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Regulating Guns in America

**An Evaluation and Comparative Analysis of
Federal, State and Selected Local Gun Laws**

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An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws

A Publication of



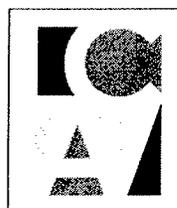
Legal Community Against Violence

expertise, information & advocacy to end gun violence

Regulating Guns in America

An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws

A Publication of



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expertise, information & advocacy **to end gun violence**

*The views expressed in this publication are those of Legal Community Against Violence.
This publication is not intended as legal advice to any person or entity, and should
not be regarded as such.*

August 11, 2006

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Preface

Legal Community Against Violence (LCAV) is pleased to release *Regulating Guns in America – An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws*. We hope this report will be a valuable resource for policymakers, law enforcement officials, government attorneys and advocates working to reduce gun violence through law and policy reform.

Regulating Guns in America grew out of LCAV's work with the City of Chicago on the Illinois Gun Law Reform Project, a multi-year collaboration in which LCAV is providing legal and technical assistance to further Chicago's efforts to secure reasonable state and local gun laws and policies in Illinois. In 2005, at the request of Mayor Richard M. Daley, LCAV joined with the City of Chicago in this effort. To help the Mayor's Office assess its policy priorities, LCAV analyzed state and local firearms laws in Illinois against the backdrop of federal law and the laws of the other states and the District of Columbia.

Understanding the value of that research, we decided to expand our analysis beyond Illinois and develop a national resource to educate public officials and gun violence prevention advocates throughout the country. *Regulating Guns in America* provides a thorough review of federal law, how states and a sampling of major U.S. cities address gun policy in the absence of a comprehensive federal framework, and what comprehensive regulation might look like.

Regulating Guns in America is based on legal research conducted through July 2006. Although the report discusses the law in many areas of firearms regulation, it does not offer, and is not intended to constitute, legal advice. LCAV encourages public officials and advocates to obtain expert counsel when considering a particular law or provision, and is available to provide legal and technical assistance to governmental entities and nonprofit organizations interested in law and policy reform at the state and local levels.

Every attorney on LCAV's small staff contributed to this report. LCAV thanks Legal Director Nina Vinik, Senior Counsel Juliet Leftwich and Staff Attorneys Laura Cutilletta, Sam Hoover and Lindsay Nichols. Inquiries regarding this report should be directed to Legal Director Nina Vinik at regulatingguns@lcav.org. The report is available online at www.lcav.org.

We are grateful to our donors and to the foundations whose encouragement and financial support enabled us to produce this report, in particular, David Bohnett Foundation, The California Wellness Foundation, The Wallace Alexander Gerbode Foundation, The Joyce Foundation and the van Löben Sels/RembeRock Foundation.

Sue Ann L. Schiff
Executive Director

August 11, 2006

REGULATING GUNS IN AMERICA

AN EVALUATION AND COMPARATIVE ANALYSIS OF FEDERAL, STATE AND SELECTED LOCAL GUN LAWS

August 2006

Executive Summary

With nearly 100,000 victims each year,¹ gun violence is a danger that threatens residents of every state and every municipality in this country. In response to that danger, public officials and advocates across the United States are working hard to craft reasonable public policies to minimize the deaths and injuries caused by guns in their communities.

Regulating Guns in America is a study of federal, state and selected local gun laws across the United States. It demonstrates – in twenty-two policy areas – that federal regulation of firearms is limited. Although most Americans favor stronger gun laws, the history of the gun violence prevention movement shows that federal reform, even under the most favorable political conditions, is difficult to achieve.

In the absence of comprehensive federal regulation, it is up to state and local governments to adopt policies to prevent gun violence. Strong state and local measures can address the concerns of specific communities and regions, improve community health and safety, fill gaps in federal policy, and act as a catalyst for the broader reforms our country needs.

Regulating Guns in America is a publication of Legal Community Against Violence (LCAV), a national public interest law center dedicated to preventing gun violence. Founded in 1993 in the aftermath of the assault weapon massacre at 101 California Street in San Francisco, LCAV is the country's only organization devoted exclusively to providing legal assistance in support of gun violence prevention. LCAV serves governmental entities and nonprofit organizations nationwide, focusing on policy reform at the state and local levels. We conduct legal research, analyze existing and emerging policy strategies, review proposed legislation, generate model regulations and develop legal and analytical materials to help governmental entities and nonprofit organizations achieve their policy goals. Our website, www.lcav.org, is the most comprehensive resource for information on U.S. firearms laws in either print or electronic form.

