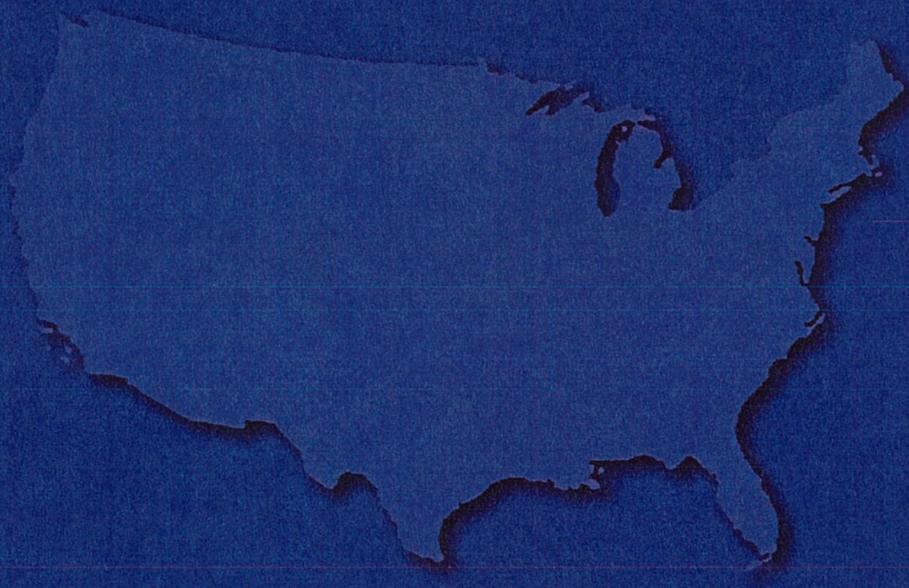


2008 Edition

Regulating Guns in America



**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

JUN 24 2010

Regulating Guns in America

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

*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.*

February 2008

Copyright © 2008 by Legal Community Against Violence. All Rights Reserved.

Legal Community Against Violence
Mailing Address: 268 Bush Street, #555
San Francisco, CA 94104
Tel: 415-433-2062 Fax: 415-433-3357
E-mail: regulatingguns@lcav.org
Web site: www.lcav.org

TABLE OF CONTENTS

Preface	
Executive Summary	i
Introduction	1
The Legal Background	7
The Second Amendment and State Right to Bear Arms Provisions.....	7
Preemption and Local Authority to Regulate Firearms and Ammunition.....	10
Classes of Weapons	18
Assault Weapons.....	19
Large Capacity Ammunition Magazines	28
Fifty Caliber Rifles	34
Banning Handguns.....	38
Non-Powder Guns.....	42
Ammunition Regulation.....	48
Sales and Transfers	68
Prohibited Purchasers.....	69
Minimum Age to Purchase and Possess Firearms	81
Domestic Violence and Firearms.....	88
Background Checks	105
Mental Health Reporting.....	115
Waiting Periods.....	134
Restrictions on Multiple Purchases or Sales of Firearms	139
Gun Dealers and Other Sellers	144
Dealer Regulations.....	145
Private Sales.....	162
Gun Shows.....	169
Gun Ownership	176
Licensing of Gun Owners or Purchasers	177
Registration of Firearms	188
Reporting Lost or Stolen Firearms.....	197
Carrying Concealed Weapons.....	203
Consumer and Child Safety	216
Design Safety Standards for Handguns: Regulating Junk Guns/ Saturday Night Specials.....	217
Locking Devices	223
Personalized Firearms.....	230
Child Access Prevention	233
Crime Detection	242
Ballistic Identification.....	243
Retention of Firearm Sales and Background Check Records.....	247
Appendix A: Snapshot of Federal, State and Selected Local Gun Laws	258

Preface

Legal Community Against Violence (LCAV) is pleased to release the 2008 edition of *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 tool for policymakers, law enforcement officials, government attorneys and advocates working to reduce gun violence through law and policy reform.

Regulating Guns in America debuted in 2006 and immediately was embraced as an indispensable resource by 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.

The 2008 edition of *Regulating Guns in America* updates all statutes, ordinances and case law referenced in the original edition. It also adds a review of federal, state and local law in four new policy areas: (1) Ammunition Regulation; (2) Mental Health Reporting; (3) Domestic Violence and Firearms; and (4) Reporting Lost and Stolen Firearms. We expect the 2008 edition will help inform the public policy debate on these emerging issues, as well as on the more than twenty policy areas already covered in the original report. The 2008 edition is based on legal research conducted through December 2007.

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. We also thank LCAV's law student interns, and the lawyers and summer associates of Bingham McCutchen LLP, Katten Muchin Rosenman LLP, Morrison & Foerster LLP, Pillsbury Winthrop Shaw Pittman LLP, and Thelen Reid Brown Raysman & Steiner LLP for pro bono research assistance.

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, the Five Bridges Foundation, and the van Löben Sels/RembeRock Foundation.

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.

Robyn Thomas
Executive Director

February 2008

REGULATING GUNS IN AMERICA

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

February 2008

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-six 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.

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) Injury Mortality Reports, 1999-2005*, at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html; 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 2005*, at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>.

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 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 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 December 2007. 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

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 and New York 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. For example, in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending, and the Cleveland and Columbus ordinances cited in this report have not been repealed. 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. Information on state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

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.

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; (5) Non-Powder Guns; and (6) Ammunition Regulation.

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. **Ammunition regulation** is an area that has received little attention from policymakers. Policies to limit access by children, convicted felons and other dangerous persons can help reduce the threat of 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 Federal law governing ammunition transfers is limited to prohibiting sales to and purchases by certain categories of persons; however, there is no requirement that ammunition sellers conduct a background check to determine if a prospective purchaser falls into a prohibited category.⁶

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.
- Three states regulate assault weapons (*Maryland, 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.⁷ No state bans all types of handguns.⁸

Nineteen states regulate the transfer, use or possession of non-powder guns.⁹

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.

⁶ Federal law also prohibits the manufacture, importation, sale and delivery of armor-piercing ammunition.

