such as a greater likelihood of gun thefts,[27] increased liability and public relations costs for colleges that lack institutional authority to restrict weapons,[28] and inhibiting dialogue by making students and faculty feel less safe to freely express ideas and exchange information.[29]

<u>Summary of Federal Law</u>

Two federal laws restrict the possession of firearms in or near schools: 1) the Gun-Free School Zones Act; and 2) the Gun-Free Schools Act.

The Gun-Free School Zones Act

The Gun-Free School Zones Act (GFSZA) prohibits any person from knowingly possessing a firearm that has moved in or otherwise affects interstate or foreign commerce at a place the individual knows, or has reasonable cause to believe, is a school zone.[30] The GFSZA defines "school zone" as: 1) in, or on the grounds of, a public, parochial or private school; or 2) within a distance of 1,000 feet from the grounds of a public, parochial or private school.[31]

The federal prohibition against possessing a gun in a school zone does not apply, however:

- To people licensed by the state or locality to possess the gun.[32] This exception applies to many people licensed to possess firearms or to carry concealed firearms; see our summaries on Licensing Gun Owners or Purchasers and Carrying Concealed Weapons for more information about these licensing requirements.

- If the firearm is unloaded and "in a locked container, or a locked firearms rack that is on a motor vehicle."[33]

- If the firearm is possessed for use in a program approved by a school, or in accordance with a contract entered into between a school and the individual or an employer of the individual.[34]

The Gun-Free Schools Act

The original Gun-Free Schools Act (GFSA) was enacted in 1994 as a response to increasing levels of gun violence in schools.[35] Unlike the GFSZA, which applies to any person possessing a firearm in the defined prohibited areas, the GFSA focuses on student behavior, penalizing students in an attempt to deter them from bringing firearms to school or possessing them at school.[36]

The current GFSA, effective January 8, 2002, requires that states receiving certain federal funds have laws requiring local educational agencies to adopt a policy that expels students for a minimum period of one year for bringing a firearm to school or possessing a firearm at school.[37] "School" is defined as "any setting that is under the control and supervision of the local educational agency for the purpose of student activities approved and authorized by the local educational agency."[38]

The GFSA allows states to permit the chief administering officer of a local educational agency to modify an expulsion for a student, in writing, on a case-by-case basis.[39] A state may also allow a local educational agency that has expelled a student from the student's regular school setting to provide an alternative educational setting.[40]

The GFSA also requires that, in order to receive federal funds, each local educational agency must annually provide:

- An assurance that the local educational agency is in compliance with the state expulsion law; and

- A description of the circumstances surrounding any expulsions imposed under the state expulsion law.[41]

Local educational agencies must refer any student who brings a firearm to a school served by the agency to the criminal justice or juvenile delinquency system.[42] In this provision, "school" is defined more narrowly to mean "a school that provides elementary or secondary education" pursuant the laws of the state.[43]

Finally, the GFSA provides narrow exceptions to these prohibitions, permitting firearm possession where the gun is lawfully stored inside a locked vehicle on school property, or where the gun is possessed for an activity approved and authorized by the local educational agency, if the agency has adopted appropriate safeguards to ensure student safety.[44] To date, the GFSA has not been challenged.

Federal Action for School Safety & Emergency Management

In the aftermath of the Newtown shootings, in 2013, President Obama issued a series of executive orders focusing on firearms and ammunition regulation, mental health issues and school safety. A few of these orders deal directly with public safety in schools:

- The Departments of Justice and Homeland Security have been directed to provide continuing federal training and security assessments for law enforcement, first responders and school officials on active shooter situations.[45]

- The Departments of Education, Justice, Homeland Security and Health and Human Services have developed emergency management planning guides for schools and institutions of higher education in the event of a school shooting that will provide these institutions a model for how to develop and implement their own reliable plans.[46]

- The Department of Justice's (DOJ) Community Oriented Policing Services (COPS) Hiring Grants are available to fund school resource officers, and DOJ has encouraged police departments to hire such officers by providing a preference for grant applications that support school resource officers.[47] In September 2013, DOJ announced the awarding of 263 COPS Hiring Grants totaling approximately $125 million, including around $45 million to fund 356 new school resource officer positions.[48]

SUMMARY OF STATE LAWS REGULATING GUNS IN SCHOOLS

As described below, almost all states and D.C. prohibit guns in K-12 schools, but only 39 states and D.C. apply this prohibition to people who have been granted a permit to carry a concealed weapon (CCW permit holders). Twenty states generally prohibit firearms on college and university campuses, but 23 states specify that CCW permit holders may not carry concealed firearms on campus. Most of the remaining states leave the question up to the college or university, but nine states prohibit colleges and universities from banning guns in certain areas of campus. In some states, state colleges and

universities are also subject to state statutes limiting the authority of political subdivisions to regulate firearms.[49]

State	General Prohibition on Guns in K-12 Schools	CCW in K-12 Schools	General Prohibition on Guns on College and University Campus	CCW on College and University Campus
AL	Yes[50]	Allowed[51]	Schools may prohibit.[52]	
AK	Yes[53]	Allowed[54]	Schools may prohibit.	
AZ	Yes[55]	Allowed[56]	Schools may prohibit.	
AR	Yes[57]	Prohibited[58]	Yes[59]	Prohibited[60]
CA	Yes[61]	Schools may prohibit.[62]	Yes[63]	Schools may prohibit.[64]
CO	Yes[65]	Prohibited[66]	Yes[67]	Allowed[68]
CT	Yes[69]	Prohibited[70]	Schools may prohibit.	
DE[71]	Yes	Prohibited	Schools may prohibit.	
DC[72]	Yes	Prohibited	Yes	Prohibited
FL	Yes[73]	Prohibited[74]	Yes[75]	Prohibited[76]
GA[77]	Yes	Prohibited	Yes	Prohibited
HI[78]	Schools may prohibit.		Schools may prohibit.	
ID	Yes[79]	Prohibited[80]	Schools may prohibit.	Allowed.[81]
IL	Yes[82]	Prohibited[83]	Yes[84]	Prohibited[85]
IN[86]	Yes	Prohibited	Schools may prohibit.	
IA	Yes[87]	Prohibited[88]	Schools may prohibit.	
KS	Yes[89]	Schools may prohibit.[90]	Schools may prohibit.[91]	
KY	Yes[92]	Prohibited[93]	Schools may prohibit.[94]	
LA	Yes[95]	Prohibited[96]	Yes[97]	Prohibited[98]
ME	Yes[99]	Prohibited[100]	Schools may prohibit.[101]	
MD[102]	Yes	Prohibited	Schools may prohibit.	
MA[103]	Yes	Prohibited	Yes	Prohibited
MI	Yes[104]	Prohibited[105]	No	Prohibited[106]
MN	Yes[107]	Prohibited[108]	Schools may prohibit.[109]	
MS	Yes[110]	Prohibited[111]	Yes[112]	Allowed[113]
MO	Yes[114]	Prohibited[115]	No	Prohibited[116]
MT[117]	Yes	Prohibited	Schools may prohibit.	
NE	Yes[118]	Prohibited[119]	Yes[120]	Prohibited[121]
NV	Yes[122]	Prohibited[123]	Yes[124]	Prohibited[125]
NH	No[126]	Allowed[127]	Schools may prohibit.	
NJ[128]	Yes	Prohibited	Yes	Prohibited

(chart cont'd)

State	General Prohibition on Guns in K-12 Schools	CCW in K-12 Schools	General Prohibition on Guns on College and University Campus	CCW on College and University Campus
NM	Yes[129]	Prohibited[130]	Yes[131]	Prohibited[132]
NY[133]	Yes	Prohibited	Yes	Prohibited
NC[134]	Yes	Prohibited	Yes	Prohibited
ND	Yes[135]	Prohibited[136]	Schools may prohibit.[137]	
OH	Yes[138]	Prohibited[139]	No	Prohibited[140]
OK	Yes[141]	Prohibited[142]	No	Allowed[143]
OR	Yes[144]	Allowed[145]	Yes[146]	Allowed[147]
PA[148]	Yes	Prohibited	Schools may prohibit.	
RI[149]	Yes	Allowed	Schools may prohibit.	
SC	Yes[150]	Prohibited[151]	Yes[152]	Prohibited[153]
SD[154]	Yes	Prohibited	Schools may prohibit.	
TN[155]	Yes	Prohibited	Yes	Prohibited
TX	Yes[156]	Prohibited[157]	No	Prohibited[158]
UT	Yes[159]	Allowed[160]	No	Allowed[161]
VT	Yes[162]	Allowed[163]	Schools may prohibit.	
VA	Yes[164]	Prohibited[165]	Schools may prohibit.	Allowed[166]
WA[167]	Yes	Prohibited	Schools may prohibit.	
WV[168]	Yes	Prohibited	Schools may prohibit.	
WI	Yes[169]	Prohibited[170]	Yes[171]	Allowed[172]
WY[173]	Yes	Allowed	Yes	Prohibited

Elementary & Secondary (K-12) Schools

1. States Prohibiting Firearms in Elementary & Secondary (K-12) Schools

The vast majority of states – 48 of them – and the District of Columbia generally prohibit any person from carrying a firearm onto or possessing a firearm on school property, within safe school or gun-free school zones, on school-provided transportation, or at certain school-sponsored events.

Hawaii and New Hampshire do not generally prohibit the possession of a firearm in school-related locations. Hawaii has no relevant statute. New Hampshire only bans pupils from possessing a firearm in a safe school zone, and also imposes a possible penalty enhancement for unlawful possession of a firearm in a safe school zone.

Common exceptions to this prohibition include: 1) guns locked in vehicles on school property; 2) guns

possessed for a hunter or firearm safety course; 3) guns possessed as part of a school-authorized sporting or recreational program; 4) military or peace officer training programs; 5) lawful possession within a residence, place of business, or other private property that lies within a school zone but is not part of the school grounds or property; 6) while hunting on school grounds or traversing school grounds to access hunting lands during a lawful hunting season on lands owned by the educational institution; and 7) where the possessor has obtained prior permission of the principal, school board, or chief administrative officer of the school or district.

2. States Prohibiting Concealed Weapons Permit/License Holders from Carrying on Elementary & Secondary School Property

Thirty-nine states and the District of Columbia prohibit concealed weapons permit or license holders from possessing concealed firearms in primary or secondary schools, within school zones, or on school-provided transportation. One notable exception common to these laws is where an adult is in lawful possession of a firearm, and the firearm is within a vehicle, when the adult is dropping off or picking up a student on school property. Note that even though Alaska,[174] Vermont[175] and Wyoming[176] do not require a permit to carry a concealed firearm, these states ban the possession of firearms at school.[177]

3. States Requiring Expulsion of Students from Elementary & Secondary Schools for Possessing Firearms

Forty-nine states and the District of Columbia have statutory and/or regulatory provisions requiring that any student possessing a firearm at an elementary or secondary school or on school property be expelled for not less than one year. [178] Consistent with the federal Gun-Free Schools Act,[179] these states commonly grant authority to the school board, superintendent or principal to modify the expulsion of a particular student on a case-by-case basis. Most states authorize school districts to provide educational services to an expelled student in an alternative setting. Only Massachusetts does not require the expulsion of a student for possessing a gun at school.[180]

Colleges, Universities and Other Postsecondary Educational Institutions

1. States Generally Prohibiting Firearms at Colleges & Universities

Twenty states and the District of Columbia currently have a statute or regulation that prohibits the possession of firearms in colleges, universities and other post-secondary educational institutions. Arkansas' law applies only to handguns.

2. States Not Explicitly Addressing Gun Possession on College Campuses, Leaving Weapons Possession Regulation to Public Colleges & Universities

In 24 states, the state either has expressly allowed colleges and universities to regulate guns, or is silent on the matter, leaving weapons possession regulation decisions up to the governing bodies of colleges and universities in the state: Alabama,[181] Alaska, Arizona, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky,[182] Maine,[183] Maryland, Minnesota,[184] Montana, New

Hampshire, North Dakota,[185] Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington and West Virginia.

3. States Specifically Prohibiting Concealed Weapons Permit/License Holders from Carrying on College and University Property

Twenty-three states and the District of Columbia explicitly prohibit persons with a concealed weapons permit or license from carrying their concealable firearms on college or university property.[186]

4. States with Specific Laws Allowing Firearms on Campus

A growing number of states are allowing the possession of firearms, primarily concealed handgun possession by permittees or licensees consistent with state law, on many public areas of college and university campuses. Some of these states also restrict regulation of guns by colleges and universities at certain locations on campus.

Colorado – Colorado courts have found that the Colorado General Assembly is the only entity that can regulate firearm possession on college and university campuses. Under the state's concealed handgun licensing statute, any person licensed to carry a concealed handgun in Colorado may carry a firearm on campus. Schools may institute policies regulating guns on campus, but do not have the authority to ban guns on campus.[187]

Idaho – In 2014, Idaho enacted a law removing the authority of the governing bodies of higher education to regulate or prohibit the possession, carrying or transporting of firearms or ammunition by people licensed to carry a concealed handgun. These people may not carry a concealed firearm in a student dormitory or residence hall, however, or in a building of a public entertainment facility that has posted the proper sign prohibiting firearms.[188]

Michigan – Any person licensed to carry a concealed handgun within the state may carry a concealed gun on school property, but cannot carry a gun in any dormitory or classroom of a community college, college or university, consistent with the state's concealed carry location limits statute.[189]

Mississippi – State law allows a person who has taken a voluntary course on the safe handling and use of firearms by a certified instructor to carry a concealed weapon on campus. Applicants must be over age 21 and must pass a background check for the advanced permit.[190]

Oklahoma – Concealed handgun license holders may carry handguns on campus only in specified areas, including in vehicles in parking lots, on property authorized for possession or use of handguns by school policy, or on property authorized by the written consent of the college or university president.[191]

Oregon – Concealed handgun license holders may possess firearms on campus, but are restricted in the locations where they may carry. In March 2011, the Court of Appeals of Oregon held that an Oregon State Board of Higher Education's rule imposing sanctions on persons who possessed or used

firearms on university property was invalid because the rule was outside the Board's authority to regulate firearms and not expressly authorized by the legislative assembly. The court also concluded that the Board's broad scope of authority to control and manage its properties includes the ability to make rules regarding the conduct of visitors or members of the public on institutional properties.[192] In 2012, the Board, using its authority, banned guns, including concealed carry, from classrooms, buildings, dormitories and sporting and entertainment events.[193]

Utah – In Utah, the state legislature assumed jurisdiction of the state's public universities in 2004. Universities now permit the lawful possession or carrying of concealed firearms in most areas of their campuses.[194]

Virginia – Colleges and universities may prohibit gun possession by the general public, including concealed carry permit holders, in the most vulnerable areas of campus (*e.g.*, academic buildings, administrative office buildings, student residence buildings, dining facilities, or while attending sporting, entertainment or educational events), but must allow concealed carry permit holders to possess guns on the open grounds of campus.[195]

Wisconsin – Colleges and universities must generally allow concealed carry permit holders to carry on campus grounds. Schools may, however, prohibit any person, including a concealed weapons permit holder, from entering or remaining in any privately or publicly-owned building on the grounds of a university or college, *if* the university or college has notified the person that he or she may not enter or remain in the building while carrying a firearm.[196]

FEATURES OF COMPREHENSIVE LAW REGULATING GUNS IN SCHOOLS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Establish a gun-free school zone that prohibits the possession or carrying, whether openly or concealed, of any firearm within an elementary or secondary school building, on school property, or within a set distance of school property (*District of Columbia*)
- Prohibit the possession or carrying, whether openly or concealed, of any firearm within a school bus or other school-provided transportation
- Prohibit concealed weapons permit holders from possessing in school buildings, on school property, or within a set distance from school property

[1] On December 14, 2012, a lone gunman killed 20 children and six adults at Sandy Hook Elementary School in Newtown, Connecticut before committing suicide.
[2] On April 20, 1999, two student gunmen killed 12 students and a teacher at a high school near Denver, Colorado before committing suicide.
[3] On April 16, 2007, a lone student gunman killed 32 people, mostly students, at Virginia Tech before committing suicide.
[4] Between December 15, 2012 and February 10, 2014, there were at least 44 school shootings in the U.S. – including fatal and nonfatal assault, suicides, and unintentional shootings. Moms Demand Action and Mayors Against Illegal Guns, *Analysis of School Shootings, Dec. 15, 2012 - Feb. 10, 2014* (Feb. 12, 2014) at http://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/SchoolShootingsReport.pdf.

[5] U.S. Department of Education & U.S. Department of Justice Office of Justice Programs, *Indicators of School Crime and Safety: 2008* 6 (Apr. 2009), at http://nces.ed.gov/pubs2009/2009022REV.pdf.

[6] Centers for Disease Control & Prevention, Morbidity & Mortality Weekly Report, *School-Associated Student Homicides – United States, 1992-2006* (Jan. 18, 2008), at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5702a1.htm. The study also found that from July 1999 – June 2006, 116 students were killed in 109 separate incidents – an average of 16.5 student homicides each year (an average annual homicide rate of 0.03 per 100,000 students); 65% of the homicides were inflicted by firearms. *See also* Mark Anderson et al., *School-Associated Violent Deaths in the United States, 1994-1999*, 286 JAMA 2695, 2697-2699 (Dec. 5, 2001), at http://www.cdc.gov/NCIPC/schoolviolencejoc11149.pdf (finding, for the period 1994-1999, that firearms were used in 164 violent deaths occurring at school or a school-related event, 119 of such incidents being homicides and 27 suicides. Over the study period, 20,541 school-aged children (ages 5 through 18 years) in the U.S. died as a result of a homicide or suicide by any means.).

[7] U.S. Department of Education & U.S. Department of Justice Office of Justice Programs, *Indicators of School Crime and Safety: 2012* 6 (June 2013), at http://nces.ed.gov/pubs2013/2013036.pdf.

[8] Centers for Disease Control & Prevention, Morbidity & Mortality Weekly Report, *School-Associated Student Homicides – United States, 1992-2006* (Jan. 18, 2008), at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5702a1.htm. The rates decreased from from 0.07 per 100,000 students to 0.03 per 100,000 students. *Id*.