The Executive Summary highlights only some of the most interesting and valuable aspects of the report. It is not intended to summarize every detail and nuance contained

¹ 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 Reports 2003*, at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>.

within. Readers are urged to refer to the full report for a thorough analysis of the laws and policies discussed in the Executive Summary.

Regulating Guns in America reviews guns laws in six general policy areas: (1) Classes of Weapons; (2) Sales and Transfers; (3) Gun Dealers and Other Sellers; (4) Gun Ownership; (5) Consumer and Child Safety; and (6) Crime Detection. The Executive Summary discusses the following topics in each policy area:²

- *Section Overview*: The Executive Summary identifies and briefly explains the specific issues covered in each policy area.
- *Federal Law Summary*: For each policy area, the Executive Summary describes existing federal law and highlights some of the significant gaps in federal law.
- *State Law Summary*: *Regulating Guns in America* analyzes the laws of all 50 states and the District of Columbia, comparing and contrasting the regulatory approaches in those states in each policy area. The Executive Summary synthesizes that discussion and discusses some of the most significant policies.
- *Local Law Summary*: The report examines local laws in 10 major U.S. cities: Boston, Massachusetts; Chicago, Illinois; Cleveland, Ohio; Columbus, Ohio; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. The Executive Summary briefly highlights their firearms laws. These cities are located in eight of the nine states that presently provide local jurisdictions broad authority to regulate firearms.³
- *Conclusions*: The Executive Summary identifies opportunities for state and local governments to close gaps in federal law.

The report also includes, for each gun policy topic, a list of features that characterize comprehensive regulation. These lists are themselves a distillation of the state and local regulatory approaches detailed in each section, and therefore do not lend themselves to further summary here. Readers are referred to each section for these features.

Regulating Guns in America is based on legal research conducted through July 2006. Although the report discusses the law in many areas of firearms regulation, it does not offer, and is not intended to constitute, legal advice. LCAV encourages public officials and advocates to obtain expert counsel when considering a particular law or provision, and is available to provide legal and technical assistance to governmental entities and nonprofit organizations interested in law and policy reform at the state and local levels.

² Appendix A to this report, a “Snapshot of Federal, State and Selected Local Gun Laws,” contains a further summary, in chart form, of existing law in each policy area.

³ California, Connecticut, Hawaii, Illinois, Massachusetts, Nebraska, New Jersey, New York and Ohio permit broad local regulation of firearms. For a number of years, the National Rifle Association (NRA) and the gun lobby have waged a sustained campaign to persuade states to enact broad preemption laws. Thus, in most states, local governments have limited authority to regulate firearms. Specific questions about whether a particular type of local regulation may be preempted in any given state involve a complex inquiry and analysis of existing case law.

Classes of Weapons

Section Overview: This section of the report reviews laws regulating and/or banning certain classes of weapons and accessories. Specifically, the section covers the following topics: (1) Assault Weapons; (2) Large Capacity Ammunition Magazines; (3) Fifty Caliber Rifles; (4) Banning Handguns; and (5) Non-Powder Guns.

The report addresses these categories of firearms and accessories because of the particular threat posed by each. **Assault weapons** are a class of semi-automatic firearms designed with military features to allow rapid and accurate spray firing. They are made to kill humans quickly and efficiently, and pose a particular threat to law enforcement officers. **Large capacity ammunition magazines** are of special concern because they significantly increase the lethality of the automatic and semi-automatic firearms that use them (including assault weapons). **Fifty caliber rifles** are military firearms capable of destroying or disabling military targets, such as armored vehicles, helicopters and stationary and taxiing airplanes. Fifty caliber rifles have been linked to terrorism, drug trafficking and other violent crime.

The section on **banning handguns** examines an approach used in some municipalities to address the proliferation of handguns by banning their possession and/or sale. Handguns are much more likely to be used to commit violent crimes than other firearms, making them a particular focus of regulatory efforts, up to and including total bans. **Non-powder guns** (e.g. BB, air or pellet guns) injure tens of thousands of people each year, most of them children. Non-powder guns are becoming more powerful and more accurate, and are often indistinguishable from firearms.

Federal Law Summary: There are no federal laws banning assault weapons, large capacity ammunition magazines, fifty caliber rifles, handguns, or non-powder guns. (Restrictions on who may purchase or possess firearms are described below under the heading “Sales and Transfers.”)