⁷ In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia’s strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. On November 20, 2007, the U.S. Supreme Court granted *certiorari* on the following question: **Whether the challenged provisions “violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?”** *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

⁸ 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.**

⁹ 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.

Twenty-three states and the District of Columbia regulate the sale, transfer, carrying or storage of ammunition, including:

- Four states (*Maryland, Massachusetts, Minnesota and Washington*) and the District of Columbia require a license for ammunition sellers or otherwise regulate the sale of ammunition
- Two states (*Illinois and Massachusetts*) and the District of Columbia require a license to purchase or possess ammunition
- Eleven states prohibit certain persons from purchasing or possessing ammunition (*Alaska, California, Delaware, Florida, Hawaii, Illinois, Michigan, Nevada, North Dakota, Tennessee and Texas*)
- Fifteen states and the District of Columbia impose a minimum age to purchase or possess ammunition¹⁰
- Two states regulate ammunition at gun shows (*California and Maine*)
- Two states restrict the locations where ammunition may be carried (*California and Minnesota*)
- Two states require safe storage of ammunition in the home (*Hawaii and Washington*)

In addition, thirty-one states and the District of Columbia regulate one or more types of unreasonably dangerous ammunition.¹¹

Local Law Summary:

Boston, Chicago, Cleveland, Columbus and New York City ban the sale and possession 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.¹²

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

Chicago prohibits the sale and possession of most ammunition. Los Angeles, New York City, Omaha and San Francisco regulate the sale and/or possession of ammunition

¹⁰ Arizona, California, Delaware, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New York, Rhode Island, South Dakota, Vermont and the District of Columbia impose a minimum age for purchase or possession of ammunition.

¹¹ Alabama, California, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin and the District of Columbia regulate one or more types of unreasonably dangerous ammunition.

¹² In 2005, San Francisco voters approved an ordinance to prohibit, *inter alia*, the possession of handguns by San Francisco residents. In a recent decision an appellate court struck down the ordinance, finding it preempted by state law. *Fiscal v. City & County of San Francisco*, No. A115018, 2008 Cal. App. LEXIS 21 (Cal. Ct. App. Jan. 9, 2008). The City has indicated that it will appeal the decision.

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. State and local laws have filled gaps left by the lack of federal regulation of ammunition. These and other laws can help limit the threat posed by firearms by limiting access to ammunition by dangerous individuals.

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) Domestic Violence and Firearms; (4) Background Checks; (5) Mental Health Reporting; (6) Waiting Periods; and (7) 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. Laws aimed at **domestic violence and firearms** recognize the particular threat posed to victims of domestic violence, and seek to keep firearms out of the hands of abusers. **Background checks** are the mechanism used to identify persons who may not lawfully purchase or possess firearms. **Mental health reporting** laws seek to ensure that federal and state databases will include all relevant information for firearm purchaser background checks. **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 and to persons who have been adjudicated as mental defectives or involuntarily committed to a mental institution.

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

sellers¹³ 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.

In addition, federal law prohibits persons who have a history of domestic violence from purchasing firearms. The prohibition applies to persons with certain domestic violence misdemeanor convictions, and to persons who are subject to certain domestic violence restraining orders. The federal prohibition does not apply to all domestic abusers; for example, most dating partners fall outside these protections. Similarly, the federal prohibitions do not apply to persons subject to orders of protection issued without notice and a hearing (*ex parte* orders). Federal law is silent with respect to the removal of firearms that are already in the possession of a domestic abuser.

The Brady Handgun Violence Prevention Act (the Brady Act)¹⁴ requires FFLs to perform background checks on prospective firearm purchasers to ensure that the sale would not violate federal, state or local law. The Brady Act is implemented through the National Instant Criminal Background Check System (NICS).¹⁵ 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.

The NICS Improvement Amendments Act of 2007 encourages states to report mental health information to NICS; however, complete reporting of state records ultimately depends on state law and practice.

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.

¹³ “Unlicensed sellers” are persons who are not required to obtain a federal firearms dealer’s license. See *infra* p. x.

¹⁴ 18 U.S.C. § 921 *et seq.*

¹⁵ 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.

The following represent examples of state laws that go beyond federal purchaser prohibitions:

- **Twenty-three states and the District of Columbia disqualify persons convicted of certain misdemeanor offenses from purchasing or possessing some or all firearms.**¹⁶ Federal law prohibits convicted felons from purchasing or possessing firearms, but is silent with respect to most misdemeanor convictions.¹⁷
- **Eighteen states and the District of Columbia restrict access to firearms by alcohol abusers.**¹⁸ 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.
- **Twenty-seven states prohibit juvenile offenders from purchasing firearms.**¹⁹ Federal law does not restrict purchases of firearms by persons with juvenile convictions.

Thirty-seven states and the District of Columbia impose a stricter minimum age than federal law for purchase and/or possession of firearms.²⁰ 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.

Thirty states go beyond federal prohibitions on purchase and possession of firearms with respect to persons who have a misdemeanor domestic violence conviction or are subject to a domestic violence protective order.²¹ Federal law prohibits purchase

¹⁶ California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia and the District of Columbia prohibit persons convicted of certain misdemeanors from purchasing some or all firearms.

¹⁷ Federal law does prohibit firearm purchases by persons with misdemeanor domestic violence convictions.

¹⁸ Alabama, Alaska, Delaware, Hawaii, Indiana, Iowa, Maryland, Massachusetts, Mississippi, 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.

¹⁹ 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.

²⁰ Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Dakota, 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.

²¹ Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin exceed federal law governing purchase or possession of firearms by persons

and possession of firearms and ammunition by persons convicted of a misdemeanor crime of domestic violence, and by persons subject to certain orders of protection. However, federal law defines these terms narrowly. States have enacted laws to protect a broader class of domestic violence victims, and to apply to a larger category of domestic violence protective orders. **In addition, twenty-eight states authorize law enforcement to remove firearms at the scene of a domestic violence incident, and/or authorize removal of firearms and ammunition when a domestic violence protective order is issued.**²² Federal law is silent with respect to the ability of law enforcement to remove firearms from domestic abusers.