[9] Between 1993 and 1999, the percentage of students who carried a gun, regardless of location, decreased from 8% to 5%. This lower percentage did not change significantly over the years 1999–2007. Danice K. Eaton et al., Centers for Disease Control & Prevention*, Youth Risk Behavior Surveillance – United States, 2007*, Morbidity & Mortality Weekly Report, (June 6, 2008), at http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5704a1.htm (surveying students in grades 9 – 12 about their behaviors throughout 2007).

[10] *See* Brady Center to Prevent Gun Violence, *No Gun Left Behind: The Gun Lobby's Campaign to Push Guns Into Colleges and Schools*, 9-11, 34, n. 2 (May 2007), at http://www.millionmommarch.org/sites/default/files/no-gun-left-behind.pdf. The gun lobby continues to push arming teachers and faculty in elementary and high schools, and seeks to repeal the federal Gun-Free School Zones Act of 1996 that prohibits firearms within 1,000 feet of elementary and high schools. After Newtown, the NRA's refrain – arm teachers and faculty or have armed guards in every school – was rightly ridiculed. *See, e.g.*, Alec MacGillis, *The NRA's Emperor Has No Clothes*, New Republic, Dec. 21, 2012, at http://www.newrepublic.com/blog/plank/111384/the-nras-emperor-no-clothes-moment; David Weigel, *Wayne LaPierre Wants Armed Guards at Schools. Columbine Had an Armed Guard*, Slate, Dec. 21, 2012, at http://www.slate.com/blogs/weigel/2012/12/21/wayne_lapierre_wants_armed_guards_at_schools_columbine_had_an_armed_guard.html?wpisrc=most_viral; and Jason Linkins, *NRA Leader Wayne LaPierre's Much-Criticized Sandy Hook Speech Was Actually Quite Effective*, The Huffington Post, Dec. 21, 2012, at http://www.huffingtonpost.com/2012/12/21/nra-wayne-lapierre_n_2348277.html?utm_hp_ref=email_share.

[11] United States Secret Service, U.S. Department of the Treasury, *Safe School Initiative: An Interim Report on the Prevention of Targeted Violence in Schools* 6 (Oct. 2000), at http://cecp.air.org/download/ntac_ssi_report.pdf. *See also* Centers for Disease Control & Prevention, Morbidity & Mortality Weekly Report, *Source of Firearms Used by Students in School-Associated Violent Deaths --- United States, 1992—1999* (Mar. 7, 2003), at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5209a1.htm.

[12] *See* Katrina Baum & Patsy Klaus, Office of Justice Programs, U.S. Dept. of Justice, Bureau of Justice Statistics Special Report, *National Crime Victimization Survey – Violent Victimization of College Students, 1995-2002* (Jan. 2005), at http://bjs.ojp.usdoj.gov/content/pub/pdf/vvcs02.pdf.

[13] Private colleges are free to regulate their campuses for public safety purposes in conformity with state law. *See* Thomas L. Harnisch, American Association of State Colleges & Universities, *Concealed Weapons on State College Campuses: In Pursuit of Individual Liberty and Collective Security* 2 (Nov. 2008), at http://www.aascu.org/WorkArea/DownloadAsset.aspx?id=4545. *See also* the discussion of state laws regulating guns in colleges, *infra*.

[14] Matthew Miller, David Hemenway & Henry Wechsler, *Guns and Gun Threats at College*, 51 J. Am. Coll. Health 57, 63 (Sept. 2002), at http://archive.sph.harvard.edu/cas/Documents/Gunthreats2/gunspdf.pdf (focusing on gun ownership and gun threats on college or university campuses, regardless of whether those schools allowed firearms on campus).

[15] National Center for Injury Prevention & Control, U.S. Centers for Disease Control & Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS) Injury Mortality Reports, 1999-2007, at* http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

[16] U.S. Dep't of Education, *Summary Campus Crime and Security Statistics – Criminal Offenses, Murder/Non-negligent Manslaughter* (2003), at http://www.ed.gov/admins/lead/safety/crime/criminaloffenses/edlite-murder.html.
[17] Baum & Klaus, *supra* note 12, at 1.
[18] *Id.*
[19] *Id*. at 5.
[20] Matthew Miller, *supra* note 14, at 59. The study found that nearly two-thirds of gun-owning students were binge drinkers.
[21] U.S. Dep't of Health & Human Services, *Results from the 2002 National Survey on Drug Use and Health: National Findings*, Chap. 9, Sec. 9.1 (2003), *at* http://www.oas.samhsa.gov/NHSDA/2k2NSDUH/Results/2k2results.htm#chap9.
[22] American College Health Ass'n, National College Health Assessment, *Data Highlights, at* http://www.achancha.org/data/PHYSMENTAL_3_all.html (providing data from Spring 2000 – Spring 2006). *See also* Jameson K. Hirsch, Jon R. Webb & Elizabeth L. Jeglic, *Forgiveness, Depression, and Suicidal Behavior Among a Diverse Sample of College Students*, 67 J. Clinical Psych. 1 (2011), at http://faculty.etsu.edu/hirsch/forgive_dep_suicide.pdf (noting that about 6.4% to 9.5% of college students seriously consider suicide).
[23] American Psychiatric Association, *College Mental Health & Confidentiality* 1 (June 2009), at http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/ResourceDocuments/200905.aspx.
[24] Sara B. Vyrostek, Joseph L. Annest, George W. Ryan, *Surveillance for Fatal and Nonfatal Injuries – United States, 2001*, Morbidity & Mortality Weekly Report, Centers for Disease Control & Prevention (Sept. 3, 2004) at http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5307a1.htm.
[25] For additional information that explains why allowing concealed handguns on campus is a poor choice for self-defense, see the International Association of Campus Law Enforcement Administrators, Inc. (IACLEA), *IACLEA Position Statement – Concealed Carrying of Firearms Proposals on College Campuses* (Aug. 12, 2008) (co-written by the Law Center to Prevent Gun Violence), at http://www.iaclea.org/visitors/PDFs/ConcealedWeaponsStatement_Aug2008.pdf.
[26] Evidence suggests that permissive concealed gun carrying generally will *increase* crime. *See, e.g.,* Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1193, 1285, 1296 (Apr. 2003); and Ian Ayres & John J. Donohue III, *The Latest Misfires in Support of the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1371, 1397 (Apr. 2003).
[27] Brady Center to Prevent Gun Violence, *supra* note 9, at 8-9. *See also* Americans for Gun Safety, *Stolen Firearms: Arming the Enemy* 1 (Dec. 2002). Once a gun is stolen it is much more likely to be used in subsequent crime.
[28] Brady Center to Prevent Gun Violence, *supra* note 9, at 6, 11-13.
[29] *Id*. at 15-17. For additional information on the dangers of allowing guns on campus, see the Students for Gun Free Schools fact sheets, *Why Our Campuses are Safer Without Concealed Handguns*, available at http://www.studentsforgunfreeschools.org/SGFSWhyOurCampuses-Electronic.pdf; and *How We Can Prevent Future Tragedies*, at http://www.studentsforgunfreeschools.org/HowWeCanPrevent-Electronic.pdf.
[30] 18 U.S.C. § 922(q)(2)(A). The GFSZA originally was enacted as part of the Crime Control Act of 1990. The GFSZA was eventually challenged as an unconstitutional exercise of congressional authority under the Commerce Clause of the U.S. Constitution. In *United States v. Lopez*, the Supreme Court struck down the law on the grounds that the Act regulated neither commercial nor interstate activity. 514 U.S. 549 (1995). Following the ruling in *Lopez*, Congress re-enacted the GFSZA in 1996, correcting the defects identified by the Supreme Court. The amended GFSZA contained the same prohibitions as the 1996 revision, except the newer version added language to apply the law to any firearm "that has moved in or that otherwise affects interstate or foreign commerce." 18 U.S.C. § 922(q)(2)(A), (3)(A). Challenges to the new statute have been unsuccessful. *See, e.g.*, *United States v. Danks*, 221 F.3d 1037, 1038-39 (8th Cir. 1999) and *United States v. Dorsey*, 418 F.3d 1038, 1045-46 (9th Cir. 2005), *rev'd on other grounds*.
[31] 18 U.S.C. § 921(a)(25).
[32] 18 U.S.C. § 922(q)(2)(B)(ii).
[33] 18 U.S.C. § 922(q)(2)(B)(iii).
[34] 18 U.S.C. § 922(q)(2)(B)(iv), (v); § 922(q)(3)(B)(ii), (iii).
[35] Avarita L. Hanson, *Have Zero Tolerance School Discipline Policies Turned into a Nightmare? The American Dream's Promise of Equal Educational Opportunity Grounded in* Brown v. Board of Education, 9 U.C. Davis J. Juv. L. & Pol'y 289, 303 (Summer 2005) (discussing the history of the Gun-Free Schools Act of 1990 and subsequent Acts).
[36] *Id*. at 303-04.
[37] 20 U.S.C. § 7151(b)(1).

[38] 20 U.S.C. § 7151(f)).
[39] 20 U.S.C. § 7151(b)(1).
[40] 20 U.S.C. § 7151(b)(2).
[41] 20 U.S.C. § 7151(d), (e).
[42] 20 U.S.C. § 7151(h)(1).
[43] 18 U.S.C. § 921(a)(26).
[44] 20 U.S.C. § 7151(g).
[45] The White House, *Progress Report on the President's Executive Actions to Reduce Gun Violence*, at 4 (June 18, 2013), available at: http://www.whitehouse.gov/sites/default/files/docs/exec_actions_progress_report_final.pdf.
[46] *Id.* at 6.
[47] *Id.*
[48] U.S. Department of Justice, Community Oriented Policing Services (COPS) Office, *Department of Justice Awards Hiring Grants for Law Enforcement and School Safety* (Sept. 27, 2013), available at: http://www.cops.usdoj.gov/Default.asp?Item=2695.
[49] See our summary on the Local Authority to Regulate Firearms for more information.
[50] Ala. Code § 13A-11-72(c), (g).
[51] Ala. Code § 13A-11-72(c), (e).
[52] Alabama's state universities prohibit guns in on campus, with some exceptions. *See* http://policies.ua.edu/weapons.html.
[53] Alaska Stat. §§ 11.61.210(a)(7), 11.61.210(a)(8).
[54] Alaska Stat. §§ 18.65.755; 11.61.210(a)(7), (a)(8).
[55] Ariz. Rev. Stat. Ann. §§ 13-3102(A)(12), 13-3102(M)(4), (5).
[56] Ariz. Rev. Stat. § 13-3102(A)(12), (C)(4). (Arizona does not require a permit to carry a concealed firearm.)
[57] Ark. Code Ann. § 5-73-119(b)(1).
[58] Ark. Code Ann. § 5-73-306(14). (Exception for possession at K-12 schools run by house of worship in certain circumstances.)
[59] Ark. Code Ann. §§ 5-73-119(c)(1); 5-73-322 (handguns only).
[60] Ark. Code § 5-73-306(14).
[61] Cal. Penal Code §§ 626.9(b), (e)(1); Cal. Penal Code § 30310(a).
[62] Cal. Penal Code § 626.9(l).
[63] Cal. Penal Code § 626.9(h), (i).
[64] Although California prohibits any person from bringing or possessing a loaded or unloaded firearm upon the grounds of a public or private college or university campus, or other campus property, including buildings owned or operated for student housing, teaching, research, or administration, any person holding a valid license to carry a firearm is specifically exempt from these prohibitions. Cal. Penal Code § 626.9(l).
[65] Colo. Rev. Stat. § 18-12-105.5(1).
[66] Colo. Rev. Stat. § 18-12-214(3).
[67] Colo. Rev. Stat. § 18-12-105.5(1).
[68] *See Regents of the Univ. of Colo. v. Students for Concealed Carry on Campus*, 271 P.3d 496 (Colo. 2012) (Colorado Concealed Carry Act's comprehensive statewide purpose, broad language, and narrow exclusions show that the Colorado General Assembly intended to divest Board of Regents of its authority to regulate concealed handgun possession on campus.)
[69] Conn. Gen. Stat. § 53a-217b(a).
[70] Conn. Gen. Stat. § 53a-217b.
[71] Del. Code Ann. tit. 11, § 1457
[72] D.C. Code Ann. § 22-4502.01. (DC exempts persons licensed to own a gun that live or work within 1,000 feet of a gun free zone.)
[73] Fla. Stat. §§ 790.115(1)-(2)(a), (c); 810.095.
[74] Fla. Stat. § 790.06(12)(a)(7), (9), (10).
[75] Fla. Stat. §§ 790.115(1)-(2)(a), (c); 810.095.
[76] Fla. Stat. § 790.06(12)(a)(9), (13).
[77] Ga. Code Ann. § 16-11-127.1 (License holders may possess or store their guns in vehicles in certain circumstances.)

[78] Hawaii has no relevant statute.
[79] Idaho Code § 18-3302D(1), (2)(e).
[80] Idaho Code §§ 18-3302C, 18-3302D(1).
[81] Idaho Code § 18-3309.
[82] 720 Ill. Comp. Stat. 5/24-1(a)(4), (a)(9), (a)(10), (c)(1), (c)(1.5), (c)(4).
[83] 720 Ill. Comp. Stat. 5/24-1(a)(4), (a)(10), (c)(1), (c)(1.5), (c)(4). 430 Ill. Comp. Stat. 66/65(a)(1).
[84] 720 Ill. Comp. Stat. 5/24-1(a)(4), (a)(9), (a)(10), (c)(1), (c)(1.5), (c)(4).
[85] 720 Ill. Comp. Stat. 5/24-1(a)(4), (a)(10), (c)(1), (c)(1.5), (c)(4). 430 Ill. Comp. Stat. 66/65(a)(15), (a)(17), (a-5).
[86] Ind. Code Ann. § 35-47-9-2.
[87] Iowa Code §§ 280.2; 724.4B(1).
[88] Iowa Code § 724.4B.
[89] Kan. Stat. Ann. § 21-6301(a)(11).
[90] H.B. 2052, 85th Leg., Reg. Sess. (Kan. 2013); Kan. Stat. Ann. § 75-7c10(a). (concealed carry presumably prohibited under new 2013 law if the building has adequate security measures to keep weapons out and the building is conspicuously posted as one where carrying a concealed handgun is prohibited.)
[91] In 2013, Kansas enacted a law stating that the carrying of concealed weapons may not be restricted in any state or municipal building (including state colleges and universities) unless the building has "adequate security measures." H.B. 2052, 85th Leg., Reg. Sess. (Kan. 2013). *See also* Kan. Stat. Ann. §§ 75-7c10, 75-7c-20.
[92] Ky. Rev. Stat. Ann. § 527.070.
[93] Ky. Rev. Stat. § 237.110(16)(f).
[94] Ky. Rev. Stat. Ann. § 237.115(1) provides that colleges *may* regulate firearm possession.
[95] La. Rev. Stat. Ann. § 14:95.2(A).
[96] La. Rev. Stat. Ann. §§ 40:1379.3(N)(11); 14:95.6.
[97] La. Rev. Stat. Ann. § 14:95.2(A).
[98] La. Rev. Stat. Ann. §§ 40:1379.3(N)(11); 14:95.6(C).
[99] Me. Rev. Stat. Ann. tit. 20-A, § 6552(1).
[100] Me. Rev. Stat. Ann., tit. 20-A, § 6552.
[101] Me. Rev. Stat. Ann. tit. 20-A § 10009(2) provides that colleges *may* regulate firearm possession.
[102] Md. Code Ann., Crim. Law § 4-102.
[103] Mass. Gen. Laws ch. 269, § 10(j).
[104] Mich. Comp. Laws § 750.237a(4), (6)(b), (6)(d).
[105] Mich. Comp. Laws § 28.425o(1)(a). (Permit holders cannot carry *concealed* in schools, but may be able to possess openly in schools.)
[106] Any person licensed to carry a concealed handgun within the state cannot carry a concealed handgun in any dormitory or classroom of a community college, college or university, consistent with the state's concealed carry location limits statute. *See* Mich. Comp. Laws § 28.425o(1)(h).
[107] Minn. Stat. § 609.66, Subd.1d.
[108] Minn. Stat. § 609.66, subd. 1d(d).
[109] Minn. Stat. § 624.714, Subd. 18(c) provides that schools may not prohibit lawful possession of firearms in a parking facility or parking area.
[110] Miss. Code Ann. § 97-37-17.
[111] Miss. Code Ann. §§ 45-9-101(13); 97-37-17(2).
[112] Miss. Code Ann. § 97-37-17.
[113] State law allows a person who has taken a voluntary course on the safe handling and use of firearms by a certified instructor to carry a concealed weapon on campus. Applicants must be over age 21 and must pass a background check for the advanced permit. *See* Miss. Code Ann. § 45-9-101(13); Miss. Code Ann. § 97-37-7(2).
[114] Mo. Rev. Stat. § 571.030.1(10).
[115] Mo. Rev. Stat. § 571.107.1(10).
[116] Mo. Rev. Stat. § 571.107.1(10).
[117] Mont. Code Ann. § 45-8-361
[118] Neb. Rev. Stat. §§ 28-1204.04(1), 28-1201(8).
[119] Neb. Rev. Stat. § 69-2441(1)(a).