Although assault weapons and large capacity ammunition magazines were banned at the federal level from 1994 to 2004, Congress allowed the law to expire in 2004 and failed to renew it. Therefore, assault weapons and large capacity ammunition magazines that were illegal from 1994 to 2004 are once again legal to possess and sell in the United States (unless banned under state or local law). Likewise, there is no federal law banning fifty caliber rifles.

There is no federal law banning handguns.⁴ There are no federal laws regulating the possession, sale or use of non-powder guns.⁵

⁴ In some respects, handguns are subject to stricter regulation under federal law than long guns. For example, as outlined below, the minimum age for purchase and possession of handguns is higher than it is for long guns, certain unsafe handguns may not be imported into the U.S., and handguns are required to be sold with locking devices.

⁵ Unlike firearms and ammunition, non-powder guns do, however, fall within the authority of the Consumer Product Safety Commission.

State Law Summary:

Seven states ban assault weapons (*California, Connecticut, Massachusetts, New Jersey and New York; Hawaii and Maryland ban assault pistols*).

- The District of Columbia bans assault weapons indirectly, through other laws banning handguns and machine guns.
- Two states regulate but do not ban assault weapons (*Minnesota and Virginia*).

Six states ban large capacity ammunition magazines (*California, Hawaii, Maryland, Massachusetts, New Jersey and New York*). All of these states also ban assault weapons.

California is the only state that bans 50 caliber rifles.

- Connecticut bans one model of 50 caliber rifle, as part of its ban on assault weapons.
- Maryland includes one 50 caliber rifle model in the list of assault weapons defined as “regulated firearms,” which are subject to stricter state regulation.

The District of Columbia bans the possession, purchase, sale, manufacture and repair of handguns. No state bans all types of handguns.⁶

Nineteen states regulate the use or possession of non-powder guns.⁷

Local Law Summary:

Boston, Chicago, Cleveland and Columbus ban the sale and possession of assault weapons. New York City prohibits the sale of assault weapons. Boston, Chicago, Columbus, Los Angeles and New York City ban large capacity ammunition magazines.

Los Angeles and San Francisco ban 50 caliber handguns. San Francisco bans 50 caliber cartridges.

Chicago bans possession and sale of handguns.⁸

Chicago, Cleveland, New York City and Omaha regulate the use or possession of non-powder guns.

⁶ Although no state bans all handguns, a number of jurisdictions ban some types of handguns, including “ultracompact” handguns, junk guns, assault pistols and 50 caliber handguns.

⁷ California, Colorado, Connecticut, Delaware, Florida, Illinois, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, Virginia, Washington and Wisconsin regulate the use or possession of non-powder guns.

⁸ In 2005, San Francisco voters approved an ordinance to prohibit, *inter alia*, the possession of handguns by San Francisco residents. In June 2006 a trial court ruled that the ordinance is preempted by state law; the city has said it will appeal.

Conclusions:

In the absence of federal law banning assault weapons, large capacity ammunition magazines, and 50 caliber rifles, some states and local communities have enacted legislation to fill the void. Other jurisdictions can look to these laws as potential strategies to limit the threat of these dangerous weapons. Although many states already regulate non-powder guns, jurisdictions may wish to consider stricter regulation of high caliber, large capacity non-powder guns, to better protect children.

Sales and Transfers

Section Overview: In this section, *Regulating Guns in America* examines laws regulating the transfer of firearms. Specifically, the section addresses the following topics: (1) Prohibited Purchasers; (2) Minimum Age to Purchase and Possess Firearms; (3) Background Checks; (4) Waiting Periods; and (5) Restrictions on Multiple Purchases or Sales of Firearms.

Prohibited purchasers are categories of persons deemed ineligible to purchase firearms. Laws governing the **minimum age to purchase and possess firearms** limit access to firearms by persons who are underage. **Background checks** are the mechanism used to identify persons who may not lawfully purchase or possess firearms. **Waiting periods** prescribe a time period eligible purchasers must wait before taking possession of their firearms, and are designed to allow law enforcement sufficient time to complete a background check and to provide a “cooling off” period to help guard against impulsive acts of violence. **Restrictions on multiple purchases or sales of firearms** include laws prohibiting eligible purchasers from purchasing more than one firearm during a specified time period, and are designed to help limit illegal weapons trafficking.

Federal Law Summary: Federal law establishes the baseline of the categories of persons who are ineligible to purchase firearms. Among other prohibited categories, federal law prohibits the sale of firearms to persons who are convicted felons, have been adjudicated as mental defectives or involuntarily committed to a mental institution, or are subject to certain restraining orders. Federal law also prohibits persons who are underage from purchasing firearms. Federally licensed firearms dealers (FFLs) are prohibited from selling rifles or shotguns to persons under 18, and are prohibited from selling handguns to persons under 21. Unlicensed sellers⁹ may not sell handguns to persons under 18. Federal law imposes no minimum age on the purchase of long guns from unlicensed sellers. Possession of handguns by persons under 18 is prohibited. There is no federal minimum age for possession of long guns.