Thirteen states authorize or require the reporting of mental health information to the FBI's National Instant Criminal Background Check System (NICS), for purposes of identifying persons who are prohibited from purchasing firearms due to a history of mental illness.²³

- Two states require reporting of all relevant mental health records to NICS (*Connecticut and Illinois*).
- Six states require reporting of some mental health records to NICS (*Alabama, Colorado, Georgia, Iowa, Kansas, Maine*).
- Five states authorize reporting of mental health records to NICS (*Florida, Michigan, Missouri, Virginia and Washington*).

Fourteen states authorize or require reporting of mental health records for in-state transfers only.²⁴

Twelve states and the District of Columbia have adopted waiting periods for firearm purchases.²⁵

- 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.

with a misdemeanor domestic violence conviction or who are subject to a domestic violence protective order.

²² Alaska, Arizona, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, West Virginia and Wisconsin authorize law enforcement to remove firearms and ammunition from domestic abusers.

²³ Alabama, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Michigan, Missouri, Virginia and Washington authorize or require reporting of mental health information to NICS.

²⁴ Arkansas, California, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Utah and Wisconsin authorize or require reporting of mental health records for in-state firearm transfers only.

²⁵ California, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Jersey, Rhode Island, South Dakota, Wisconsin and the District of Columbia impose waiting periods.

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.

New York City and Omaha restrict access to firearms by domestic abusers.

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

New York City requires its Department of Mental Hygiene to make records available in connection with applications for rifle or shotgun permits.

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

Los Angeles limits handgun purchases and sales to one per person per month. New York City limits purchases of handguns, and of rifles and shotguns, 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, domestic abusers, 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.

Federal Law Summary: 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 handgun 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.**²⁶

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.

State Law Summary:

Twenty-eight 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.**²⁷
- **Eleven 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 and Washington*).
- **Fifteen states require dealers to provide warnings to purchasers about the dangers of firearms.**²⁸
- **Five states require background checks of dealer employees** (*Connecticut, Delaware, New Jersey, Virginia and Washington*).
- **Nine states and the District of Columbia require dealers to use security measures on their premises** (*Alabama, California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, West Virginia and the District of Columbia*).

²⁶ 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).

²⁷ 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.

²⁸ California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Texas and Wisconsin require dealers to provide warnings to purchasers.

- **Three states require dealers to report the theft or loss of firearms to law enforcement** (*California, Massachusetts and New Jersey*).
- **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.
- Connecticut and Pennsylvania require 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 of handguns and assault weapons to obtain a license.
- Five states impose recordkeeping requirements on gun show vendors and/or promoters (*Colorado, Illinois, New York, Oregon and Virginia*).

Local Law Summary:

Chicago, Cleveland, Columbus, Hartford, Los Angeles, New York City, Omaha and San Francisco license and regulate handgun or firearms dealers.

Chicago, Columbus, New York City and Omaha regulate private sales.

Omaha regulates gun shows (but does not require background checks on purchasers at gun shows).

Conclusions:

Some states and local communities have addressed gaps in federal oversight of gun dealers with comprehensive dealer licensing laws. In addition, the private sale loophole which allows unlicensed sellers to transfer firearms without conducting background checks or keeping any records of their sales, is an area that could be addressed through state and local policy reform. In addition to requiring universal background checks, jurisdictions may wish to consider other gun show regulations to improve security and recordkeeping.

Gun Ownership

Section Overview: In this section, *Regulating Guns in America* summarizes laws governing licensing and permitting of firearm owners, and laws requiring registration of firearms, covering the following: (1) Licensing of Gun Owners or Purchasers;

(2) Registration of Firearms; (3) Reporting Lost or Stolen Firearms; and (4) Carrying Concealed Weapons.

Licensing of gun owners or purchasers refers to laws that require an individual to obtain a license or permit authorizing the individual to purchase and/or possess a firearm. Laws requiring **registration of firearms** typically require gun owners to record the ownership of their firearms with a designated law enforcement agency. Laws requiring **reporting lost or stolen firearms** by gun owners help deter gun trafficking and make owners more accountable for their weapons. **Carrying concealed weapons (CCW)** laws determine the circumstances, if any, under which a person is permitted to carry a concealed weapon in public.

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

Federal registration of firearms is limited to machine guns owned prior to 1986, when Congress banned the possession and transfer of machine guns, and to certain transfers of short-barreled rifles and shotguns specifically approved by the Attorney General. 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.

Federal law does not require gun owners to report lost or stolen firearms; it does require licensed firearms dealers to report loss or theft of firearms.

Federal law allows certain law enforcement officers, including certain retired law enforcement officers, to carry concealed firearms.

State Law Summary:

Four states require licenses for all firearm purchasers or owners (*Hawaii, Illinois, Massachusetts and New Jersey*).

Seven states license all handgun owners or purchasers (*California, Connecticut, Iowa, Michigan, New York, North Carolina and Rhode Island*).

- Six states allow purchase of only a single handgun with each license or permit (*Hawaii, Massachusetts, Michigan, New Jersey, New York and North Carolina*).
- Six states require firearm safety training or a safety exam as a condition of issuance of a license or permit (*California, Connecticut, Hawaii, Massachusetts, Michigan and Rhode Island*).

Only Hawaii and the District of Columbia require registration of all firearms. In addition:

- California requires registration of pre-ban assault weapons and 50 caliber rifles.
- Four states require registration of pre-ban assault weapons (*Connecticut, Hawaii, Maryland and New Jersey*).

- Louisiana requires registration of certain other firearms (including machine guns and short-barreled shotguns and rifles).²⁹

Seven states prohibit any registry of firearms (*Delaware, Florida, Georgia, Idaho, Rhode Island, South Dakota and Vermont*). Two states prohibit a registry of long guns (*California and Pennsylvania*).

Seven states and the District of Columbia require firearm owners to report the loss or theft of their firearms to law enforcement (*Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island and the District of Columbia*).

Two states prohibit carrying concealed weapons (*Illinois and Wisconsin*). Forty-eight states and the District of Columbia allow carrying concealed weapons.