[120] Neb. Rev. Stat. Ann. §§ 28-1204.04(1), 28-1201(8).
[121] Neb. Rev. Stat. § 69-2441(1)(a).
[122] Nev. Rev. Stat. Ann. § 202.265(1)(e).
[123] Nev. Rev. Stat. Ann. § 202.3673(3)(a).
[124] Nev. Rev. Stat. Ann. § 202.265(1)(e).
[125] Nev. Rev. Stat. Ann. § 202.3673(3)(a), (6)(b). (Applies to any component of the Nevada System of Higher Education.)
[126] N.H. Rev. Stat. Ann. §§ 193-D:3; 193-D:1. (Not a prohibition, but a possible penalty enhancement for unlawful possession of a gun in a safe school zone.)
[127] N.H. Rev. Stat. Ann. §§ 193-D:1; 193:13. (New Hampshire only bans pupils from possessing a firearm in a safe school zone, and also imposes a possible penalty enhancement for unlawful possession of a firearm in a safe school zone.)
[128] N.J. Stat. Ann. § 2C:39-5e.
[129] N.M. Stat. Ann. § 30-7-2.1.
[130] N.M. Stat. Ann. § 29-19-8(B), (C).
[131] N.M. Stat. Ann. § 30-7-2.4.
[132] N.M. Stat. Ann. § 30-7-2.4.
[133] N.Y. Penal Law §§ 265.01(3), 265.01-a, 265.20(a)(3).
[134] N.C. Gen. Stat. § 14-269.2
[135] N.D. Cent. Code § 62.1-02-05(1).
[136] N.D. Cent. Code § 62.1-02-05.
[137] N.D. Cent. Code, § 62.1-02-13(1)(a), (d), (6)(a) allows limited regulation of guns in vehicles.
[138] Ohio Rev. Code Ann. § 2923.122.
[139] Ohio Rev. Code Ann. § 2923.122.
[140] Ohio Rev. Code Ann. § 2923.126(B)(5).
[141] Okla. Stat. tit. 21, § 1280.1.
[142] Okla. Stat. tit. 21, § 1277(A)(3), (C). (Exception to restriction for authorized permit holders in certain private schools.)
[143] Concealed handgun license holders may carry handguns on campus only in specified areas, including in vehicles in parking lots, on property authorized for possession or use of handguns by school policy, or on property authorized by the written consent of the college or university president. *See* Okla. Stat. tit. 21, § 1277(E).
[144] Or. Rev. Stat. §§ 166.360(4); 166.370(1).
[145] Or. Rev. Stat. § 166.370(3)(d), (g).
[146] Or. Rev. Stat. §§ 166.360(4); 166.370(1).
[147] *Or. Firearms Educ. Found. v. Bd. of Higher Educ.*, 264 P.3d 160 (Or. Ct. App. 2011), available at http://www.publications.ojd.state.or.us/docs/A142974.pdf. The Oregon University System's policies on the possession of firearms, approved by the State Board of Higher Education on March 2, 2012, many be viewed at http://www.ous.edu/sites/default/files/state_board/polipro/OUS-Policy-on-Firearms.pdf.
[148] 18 Pa. Cons. Stat. Ann. § 912.
[149] R.I. Gen. Laws § 11-47-60.
[150] S.C. Code Ann. §§ 16-23-420(A); 16-23-430.
[151] S.C. Code Ann. §§ 16-23-420(A), 23-31-215(M)(5), (6), (7).
[152] S.C. Code Ann. § 16-23-420(A).
[153] S.C. Code Ann. §§ 16-23-420(A), 23-31-215(M)(6).
[154] S.D. Codified Laws § 13-32-7.
[155] Tenn. Code Ann. § 39-17-1309(b), (c).
[156] Tex. Penal Code § 46.03(a)(1); Tex. Educ. Code § 37.125(a).
[157] Tex. Penal Code § 46.03(a)(1), (f).
[158] Tex. Penal Code § 46.03(a)(1), (f).
[159] Utah Code Ann. § 76-10-505.5.
[160] Utah Code Ann. § 76-10-505.5(4)(a).
[161] Utah Code Ann. §§ 53B-3-103(1), (2)(a)(ii), (2)(b), 76-8-311.1; Utah Admin. Code r. 765-254-3.
[162] Vt. Stat. Ann. tit. 13, § 4004(a), (b), (d)(1).
[163] Vt. Stat. Ann. tit. 13, § 4004.
[164] Va. Code Ann. § 18.2-308.1(B).

[165] Va. Code Ann. § 18.2-308.1(B), (C).
[166] *Digiacinto v. Rector & Visitors of George Mason Univ.*, 704 S.E.2d 365 (Va. 2011) (school regulations that are tailored to restrict weapons, including by concealed carry permit holders, only in those places where people congregate and are most vulnerable, but still allow gun possession on the open grounds of campus, are valid, constitutional provisions). *See also* Op. Att'y Gen. Va. 05-078 (2006), 2006 Va. AG LEXIS 3, *6-*7 (the governing boards of colleges and universities may not impose a general prohibition on the carrying of concealed weapons by permit holders, but may regulate the conduct of students and employees to prohibit them from carrying concealed firearms on campus.)
[167] Wash. Rev. Code Ann. § 9.41.280
[168] W. Va. Code § 61-7-11a(b)(1).
[169] Wis. Stat. § 948.605.
[170] Wis. Stat. § 948.605(2).
[171] Wis. Adm. Code UWS § 18.10(3). (General ban applies to schools in the University of Wisconsin system.)
[172] Colleges and universities must generally allow concealed carry permit holders to carry on campus grounds. Schools may, however, prohibit any person, including a concealed weapons permit holder, from entering or remaining in any privately or publicly-owned building on the grounds of a university or college, *if* the university or college has notified the person that he or she may not enter or remain in the building while carrying a firearm. *See* Wis. Stat. § 943.13(1m)(c)(2), (5).
[173] Wyo. Stat. Ann. § 6-8-104(t).
[174] Alaska Stat. §§ 18.65.755; 11.61.210(a)(7), (a)(8).
[175] Vt. Stat. Ann. tit. 13, § 4004.
[176] Wyo. Stat. Ann. § 6-8-104(t)(vi), (ix).
[177] The following states exempt concealed weapons permit holders from the state prohibition on gun possession or have no law addressing the subject: Alabama (Ala. Code § 13A-11-72(c), (e).), Arizona (See Ariz. Rev. Stat. § 13-3102(A)(12), (C)(4). Arizona does not require a permit to carry a concealed firearm.), California (Cal. Penal Code § 626.9(l).), Hawaii (no relevant statute), New Hampshire (New Hampshire only bans pupils from possessing a firearm in a safe school zone, and also imposes a possible penalty enhancement for unlawful possession of a firearm in a safe school zone. *See* N.H. Rev. Stat. Ann. §§ 193-D:1; 193:13.), Oregon (Or. Rev. Stat. § 166.370(3)(d), (g).), Rhode Island (R.I. Gen. Laws § 11-47-60(b).) and Utah (Utah Code Ann. § 76-10-505.5(4)(a).).
[178] Ala. Code § 16-1-24.3; Alaska Stat. § 14.03.160; Ariz. Rev. Stat. § 15-841(G); Ark. Code §§ 6-18-502(c)(2); 6-18-503(a)(1)(C)(ii); 6-18-507(e); Cal. Ed. Code §§ 48900(b); 48915(b), (c); Colo. Rev. Stat. § 22-33-106(1.5); Conn. Gen. Stat. § 10-233d(a)(2), (e); Del. Code Ann. Tit. 11, § 1457(c), (j)(5); D.C. Code §§ 38-231, 38-233, 38-234(a); Fla. Stat. §§ 1006.07(2)(g), (l); 1006.13(3)(a); Ga. Code Ann. §§ 20-2-751.1; 20-2-751(4); Haw. Rev. Stat. § 302A-1134(b); Idaho Code § 33-205; 105 Ill. Comp. Stat. 5/10-22.6(d); Ind. Code Ann. § 20-33-8-16(d), (e); Iowa Code § 280.21B; Kan. Stat. Ann. §§ 72-89a02; 72-89a01(b); Ky. Rev. Stat. Ann. § 158.150(1)(a), (2)(a); La. Rev. Stat. Ann. §§ 17:416(C)(2)(a)(i), (b)(i), (c)(i); 17:416(A)(3)(a)(x); Me. Rev. Stat. Ann. tit. 20-A §§ 1001(9)(C); 1001(9-A); Md. Code Ann., Educ. § 7-305(f); Md. Code Regs. 13A.08.01.12-1; Mich. Cop. Laws § 380.1311(2), (3), (10); Minn. Stat. § 121A.44; Miss. Code Ann. § 37-11-18; Mo. Rev. Stat. § 160.261(5), (6); Mont. Code Ann. § 20-5-202(2), (3), (4)(b); Neb. Rev. Stat. § 79-263; Nev. Rev. Stat. Ann. § 392.466(2); N.H. Rev. Stat. Ann. §§ 193:13(III); 193-D:1(II); N.J. Stat. Ann. § 18A:37-8; N.J. Admin. Code § 6A:16-5.5; N.M. Stat. Ann. § 22-5-4.7(A), (C); N.Y. Educ. Law § 3214(3)(d), (f); N.C. Gen. Stat. § 115C-390.10(a); N.D. Cent. Code §§ 15.1-19-10; 15.1-19-09(4); Ohio Rev. Code Ann. § 3313.66(B)(2); Okla. Stat. tit. 70, § 24-101.3(C)(2); Or. Rev. Stat. § 339.250(7); 24 Pa. Stat. Ann. § 13-1317.2; R.I. Gen. Laws § 16-21-18; S.C. Code Ann. § 59-63-235; S.D. Codified Laws § 13-32-4; Tenn. Code Ann. § 49-6-3401(a)(7), (g); Tex. Educ. Code §§ 37.007(a)(1)(A), (b)(3)(B), (e); Utah Code Ann. § 53A-11-904(2)(a)(i)(A), (B), (b); Vt. Stat. Ann. tit. 16, §§ 1162(a), 1166; Va. Code Ann. § 22.1-277.07(A), (E); Wash. Rev. Code Ann. § 28A.600.420; W. Va. Code §§ 18A-5-1a(a)(ii), 18A-5-1a(i); Wis. Stat. § 120.13(1)(c)(2m); Wyo. Stat. §§ 21-4-305(a); 21-4-306(a)(v).
[179] See Gun-Free Schools Act discussion, *supra* at pages 7-8.
[180] Massachusetts law states only that, as part of the each school district's policies pertaining to the conduct of students, any student found on school premises or at school-sponsored or school-related events, including athletic games, in possession of a firearm may be subject to expulsion from the school or school district. Mass. Gen. Laws ch. 71, § 37H(a). No law requires mandatory expulsion for students possessing guns at school.
[181] Alabama's state universities prohibit guns in on campus, with some exceptions. *See* http://policies.ua.edu/weapons.html.
[182] Ky. Rev. Stat. Ann. § 237.115(1) provides that colleges *may* regulate firearm possession.
[183] Me. Rev. Stat. Ann. tit. 20-A § 10009(2) provides that colleges *may* regulate firearm possession.

[184] Minn. Stat. § 624.714, Subd. 18(c) provides that schools may not prohibit lawful possession of firearms in a parking facility or parking area.
[185] N.D. Cent. Code, § 62.1-02-13(1)(a), (d), (6)(a) allows limited regulation of guns in vehicles.
[186] Note that some of these states also allow concealed carry on specific areas of campus or under specific circumstances. See Section 4, *infra*, for further information.
[187] *See Regents of the Univ. of Colo. v. Students for Concealed Carry on Campus,* 271 P.3d 496 (Colo. 2012) (Colorado Concealed Carry Act's comprehensive statewide purpose, broad language, and narrow exclusions show that the Colorado General Assembly intended to divest Board of Regents of its authority to regulate concealed handgun possession on campus).
[188] 2014 Idaho S.B. 1254 (signed by the Governor March 12, 2014).
[189] *See* Mich. Comp. Laws § 28.425o(1)(h).
[190] Miss. Code Ann. § 97-37-7(2).
[191] *See* Okla. Stat. tit. 21, § 1277(E).
[192] *See Or. Firearms Educ. Found. v. Bd. of Higher Educ.*, 264 P.3d 160 (Or. Ct. App. 2011), available at http://www.publications.ojd.state.or.us/docs/A142974.pdf.
[193] The Oregon University System's policies on the possession of firearms, approved by the State Board of Higher Education on March 2, 2012, many be viewed at http://www.ous.edu/sites/default/files/state_board/polipro/OUS-Policy-on-Firearms.pdf.
[194] Utah Code Ann. §§ 53B-3-103(1), (2)(a)(ii), (2)(b), 76-8-311.1; Utah Admin. Code r. 765-254-3.
[195] *Digiacinto v. Rector & Visitors of George Mason Univ.*, 704 S.E.2d 365 (Va. 2011) (school regulations that are tailored to restrict weapons, including by concealed carry permit holders, only in those places where people congregate and are most vulnerable, but still allow gun possession on the open grounds of campus, are valid, constitutional provisions). *See also* Op. Att'y Gen. Va. 05-078 (2006), 2006 Va. AG LEXIS 3, *6-*7 (the governing boards of colleges and universities may not impose a general prohibition on the carrying of concealed weapons by permit holders, but may regulate the conduct of students and employees to prohibit them from carrying concealed firearms on campus).
[196] *See* Wis. Stat. § 943.13(1m)(c)(2), (5). Campuses may prohibit firearms from campus buildings if signs are posted at entrances explicitly stating that weapons are prohibited.

Part 7: Investigating Gun Crimes

Introduction

This Part includes two section describing laws that will assist law enforcement in investigating gun-related crimes. The first section describes ballistic identification laws, which enable law enforcement to identify a firearm from cartridges cases left at the scene of a crime. Microstamping is a particularly innovative form of ballistic identification. The second section describes laws specifically aimed at the trafficking of firearms, including laws regarding the tracing of firearms found at a crime scene and laws aimed at reducing straw purchases of firearms.

Microstamping and Ballistic Identification

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Microstamping and Ballistic Identification

Background

All firearms leave markings on the cartridge cases they expel when fired.[1] **Ballistic identification and microstamping laws make it possible to link cartridge cases recovered at crime scenes to the firearm that fired them.** Comprehensive ballistic identification systems (sometimes called ballistic "fingerprinting") require gun manufacturers to test-fire the firearms they produce and store images of the ballistic markings left on cartridge cases in a database so that law enforcement can later determine whether a particular gun fired a particular cartridge. Microstamping is a newer technology that utilizes lasers to make precise, microscopic engravings on the internal mechanisms of a semiautomatic pistol, such as the breech face and firing pin. When the gun is fired, a unique alpha-numeric code identifying the gun's make, model and serial number is stamped on to the cartridge case.[2]

Both ballistic identification and microstamping systems help law enforcement investigate gun crimes because cartridge cases are much more likely to be recovered at the scene of a shooting than the gun itself.[3] These systems can identify the gun from which a cartridge case was fired without recovering the gun.[4] Microstamping systems are more efficient, however, because they rely on intentional alpha-numeric codes unique to each firearm.

Ballistic Identification

In the mid-1990s, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) pioneered the concept of using automated ballistic imaging and comparison equipment to analyze crime gun evidence.[5] ATF's National Integrated Ballistic Information Network (NIBIN) currently provides Integrated Ballistic Identification System (IBIS) equipment to numerous state and local law enforcement agencies nationwide.[6] IBIS equipment is used to compare images of bullets and cartridge cases found at crime scenes to ballistic images previously entered into the NIBIN database. When a "match" is found, firearms examiners are able to conclude that the same gun was used in both crimes. Recovered crime guns are also test-fired and their ballistic images entered into the system, allowing law enforcement to determine whether those guns were used in other crimes.

Regarding NIBIN, ATF has concluded that, **"Numerous violent crimes involving firearms have been solved through use of the system, many of which would not have been solved without it."**[7]

Traditional ballistic identification systems like NIBIN have two limitations, however. For one thing, they generally only contain ballistic fingerprints from bullets, cartridges cases, and guns recovered from crime scenes. A comprehensive ballistic identification law would require gun manufacturers to submit a test-fired bullet and cartridge case for every firearm produced. In addition, a high level of technological skill is required to match bullets or cartridge cases to a firearm based solely on ballistic fingerprints, meaning that the use of ballistic fingerprinting requires the involvement of trained firearms examiners.

Microstamping

Microstamping gives law enforcement a significant new investigative tool to solve gun-related crimes.[8] **When a cartridge case has been engraved with a code through microstamping, the code allows law enforcement to connect the cartridge case directly to the gun that fired it,** much like the license plate on a vehicle allows law enforcement to identify the vehicle's make, model and VIN number. Studies have shown that semi-automatic pistols equipped with microstamping technology produce a significant amount of ballistic evidence that would not be produced if the pistol did not include the technology.[9]

In addition to assisting in the investigation and prosecution of gun crimes, this cutting-edge technology will deter gun trafficking. Traffickers often purchase guns intending to transfer them to someone else illegally. A trafficker who purchases a gun for this purpose would be on notice that the cartridge case could be used to trace the gun back to him or her if the gun was used in the commission of a crime.

In 2010, the American Bar Association (ABA) recommended that federal, state, and territorial governments enact microstamping laws that would enable law enforcement officers to identify the weapon used in a crime and the purchaser of that firearm.[10] The ABA concluded, "Microstamping technology will be a material aid to law enforcement in the effort to solve crimes committed by use of guns."[11]

Similarly, the International Association of Chiefs of Police (IACP) issued a resolution in 2008 supporting the use of microstamping technology in criminal investigations. The IACP specifically identified microstamping as an inexpensive yet effective way to mark and identify cartridge cases.[12] The IACP concluded that this technology would help law enforcement to identify the purchaser of a weapon used in crime, therefore "providing leads that would allow for substantial evidentiary information that will help identify, apprehend and arrest criminals."[13]

California was the first state to adopt a law requiring handguns to be equipped with microstamping technology, as described below. That law went into effect on May 17, 2013.[14]

There is strong public support for ballistic identification and microstamping laws. A national poll conducted for Mayors Against Illegal Guns in the spring of 2008 found that 77% of Americans favor requiring all guns sold in the U.S. to have a ballistic fingerprint, which allows police to determine what gun fired a bullet.[15]

Ammunition serialization is another law enforcement tool that can assist in solving more gun-related crimes. For more information about ammunition serialization, see our summary on Ammunition Regulations.

For information about how law enforcement may identify the owner or purchaser of a firearm after determining that the firearm was used in a shooting, see our summary on Maintaining Records and Reporting Gun Sales.

Summary of Federal Law

Federal law does not require or address ballistic identification or microstamping technology.