The Brady Handgun Violence Prevention Act (the Brady Act)¹⁰ requires FFLs to perform background checks on prospective firearms purchasers to ensure that the sale would not violate federal, state or local law. The Brady Act is implemented through the National

⁹ “Unlicensed sellers” are persons who are not required to obtain a federal firearms dealer’s license. See *infra* p. viii.

¹⁰ 18 U.S.C. § 921 *et seq.*

Instant Criminal Background Check System (NICS).¹¹ There are a number of gaps in federal law, including: (1) the Brady Act does not apply to sales by unlicensed sellers; (2) in cases where the background check may not be completed within three business days, the sale may proceed by default, which may result in firearms being transferred to ineligible persons; (3) FBI databases are incomplete, because the FBI does not have access to certain state records, including mental health records, domestic violence restraining orders, and outstanding felony warrants; and (4) persons holding some state-issued permits allowing purchase or possession of firearms are not required to undergo a background check at the time of purchase.

Federal law does not impose a waiting period, and does not restrict multiple sales or purchases of firearms.

State Law Summary: With the exception of Vermont, all states and the District of Columbia have laws governing prohibited purchasers and background checks. Federal categories of prohibited purchasers are the prevailing minimum for all states. As detailed in *Regulating Guns in America*, a number of states have gone beyond federal law, establishing broader standards or designating additional classes of prohibited purchasers. The following represent examples of state laws that go beyond federal purchaser prohibitions:

- **Twenty-three states disqualify persons convicted of certain misdemeanor offenses from purchasing some or all firearms.**¹² Federal law prohibits convicted felons from purchasing firearms, but is silent with respect to most misdemeanor convictions.¹³
- **Twenty states and the District of Columbia restrict access to firearms by alcohol abusers.**¹⁴ Federal law prohibits persons who are unlawful users of or addicted to a controlled substance from purchasing firearms, but does not restrict firearm purchases by alcohol abusers.

¹¹ NICS checks are conducted by the FBI or by the state. (States may opt to serve as a Point of Contact (POC) and conduct their own NICS checks.) The FBI or POC conducts name-based searches of federal and state databases. FBI searches include three federal databases: (1) the National Crime Information Center (NCIC), which includes records regarding fugitives and persons subject to protective or restraining orders; (2) the Interstate Identification Index, which contains state criminal history records; and (3) the NICS Index, which contains records of other persons prohibited under federal law from receiving or possessing firearms.

¹² California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Dakota, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington and West Virginia prohibit persons convicted of certain misdemeanors from purchasing some or all firearms.

¹³ Federal law does prohibit firearm purchases by persons with misdemeanor domestic violence convictions.

¹⁴ Alabama, Alaska, Delaware, Florida, Hawaii, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, West Virginia and the District of Columbia restrict access to some or all firearms by alcohol abusers.

- **Twenty-seven states prohibit juvenile offenders from purchasing firearms.**¹⁵ Federal law does not restrict purchases of firearms by persons with juvenile convictions.

Thirty-four states and the District of Columbia impose a stricter minimum age than federal law for purchase and/or possession of firearms.¹⁶ These include: laws imposing minimum age restrictions on all firearm purchases, whether from a licensed dealer or an unlicensed seller; laws imposing stricter minimum age requirements for possession of handguns; and laws imposing minimum age requirements for possession of long guns.

Twelve states and the District of Columbia have adopted waiting periods for firearm purchases.¹⁷

- Four states impose waiting periods for purchases of all firearms (*California, Hawaii, Illinois and Rhode Island*).
- Two states impose waiting periods for purchases of handguns and assault weapons (*Maryland and Minnesota*).
- Five states and the District of Columbia impose waiting periods on handgun purchases only (*Florida, Iowa, New Jersey, South Dakota, Wisconsin and the District of Columbia*).
- Connecticut imposes a waiting period on long gun purchases only.

Three states restrict multiple purchases of firearms (*California, Maryland and Virginia*).

- Maryland limits purchases of handguns and assault weapons to one per person per month.
- California limits purchases and sales of handguns to one per person per month.
- Virginia limits purchases of handguns to one per person per month.

Local Law Summary:

Chicago, Cleveland, Columbus, Hartford, New York City and Omaha prohibit certain categories of persons from purchasing firearms (going beyond federal law).