- Twelve states and the District of Columbia are “**may issue**” states, in which the issuing official has discretion to grant or deny the permit based on statutory criteria (*Alabama, California, Connecticut, Delaware, Hawaii, Iowa, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Wyoming and the District of Columbia*).
- Among “**may issue**” states, **eleven states** and the District of Columbia require applicants to demonstrate good cause and/or be of good character in order to be eligible for a permit (*Alabama, California, Connecticut, Delaware, Hawaii, Iowa, Maryland, Massachusetts, New Jersey, New York, Rhode Island and the District of Columbia*).
- **Thirty-four states are “shall issue” states, in which law enforcement officials are required to issue a permit to anyone who meets certain minimal statutory criteria.**³⁰
- Eighteen states require applicants to demonstrate knowledge of firearm use and/or safety.³¹

Local Law Summary:

Chicago, Cleveland, Columbus, Hartford, New York City and Omaha require local licenses for owners and/or purchasers of some or all firearms.

Chicago, Cleveland, New York City and Omaha require registration of some or all firearms.

²⁹ While not requiring registration *per se*, Michigan requires handgun owners to pass a safety inspection; copies of certificates of inspection (which include information identifying the owner and the weapon) are kept by state and local law enforcement.

³⁰ Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington and West Virginia are “**shall issue**” states. **Only two states** (Alaska and Vermont) allow concealed carry with no permit.

³¹ California, Connecticut, Delaware, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, Texas and Utah require applicants to demonstrate knowledge of firearm use and/or safety.

Chicago, Cleveland, Columbus, Hartford, Los Angeles, New York City and San Francisco require firearm owners to report the theft or loss of a firearm to law enforcement.

Chicago, Cleveland, Columbus, Hartford, New York City and Omaha generally do not allow carrying concealed weapons, but Hartford, New York City and Omaha have permitting schemes that would allow some concealed carry.

Conclusions:

Licensing and registration are policies that are underused at the state and local levels. With no federal licensing and only limited federal registration of firearms, these fields lend themselves to creative state and/or local policy approaches. Generally considered to be most effective when used in concert, jurisdictions may wish to consider policy options that combine licensing with registration of firearms. Laws requiring firearm owners to report theft or loss of a weapon help deter gun trafficking, assist law enforcement in tracing guns more effectively, and protect gun owners who are victims of theft. In jurisdictions that allow carrying concealed weapons, strict permitting policies can help mitigate, but not eliminate, the risks of permissive CCW laws to public health and safety.

Consumer and Child Safety

Section Overview: This portion of the report focuses on laws addressed at making firearms safer, especially for children. Specific topics covered are: (1) Design Safety Standards for Handguns: Regulating Junk Guns/Saturday Night Specials; (2) Locking Devices; (3) Personalized Firearms; and (4) Child Access Prevention.

Design safety standards are targeted at low-quality handguns composed of inferior metals and lacking in basic safety features. **These handguns, also referred to as “junk guns/Saturday Night Specials,”** are cheap, easily concealed, and more likely to misfire or malfunction than other firearms. **Locking devices** describe a wide range of disabling devices designed to keep unauthorized users from gaining access to guns, and to reduce the risk of unintentional death and injury. **Personalized firearms, also known as “smart guns,”** are firearms that can be fired only by authorized users. **Child access prevention** laws impose criminal liability on adults who negligently leave firearms accessible to children, or otherwise allow children access to firearms.

Federal Law Summary: Federal law prohibits the importation of junk guns through a ban on importation of firearms not suited for “**sporting purposes.**” The federal Consumer Product Safety Act, which imposes health and safety standards on consumer products, exempts firearms and ammunition from its requirements. Because the federal government has not regulated the safety of domestically-produced firearms, there is effectively a protected market for domestic models of junk guns.

It is 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.³² The requirement does not apply to private sellers, and there is no requirement that the transferee use the device. There are no federal standards for locking devices.

There are no federal laws requiring personalized firearms, and no federal child access prevention laws.

State Law Summary:

Eight states regulate junk guns through handgun design and safety standards (*California, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New York and South Carolina*). Of these:

- Three states require drop testing and firing testing (*California, Massachusetts and New York*).
- Six states impose a melting point test (*Hawaii, Illinois, Massachusetts, Minnesota, New York and South Carolina*).
- Three states require specific handgun safety features, such as safeties to prevent accidental firing, chamber load indicators, and/or magazine disconnect mechanisms (*California, Massachusetts and New York*).
- Three states use a list of approved handguns that may be sold in the state (*California, Maryland and Massachusetts*).

Eleven states and the District of Columbia require locking devices on some or all firearms (*California, Connecticut, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and the District of Columbia*).

- California requires locking devices on all firearms manufactured, sold or transferred in the state. Massachusetts requires any handgun or assault weapon sold in the state to have an approved safety device.
- Two states require that all licensed dealers provide a locking device with all firearms prior to transfer (*Michigan and New York*).
- Six states require dealers to provide locks with the sale of some or all handguns (*Connecticut, Illinois, Maryland, New Jersey, Pennsylvania (handguns and certain rifles and shotguns) and Rhode Island*).
- Massachusetts and the District of Columbia require that all firearms be stored with a lock in place.
- Four states set standards for locking devices or maintain a roster of approved locking devices that may be sold in the state (*California, Maryland, Massachusetts and New York*).

Two states require monitoring of personalized handgun technology (*Maryland and New Jersey*).

- When determined to be available for retail sale, New Jersey will require that personalized handgun technology be incorporated in all handguns transported, sold or possessed in the state.

³² This provision was enacted in 2005 as part of the Protection of Lawful Commerce in Arms Act. 18 U.S.C. § 922 (z).

Twenty-seven states and the District of Columbia have child access prevention laws.³³

- The broadest laws impose criminal liability on persons who negligently store firearms whenever a child could or does gain access to the firearm, regardless of whether the child uses the firearm (*Hawaii, Maryland, Massachusetts, Minnesota, New Jersey, and Texas*).

Local Law Summary:

Chicago, Cleveland, Los Angeles and New York City require locking devices on some or all firearms. Chicago and Cleveland have local child access prevention laws.