SUMMARY OF STATE LAWS CONCERNING MICROSTAMPING AND BALLISTIC IDENTIFICATION

California and the District of Columbia have adopted microstamping requirements for handguns. Maryland has created a statewide ballistics imaging database for new handguns sold in state, and Connecticut operates a statewide firearms evidence databank that stores ballistic information on handguns recovered or used by police.

Description of State Laws Governing Microstamping and Ballistic Identification

1. Microstamping Requirements:

California: With legislation passed in 2007, California became the first state to require the use of handgun microstamping, an innovative technology that enables law enforcement to match cartridge cases found at a crime scene to the gun's owner. On October 13, 2007, Governor Arnold Schwarzenegger signed into law the Crime Gun Identification Act, which requires all new models of semiautomatic pistols manufactured or sold in California to be designed and equipped with microstamping technology. The law required the California Department of Justice (DOJ) to certify when microstamping technology was available to more than one manufacturer unencumbered by patent restrictions; as noted above, DOJ made this certification in May 2013.[16]

The District of Columbia – Beginning January 1, 2016, the District will prohibit any licensed dealer from selling or offering for sale any semiautomatic pistol manufactured on or after January 1, 2016 that is not "microstamp-ready." "Microstamp-ready" means a semiautomatic pistol that is manufactured to produce a unique alpha-numeric or geometric code on at least two locations on each expended cartridge case that identifies the make, model, and serial number of the pistol. Beginning January 1, 2016, a semiautomatic pistol must be microstamp-ready if it is:

- Manufactured in the District of Columbia;
- Manufactured on or after January 1, 2016, and delivered or caused to be delivered by any manufacturer to a firearms dealer in the District; or
- Manufactured on or after January 1, 2016, and sold, offered for sale, loaned, given or transferred by a firearms dealer in the District.

A semiautomatic pistol manufactured after January 1, 2016, that is not microstamp-ready and that was acquired outside of the District by a person who was not a District resident at the time but who subsequently moved to the District is allowed, and may be sold, transferred, or given away, but only through a licensed firearms dealer.

In addition, beginning January 1, 2013, a manufacturer transferring a pistol to a firearms dealer for sale in the District will be required to certify whether the pistol was manufactured on or after January 1, 2016, and, if it was, that:

- The pistol will produce a unique alpha-numeric code or a geometric code on each cartridge case that identifies the make, model, and serial number of the semiautomatic pistol that expended the cartridge case; and

- The manufacturer will supply the Chief of Police with the make, model, and serial number of the pistol that expended the cartridge case, when presented with an alpha-numeric or geometric code from a cartridge case, provided that the cartridge case was recovered as part of a legitimate law enforcement investigation.[17]

2. Traditional Ballistic Identification Requirements:

Maryland: Maryland requires manufacturers to test-fire all handguns shipped into the state after October 1, 2000, and provide a spent cartridge case to the purchasing firearms dealer. Once the gun is sold, the dealer must forward the cartridge case to the state police, who then enter its unique markings in a database for possible use in future criminal investigations.[18]

Connecticut: Connecticut requires the Division of Scientific Services ("Division") of the Connecticut Department of Emergency Services and Public Protection to establish a firearms evidence databank. The databank is a computer-based system that stores images of fired components of ammunition in a manner suitable for retrieval and comparison to images of other fired components of ammunition stored in the databank. Handguns recovered by police through a criminal investigation may be submitted to the Division laboratory for test firing and collection of fired components of ammunition. Police departments are also required to submit all handguns issued to employees for test firing and collect fired components of ammunition from the test fire.[19]

New York repealed its ballistic identification requirements in 2012.[20]

FEATURES OF COMPREHENSIVE LAWS REGARDING MICROSTAMPING AND BALLISTIC IDENTIFICATION

The features listed below are intended to provide a framework from which policy options may be debated. A jurisdiction considering new legislation should consult with counsel.

- Licensed firearms dealers in the jurisdiction are prohibited from selling or offering for sale any semiautomatic pistol unless it microstamps *(District of Columbia; California requires any new model of semiautomatic pistol to microstamp)*
- A semiautomatic pistol "microstamps," as the relevant term(s) is defined, if it was manufactured to produce a unique alpha-numeric or geometric code on at least two locations on each expended cartridge case that identifies the make, model, and serial number of the pistol *(California, District of Columbia)*

- Manufacturing a semiautomatic pistol that does not microstamp is prohibited in the jurisdiction *(District of Columbia; California prohibits manufacturing a new model of semiautomatic pistol unless it microstamps)*
- Manufacturing a semiautomatic pistol that does not microstamp and offering it for sale or delivering it to a dealer in the jurisdiction is prohibited *(District of Columbia; California imposes this prohibition on new models of semiautomatic pistols)*
- Manufacturers must certify that each semiautomatic pistol transferred to a dealer in the jurisdiction microstamps *(District of Columbia)*
- Manufacturers must supply law enforcement with the make, model, and serial number of the semiautomatic pistol that expended a cartridge case when presented with an alpha-numeric or geometric code from the cartridge case *(District of Columbia)*
- Alternatively, manufacturers are required to provide ballistic identification for all new handguns manufactured or sold in the jurisdiction, and dealers are required to submit that information to state law enforcement when the gun is sold *(Maryland)*
    - For other weapons of particular concern to law enforcement, such as assault weapons and 50 caliber rifles, ballistic identification may also be required
    - In jurisdictions that require registration of handguns, current handgun owners are required to deliver their weapons to a ballistic testing center for purposes of ballistic identification to secure or maintain the registration[21]

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[1] Robert M. Thompson et al., *Ballistic Imaging and Comparison of Crime Gun Evidence by the Bureau of Alcohol, Tobacco and Firearms* 4 (May 13, 2002).

[2] *See* Orest P. Ohar, Todd E. Lizotte, *Extracting Ballistic Forensic Intelligence: Microstamped Firearms Deliver Data for Illegal Firearm Traffic Mapping – Technology* 7434 Proc. of SPIE 743416 (2009), at http://csgv.org/wp/wp-content/uploads/2013/06/LIZOTTE-RESEARCH-PAPER-AUGUST-2009.pdf.

[3] *See* Coalition to Stop Gun Violence, *Microstamping,* at http://csgv.org/issues/microstamping/.

[4] The Educational Fund to Stop Gun Violence, *Cracking the Case: The Crime-Solving Promise of Ballistic Identification* 2 (July 2004).

[5] National Integrated Ballistic Information Network, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of Treasury, *The Missing Link: Ballistics Technology That Helps Solve Crimes* 6-7 (2001).

[6] Thompson, *supra* note 1, at 4.

[7] *Id.* at 2. For example, on July 10, 2007, a gunman shot and killed three people in their apartment in North Charleston, South Carolina. Investigators used NIBIN to determine that the gun used had also been fired several months previously outside a nearby bar. The bouncer at the bar was able to identify the person who had fired the gun at that time. Corroborating evidence confirmed that the person was guilty of the triple murder, and he was subsequently convicted. Bureau of Alcohol, Tobacco, Firearms & Explosives, *NIBIN Success Story from the Charlotte Field Division, Triple Murder Solved with NIBIN,* at http://www.atf.gov/content/Firearms/firearms-enforcement/NIBIN/success-stories/triple-murder-solved-with-NIBIN#overlay-context=content/NIBIN-helps-nab-multi-state-armed-robbery-suspects.

[8] *See* Orest P. Ohar, Todd E. Lizotte, *Extracting Ballistic Forensic Intelligence: Microstamped Firearms Deliver Data for Illegal Firearm Traffic Mapping – Technology* 7434 Proc. of SPIE 743416 (2009), at http://csgv.org/wp/wp-content/uploads/2013/06/LIZOTTE-RESEARCH-PAPER-AUGUST-2009.pdf.

[9] L.S. Chumbley et al., *Clarity of Microstamped Identifiers as a Function of Primer Hardness and Type of Firearm Action*, AFTE Journal Vol. 44, No. 2 145-155, 155 (Spring 2012); Todd E. Lizotte, Orest P. Ohar, *Forensic Firearm Identification of Semiautomatic Handguns Using Laser Formed Microstamping Elements* 7070 Proc. of SPIE 70700K (2008), at http://csgv.org/wp/wp-content/uploads/2013/06/FORENSIC-FIREARM-IDENTIFICATION-OF-SEMIAUTOMATIC-HANDGUNS-LIZOTTE.pdf.

[10] American Bar Association, *Recommendation on Microstamping*, 1 (Aug. 2010), AT http://csgv.org/wp/wp-content/uploads/2013/06/aba-resolution-on-microstamping-sept-10.pdf.
[11] *Id.*
[12] International Association of Chiefs of Police, *Resolution: Support the Use of Microstamping Technology* (Nov. 11, 2008).
[13] *Id.*
[14] Cal. Dept. of Justice, Firearms Bureau, *Information Bulletin: Certification of Microstamping Technology* (May 17, 2013), at http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/infobuls/2013-BOF-03.pdf.
[15] Greenberg Quinlan Rosner Research & the Tarrance Group for the Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 6, (Apr. 10, 2008), at http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf.
[16] Cal. Dept. of Justice, Firearms Bureau, Information Bulletin: Certification of Microstamping Technology (May 17, 2013), at http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/infobuls/2013-BOF-03.pdf. If a method of equal or greater reliability and effectiveness in identifying the specific serial number of a pistol from spent cartridge cases discharged by that firearm exists, and is also unencumbered by patent restrictions, the law allows DOJ to approve it as well. Cal Pen Code § 31910.
[17] D.C. Code Ann. §§ 7-2504.08; 7-2505.03 (as amended by 61 D.C. Reg. 324 (Jan. 17, 2014)).
[18] Md. Code Ann., Pub. Safety § 5-131.
[19] Conn. Gen. Stat. § 29-7h.
[20] 2012 N.Y. ALS 55 § 1.
[21] Additional information on registration of firearms is contained in our summary on the Registration of Firearms.

Gun Trafficking and Straw Purchases

Background

The term "gun trafficking" refers to the diversion of guns from lawful commerce into the illegal market.[1] Studies of gun trafficking have identified the following major channels of trafficked guns:

- **Corrupt gun dealers:** Licensed firearms dealers are associated with the largest number of diverted guns.[2] While most gun dealers comply with the law, some dealers fail to adequately monitor their inventory, and some sell guns off the books to gun traffickers. Strong dealer regulations, such as laws requiring employee background checks and the videotaping of gun purchases, can prevent this conduct. For more information about the role gun dealers play in gun trafficking and laws regulating gun dealers, see our summary on Dealer Regulations.

- **Private sellers:** Federal law allows people who are not licensed as gun dealers to sell guns at gun shows, online, and elsewhere. Unlicensed private sellers are not required to conduct background checks or maintain records of purchasers. As a result, they play a significant role in gun trafficking.[3] Some states have addressed this problem by passing laws requiring universal background checks. For more information, see our summary on Universal Background Checks & the Private Sale Loophole.

- **Lost or stolen guns:** Gun traffickers sometimes falsely claim that guns they have purchased were lost or stolen in order to hide their involvement in crime. Laws that require the reporting of lost or stolen firearms to law enforcement can prevent this behavior and are discussed in our summary on Reporting Lost or Stolen Firearms.

- **Sales of Multiple Guns:** Gun traffickers often buy multiple guns at once and then resell them to convicted felons and other prohibited persons. Laws limiting the number of guns that may be purchased in a single transaction help deter this conduct. See our summary on Sales of Multiple Guns for more information.

Straw purchasers play a special role in gun trafficking. A "straw purchase" occurs when the actual buyer of a firearm uses another person, a "straw purchaser," to execute the paperwork necessary to purchase a firearm from a federally licensed firearms dealer. People who are prohibited from purchasing firearms and people who do not want to be identified through crime gun tracing often obtain firearms through straw purchases.

According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), straw purchasers "represent a significant overall crime and public safety problem."[4] By intentionally buying firearms for someone else, straw purchasers thwart the background check requirement and allow firearms to be funneled to criminals, domestic abusers and gangs.[5]

- According to a study ATF conducted in 2000 of 1,530 firearms trafficking investigations, straw purchasing accounted for almost one-half (46%) of all investigations, and was associated with nearly 26,000 illegally trafficked firearms.[6]

- Subsequent ATF investigations at gun shows from 2004 – 2006 also uncovered "widespread" straw purchasing from firearms dealers, where guns were diverted to "convicted felons and local and international gangs."[7]

- In 2009, New York City officials conducted their own investigation at gun shows across the U.S. to test whether, among other things, firearms dealers would be willing to sell guns to someone who appeared to be a straw purchaser.[8] New York's investigation found that 16 out of 17 (or 94% of) dealers approached by investigators willingly sold to an apparent straw purchaser.[9]

- A 2007 study found that straw purchases were significantly more common at gun shows in states with little regulation (Arizona, Florida, Nevada and Texas) than at gun shows in California, which regulates gun shows and requires background checks for all firearm transfers.[10]

Guns move from states with weak gun laws into states with strong gun laws. More specifically, gun traffickers frequently obtain guns in states that lack laws such as dealer regulations, background check requirements, and lost and stolen reporting requirements, and re-sell them in states that have these laws.[11]

Trafficking channels are identified through the use of crime gun tracing.[12] Crime gun trace data is generated when law enforcement recovers a firearm from a crime scene and requests that ATF or another law enforcement agency conduct an investigation to determine who originally sold and purchased the gun. As detailed in our summary on Maintaining Records & Reporting Gun Sales, crime gun trace data is crucial to individual criminal investigations and, when aggregated, can reveal patterns regarding who is trafficking firearms and how they are being trafficked.

Unfortunately, ATF's ability to investigate and prosecute gun trafficking is significantly limited. According to an investigation by the Washington Post in 2010, ATF's efforts are hindered by a lack of sufficient funding, as well as limitations on the use of crime gun trace data.[13] In addition, the number of ATF agents – 2,500 – has not changed since 1972. During the same period of time, the staffs of other government agencies have increased dramatically (for example, the staff of the Drug Enforcement Agency more than tripled during the time period).[14]

Guns trafficked from the U.S. play a major role in violence south of the border. According to data from ATF, approximately 87% of firearms seized by Mexican authorities and traced over Fiscal Years 2004-2008 originated in the U.S.[15] Since Mexico's laws regarding the possession of guns by civilians are strict,[16] the Mexican drug cartels obtain the firearms that fuel drug-related violence legally – and easily – in the U.S.

- A June 2009 U.S. Government Accountability Office (GAO) report found that certain federal firearms laws, including restrictions on the collection and reporting of information regarding gun purchases and the lack of a background check requirement for private gun transfers, present significant challenges to U.S. efforts to fight firearms trafficking into Mexico.[17]

- Another study points out that the near absence of ammunition sales regulation in the U.S. also contributes substantially to the cross-border trafficking problem.[18]

A 2010 analysis of trace data regarding crime guns exported to Mexico revealed significant differences in the states that serve as sources for these guns.[19] Not surprisingly, the four states with the highest number of exports were the four that share a border with Mexico – Arizona, California, New Mexico and Texas. However, after controlling for population, three of these states – Arizona, New Mexico and Texas – each exported firearms to Mexico at a rate that is 169% higher than any other state and more than three times as high as California, a state with some of the strongest gun laws.[20] This data supports the argument that **strong state gun laws are the key to reducing gun trafficking.**

Federal Law

No clear and effective federal statute makes gun trafficking a federal crime. Federal law makes certain people, such as convicted felons, ineligible to purchase or possess firearms.[21] Federal law also makes it unlawful for any person to sell or otherwise dispose of a firearm to a person he or she has a "reasonable cause to believe" falls within one of these categories.[22] As described in our summary on Universal Background Checks & the Private Sale Loophole, however, federal law only requires licensed dealers, and not unlicensed private sellers, to conduct background checks on purchasers and maintain records of sales. As a result, guns are often sold or transferred to dangerous people even though they are ineligible to purchase or possess firearms.

Gun traffickers exploit the loopholes in federal law by purposefully purchasing guns to resell or transfer them without background checks. Federal law does not generally prohibit this behavior except in the context of straw purchases.[23] As described above, a straw purchaser buys a firearm from a federally licensed firearms dealer on behalf of another person. Straw purchases are illegal because federal law criminalizes the making of false statements to a dealer about a material fact on ATF Form 4473, which must be filled out when a firearm is purchased from a licensed dealer.[24] Form 4473 asks the purchaser to confirm that he or she is the "actual transferee/buyer of the firearm(s)" and states "You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person."[25] A straw purchaser therefore commits a federal crime by falsely stating that he or she is the actual gun buyer. In a successful straw purchase, the actual buyer has also committed a federal crime by aiding and abetting the straw purchaser or causing the making of the false statements.[26]

Crime gun tracing and the Tiahrt amendments: Under federal regulations, ATF must maintain and operate the National Tracing Center to process requests from federal, state, local, and foreign law

enforcement agencies for the tracing of crime guns.[27] Provisions that have been attached to U.S. Department of Justice appropriations bills every year since 2003 have significantly impeded efforts to trace crime guns, however. These provisions are referred to as the Tiahrt Amendments after their sponsor, U.S. Representative Todd Tiahrt (R-KS). Among other things, the Tiahrt Amendments currently prohibit ATF from releasing firearm trace data for use by cities, states, researchers, litigants and members of the public, except in aggregate form.[28]

On January 16, 2013, President Obama released a memorandum to federal agencies requiring them to submit any firearm taken into their custody to the National Tracing Center to be traced.[29] In the absence of state and local laws, however, other law enforcement officials are not subject to this requirement.

For additional information about the records used in crime gun tracing, including additional information about the Tiahrt Amendments, see our summary on Maintaining Records and Reporting Gun Sales.[30]

SUMMARY OF STATE LAWS ADDRESSING FIREARMS TRAFFICKING

The strongest laws against firearms trafficking are those that require a background check before any transfer of a firearm. See our summary on Universal Background Checks & the Private Sale Loophole for information about these laws.[31] See also our summaries on:

- Dealer Regulations;
- Gun Shows;
- Maintaining Records and Reporting Gun Sales;
- Sales of Multiple Guns; and
- Reporting Lost or Stolen Firearms.

Some states, including California, Connecticut, Maryland, and Massachusetts, have additional strong laws that may be used to prosecute firearms traffickers, as described below.