Boston, Chicago, Cleveland, Columbus and New York City impose stricter minimum age requirements than federal law.

¹⁵ Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Washington and Wisconsin prohibit persons with certain juvenile convictions from purchasing some or all firearms.

¹⁶ Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington, Wisconsin and the District of Columbia impose stricter minimum age requirements than federal law for purchase and/or possession of firearms.

¹⁷ California, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Jersey, Rhode Island, South Dakota, Wisconsin and the District of Columbia impose waiting periods.

Cleveland, Columbus, New York City and Omaha have local laws requiring background checks for issuance of local firearms permits.

Columbus imposes a waiting period for issuance of a weapons transaction permit.

Los Angeles limits handgun purchases to one per person per month. New York City limits purchases of firearms to one per person per ninety days.

Conclusions:

Federal laws governing prohibited purchasers, minimum age to purchase or possess firearms, and background checks contain a number of gaps that may be addressed by states or local governments, including policies to better restrict access to firearms by children, persons with mental illness, and others. Waiting periods and restrictions on multiple sales and purchases of firearms are underused policies that jurisdictions may wish to consider.

Gun Dealers and Other Sellers

Section Overview: This portion of the report addresses laws regulating sellers of firearms, and contains the following sections: (1) Dealer Regulations; (2) Private Sales; and (3) Gun Shows.

Dealer regulations are laws that require firearms dealers to be licensed, and impose other requirements on their operations. **Private sales** are sales of firearms by persons other than federally licensed firearms dealers. **Gun shows** are events dedicated to the display and sale of firearms and firearm-related accessories. Gun shows are of particular concern because they are a popular venue for private sales, and have been shown to be a major channel for illegal firearms trafficking.

Summary of Federal Law: Federal law makes it unlawful for any person except a licensed dealer to engage in the business of dealing in firearms. Persons who make occasional sales or purchases as part of a personal collection or as a hobby, or who sell all or part of a personal collection, are defined as not being engaged in the business of dealing in firearms, and therefore need not be licensed under federal law.

Among other requirements, federally licensed firearms dealers (FFLs) are required to: (1) initiate background checks on prospective firearm purchasers; (2) maintain records of all gun sales; (3) report multiple sales; (4) report the theft or loss of a firearm from the licensee's inventory; and (5) submit to a maximum of one inspection per year by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to ensure compliance with recordkeeping requirements.¹⁸

¹⁸ For a discussion of the limitations of ATF's inspections, see 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).

Unlicensed sellers (at gun shows or elsewhere) are not subject to these requirements, and may sell firearms without conducting background checks or documenting the transaction in any way.

Summary of State Laws:

Twenty-six states and the District of Columbia license and/or regulate firearms dealers. Some of the noteworthy types of regulation include:

- **Seventeen states and the District of Columbia license firearms dealers.**¹⁹
- **Twelve states require dealers to report sales to state and/or local law enforcement** (*Alabama, California, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, New York, Oregon, Pennsylvania, Rhode Island and Washington*).
- **Eleven states require dealers to provide warnings to purchasers about the dangers of firearms** (*California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, North Carolina, Ohio, Texas and Wisconsin*).
- **Five states require background checks of dealer employees** (*Connecticut, Delaware, New Jersey, Virginia and Washington*).
- **Three states and the District of Columbia require dealers to use security measures on their premises** (*California, Connecticut, Minnesota and the District of Columbia*).
- **Two states require dealers to report the theft or loss of firearms to law enforcement** (*California and Massachusetts*).
- **Massachusetts bans residential dealers.**

Two states and the District of Columbia require universal background checks for all firearm purchases, whether from licensed or unlicensed sellers (*California, Rhode Island and the District of Columbia*). Other states require universal background checks on some firearm purchases:

- Maryland requires universal background checks for transfers of handguns and assault weapons from licensed or unlicensed sellers.
- Pennsylvania requires universal background checks for all handgun purchasers.

Five states require background checks on all transfers at gun shows (*Colorado, Connecticut, Illinois, New York and Oregon*). These states, along with California, Maryland and Virginia, also impose other regulations on gun shows, including:

- California imposes safety and security requirements on gun shows.
- Maryland requires all gun show vendors to obtain a license.
- Five states impose recordkeeping requirements on gun show vendors and/or promoters (*Colorado, Illinois, New York, Oregon and Virginia*).

¹⁹ Alabama, California, Connecticut, Delaware, Georgia, Hawaii, Indiana, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, Washington, Wisconsin and the District of Columbia license firearms dealers.