Conclusions:

Federal law does not prohibit unsafe domestically produced firearms from entering the market. The 2005 law requiring locking devices is limited to licensed sellers, and does not require that the gun owner actually use the device. These gaps can be addressed at the state or local levels, through safety standards for handguns, safe storage requirements for all firearms, personalized handgun technology and stronger child access prevention laws.

Crime Detection

Section Overview: Crime detection is a multi-faceted topic, and this report focuses on two areas of particular relevance to firearms: (1) Ballistic Identification; and (2) Retention of Firearm Sales and Background Check Records.

Ballistic identification refers to the process through which bullets and shell casings recovered at crime scenes are linked to the firearms that fired them. Traditional ballistic identification laws require manufacturers to test-fire the firearms they produce. Images of the unique ballistic markings left on bullets and shell casings by each weapon are stored in a database so that law enforcement can later determine whether a particular gun fired a particular bullet.

Retention of firearm sales and background check records is critical to law enforcement. Background check records help deter fraud and detect dealers who might be providing false information about a prohibited purchaser. Sales records, which include information about the purchaser and the firearm being purchased, are an indispensable tool for tracing the ownership of firearms recovered in crimes.

Federal Law Summary: Federal law does not require ballistic identification.³⁴

³³ California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Virginia, Wisconsin and the District of Columbia have child access prevention laws.

Background check records of approved purchasers must be destroyed within 24 hours of the official response to the dealer from the National Instant Criminal Background Check System (NICS). The FBI maintains indefinitely the records of prospective purchasers whose applications are denied.

Federally licensed firearms dealers (FFLs) are required to retain sales records indefinitely. FFLs are not required to report sales information to law enforcement, and, with limited exceptions, the federal government does not maintain records of firearm sales.³⁵

State Law Summary: In 2007, California became the first state in the nation to require the use of handgun microstamping for every new semiautomatic handgun manufactured or sold in the state. Microstamping technology enables law enforcement to match cartridge cases found at a crime scene to the gun's owner. Three states have created statewide ballistic imaging databases (*Connecticut, Maryland and New York*).

- In Maryland and New York, manufacturers are required to test-fire all handguns manufactured or sold in the state and provide a spent shell casing to the dealer. Once the gun is sold, the dealer forwards the casing to the state police along with information about the purchaser, to be entered into a database for possible use in future criminal investigations.
- **Connecticut's firearms evidence databank** includes ballistic images from all handguns recovered by or issued to law enforcement.

Twenty-one states and the District of Columbia require sellers to retain firearm sales records.³⁶ Of these states:

- Eleven states and the District of Columbia require licensed dealers to maintain records of all firearm sales (*California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Michigan, Oregon, Pennsylvania, Rhode Island, Tennessee and the District of Columbia*). Private sellers in Illinois and Rhode Island are also required to maintain records of all firearm sales.³⁷
- Eight states require dealers to maintain records of handgun sales only (*Alabama, Colorado, Delaware, Mississippi, New Jersey, North Carolina, Vermont and Washington*). Connecticut requires private sellers to maintain handgun sales records.
- Three states (*Maryland, New York and Pennsylvania*) require sellers to maintain records of sales of other firearms. Maryland requires dealers to retain records of

³⁴ ATF's **National Integrated Ballistic Information Network** (NIBIN) is a ballistic identification database. However, it contains only ballistic identification of guns recovered from crime scenes.

³⁵ The National Firearms Act Branch of ATF maintains a limited registry of machine guns, short-barreled rifles and shotguns, and silencers, known as the National Firearms Registration and Transfer Record.

³⁶ Alabama, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington and the District of Columbia require sellers to retain sales records.

³⁷ In California and the District of Columbia, all firearm transfers must be conducted through licensed dealers, thereby ensuring that the recordkeeping requirements on licensed dealers will include records of private sales.

handgun and assault weapon transfers. New York requires dealers to retain transfer records for handguns, assault weapons and certain rifles and shotguns. In Pennsylvania, all transfers of handguns and certain rifles and shotguns must be conducted through licensed dealers, thereby ensuring that the recordkeeping requirements on licensed dealers will include records of private sales of these weapons.

Ten states retain firearm sales information reported by sellers to law enforcement (*Alabama, California, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania and Washington*). These include:

- Two states maintain records submitted by dealers of all firearm transactions (*Connecticut and Massachusetts*). Massachusetts also retains sales records for all firearms reported by private sellers.
- Five states retain records of all handgun sales reported by licensed dealers (*Alabama, California, Michigan, New Jersey and Washington*). California³⁸ and Connecticut retain handgun sales records reported by private sellers.
- Maryland retains records of transfers by dealers and private sellers of “**regulated firearms,**” defined to include handguns and assault weapons.
- New York retains records reported by dealers of sales of handguns, short-barreled rifles and shotguns, and assault weapons.
- Pennsylvania maintains records of handgun sales and sales of rifles and shotguns of specified dimensions reported by dealers and private sellers.

Nine states are required to purge background check records (*Delaware, Florida, Nebraska, New Hampshire, Rhode Island, Tennessee, Utah, Virginia and Wisconsin*).

Local Law Summary:

Chicago, Cleveland, Columbus, Hartford, New York City and Omaha have local laws governing retention and/or reporting of firearms sales records.

Conclusions:

Ballistic identification is a valuable law enforcement tool that states may wish to consider expanding. In addition, states and local communities can close gaps in federal law by requiring dealers to report sales information to law enforcement. Policies requiring law enforcement to retain those records, and to retain background check records, will help facilitate criminal investigations.

³⁸ In California, all firearm transfers must be conducted through licensed dealers, thereby ensuring that sales reporting requirements include private sales. California retains reports of handgun sales only.