1. ***State Laws that Prevent Transfers to Traffickers:*** Apart from the laws mentioned above, the strongest laws against firearms trafficking prohibit any sale or transfer of a firearm where the buyer intends to subsequently transfer or resell the firearm to a third party without a background check. The buyer or transferee in this situation may be a "straw purchaser," i.e., someone who is buying a gun on behalf of a specific person (referred to below as the "actual purchaser" or "true purchaser"), or he or she may simply intend to resell the firearms at a later time for profit without conducting a background check.

A. State Laws That Penalize Buyers Who Intend to Traffic the Firearm

About a third of the states have laws that prosecutors may use to penalize gun purchasers who intend to traffic the gun, in certain circumstances. California has the strongest anti-trafficking law of this type. California law prohibits acquiring a firearm for the purpose of selling, loaning, or transferring it in violation of California law. Unlike most states, California law requires a background check for every sale of a firearm. Hence, any person who acquires a firearm in order to transfer it to someone else without a background check violates California law.[32]

Maryland, Massachusetts, and Pennsylvania also have strong laws aimed at buyers who intend to traffic the firearm. Massachusetts law prohibits any person from using any of the state's gun licenses for the purpose of purchasing a firearm for resale or to give it to an unlicensed person.[33]

The law in Maryland is more limited, because it presumes that the true purchaser played an active role in soliciting the person who filled out the required forms and underwent a background check. Maryland prohibits any person from knowingly or willfully participating in a "straw purchase" of a handgun or assault weapon. "Straw purchase" is broadly defined as a sale in which a person uses another, known as the straw purchaser, to: (1) complete the application to purchase; (2) take initial possession of the firearm; and (3) subsequently transfer the firearm to the person.[34]

Pennsylvania law requires a buyer of a handgun to affirm, on a form, that he or she is the "actual buyer" of the handgun, with a statement that a person is not the actual buyer if he or she is acquiring the firearm on behalf of another person, with an exception for gifts to certain family members.[35]

The remaining states only penalize a narrower category of "straw purchasers": those who purchase or acquire a firearm on behalf of, or with the intent to resell the firearm to, an individual who is prohibited by law from possessing a firearm. Some state laws, including those in Connecticut,[36] Colorado,[37] North Dakota,[38] and Virginia,[39] impose penalties if the initial buyer has a reason to know that the third party is prohibited from possessing firearms, even if he or she does not have actual knowledge of the third party's prohibited status.[40] Other state laws only impose penalties if the buyer actually knows that the third party is ineligible.[41]

B. State Laws That Penalize Individuals Who Transfer to Traffickers

Seven states (California, Connecticut, Maryland, Minnesota, New Jersey, Pennsylvania, and Rhode Island) have laws that may facilitate prosecution of individuals who transfer firearms to traffickers under certain circumstances.[42]

Maryland prohibits any person from transferring a handgun or assault weapon to a transferee that the transferor has reasonable cause to believe is a participant in a "straw purchase," as defined above.[43]

California prohibits a person from transferring a firearm to any person he or she has cause to believe is not the actual transferee of the firearm, provided he or she knows that the firearm is to be subsequently transferred illegally.[44]

Rhode Island prohibits any person from selling a handgun to someone who he or she has reasonable cause to believe is providing false information.[45] Minnesota has a similar law that applies to handguns and assault weapons.[46]

Pennsylvania penalizes any seller who knowingly or intentionally sells, delivers or transfers a firearm "under circumstances intended to provide a firearm to" any person who is unqualified or ineligible to possess a firearm under Pennsylvania law.[47] Connecticut law prohibits a person from directly or indirectly causing a firearm to come into the possession of another individual that the transferor knows or has reason to believe is prohibited from possessing a firearm under state or federal law.[48] New Jersey enacted a law in 2013 that prohibits a licensed dealer from selling or transferring a firearm to a person knowing that the person intends to sell, transfer, assign, or otherwise dispose of that firearm to a person who is disqualified from possessing a firearm under state or federal law.[49]

In addition, although federal law requires licensed dealers to conduct background checks, ATF does not have the resources to fully enforce this requirement. As a result, state laws that mirror the federal requirement enable prosecution of dealers who sell firearms "off the books" to ineligible individuals. See our summary on Background Check Procedures for information about such laws.

2. State Laws That Prohibit Persuading a Seller to Transfer a Firearm Knowing It is Illegal

A weaker set of laws, including laws in Alabama,[50] Louisiana[51] and West Virginia,[52] prohibit any person from knowingly soliciting, encouraging, persuading, or enticing a dealer or other firearm seller to transfer a firearm under circumstances the person knows would violate federal or state law.[53] Many of these laws apply to ammunition sales as well. Similarly, Georgia[54] and Virginia penalize any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm other than to the actual buyer. Virginia also penalizes any other person who willfully and intentionally aids or abets such person. Unlike the federal Form 4473, Virginia law defines "actual buyer" to mean a person who executes the required consent form, or other such firearm transaction records as required by federal law.[55]

3. State Laws that Penalize the Actual Buyer in a Straw Purchase

A small number of states have laws that allow the prosecution of the actual buyer in a straw purchase situation, even if the straw purchase was ultimately unsuccessful.[56] Connecticut[57] and Virginia[58] penalize any ineligible buyer who solicits another person to purchase a firearm on behalf of that person.[59] Maryland penalizes any willing participant in a straw purchase, as defined above.[60] New Jersey prohibits causing someone else to give false information when acquiring a firearm.[61] Other

states, including Kentucky,[62] Missouri,[63] and West Virginia,[64] penalize a person who willfully procures another person to entice a firearm seller to transfer a firearm knowing the transfer is illegal.[65]

4. State Laws that Prohibit Providing False Information in a Firearms Transfer

Most states prohibit providing false information in connection with a firearms transfer.[66] In eight states (Colorado,[67] Connecticut,[68] Illinois,[69] New York,[70] Oregon,[71] Pennsylvania,[72] Utah[73] and Virginia[74]), this law applies to sellers as well as buyers. In other states, including Delaware,[75] Missouri,[76] and Oklahoma,[77] the law is no broader than federal law, because it only applies to "materially false information," which is defined as information that portrays an illegal transaction as legal or a legal transaction as illegal, and only if the information is intended or likely to deceive the seller.[78]

5. State Laws to Aid Enforcement Agencies in Anti-Trafficking Efforts

Connecticut, Maryland, New York and the District of Columbia have established programs to help law enforcement combat gun trafficking.[79] Connecticut has created a statewide firearms trafficking task force for the "effective cooperative enforcement" of state laws concerning the distribution and possession of firearms. This task force, composed of municipal and state law enforcement officers, is tasked with identifying and prosecuting traffickers, tracking and removing illegally possessed firearms, and coordinating with other law enforcement agencies within and without the state.[80]

The District of Columbia has created a "Firearms Bounty Fund" that makes payments of cash rewards to anyone who provides a tip that leads to the conviction of a gun trafficker.[81] Maryland has established a Cease Fire Grant Program to help fund activities aimed at reducing gun trafficking, [82] and New York has established a gun trafficking interdiction program to implement and fund a strategy for the interdiction of guns illegally entering New York from supplier states.[83]

6. State Laws Requiring the Tracing of Crime Guns: Five states (Connecticut, Illinois, New Jersey, New York, and Pennsylvania) have laws requiring law enforcement to use tracing information to identify the source of a recovered firearm.[84]

7. *State Laws Regulating "Community Guns":* A "community gun" is a firearm generally hidden away in a location known to a small group of individuals, such as members of the same gang, who then access the weapon when it is needed to commit criminal activity.[85] States have begun to respond to the increasing use of community guns in dense urban areas. New Jersey, for example, prohibits the possession, use, or transfer of a "community gun," which is defined as a firearm that is transferred among an association of two or more people who, while possessing the firearm, engage in criminal activity.[86] New York also prohibits the use of "community guns," but requires that at least one person sharing the weapon must be prohibited from possessing firearms.[87]

FEATURES OF COMPREHENSIVE FIREARMS TRAFFICKING LAWS

The features listed below are intended to provide a framework from which policy options may be considered. A jurisdiction considering new legislation should consult with counsel.

- Any licensed dealer or unlicensed seller or transferor of a firearm must conduct a background check on the transferee[88]
- State law penalizes anyone who:
  - Acquires a firearm with the intent to transfer it to anyone else without a background check *(California, Massachusetts)*
  - Sells or transfers a firearm under circumstances where the transferor reasonably should know that the transferee intends to transfer the firearm to a third party without a background check *(Maryland penalizes anyone who sells or transfers a firearm to someone with reason to believe that the person is a participant in a straw purchase)*
  - Solicits someone else to acquire a firearm on his or her behalf, even if the person is ultimately unable to acquire the firearm *(Connecticut, Virginia)*
- Any false statement made in connection with a firearms transfer is penalized, even if the statement is not likely to deceive the seller; this penalty also applies to false statements made by sellers, including licensed firearms dealers *(Colorado, Connecticut, Illinois, New York, Oregon, Pennsylvania, Utah, Virginia)*
- Law enforcement must cooperate with other agencies to investigate and prosecute firearms traffickers *(Connecticut)*
- Law enforcement must identify the source of any recovered firearm, using trace information if necessary *(Connecticut, Illinois, New York, Pennsylvania)*
- State law prohibits the possession, transfer, or use of a "community gun," defined as a firearm that is transferred among an association of two or more people who, while possessing the firearm, engage in criminal activity *(New Jersey)*

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[1] *See* William J. Krouse, Congressional Research Service, *Gun Control Legislation* 19 (Nov. 14, 2012) at http://assets.opencrs.com/rpts/RL32842_20121114.pdf.

[2] See Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix-x (June 2000), at http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf. Additional research on this topic is described in our summary on Dealer Regulations.

[3] *Id.* at xi.

[4] *Id.* at 18.

[5] For information on the ease by which straw purchases of guns can be made, *see* Mayors Against Illegal Guns, *Inside Straw Purchasing: How Criminals Get Guns Illegally*, at http://www.mayorsagainstillegalguns.org/downloads/pdf/inside-straw-purchases.pdf.

[6] *Following the Gun, supra* note 2, at ix, xi., 18. ATF's trafficking investigations during this period that specifically involved youth and juveniles found that the source of 50.9% of the trafficked guns were via straw purchasers or straw purchasing rings. Bureau of Alcohol, Tobacco and Firearms, U.S. Dep't of Treasury, *Commerce in Firearms in the United States* 22 (Feb. 2000), at http://permanent.access.gpo.gov/lps4006/020400report.pdf.

[7] Office of the Inspector General, U.S. Dep't of Justice, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows* v-vi (June 2007), at http://www.justice.gov/oig/reports/ATF/e0707/final.pdf. From 2004-2006, ATF conducted 202 investigative operations at 195 guns shows, or roughly 3% of the gun shows held nationwide during this period. The investigations resulted in 121 arrests and the seizure of 5,345 firearms. *Id*. at iv-v.
[8] The City of New York, *Gun Show Undercover: Report on Illegal Sales at Gun Shows* 6, 20-23 (Oct. 2009), at http://www.nyc.gov/html/om/pdf/2009/pr442-09_report.pdf. The City's investigations took place at seven gun shows in Nevada, Ohio and Tennessee from May through August 2009. *Id*. at 13.
[9] *Id*. at 20. A study of more than 1,000 gun-related prosecutions, including interviews with over 100 witnesses, found that, while some gun dealers and employees are able to identify straw purchases and will reject these sales, others are willing to sell guns despite suspicions that a sale is a straw purchase, and some gun dealers even coach customers on how to conduct a straw purchase. Mayors Against Illegal Guns, *Inside Straw Purchasing: How Criminals Get Guns Illegally*, at http://www.mayorsagainstillegalguns.org/downloads/pdf/inside-straw-purchases.pdf.
[10] *See* Garen J. Wintemute, *Gun Shows Across a Multistate American Gun Market: Observational Evidence of the Effects of Regulatory Policies,* 13 Inj. Prevention 150, 153-54 (2007), at http://injuryprevention.bmj.com/content/13/3/150.full.pdf.
[11] Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* (Sept. 2010), at http://www.tracetheguns.org/report.pdf; Brain Knight, *State Gun Policy and Cross-State Externalities: Evidence from Crime Gun Tracing,* NBER Working Paper No. 17469 (Sept. 2011), at https://www.princeton.edu/rppe/speaker-series/speaker-series-2011-12/Knight.pdf.
[12] *Id.* at 1.
[13] Sari Horwitz and James V. Grimaldi, *ATF's Oversight Limited in Face of Gun Lobby*, Wash. Post, Oct. 26, 2010, at http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505823.html?sub=AR.
[14] *Id. See also* Mayors Against Illegal Guns, *A Blueprint for Federal Action on Illegal Guns: Regulation, Enforcement, and Best Practices to Combat Illegal Gun Trafficking, Section III. ATF Resources & Structure* (Aug. 2009), at http://www.mayorsagainstillegalguns.org/downloads/pdf/blueprint_federal_action.pdf.
[15] U.S. Gov't Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 3, 15 (June 2009), at http://www.gao.gov/products/GAO-09-709. Further estimates finding the U.S. as the overwhelming source of illegal guns in Mexico are even higher: around 90% to 95% of guns seized in drug crimes in Mexico originate in the U.S. Spencer S. Hsu, *U.S.-Mexico Task Force Seeks Renewed Ban on Assault Weapons*, Wash. Post, Nov. 13, 2009 at http://www.washingtonpost.com/wp-dyn/content/article/2009/11/12/AR2009111211331.html (reporting statements from Mexican officials finding that 90% of guns seized in drug crimes in Mexico and submitted for tracing to ATF originate in the U.S., including most assault rifles); and Alicia A. Caldwell, *ATF: Most Illegal Guns in Mexico Come from U.S.*, Associated Press, Aug. 11, 2008 (ATF states that nearly all illegal guns seized in Mexico – 90 to 95 percent – originally come from the U.S.). U.S. guns have also been shown to play a significant role in gun violence in Guatemala. Colby Goodman, *U.S. Firearms Trafficking to Guatemala and Mexico*, Woodrow Wilson International Center for Scholars (April 2013), at http://www.wilsoncenter.org/sites/default/files/US%20Firearms%20to%20Guatemala%20and%20Mexico_1.pdf.
[16] *See* Damien Cave, *At a Nation's Only Gun Shop, Looking North in Disbelief,* N.Y. Times, July 24, 2012, at http://www.nytimes.com/2012/07/25/world/americas/in-mexico-a-restrictive-approach-to-gun-laws.html.
[17] U.S. Gov't Accountability Office, *supra* note 15, at 24–28.
[18] Colby Goodman and Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges* 198, Woodrow Wilson International Center for Scholars, September 2010, at http://www.wilsoncenter.org/sites/default/files/Chapter%206-%20U.S.%20Firearms%20Trafficking%20to%20Mexico,%20New%20Data%20and%20Insights%20Illuminate%20Key%20Trends%20and%20Challenges.pdf.
[19] Mayors Against Illegal Guns, *Issue Brief: The Movement of Illegal Guns Across the U.S.-Mexico Border,* Sept. 2010, at http://www.mayorsagainstillegalguns.org/downloads/pdf/issue_brief_mexico_2010.pdf.
[20] *Id.* at 3.
[21] 18 U.S.C. § 922(g).
[22] 18 U.S.C. § 922(d).
[23] *See Gun Control Legislation, supra* note 1, at 21-25. 3. Under federal law, a handgun purchased over the Internet or via mail-order from a seller in a different state must be shipped to a dealer in the purchaser's home state. A person may purchase or otherwise acquire a rifle or shotgun, in person, at a licensee's premises in any state, provided the sale complies with state laws applicable in the state of sale and the state where the purchaser resides. A person may borrow or rent a

firearm in any state for temporary use for lawful sporting purposes. 18 U.S.C § 922(a)(3), (5), (b)(3). However, in the absence of state or local laws on this issue, only licensed dealers, and not unlicensed private sellers, are required to view purchasers' identification documents and verify the state of residence of the purchase, making it all too easy for traffickers to transfer firearms across state lines.

[24] 18 U.S.C. §§ 922(a)(6), 924(a)(1)(A).

[25] The instructions for Form 4473 specify that a person is the actual transferee/buyer if he or she is buying the gun as a gift for someone else.

[26] *See Following the Gun, supra* note 2, at 5. Federal law also makes it unlawful for anyone to transport, receive, possess, sell, or otherwise dispose a firearm knowing or having reasonable cause to believe it was stolen, 18 U.S.C. § 922(i), (j), and makes it unlawful for anyone to possess, transport, ship, or receive, a firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered. 18 U.S.C. § 922(k).

[27] 28 C.F.R. § 0.131(f).

[28] Consolidated and Further Continuing Appropriations Act 2012, Pub. L. 112 P.L. 55; 125 Stat. 552, 4 (2011).

[29] Memorandum of January 16, 2013, Tracing of Firearms in Connection With Criminal Investigations, Memorandum for the Heads of Executive Departments and Agencies, 78 Fed. Reg. 4301 (The President January 22, 2013).

[30] See also our webpage on the Tiahrt Amendments at http://smartgunlaws.org/federal-law-on-tiahrt-amendments/.

[31] An alternative approach penalizes anyone who sells or transfers a firearm to a person who is prohibited from possessing it. Connecticut imposes strict criminal liability in this situation with respect to handguns, meaning that the person transferring a handgun to a prohibited person is guilty of a criminal offense regardless of whether he or she knew or had reason to know the transferee was a prohibited person. Conn. Gen. Stat. § 29-33(a), (i). Like federal law, other states prohibit sale or transfer of a firearm to a person the transferor knows or has reason to believe is ineligible to possess it.

[32] Cal. Penal Code §§ 27515, 27520.

[33] Mass. Gen. Laws ch. 140, § 131E(b).

[34] Md. Code Ann., Pub. Safety §§ 5-101(v), 5-114(b)(viii), 5-134(b)(13), 5-136, 5-141(a), *See* Md. Code Regs. 29.03.01.24.