REGULATING GUNS IN AMERICA

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

February 2008

Introduction

In the United States, gun violence claims close to 30,000 lives each year, according to the Centers for Disease Control and Prevention.¹ For every person who dies from a gunshot wound, two others are injured by firearms.² Over 100,000 Americans are victims of gun violence each year.³ In 2005, the most recent year for which data are available, firearms killed 30,694 persons in this country, including 12,352 homicides (40%), 17,002 suicides (55%), and 789 unintentional firearm deaths (3%).⁴

Gun violence touches every segment of our society. It places children and young people at special risk: in 2005, 3,027 juveniles age 19 and under died from gunshot wounds; another 16,298 were injured.⁵ In fact, children and young people under the age of 25 account for over 41% of all firearm deaths and injuries.⁶ Gun violence also increases the probability of death in incidents of domestic violence,⁷ raises the likelihood of fatalities by those who intend to injure others⁸ and among those who attempt suicide,⁹ and disproportionately affects communities of color. While African Americans make up 13% of the population, in 2005 they suffered more than 25% of all firearm deaths, and nearly

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) Injury Mortality Reports, 1999-2005* (2008), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.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 Reports 2005* (2007), at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>.

³ *Id.*, *WISQARS Injury Mortality Reports, 1999-2005*, *supra* note 1.

⁴ *WISQARS Injury Mortality Reports, 1999-2005*, *supra* note 1.

⁵ *Id.*, *WISQARS Nonfatal Injury Reports 2005*, *supra* note 2.

⁶ *WISQARS Injury Mortality Reports, 1999-2005*, *supra* note 1, *WISQARS Nonfatal Injury Reports 2005*, *supra* note 2.

⁷ 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).

⁸ Sara B. Vyrostek et al., *Surveillance for Fatal and Nonfatal Injuries – United States, 2001*, *Morbidity and Mortality Weekly Report, Surveillance Summaries*, U.S. Centers for Disease Control and Prevention (Sept. 3, 2004), at <http://www.cdc.gov/mmwr/PDF/SS/SS5307.pdf>.

⁹ Edmond D. Shenassa, Sandra N. Catlin & Stephen Buka, *Lethality of Firearms Relative to Other Suicide Methods: A Population Based Study*, 57 *J. Epidemiol. Community Health* 120, 122-23 (2003); Michael E. Romero & Garen J. Wintemute, *The Epidemiology of Firearm Suicide in the United States*, 79 *J. Urb. Health* 39, 40, 44-47 (Mar. 2002).

54% of all firearm homicides.¹⁰ Firearm homicide is the leading cause of death for African American males ages 15-34.¹¹

Most Americans favor stronger gun laws. But 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. Indeed, the future of the gun violence prevention movement depends on building grassroots strength to achieve reform at the state and local levels so that, ultimately, nationwide solutions will be more easily achievable. 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.

Legal Community Against Violence (LCAV) has prepared this report to furnish advocates and public officials with the legal information they need to evaluate and pursue options for gun policy reform at the state and local levels.

About Legal Community Against Violence

LCAV is a national public interest law center dedicated to preventing gun violence. We focus on policy reform at the state and local levels, marshaling the expertise of the legal **community to help transform America's gun policies** from the grassroots up. LCAV fills **a unique role as the first and only lawyers' organization in the gun violence prevention movement – and the only organization devoted** exclusively to providing legal assistance in support of gun violence prevention.

To end the epidemic of gun violence in this country, we need laws and policies that work. Community education and action are critical to achieving sound gun laws and policies. Lawyers bring an essential set of skills to this challenge. By making complex legal and policy issues understandable, conducting legal research, analyzing existing and emerging policy strategies, and generating model regulations, LCAV informs and educates communities, and empowers advocates and governments to pursue effective measures that are legally defensible.

LCAV was founded in 1993, several days after a gunman shot 14 people, fatally wounding eight of them, at 101 California Street in San Francisco. Recognizing that stronger gun laws might have prevented this massacre and potentially could prevent future tragedies, Bay Area lawyers formed LCAV.

One of our first projects was to mobilize the Bay Area legal community to support enactment of the 1994 federal assault weapon ban. We then concentrated our efforts on California, providing legal assistance to California communities seeking to adopt and defend local gun regulations. Our services contributed to the adoption of hundreds of

¹⁰ *WISQARS Injury Mortality Reports, 1999-2005*, *supra* note 1.

¹¹ National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS) Leading Causes of Death Reports, 1999-2005* (2008), at <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>.

California firearms ordinances, many of which inspired state legislation that now makes California a leader in gun policy reform. We learned that we could make the greatest difference and meet the greatest need by working at the state and local levels.

Today, LCAV serves governmental entities and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, www.lcav.org, is the most comprehensive resource for information on U.S. firearms laws in either print or electronic form.

How to Use This Resource

Overview

Regulating Guns in America is designed for use by state and local officials, law enforcement, and gun violence prevention advocates. It provides a comprehensive, national review of existing federal and state laws on more than twenty topics covering all major areas of gun policy. It also includes a discussion of local laws in ten major U.S. cities. 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 legislative solution in each area.

Topics Covered

Regulating Guns in America covers twenty-six topics, organized into six general areas of firearm regulation. Topics included are:

Classes of Weapons

Assault Weapons
Large Capacity Ammunition Magazines
Fifty Caliber Rifles
Banning Handguns
Non-Powder Guns
Ammunition Regulation

Sales and Transfers

Prohibited Purchasers
Minimum Age to Purchase and Possess Firearms
Domestic Violence and Firearms
Background Checks
Mental Health Reporting
Waiting Periods
Restrictions on Multiple Purchases or Sales of Firearms

Gun Dealers and Other Sellers

Dealer Regulations
Private Sales
Gun Shows

Gun Ownership

Licensing of Gun Owners or Purchasers
Registration of Firearms
Reporting Lost and Stolen Firearms
Carrying Concealed Weapons

Consumer and Child Safety

Design Safety Standards for Handguns:
Regulating Junk Guns/Saturday Night Specials
Locking Devices
Personalized Firearms
Child Access Prevention

Crime Detection

Ballistic Identification
Retention of Firearm Sales and Background
Check Records

Analysis Provided

For each topic area, *Regulating Guns in America*.

- Outlines the nature of the particular problem addressed (e.g., the threat posed by 50 caliber rifles);
- Summarizes the existing law at the federal level;
- Identifies and summarizes the relevant laws in each state and the District of Columbia, and discusses how the state laws compare with one another;
- Identifies and summarizes local laws in 10 major U.S. cities; and
- Lists features of a comprehensive regulatory approach to each topic.

In addition, Appendix A contains a chart entitled **“Snapshot of Federal, State and Selected Local Gun Laws,”** which further summarizes existing law in each topic area.

Regulating Guns in America is based on research conducted by LCAV through December 2007.

Objectives

Regulating Guns in America has the following objectives:

- **To identify the scope of federal firearms regulation:** Because federal firearms laws apply throughout the country, it is critical to understand how those laws operate before considering state or local level policy reform. Federal law leaves

many gaps that can be filled at the state (and, in some cases, local) level. The report summarizes the scope of federal law on each topic.

- **To create a comprehensive survey of existing firearms laws in all 50 states and the District of Columbia:** One of the most valuable tools in the analysis is a summary of firearms laws in each subject area across all fifty states and the District of Columbia. Readers can learn how their state law compares with the rest of the country, and particularly with other states that are recognized as leaders in gun violence prevention.
- **To identify the states where local governments have broad authority to regulate firearms:** Only eight states presently provide local jurisdictions broad authority to regulate firearms.¹² In Connecticut, Hawaii, Illinois, Massachusetts, New Jersey and New York, there is no state provision or statute expressly preempting local regulation of firearms. California and Nebraska preempt local regulation of one or more aspects of firearms, but otherwise permit broad local regulation. In the remaining 42 states, local governments have only limited authority to regulate firearms.¹³
- **To examine existing laws regulating firearms in 10 key cities:** LCAV analyzed local laws in 10 major cities located in states that grant local jurisdictions broad authority to regulate firearms. LCAV researched and analyzed existing firearms laws in: Boston, Massachusetts;¹⁴ Chicago, Illinois; Cleveland, Ohio; Columbus, Ohio; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey;¹⁵ New York, New York; Omaha, Nebraska; and San Francisco, California, to determine the nature and extent of their local gun laws. Local regulation is important not only because it reflects the considered judgment of local officials in response to local issues, but because it can be a powerful agent for reform at the state level.¹⁶
- **To identify the broad range of policies and regulatory approaches in each policy area:** Regulatory policies that address gaps in federal and state law can take a number of forms. This report discusses the approaches used by the states

¹² An overview of the laws governing local authority to regulate firearms in these and other states is contained in the section entitled “Preemption and Local Authority to Regulate Firearms,” on pages 10-16.

¹³ 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.

¹⁴ In Boston, local laws may be enacted through a procedure known as the “home rule petition.” Home rule petitions are enacted via special legislation, and have the force of law. However, they are not codified and LCAV was not able to locate any comprehensive source for Boston’s home rule petitions. We have included all relevant home rule petitions that we were able to locate, but we cannot confirm that this is a complete inventory of all relevant local firearms laws in Boston.

¹⁵ Our research did not locate any local laws in Newark in any of the policy areas covered by this report.

¹⁶ California serves as a model for such an approach. Many of the areas in which California is recognized as a leader in gun policy reform began with local regulation. Examples of California laws that originated at the local level include laws to: prohibit the manufacture and sale of junk guns; require firearms dealers to equip all firearms with child safety locks; prohibit the manufacture, sale and possession of assault weapons; prohibit the manufacture and sale of large capacity ammunition magazines; limit handgun purchases to one per person per month; and prohibit the manufacture, sale and possession of 50 caliber rifles.

(and, in some cases, local communities) to address these key policy issues, and identifies the most comprehensive regulatory schemes used across the country. Each section also includes a list of features of a comprehensive regulatory approach to the issue.

- **To facilitate fresh approaches to key policy issues:** The overall objective of this report is to provide a tool for understanding how each state's laws compare with the rest of the country, and how that state and its local leaders can best address gaps in existing law.

How LCAV Can Help

LCAV is available to help public officials and advocates develop effective, legally-defensible gun violence prevention measures. We can help identify policy options that are tailored to the particular needs and laws of the jurisdiction, and assist with research, analysis and drafting. Please contact us at 415-433-2062, or at requestassistance@lcav.org

The Legal Background

Litigation challenging firearms laws has become a routine strategy of the gun industry and the NRA. These challenges often raise the following issues: (1) the Second Amendment and state right to bear arms provisions; and (2) in the context of local gun regulations, preemption and local authority to regulate firearms. This section provides an overview of these issues.

The Second Amendment and State Right to Bear Arms Provisions

The Second Amendment and state right to bear arms provisions are often raised as a bar to gun violence prevention laws and regulations. In fact, these provisions permit a broad range of gun control measures.

The Second Amendment

The Second Amendment to the U.S. Constitution **states, “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.”**

The U.S. Supreme Court last addressed the scope of the Second Amendment in *United States v. Miller*, 307 U.S. 174 (1939). In that case, the Court rejected a Second Amendment challenge brought by two individuals charged with violating a federal law prohibiting the interstate transportation of sawed-off shotguns. The Court held that the **“obvious purpose” of the Amendment is to “assure the continuation and render possible the effectiveness” of the state militia, and the Amendment “must be interpreted and applied with that end in view.”**¹⁷

Since *Miller*, the scope of the Second Amendment has been addressed in more than 200 federal and state appellate cases. Until 2007, these decisions uniformly rejected Second Amendment challenges to firearms laws, including laws that ban certain types of weapons, require safety devices on others, mandate registration and licensing and otherwise impose regulatory oversight of the firearms industry.¹⁸

¹⁷ *Id.* at 178.