[35] 18 Pa. Cons. Stat. § 6111(b)(1).

[36] Conn. Gen. Stat. § 29-37j.

[37] Colo. Rev. Stat. § 18-12-111.

[38] N.D. Cent. Code § 62.1-02-08.

[39] Va. Code Ann. § 18.2-308.2:2(M).

[40] *See also* Del. Code Ann. tit. 11, § 1455; R.I. Gen. Laws § 11-47-37.

[41] *See e.g.,* Fla. Stat. § 790.065(12)(d); 720 Ill. Comp. Stat 5/24-3.5; Ind. Code § 35-47-2-7(c); Neb. Rev. Stat. § 69-2422; N.Y. Penal Law § 265.17(2), Utah Code Ann. § 76-10-527. *See also* Ohio Rev. Code § 2923.20(A)(2) (prohibiting possessing a firearm in order to "recklessly" sell, lend, give, or furnish it to a prohibited person).

[42] In addition, Ohio law penalizes anyone who sells or furnishes a firearm knowing or having reason to know that the person is purchasing or receiving the firearm for the purpose of selling or furnishing the firearm illegally to a person who is under age. Ohio Rev. Code Ann. § 2923.21(A).

[43] Md. Code Ann., Pub. Safety §§ 5-101(v), 5-114(b)(viii), 5-134(b)(13), 5-136, 5-141(a), See Md. Code Regs. 29.03.01.24.

[44] Cal. Penal Code § 27515.

[45] R.I. Gen. Laws §§ 11-47-23, 11-47-37.

[46] Minn. Stat. § 624.7132, subd. 15(a)(2), (4).

[47] 18 Pa. Cons. Stat. Ann. § 6111(g)(2).

[48] Conn. Gen. Stat. § § 53-202aa.

[49] N.J. Stat. § 2C:39-10(a)(4).

[50] Ala. Code § 13A-11-58.1.

[51] La. Rev. Stat. § 14:95.1.3.

[52] W. Va. Code § 61-7-10(f).

[53] *See also* Ky, Rev. Stat. § 527.090; Miss. Code § 97-37-105; Mo. Rev. Stat. § 571.063(2)(1); Okla. Stat. Ann. tit. 21, § 1289.28(C); N.C. Gen. Stat. § 14-408.1(b); Utah Code Ann. §§ 76-10-503(9).

[54] Ga. Code Ann. § 16-11-113.

[55] Va. Code Ann. § 18.2-308.2:2(G), (K), (L1).

[56] The actual buyer in a straw purchase situation may also be prosecuted as an ineligible buyer attempting to purchase a firearm. For example, New York prohibits a person from attempting to purchase a firearm knowing that he or she is

ineligible to possess it. N.Y. Penal Law. § 265.17(1). Georgia has a similar law limited to certain felons. Ga. Code § 16-11-131(b.1).
[57] Conn. Gen. Stat. § 29-37j.
[58] Va. Code Ann. § 18.2-308.2:2(M), (N).
[59] Oregon prohibits a person who knows that he or she is ineligible to possess a firearm but attempts to purchase a firearm. Or. Rev. Stat. § 166.425.
[60] Md. Code Ann. Pub. Safety §§ 5-101(v), 5-114(b)(viii), 5-134(b)(13), 5-136, 5-141(a). *See* Md. Code Regs. 29.03.01.24.
[61] N.J. Stat. Ann. § 2C:39-10(c), (d), (g).
[62] Ky. Rev. Stat. § 527.090.
[63] Mo. Rev. Stat. § 571.063.
[64] W. Va. Code § 61-7-10(f).
[65] *See also* La. Rev. Stat. § 14:95.1.3; N.C. Gen. Stat. § 14-408.121; Okla. Stat. Ann. tit. 21, § 1289.28.
[66] A Tennessee administrative regulation states that a firearm transfer must be denied if the purchaser "provide[s] false information to purchase or transfer a firearm." Tenn. Code Ann. § 39-17-1316(q)(1); Tenn. Comp. R. & Regs. R. 1395-1-3-.02(30), 1395-1-3-.05(1)(n).
[67] Colorado provides that it is unlawful for any person, in connection with the acquisition or attempted acquisition of a firearm from any transferor, to willfully make any false statement or to exhibit any false identification that is intended or likely to deceive such transferor with respect to any fact material to the lawfulness of the sale or other disposition of such firearm under federal or state law. Colorado also specifically penalizes anyone who gives false information in connection with the making of a record of a handgun transfer. Colo. Rev. Stat. §§ 12-26-103, 24-33.5-424(10).
[68] Conn. Gen. Stat. §§ 29-34, 29-37e.
[69] 720 Ill. Comp. Stat. 5/24-3.5(c).
[70] N.Y. Penal Law § 175.30.
[71] Or. Rev. Stat. § 166.416.
[72] 18 Pa. Cons. Stat. Ann. § 6111(g)(4).
[73] Utah penalizes anyone who provides to a dealer or other person what the person knows to be "materially false information" with intent to deceive the dealer or other person about the legality of a sale, transfer or other disposition of a firearm. "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal. However, Utah also penalizes any person who willfully and intentionally makes a false statement of the information required for a criminal background check. Utah Code Ann. §§ 76-10-503(9), 76-10-527.
[74] Va. Code Ann. §§ 18.2-204.1(C), 18.2-308.2:2(G), (K).
[75] Del. Code Ann. tit. 11, §§ 1448A(f).
[76] Mo. Rev. Stat. § 571.063.
[77] Okla. Stat. Ann. tit. 21, § 1289.28.
[78] 18 U.S.C. § 922(a)(6). In some states, such as Missouri and Oklahoma, this law also applies to ammunition sales, as does the federal law.
[79] In addition, a number of states impose higher penalties for the illegal transfer of firearms in certain gun trafficking situations. For example, New Jersey prohibits conspiring with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to unlawfully manufacture, transport, ship, sell or dispose of any firearm. N.J. Stat. Ann. § 2C:39-16. New Jersey also prohibits any person from knowingly bringing a firearm into the state for the purpose of an unlawful transfer. N.J. Stat. Ann. § 2C:39-9(i). Texas prohibits knowingly engaging in the business of transporting or transferring a firearm that the person knows was illegally acquired. A person is considered to be "engaged in the business of transporting or transferring a firearm" if the transaction is for profit or any other form of payment, or if the person engages in the conduct on more than one occasion. Tex. Penal Code § 46.14.
[80] Conn. Gen. Stat. § 29-38e, 54-36n.
[81] D.C. Code Ann. § 7-2531.04.
[82] Md. Code Ann., Pub. Safety § 5-504.
[83] NY CLS Exec § 230.
[84] Conn. Gen. Stat. § 54-36n; Ill. Comp. Stat. 5/24-8; N.J. Stat. §§ 52:17B-9.18, 52:17B-5.3; N.Y. Exec. Law § 230; 18 Pa. Cons. Stat. Ann. § 6127. New Jersey's law was enacted in 2013. See 2013 N.J. ALS 162.
[85] For more information on community guns, see Michael Wilson, *In Mailbox: A Shared Gun, Just for the Asking*, N.Y. Times, Feb. 10, 2012, *available at* http://www.nytimes.com/2012/02/11/nyregion/hidden-communal-guns-are-more-common.html.

[86] N.J. Stat. Ann. §§ 2C:39-4a(2).
[87] N.Y. Penal Law § 115.20. Idaho makes it illegal to knowingly sell or transfer a firearm to a gang member. Idaho Code Ann. § 18-8505.
[88] Additional information on jurisdictions requiring universal background checks is contained in our summary on Universal Background Checks & the Private Sale Loophole.

Local Authority to Regulate Firearms and Ammunition

Background

"Preemption" occurs when a higher level of government removes regulatory power from a lower level of government. With very narrow exceptions, Congress has not expressly preempted state or local laws regulating firearms and ammunition. Most state constitutions generally allocate authority to local governments to regulate in the interests of the public health, safety and welfare. At the urging of the gun lobby, however, most states have explicitly removed authority from local governments to regulate guns and ammunition, thereby creating a dangerous exception to the traditional rule of local authority.

State preemption statutes threaten public safety because they prevent local governments from implementing customized solutions to gun violence in their communities and impede their ability to fill regulatory gaps created by inaction at the state and federal level. Moreover, by mandating a one-size-fits-all approach to firearms regulation, preemption statutes deprive the public of a critical problem-solving resource: local innovation.

Broad preemption statutes ignore important local variations that may necessitate distinct approaches to the problem of gun violence. A regulation in a densely-populated urban area may not be appropriate in a rural setting and vice versa. Moreover, there is often a large disconnect between statewide political priorities and local public safety needs. Local officials are more responsive to community needs, as they see the devastation caused by gun violence firsthand. For example, in 2009, the Tennessee Legislature legalized the carrying of concealed handguns in all public parks across the state.[1] However, the statute contained a provision allowing local governments to opt out within a specified time frame, and roughly 70 cities and counties, including urban centers such as Nashville and Memphis, voted to keep concealed weapons out of their parks.[2] Without the opt-out provision, Tennessee's preemption clause would have denied these localities the ability to decide the issue based on their particular public safety needs.

Restrictions on state and federal resources also make an extra level of local involvement necessary to properly enforce many gun laws. As detailed in our summary on Dealer Regulations, the Bureau of Alcohol, Tobacco, Firearms & Explosives and state law enforcement agencies generally lack the resources or authority to properly oversee all the firearms businesses in their jurisdictions. In states without broad preemption statutes, local governments may fill this gap by imposing additional common sense requirements on gun dealers, such as employee background checks and mandatory on-site security systems to help ensure that these businesses operate responsibly.

In addition to hindering local flexibility, preemptions statutes also deny states access to innovative gun violence prevention policies. Local governments are often the source of cutting-edge laws to reduce gun violence which are later adopted at the statewide level. Over the last two decades, California has utilized this approach to great effect, with local governments in California adopting over 300 gun laws since the mid-1990s. Several of the state's important firearms regulations, including a ban on the sale of "junk guns" and a law requiring that a locking device be included with every purchased firearm, originated at the city level and were later enacted by the legislature. More

recently, local efforts to regulate ammunition sales have proven successful, as detailed in our summary on Ammunition Regulations. These successful local initiatives were only possible because California is among the handful of states that do not have an expansive preemption statute.

Local authorities across the country have expressed the desire to implement common sense ordinances to protect their citizens from gun violence. However, in states with broad preemption statutes, local governments are often powerless to fill dangerous gaps in state and federal law. A September 2010 report by Mayors Against Illegal Guns found that states that do not allow local control of gun laws are the sources of guns recovered from crimes in other states at a rate more than four times greater than states that do allow local governments to enact gun laws.[3] Accordingly, the ability of local governments to enact strong gun laws can help prevent gun trafficking into other states.

Federal Law

Under the Supremacy Clause of Article VI of the U.S. Constitution, a federal law is binding on all state and local governments so long as Congress duly enacted the law pursuant to one of its limited powers. Federal preemption of state law is uncommon in the area of firearms regulation, however.

Congress may make its intention to preempt an area of state law clear by expressly stating its intent in the language of a statute. Absent such a statement, when considering a challenge to a state or local law based on the claim that regulation of the subject has been preempted by Congress, courts presume that the federal government does not intend to preempt state and local authority.[4]

Congress has not expressly preempted the broad field of firearms or ammunition regulation. Furthermore, courts have held that congressional regulation of firearms does not create a scheme so pervasive that it leaves no room for state and local law.[5] Thus, absent a specific, irreconcilable conflict between a challenged state or local firearms or ammunition law and a federal enactment, there is no federal preemption of that state or local law.

SUMMARY OF STATE LAWS REGARDING LOCAL AUTHORITY TO REGULATE FIREARMS AND AMMUNITION

States differ considerably in how and to what extent they preempt the regulation of firearms and ammunition. Specific questions about whether a particular type of local regulation may be preempted in any given state involve complex inquiry and analysis of existing case law. The Law Center is available to consult with officials and advocates on specific questions relating to their jurisdiction.

Generally, preemption occurs in two ways: through express preemption and implied preemption. Express preemption occurs when a state provides explicitly, in the language of a statute or constitutional provision, that it intends to remove a lower government's regulatory authority. For example, the South Dakota legislature expressly preempts county legislative authority to regulate most aspects of firearms and ammunition with the following statutory language:

> No county may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.[6]

Absent an express statement, courts may infer an intent to take over a field of regulation, even though there is no express legislative statement to that effect. This is referred to as implied preemption. In general, courts may find that a local law is preempted if it conflicts directly with state law by requiring what the state law prohibits, or prohibiting what the state law requires. In addition, when a comprehensive scheme of state regulation exists on a particular subject matter, many state courts find that the state legislature thereby indicated an intent to assert exclusive authority over that subject matter.[7]

The existence and degree of express state preemption of local firearms and ammunition regulation varies from state to state, as do the tests courts use to determine whether implied preemption exists.

The discussion below groups the states into three categories based on the extent of **express** preemption of local authority to regulate firearms and ammunition and then comments on issues of **implied** preemption where appropriate:

1. States with no provision or statute expressly preempting local regulation of firearms or ammunition: *Connecticut, Hawaii, Massachusetts, New Jersey, New York*

In Connecticut, Hawaii, Massachusetts, New Jersey and New York, there are no state laws expressly preempting local authority to regulate firearms or ammunition. In Connecticut, Massachusetts, New Jersey and New York, courts have interpreted the degree to which local governments can regulate firearms in the absence of express preemption. Although each local law must be evaluated on a case-by-case basis, some general preemption principles for each state are outlined below.[8]

Connecticut: In Connecticut, a local government is preempted from regulating a subject matter when the state has demonstrated an intent to occupy the entire field of regulation in that area or when the ordinance at issue irreconcilably conflicts with a state law.[9] Connecticut courts have not found that the legislature has demonstrated an intent to occupy the field of firearms and ammunition regulation.[10] Thus, absent a direct conflict with state law, broad local firearms and ammunition regulation appears to be possible.

Hawaii: Hawaii courts, like those in Connecticut, will generally find that a local ordinance is preempted when it addresses an area the state has intended to regulate exclusively and uniformly, and/or when it conflicts with state law.[11] The Law Center is not aware of any published case interpreting the extent of local authority to regulate firearms and ammunition in Hawaii. In the absence of any contrary authority, it appears that local governments have broad authority to regulate firearms and ammunition unless there is a conflict with state law.

Massachusetts: When presented with a preemption challenge, Massachusetts courts consider whether an inference can be made that the legislature intended to preempt the subject matter

addressed by the ordinance at issue. Courts may infer such intent when a local law frustrates the purpose of a state law either directly or due to a comprehensive scheme enacted by the legislature.[12] Courts also may find that local law is preempted if it conflicts with state law.[13] Thus, so long as there is no conflict with state law, it appears that local governments may regulate broadly in the area of firearms and ammunition. Furthermore, even when a state law and a local law address the same subject area, a stricter local law may be permissible. For example, the Supreme Judicial Court of Massachusetts upheld a local firearm discharge ban, finding that it did not frustrate the state's hunting license law even though it was more stringent than state law concerning the safe use of firearms.[14]

New Jersey: New Jersey municipalities enjoy express authority to regulate and prohibit the sale and use of firearms.[15] However, local governments may not enact regulation that conflicts with any policy of the state.[16] In the absence of a conflict, local governments appear to have broad authority to regulate firearms and ammunition, and at least in one area of firearms regulation, are authorized to enact local laws that are stricter than state laws addressing the same subject.[17] In a case upholding a local firearms discharge ordinance, the New Jersey Supreme Court concluded that a state law regulating hunting was not intended to preempt a stricter local law.[18]

New York: New York courts use a test to evaluate preemption challenges, which is similar to many of those described above – a local law may not conflict with a state law or regulate in an area that is occupied by the state.[19] New York courts have not found that the state has preempted the broad field of firearms and ammunition regulation. Courts have upheld several local firearms laws against preemption challenges and have found that the state has intended to occupy only limited areas of firearms regulation, such as the regulation of air guns.[20] Thus, local governments in New York appear to have broad authority to regulate firearms and ammunition absent conflict with state law.

2. States with provisions expressly preempting local regulation of one or more aspects of firearms or ammunition but otherwise permitting broad regulation of firearms and ammunition at the local level: *California, Nebraska*

In California and Nebraska, local governments retain authority to regulate firearms and ammunition, but the state legislature has expressly removed this authority in certain areas.

California: California expressly preempts local governments from regulating in the areas of registration or licensing of firearms; manufacture, sale or possession of imitation firearms; and licensing or permitting with respect to the purchase, ownership, possession, or carrying of a concealable firearm in the home or place of business.[21] In other areas, courts have found that local governments have a great deal of authority to regulate firearms and ammunition in their communities.[22] For example, courts have rejected preemption challenges to many local firearms and ammunition laws, including ordinances regulating the location and operation of firearms dealers, and the sale and possession of firearms and ammunition on county-owned property.[23]

Nebraska: In 2009, Nebraska enacted a law depriving cities and villages of "the power to regulate the ownership, possession, or transportation of a concealed handgun," at least as applied to people

authorized to carry a concealed handgun under Nebraska law.[24] Like most states, Nebraska requires a person to obtain a permit to carry a concealed handgun in public. In 2010, Nebraska clarified that cities and villages are also prohibited from requiring the registration of a concealed handgun owned, possessed, or transported by a holder of a concealed carry permit.[25] According to the Attorney General of Nebraska, these provisions invalidated Omaha's handgun registration requirement as applied to concealed carry permit holders.[26] For more information about concealed carry permits, see our summary on Carrying Concealed Weapons. For more information about the registration of firearms, see our summary on the Registration of Firearms. There are no laws expressly limiting local authority to regulate firearms or ammunition in Nebraska outside of the context of concealed handgun permit holders.

3. States that have enacted broad preemption statutes

In the remaining 43 states, local governments possess limited authority to regulate firearms and ammunition. The preemption statutes in these states vary, but each one expressly preempts all, or substantially all, aspects of local firearms and/or ammunition regulation. In many of these states there are statutory exceptions that may permit some local firearms and/or ammunition regulation.[27] The Law Center is available to assist public officials and activists in evaluating potential local strategies to prevent gun violence.

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[1] Tenn. Code Ann. § 39-17-1311(b)(1)(I), (J).
[2] *Id*. § 39-17-1311(d), (e). Legal Community Against Violence, *The 2010 Report: Recent Developments in Federal, State, and Local Gun Laws* 33 (Aug. 2010), at http://smartgunlaws.org/the-2010-report-recent-developments-in-federal-state-and-local-gun-laws/.
[3] Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 24-25 (Sept. 2010), at http://www.tracetheguns.org/report.pdf.
[4] *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 285 (E.D.N.Y. 1995), *aff'd*, 97 F.3d 681 (2d Cir. 1996) (upholding New York City's assault weapon ban against a federal preemption challenge).
[5] *Id*.
[6] S.D. Codified Laws § 7-18A-36.
[7] *See, e.g., Cal. Rifle & Pistol Ass'n v. City of W. Hollywood*, 78 Cal. Rptr. 2d 591 (Cal. Ct. App. 1998) (discussing the doctrine of implied preemption in California and rejecting a preemption challenge to a local ban on Saturday Night Specials).
[8] Please note that the authority enjoyed by different types of local governmental entities varies from state to state. (For example, a county may have less authority to regulate than that enjoyed by a city.)
[9] *Dwyer v. Farrell*, 475 A.2d 257 (Conn. 1984) (holding that a New Haven law regulating handgun sales conflicted with an existing state law and thus was preempted).
[10] Note that Connecticut courts have found that the area of hunting regulation has been occupied by the state. *See, e.g., Kaluszka v. Town of East Hartford*, 760 A.2d 1282 (Conn. Super. Ct. 1999).
[11] *Richardson v. City and County of Honolulu,* 868 P.2d 1193 (Haw. 1994) (holding that a local ordinance providing a mechanism for transfer of property interests was not preempted by state law).
[12] *Connors v. City of Boston*, 714 N.E.2d 335, 337-38 (Mass. 1999).
[13] *Id*.
[14] *Town of Amherst v. Att'y Gen.*, 502 N.E.2d 128 (Mass. 1986).
[15] N.J. Stat. Ann. § 40:48-1(18). "Municipalities" refers to cities, towns, townships, villages and boroughs, but not counties. N.J. Stat. Ann. § 40:42-1. For additional sources of authority for municipalities and for counties, *see* N.J. Stat. Ann. §§ 40:48-2, 40:41A-27; N.J. Const. art. IV, § VII, ¶ 11.

[16] N.J. Stat. Ann. § 2C:1-5(d). A local law may conflict with a state policy by "exclusion" or "inclusion." *See, e.g., State v. Crawley*, 447 A.2d 565 (N.J. 1982); *Mack Paramus Co. v. Mayor and Council of Borough of Paramus,* 511 A.2d 1179 (N.J. 1986). *See also Overlook Terrace Management Corp. v. West New York Rent Control Bd.,* 366 A.2d 321 (N.J. 1976), in which the Supreme Court of New Jersey developed a five-part test for determining whether a local law is preempted by state law.

[17] *Township of Chester v. Panicucci*, 299 A.2d 385, 389 (N.J. 1973) ("[T]he prohibition against possession of a loaded gun, for the purpose of hunting, within a prescribed distance of an occupied dwelling or school playground simply represents a declaration of statewide policy of minimum regulation."). Despite this statutory and case law supporting municipal authority to regulate firearms, a superior court case invalidated a local firearms ordinance limiting handgun sales and purchases to one per person per 30-day period, on preemption grounds. In 2008, a New Jersey appeals court affirmed the ruling, on the grounds that state law preempted the local law. However, that appellate court opinion and judgment were vacated, and the appeal dismissed as moot, by the Supreme Court of New Jersey because the state legislature adopted an identical 30-day handgun sales limitation while the Supreme Court appeal was pending. *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. City of Jersey City*, 201 N.J. 444 (2010).

[18] *Id.*

[19] *DJL Restaurant Corp. v. City of New York*, 749 N.E.2d 186, 190 (N.Y. 2001).

[20] *See, e.g., People v. Stagnitto,* 691 N.Y.S.2d 223 (N.Y. App. Div. 1999) (rejecting preemption challenge to city ordinance regulating assault weapons); *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193 (N.Y. Sup. Ct. 1994) (rejecting preemption challenge to ordinance banning assault weapons but finding regulation of manufacture, sale, and possession of air guns preempted by state law); *Grimm v. City of New York*, 289 N.Y.S.2d 358 (N.Y. Sup. Ct. 1968) (rejecting preemption challenge to ordinance requiring licensing and registration of rifles and shotguns); *People v. Del Gardo*, 146 N.Y.S.2d 350 (City Magis. Ct. 1955) (finding ordinance banning imitation handguns preempted by state law).

[21] Cal. Gov't Code § 53071 (preempting registration or licensing of commercially manufactured firearms); Cal. Gov't Code § 53071.5 (preempting regulation of the manufacture, sale or possession of imitation firearms); Cal. Penal Code § 25605(b) (prohibiting permit or license with respect to the purchase, ownership, possession or carrying of a handgun in a residence or place of business).

[22] *See, e.g., Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420, 425 (Cal. Ct. App. 1997) ("That state law tends to concentrate on specific areas, leaving unregulated other substantial areas relating to the control of firearms, indicates an intent to permit local governments to tailor firearms legislation to the particular needs of their communities." Note however, that while the *Suter* court upheld an ordinance regulating the location and operation of firearms dealers, it struck down the portion of the ordinance regulating firearm storage).

[23] *Cal. Rifle and Pistol Ass'n, Inc. v. City of W. Hollywood*, 78 Cal. Rptr. 2d 591 (Cal. Ct. App. 1998) (upholding ordinance banning junk guns); *Suter*, 67 Cal. Rptr. 2d at 425 (upholding ordinance regulating the location and operation of firearms dealers); *Great Western Shows, Inc. v. County of Los Angeles*, 44 P.3d 120 (Cal. 2002) (upholding ordinance banning the sale of firearms and ammunition on county-owned property); *Nordyke v. King*, 44 P.3d 133 (Cal. 2002) (upholding ordinance banning possession of firearms and ammunition on county-owned property). In contrast, in *Doe v. City and County of San Francisco,* 186 Cal. Rptr. 380 (Cal. Ct. App. 1982), the court held that California Gov't Code § 53071 and Cal. Penal Code § 12026 (subsequently renumbered as § 25605) preempted a San Francisco ordinance banning handgun possession. Because the ordinance contained an exception for concealed weapons licensees, the court found the measure had the effect of creating a new class of persons who would be required to obtain a license in order to possess a handgun in their home or place of business. Similarly, in *Fiscal v. City and County of San Francisco,* 158 Cal. App. 4th 895 (Cal. Ct. App. 2008), the same court that decided the Doe case, held that a municipal ordinance prohibiting the sale, distribution, transfer and manufacture of all firearms and ammunition in San Francisco and banning possession of handguns by San Francisco residents was preempted by state law. The California Supreme Court declined to review the case.

[24] 2009 Neb. ALS 430 (codified as Neb. Rev. Stat. § 18-1703). See also Neb. Rev. Stat. Ann. §§ 14-102, 15-255, 16-227, 17-556, 69-2401, 69-2425.

[25] 2010 Neb. ALS 817, § 2.

[26] Op. Att'y Gen. 10008 (March 26, 2010), 2010 Neb. AG LEXIS 7.

[27] In 2006, in a 3-3 split decision, the Colorado Supreme Court affirmed a trial court ruling which found that state laws expressly preempting firearms regulation unconstitutionally infringed on Denver's home rule authority with respect to ordinances addressing the open carrying of firearms and banning assault weapons and Saturday night specials. *State v. City and County of Denver,* 139 P.3d 635 (Colo. 2006). The court also held, however, that Denver's ordinances addressing juvenile possession of firearms, carrying concealed firearms with a permit in a public park, and concealed weapon

permitting were invalid because they conflicted with state law. As a result, local jurisdictions in Colorado may enact ordinances that utilize some, but not all, policy options to reduce gun violence. But see *City of Cleveland v. State,* 128 Ohio St. 3d 135 (Ohio 2010) (rejecting a home rule challenge to Ohio's preemption statute).

Dangerous Trends in State Gun Laws

Most Americans, including those who own guns, are unaware of the extreme bills the corporate gun lobby pushes in states across the country each year. Far too often, these legislative efforts result in dangerous new state laws that endanger public safety. Several of the most irresponsible gun lobby laws that have been enacted include:

- "Stand Your Ground" or "Shoot First" Laws;
- Medical Gag Rules;
- State Right to Bear Arms Provisions Mandating the Use of "Strict Scrutiny;"
- Extreme Preemption Laws;
- Laws Allowing Guns in Parking Areas;
- Laws Allowing Guns Everywhere; and
- "Firearms Freedom Acts."

1. ***Stand Your Ground or Shoot First Laws:*** The most well-known of the gun lobby's extreme measures are "stand your ground" or "shoot first" laws. Although the first of these laws was enacted in Utah in 1994, they gained national attention in 2012 after the tragic death of 17-year-old Trayvon Martin in Sanford, Florida. Trayvon was shot and killed by neighborhood watch volunteer George Zimmerman, who had been carrying a concealed handgun and following the unarmed teen because he looked "suspicious." Zimmerman claimed he was acting in self-defense and successfully invoked Florida's extreme shoot first law, which had been on the books since 2005. The Florida law allows a person to use deadly force in a public place in self-defense, even if such force can be avoided by the person's retreat and provides blanket immunity from criminal prosecution and civil lawsuits.

The Trayvon Martin case demonstrates that shoot first laws threaten public safety, particularly when combined with permissive laws governing the carrying of concealed weapons (like those in Florida and in most states). **Shoot first laws encourage people to take the law into their own hands and act as armed vigilantes, often with deadly consequences.** The laws also have a profound impact on the criminal and civil justice systems, tying the hands of law enforcement and depriving victims of remedies. Despite these facts, shoot first laws have been adopted by nearly two dozen states nationwide.[1] Additional states permit the use of deadly force in self-defense in public with no duty to retreat through a combination of statutes, judicial decisions, and/or jury instructions.[2] These laws are generally less extreme than the Florida-style laws, however.

For a more detailed description of the Trayvon Martin case, and shoot first laws in general, see our summary on Shoot First Laws, available on our website at http://smartgunlaws.org/shoot-first-laws-policy-summary/.

2. ***Medical Gag Rule Laws:*** Gun owners often store their firearms unlocked and loaded, significantly increasing the chances that a child or unauthorized person will find the gun and use it to harm themselves or others.[3] **By counseling gun owners on the safe storage of firearms and ammunition, doctors can make a difference.** One study found that 64% of individuals who received verbal firearm storage safety counseling from their doctors improved their gun safety practices.[4]

Despite this promising statistic, the gun lobby is pushing laws that restrict the ability of medical practitioner to provide this information. In 2011, Florida enacted a National Rifle Association-sponsored bill that subjected health care practitioners who inquired into gun ownership to disciplinary action.[5]

One month after the bill was signed into law, a challenge was filed in the U.S. District Court for the Southern District of Florida, Miami Division. The challengers were six individual physicians and the Florida chapters of the American Academy of Pediatrics, the American Academy of Family Physicians, and the American College of Physicians.

The District Court granted a permanent injunction against the law finding that it violated the First Amendment's free speech guarantee and interfered with the flow of information within the doctor-patient relationship.[6] The court also rejected the argument that the law was necessary to protect patients' Second Amendment rights. This decision has been appealed to the Eleventh Circuit.

Montana is the only other state that has enacted a medical gag rule law.[7] Montana's law, adopted in 2013, requires medical providers to treat patients regardless of whether they are willing to discuss their ownership, possession or use of firearms.

3. ***State Right to Bear Arms Provisions Mandating the Use of "Strict Scrutiny":*** The constitutions of most states recognize a right to bear arms similar to the right guaranteed by the Second Amendment. Challenges to state firearms laws are often brought under a state's right to bear arms provision. Historically, however, courts have rarely struck down state firearms laws based on the state right to bear arms. Most courts have applied a reasonableness standard: as long as a law regulating firearms is rationally related to a legitimate governmental interest, it has been upheld under the state's constitutional right to bear arms.[8]

In most recent cases involving a claim that a gun law violates the Second Amendment, in contrast, courts have upheld the law if it meets "intermediate scrutiny," meaning that it is reasonably related to an important or significant governmental interest.[9] Intermediate scrutiny is a tougher legal standard than simple reasonableness.

Traditionally, judges look at legal precedent to determine what standard of review to use when reviewing a law before the court. A new gun lobby measure seeks to amend state constitutions, however, to make right to bear arms provisions even stricter than the Second Amendment by forcing judges to analyze gun laws under "strict scrutiny" - the most difficult judicial standard to satisfy. **This change puts even the most common sense firearms law in jeopardy and makes it easier for criminals to challenge state gun laws in court.**

Louisiana was the first state in the nation to adopt this type of law. In 2012, the voters of Louisiana approved an NRA-sponsored ballot initiative that amended the state constitution's right to bear arms provision to force courts considering state constitutional challenges to gun laws to apply strict scrutiny.[10]

Several months after Louisiana amended its constitution, an Orleans Parish judge overturned the conviction of a felon who had been found in possession of an AK-47 while under court supervision. The

judge ruled that the state law prohibiting a convicted felon from possessing a firearm did not pass the high standard imposed by the new constitutional provision. Fortunately, Louisiana's Supreme Court overturned that decision and upheld the felon in possession prohibition.[11] Other firearms laws that are challenged in state court will face the same high standard, however.

In 2013, the legislature of a second state, Alabama, voted to put before the voters a nearly identical constitutional amendment. Alabama resident will vote on the amendment in November, 2014.

4. ***Extreme Preemption Laws:*** Local firearms regulations are crucial because they can fill gaps in federal and state laws and provide an important source of innovative solutions tailored to local needs. "State preemption" occurs when a state government removes a portion of a local government's legislative authority. Several years ago, the gun lobby pushed a majority of the states to prohibit local governments from regulating firearms. For more information, see our summary on Local Authority to Regulate Firearms.

A new gun lobby effort takes state preemption a step further by imposing harsh sanctions against any government body, agency or official who is found to have acted in violation of these state preemption laws. Kentucky, Florida and Mississippi have enacted such extreme measures.[12] Florida's law imposes several thousand dollars in fines against any local government or agency that enacts or enforces a firearms law that is found to be preempted by state law. An elected official may also be fined and terminated from employment for enforcing a law that is found to violate state preemption. No public funds may be used to pay these fines or defend the official. In addition, if a person or organization successfully sues a local government for state preemption, the government must pay the attorney's fees and costs of the individual and may be forced to pay damages up to $100,000.

In Kentucky, a local official commits official misconduct – a misdemeanor – if he or she is found to have violated the firearms preemption statute. The court must order the local official to pay the plaintiff's attorney's fees and litigation costs.

In Mississippi, a person adversely affected by a local ordinance regulating the carrying of firearms in public may sue the local government. If the court finds that the locality violated the preemption law, the plaintiff may also sue the official under whose jurisdiction the ordinance was enacted. The official may be personally liable for up to $1,000 plus reasonable attorney's fees and costs.

These harsh penalties chill efforts by local governments and elected officials to enact or enforce any regulation of firearms. Because some state preemption laws are very broadly drafted, it is not always clear whether a local law falls within the scope of the law. As a result, these extreme penalties may even deter local government officials from enacting or enforcing firearms-related regulations that a court might ultimately uphold under state preemption laws.

5. ***Laws Allowing Guns in Parking Areas:*** A business owner enjoys several rights arising out of his or her ownership interest in the business premises. One of the most important of these rights is the ability to establish rules governing what happens on the property, and to exclude individuals who fail to comply with these rules. However, for the last several years, the gun lobby has backed legislation nationwide that hampers the right of business owners to decide whether or not to allow firearms on their property.

Almost half of the states have adopted these laws, which vary by state.[13] The narrower version of the law applies to employers only and prohibits them from regulating firearm possession in employee vehicles in a workplace parking area. The most comprehensive laws apply to all property owners with an exception only for residential property and remove these property owners' authority to prohibit firearms on their property. These laws include parking areas on college and university campuses and even on the properties of K-12 schools.

In two states, Indiana and North Dakota, employees may sue their employer if they are even asked about whether they are storing a firearm in the workplace parking area.[14] North Dakota's law also allows non-employees, such as a business' customers, to sue the business if they are asked whether they have a firearm in a vehicle parked on the premises.

6. ***Laws Allowing Guns Everywhere:*** For the last several years, the gun lobby has also been actively pursuing a campaign to repeal state restrictions on where firearms may be carried in public. In particular, **the gun lobby has focused on bars, houses of worship, college campuses and state parks.** In many states, the law is silent on whether guns may be carried in these areas because, traditionally, laws regulating the carrying of firearms in public were much stricter than they are today. Some states, however, have enacted laws explicitly prohibiting firearms in these areas. The gun lobby has attacked these laws and, in many cases, succeeded in getting them repealed. This effort is especially alarming when viewed in light of the fact that most states also have weak concealed carry permitting laws. See our summary on Carrying Concealed Weapons for further information.

7. ***"Firearms Freedom Acts":*** In recent years, the gun lobby has promoted laws that declare firearms in a particular state exempt from federal firearms laws. The most extreme versions declare that no gun or ammunition manufactured, transferred and possessed in a particular state is subject to any federal firearms law (such as the federal laws that require firearms dealers to be licensed and to conduct background checks on prospective purchasers). Nine states have adopted these kinds of laws. The first states to adopt the laws were Montana and Tennessee in 2009.[15] Alaska, Arizona, Idaho, South Dakota, Utah and Wyoming followed in 2010,[16] and Kansas enacted such a law in 2013.[17]

Despite the push for such acts, **so-called "Firearms Freedom Acts" are unconstitutional.** On the effective date of the Montana statute, the Montana Shooting Sports Association and others filed an action in federal court seeking a ruling that the Act is constitutional. On August 31, 2010, a magistrate judge recommended that the United States' motion to dismiss be granted. The magistrate concluded that Congress alone has the power to regulate the intrastate manufacture, transfer and possession of firearms. This decision was upheld by the Ninth Circuit Court of Appeals in August 2013.[18]

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[1] Alabama (Ala. Code § 13A-3-23), Alaska (Alaska Stat. §§ 11.81.335; 11.81.350), Arizona (Ariz. Rev. Stat. Ann. § 13-405), Florida (Fla. Stat. § 776.013), Georgia (Ga. Code Ann. §§ 16-3-21, 16-3-23, 16-3-23.1), Indiana (Ind. Code Ann. § 35-41-3-2), Kansas (Kan. Stat. Ann. §§ 21-3211, 21-3212, 21-3218), Kentucky (Ky. Rev. Stat. Ann. §§ 503.050, 503.070), Louisiana (La. Rev. Stat. Ann. §§ 14:19, 14:20(C)), Michigan (Mich. Comp. Laws §§ 780.951, 780.972 – 780.974), Mississippi (Miss. Code Ann. § 97-3-15), Montana (Mont. Code Ann. §§ 45-3-102, 45-3-110), Nevada (Nev. Rev. Stat. § 200.120), New Hampshire (N.H. Rev. Stat. Ann. § 627:4), North Carolina (N.C. Gen. Stat. §§ 14-51.2, 14-51.3), Oklahoma (Okla. Stat. tit. 21, § 1289.25(D)), Pennsylvania (18 Pa. Cons. Stat. § 505(b)(2)(ii); 18 Pa. Cons. Stat. § 505(b)(2.3)), South Carolina (S.C. Code Ann. § 16-11-440(C)), South Dakota (S.D. Codified Laws § 22-18-4), Tennessee (Tenn. Code Ann. § 39-11-611), Texas (Tex. Penal Code Ann. §§ 9.31, 9.32), Utah (Utah Code Ann. § 76-2-402), West Virginia (W. Va. Code § 55-7-22(c)).

[2] California, Idaho, Illinois, New Mexico, Virginia, and Washington. These states are distinct from states with shoot first statutes in several respects, however. For example, many of the shoot first protections established in these states may only be invoked during criminal trials, as opposed to some states in which a shooter may escape liability in a pretrial hearing. Most of these laws also do not provide blanket immunity from civil lawsuits.

[3] For more information about the storage of firearms, see our summary on Safe Storage & Gun Locks.

[4] Teresa L. Albright & Sandra K. Burge, *Improving Firearm Storage Habits: Impact of Brief Office Counseling by Family Physicians,* 16 J. of the Am. Bd. of Family Practice 40, 40 (2003).

[5] 2011 Fla. HB 155.

[6] *Wollschlaeger v. Frank Farmer,* 880 F. Supp. 2d 1251 (S.D.Fla. June 29, 2012), appeal docketed, No. 12-14009 (11th Cir. Aug. 2, 2012).

[7] 2013 MT H.B. 459 .

[8] *See, e.g., State v. Comeau,* 448 N.W.2d 595, 600 (Neb. 1989) (holding that reasonable regulations concerning firearms do not violate the Nebraska constitution's right to bear arms); *State v. Rivera,* 115 N.M. 424, 426 (N.M. Ct. App. 1993) (holding that a law is valid if it is reasonably related to the public health, welfare, and safety).

[9] For further information, see Law Center to Prevent Gun Violence, *Post-Heller Litigation Summary* at http://smartgunlaws.org/post-heller-litigation-summary/.

[10] La. Const. Art. I, § 11.

[11] *Louisiana v. Draughter,* 130 So. 3d 855 (La. 2013)

[12] *See* Fla. Stat. § 790.33; Ky. Rev. Stat. § 65.870; Miss. Code Ann. § 45-9-53.

[13] Alabama (Ala. Code § 40-12-143), Alaska (Alaska Stat. §§ 29.35.145(e)(2), 18.65.800), Arizona (Ariz. Rev. Stat. Ann. § 12-781), Florida (Fla. Stat. § 790.251), Georgia (Ga. Code Ann. § 16-11-135), Illinois (430 Ill. Comp. Stat. 66/65(b)), Indiana (Ind. Code §§ 34-28-7-2 - 34-28-8-9), Kansas (Kan. Stat. Ann. § 75-7c10), Kentucky (Ky. Rev. Stat. Ann §§ 237.106-237.110), Louisiana (La. Rev. Stat. Ann. § 32:292.1), Maine (Me. Rev. Stat. tit. 26 § 600), Minnesota (Minn. Stat. § 624.714), Mississippi (Miss. Code Ann. §§ 45-9-55, 45-9-101), Missouri (Mo. Rev. Stat. § 571.107), Nebraska (Neb. Rev. Stat. § 69-2441), North Dakota (N.D. Cent. Code § 62.1-02-13), Ohio (Ohio Rev. Code Ann. § 2923.126), Oklahoma (Okla. Stat. tit. 21, §§ 1289.7a, 1289.27, 1290.22), Tennessee (Tenn. Code Ann. § 39-17-1313), Texas (Tex. Lab. Code Ann. §§ 52.061-52.062), Utah (Utah Code Ann. §§ 34-45-103, 34-45-107), Wisconsin (Wis. Stat. § 943.13).

[14] N.D. Cent. Code § 62.1-02-13 (1)(b), (5); Ind. Code Ann. § 34-28-8.

[15] Mont. Code Ann. § 30-20-102 through 30-20-106, Tenn. Code Ann. § 4-54-101 through 106.

[16] Alaska Stat. § 44.99.500 , Ariz. Rev. Stat. § 13-3114, Idaho Code Ann. § 18-3316, S.D. Codified Laws § 37-35-1 through 37-35-5, Utah Code Ann. § 53-5b-101 through 53-5b-202, *Wyo. Stat. § 6-8-401 through 6-8-406.*

[17] Kan. Stat. Ann. § 50-1201 through 1211.

[18] *Mont. Shooting Sports Ass'n v. Holder*, 727 F.3d 975 (9th Cir. 2013), *cert. denied* 2014 U.S. LEXIS 1525 (Feb. 24, 2014).

The Second Amendment

Opponents of the laws described in this publication often assert that these laws violate the Second Amendment. As described below, however, these claims are usually unsuccessful.

Heller: A Radical New Interpretation of the Second Amendment

In 2008, in a very controversial 5-4 ruling, the U.S. Supreme Court held for the first time that the Second Amendment protects an individual right to possess an operable handgun in the home for self-defense. In that case, *District of Columbia v. Heller*,[1] the Court struck down Washington, D.C. laws prohibiting handgun possession and requiring that firearms in the home be stored unloaded and disassembled or locked at all times.[2]

Heller was a truly radical decision, overturning the Court's longstanding previous ruling —based on the Amendment's plain text—that the Second Amendment was tied to state militia service.[3] Not surprisingly, *Heller* drew strong criticism from a wide array of legal scholars, historians, advocates, and legislators, including a particularly scathing rebuke from conservative federal appellate court Judge Richard Posner, who noted that, "the only certain effect of the *Heller* decision…will be to increase litigation over gun ownership."[4] Nevertheless, in 2010, in *McDonald v. City of Chicago*,[5] the Supreme Court held in another 5-4 ruling that the Second Amendment applies to state and local governments in addition to the federal government.

The Supreme Court's radical *Heller* decision placed significant limits on the new Second Amendment "right" it created, however. The Court specifically stated that the Second Amendment does not protect "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose" and listed several examples of "presumptively lawful" regulations, including laws prohibiting firearm possession by felons and the mentally ill, forbidding guns in sensitive places such as schools and government buildings, and regulating the commercial sale of firearms. The Court also noted that the Second Amendment is consistent with laws banning "dangerous and unusual weapons" and "regulating the storage of firearms to prevent accidents."

Despite A Flood Of Lawsuits, Courts Have Overwhelmingly Upheld Smart Gun Laws After *Heller*

Since *Heller* and *McDonald*, courts have been inundated with civil lawsuits claiming that various federal, state, and local gun laws violate the Second Amendment. **Nearly all of these lawsuits have been unsuccessful.** Moreover, criminal defendants now routinely claim that criminal statutes violate the Second Amendment. Like the civil lawsuits, those claims have been met with nearly uniform rejection by the courts nationwide. Well over 800 decisions have been issued in cases raising Second Amendment challenges since *Heller* and more lawsuits are regularly being filed. Nevertheless, more than 90% of those decisions have rejected the Second Amendment challenge at issue.[6] For further information, see our *Post-Heller Litigation Summary* at http://smartgunlaws.org/post-heller-litigation-summary/.

Success in Federal Appellate and State Supreme Courts

Federal appellate courts have rejected challenges to numerous common sense gun laws, including those regulating the concealed carrying of guns in public. For example, the Second Circuit Court of Appeals in *Kachalsky v. Cacace*[7] upheld a New York law requiring applicants for a concealed carry permit to demonstrate that they have some special need for self-protection above and beyond that of the general public. The court observed that "outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense" and that "[t]here is a longstanding tradition of states regulating firearm possession and use in public because of the dangers posed to public safety." The Fourth Circuit upheld a similar Maryland law in *Woollard v. Gallagher*,[8] observing that Maryland had "clearly demonstrated" that "limiting the public carrying of handguns protects citizens and inhibits crime[.]" The Tenth Circuit went even further in *Peterson v. Martinez*,[9] flatly holding that "the Second Amendment does not confer a right to carry concealed weapons."

Advocates for smart gun laws have also been successful in defending many other types of gun regulation in federal appellate courts. The D.C. Circuit, for example, upheld the District of Columbia's ban on assault weapons and large capacity magazines.[10] The Ninth Circuit upheld a San Francisco ordinance requiring handguns to be locked in a gun safe or secured with a trigger lock when they are not carried by the owner.[11] The Second Circuit also upheld New York City's $340 fee for a license to own a handgun[12] and the Fifth Circuit upheld a law banning the sale of handguns to persons under 21.[13] Also, every federal appeals court to have confronted the question has upheld laws prohibiting felons from owning firearms.[14]

State supreme courts have been equally skeptical of challenges to sensible gun regulations. For example, the Massachusetts Supreme Court upheld that state's safe storage laws,[15] the New Jersey Supreme Court upheld a law authorizing firearms seizures in cases of domestic violence,[16] and the Virginia Supreme Court upheld a ban on carrying weapons inside college campus buildings.[17]

Numerous gun safety laws have also been upheld by lower federal and state courts including:

- Limitations and regulation of the carrying of concealed weapons,[18]
- Bans on assault weapons and large capacity ammunition magazines,[19]
- Prohibitions against felons and persons convicted of certain classes of misdemeanors owning firearms,[20]
- Gun registration requirements,[21]
- Laws forbidding the mentally ill from owning firearms,[22]
- Laws setting age limits for firearm possession,[23] and
- Residency requirements for firearm sales.[24]

By contrast, courts have only struck down gun laws in a handful of cases, and even in those cases, they have been careful to note that most gun safety laws are not prohibited by the Second Amendment.[25]

Significantly, the U.S. Supreme Court has declined to review more than 60 lower court decisions upholding federal, state, and local gun laws. As a result, the Supreme Court has maintained important limitations on the Second Amendment and reconfirmed that the Second Amendment is not an obstacle to common sense laws to reduce gun violence.

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[1] 128 S.Ct. 2783 (2008).
[2] The storage requirement had no exception for self-defense.
[3] *See United States v. Miller,* 307 U.S. 174 (1939). The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."
[4] Richard A. Posner, *In Defense of Looseness*, The New Republic, Aug. 27, 2008, at http://www.newrepublic.com/article/books/defense-looseness.
[5] 130 S.Ct. 3020 (2010).
[6] The Supreme Court has not identified the proper level of scrutiny to be applied by courts in Second Amendment challenges. Since *Heller*, most courts have used an intermediate level of scrutiny to evaluate gun laws under the Second Amendment. For further information, see our *Post-Heller Litigation Summary* at http://smartgunlaws.org/post-heller-litigation-summary/.
[7] 701 F.3d 81 (2d Cir. 2012).
[8] 712 F.3d 865 (4th Cir. 2013).
[9] 707 F.3d 1197 (10th Cir. 2013).
[10] *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011).
[11] *Jackson v. City & County of San Francisco*, No. 12-17803 (9th Cir. Mar. 25, 2014).
[12] *Kwong v. Bloomberg*, 723 F.3d 160 (2nd Cir. 2013).
[13] *NRA v. ATF*, 714 F.3d 334 (5th Cir. 2013).
[14] *See, e.g.*, *United States v. Pruess*, 703 F.3d 242 (4th Cir. 2012); *United States v. Torres-Rosario*, 658 F.3d 110 (1st Cir. 2011); *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010); *US v. Vongxay*, 594 F. 3d 1111 (9th cir. 2010); *United States v. Anderson*, 559 F.3d 348 (5th Cir. 2009).
[15] *Commonwealth v. McGowan*, 464 Mass. 232 (2013).
[16] *Crespo v. Crespo*, 989 A.2d 827 (N.J. 2010).
[17] *Digiacinto v. Rector & Visitors of George Mason Univ.*, 704 S.E.2d 365 (Va. 2011).
[18] *See, e.g.*, *Young v. Hawaii*, 2012 U.S. Dist. LEXIS 169260 (D. Haw. Nov. 29, 2012); *Raulinaitis v. Los Angeles Sheriff's Dept.*, No. 11-08026 (C.D. Cal. Aug. 13, 2012); *Birdt v. Beck*, No. 10-08377 (C.D. Cal. Jan. 13, 2012); *Piszczatoski v. Filko*, 2012 U.S. Dist. LEXIS 4293 (D. N.J. Jan. 12, 2012); *Kuck v. Danaher*, 2011 U.S. Dist. LEXIS 111793 (D. Conn. 2011); *In re Patano*, 60 A.3d 507 (N.J. Super. Ct. App. Div. 2013).
[19] *See, e.g.*, *Shew v. Malloy*, 2014 U.S. Dist. LEXIS 11339 (D. Conn. Jan. 30, 2014); *N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 2013 U.S. Dist. LEXIS 182307 (W.D.N.Y. Dec. 31, 2013).
[20] *See , e.g.*, *Schrader v. Holder*, 704 F.3d 980 (D.C. Cir. 2013); *United States v. Armstrong*, 706 F.3d 1 (1st Cir. 2013); *United States v. Staten*, 666 F.3d 154 (4th Cir. 2011); *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010); *United States v. White*, 593 F.3d 1199 (11th Cir. 2010); *United States v. Booker*, 644 F.3d 12 (1st Cir. 2011); *State v. Craig*, 826 N.W.2d 789 (Minn. Feb. 27, 2013); *Wisconsin v. Pocian*, 2012 Wisc. App. LEXIS 298 (Wis. Ct. App. Apr. 11, 2012); *People v. Spencer*, 2012 Ill. App. LEXIS 82 (Ill. App. Ct. Feb. 6, 2012); *Pohlabel v. Nevada*, 2012 Nev. LEXIS 2 (Nev. Jan. 26, 2012); *Chardin v. Police Comm'r of Boston*, 2013 Mass. LEXIS 352 (June 4, 2013); *Enos v. Holder*, 2012 U.S. Dist. LEXIS 25759 (E.D. Cal. Feb. 28, 2012).
[21] *Justice v. Town of Cicero*, 577 F.3d 768 (7th Cir. 2009).
[22] *Tyler v. Holder*, 2013 U.S. Dist. LEXIS 11511 (W.D. Mich. Jan. 29, 2013).
[23] *L.S. v. State*, 2013 Fla. App. LEXIS 11592 (Jul. 24, 2013).
[24] *Dearth v. Holder*, 2012 U.S. Dist. LEXIS 138697 (D.D.C. Sept. 27, 2012).
[25] *See, e.g.*, *Peruta v. County of San Diego*, 2014 U.S. App. LEXIS 2786, at *97 (9th Cir. Cal. Feb. 13, 2014) ("We conclude by emphasizing, as nearly every authority on the Second Amendment has recognized, regulation of the right to bear arms is not only legitimate but quite appropriate."); *Moore v. Madigan*, 702 F. 3d 933, 940-41 (7th Cir. 2012) (striking down Illinois' ban on carrying concealed firearms but noting that "some states sensibly require that an applicant for a handgun permit establish his competence in handling firearms. A person who carries a gun in public but is not well trained in the use of

firearms is a menace to himself and others. . . . States also permit private businesses and other private institutions (such as churches) to ban guns from their premises."); *Ill. Ass'n of Firearms Retailers v. City of Chicago*, 2014 U.S. Dist. LEXIS 782, at *47-48, 53 (N.D. Ill. Jan. 6, 2014) (striking down a Chicago ordinance banning all gun transfers) ("To address the City's concern that gun stores make ripe targets for burglary, the City can pass more targeted ordinances aimed at making gun stores more secure—for example, by requiring that stores install security systems, gun safes, or trigger locks . . . . Or the City can consider designating special zones for gun stores to limit the area that police would have to patrol to deter burglaries. . . . [N]othing in this opinion prevents the City from considering other regulations—short of the complete ban—on sales and transfers of firearms to minimize the access of criminals to firearms and to track the ownership of firearms.") *People v. Aguilar*, No. 112116 (Ill. Sep. 12, 2013) (striking down the same Illinois law but noting that the court was "in no way saying that such a right is unlimited or is not subject to meaningful regulation"); *Ezell v. City of Chicago,* 651 F.3d 684 (7th Cir. 2011) (striking down a municipal ordinance that mandated one hour of training at a gun range as a prerequisite to lawful gun ownership but that also prohibited all firing ranges in the city).

The Law Center to Prevent Gun Violence is a non-profit organization dedicated to ending the epidemic of gun violence in America. The Law Center's trusted and in-depth legal expertise, analysis, and comprehensive tracking are relied upon by legislators, advocates, and members of the media from across the country.

Formed in the wake of the July 1, 1993 assault weapon massacre at a law firm in San Francisco, the Law Center is now the premier clearinghouse for information about federal and state firearm laws and Second Amendment litigation nationwide.

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