¹⁸ See, e.g., *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002) (the Second Amendment protects the **people’s collective right to maintain an effective state militia, and does not establish an individual right to own or possess firearms for personal or other use**), *cert. denied*, 540 U.S. 1046 (2003); *United States v. Haney*, 264 F.3d 1161 (10th Cir. 2001) (a federal criminal gun control law does not violate the Second Amendment unless it impairs a state’s ability to maintain a well-regulated militia; the term “militia” refers to a governmental organization or unit, and does not include private anti-government groups that sometimes refer to themselves as “militias”), *cert. denied*, 536 U.S. 907 (2002); *Peoples Rights Org. v. City of Columbus*, 152 F.3d 522 (6th Cir. 1998) (the Second Amendment guarantees a collective, rather than an individual right, and its restrictions operate only upon the federal government and have no application to a city ordinance); *State v. Mendoza*, 920 P.2d 357 (Haw. 1996) (the Second Amendment is a limitation upon Congress and not upon the states); *Brown v. City of Chicago*, 250 N.E.2d 129 (Ill. 1969) (the Second Amendment does not prohibit regulations that do not impair maintenance of a state militia). Note that the Fifth Circuit has stated support in *dicta* for the proposition that the Second Amendment guarantees an individual right, while upholding firearm laws against Second Amendment challenges. See *U.S. v. Emerson*, 270 F.3d 203 (5th Cir. 2001), *cert. denied*, 536 U.S. 907 (2002) (rejecting a Second Amendment

In addition, lower courts considering challenges to state and local gun laws have held that the Second Amendment constrains only the federal government, and does not apply to firearm laws passed by state or local governments.¹⁹

In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that these laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. On November 20, 2007, the U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions "violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?" *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.²⁰

State Right to Bear Arms Provisions

The constitutions of most states recognize a right to bear arms. Unlike the Second Amendment, many of these state provisions specifically recognize an individual right to bear arms or have been interpreted by the courts to protect an individual right. However, every state court that has considered a state right to bear arms challenge to a firearms law has determined that the right at issue is not absolute.²¹

Nearly every state with a right to bear arms clause in its constitution, or a similar statutory provision, uses a reasonableness test to determine whether a state or local law violates this right.²² When this test is applied, firearms regulations are generally upheld

challenge to a federal law prohibiting firearm possession by persons subject to a domestic violence restraining order, but stating in *dicta* that the Amendment protects an individual right to possess firearms apart from service in a well-regulated militia, subject only to limited government regulation); *U.S. v. Patterson*, 431 F.3d 832, 835 (5th Cir. 2005) (repeating *Emerson's dicta*, while holding that laws prohibiting felons from possessing firearms do not violate the Second Amendment); *U.S. v. Everist*, 368 F.3d 517, 519 (5th Cir. 2004) (same). These and other federal and state Second Amendment cases are summarized on LCAV's web site, www.lcav.org.

¹⁹ Prior to *Miller*, the Supreme Court held that the Second Amendment is a limitation upon the power of Congress and not upon that of the states. See *Miller v. Texas*, 153 U.S. 535, 538 (1894); *Presser v. Illinois*, 116 U.S. 252, 265 (1886); *United States v. Cruikshank*, 92 U.S. 542, 553 (1876). Federal appellate courts continue to reiterate this position. See, e.g., *Love v. Peppersack*, 47 F.3d 120, 123-24 (4th Cir. 1995), *cert. denied*, 516 U.S. 813 (1995); *Fresno Rifle & Pistol Club, Inc. v. Van De Kamp*, 965 F.2d 723, 729-31 (9th Cir. 1992); *Quilici v. Village of Morton Grove*, 695 F.2d 261, 270-71 (7th Cir. 1982), *cert. denied*, 464 U.S. 863 (1983).

²⁰ Joined by eleven U.S. cities and the U.S. Conference of Mayors, LCAV filed an *amicus curiae* (friend of the court) brief in the case in support of the District. Brief of *Amici Curiae* Major American Cities, the United States Conference of Mayors, and Legal Community Against Violence in Support of Petitioners, *District of Columbia v. Heller*, No. 07-290 (U.S. Supreme Court, filed Jan. 11, 2008).

²¹ Sayre Weaver, *Analysis of State Constitutional "Right to Keep and Bear Arms" Provisions* (© 2004 by Sayre Weaver) (on file with author).

²² *Id.* Note that in Alaska and New Hampshire, state courts apply a higher standard than the reasonableness test to firearms laws challenged under the right to bear arms clauses in their state constitutions. *Id.* In

against state right to bear arms challenges.

For instance, Article I, section 4 of the Constitution of the State of Ohio provides in part: "The people have the right to bear arms for **their defense and security....**" However, Ohio courts have repeatedly rejected Article I, section 4 challenges to firearms regulations such as those banning assault weapons, semi-automatic firearms, and large capacity ammunition magazines, restricting certain classes of persons from possessing firearms, requiring firearms dealers to be licensed and keep certain records, and prohibiting the carrying of firearms in vehicles.²³ For example, in rejecting an Article I, section 4 challenge to a ban on carrying concealed weapons, the Ohio Supreme Court concluded that the goal of maintaining an "orderly and safe society" was reasonable, as was the means employed – banning concealed weapons – to obtain that goal.²⁴

States with no right to bear arms provision²⁵

California
Iowa
Maryland
Minnesota
New Jersey

The District of Columbia also has no right to bear arms provision²⁶

States with a right to bear arms only for militia service

Kansas
Massachusetts
New York²⁷

Alaska, regulations must bear a "close and substantial relationship to the state's legitimate interest in protecting the health and safety of its citizens." *Gibson v. State*, 930 P.2d 1300, 1302-3 (Alaska Ct. App. 1997) (upholding state law prohibiting possession of firearm while intoxicated). In New Hampshire, a regulation will be deemed reasonable if it "narrowly serve[s] a significant governmental interest." *State v. Smith*, 571 A.2d 279, 281 (N.H. 1990) (upholding state law prohibiting firearm possession by persons convicted of certain felonies).

²³ *Arnold v. City of Cleveland*, 616 N.E.2d 163 (Ohio 1993) (upholding Cleveland assault weapon ban); *City of Cincinnati v. Langan*, 640 N.E.2d 200, 206 (Ohio Ct. App. 1994) (upholding Cincinnati semi-automatic firearm and large capacity ammunition magazine ban); *City of Akron v. Williams*, 177 N.E.2d 802, 804 (Ohio Ct. App. 1960) (upholding Akron ban on firearm possession by convicted felons); *Photos v. City of Toledo*, 19 Ohio Misc. 147 (Ohio Ct. C.P. 1969) (upholding Toledo ordinance prohibiting certain classes of persons from possessing firearms, requiring identification cards to acquire or possess handguns, requiring firearms dealers to be licensed and keep certain records, and prohibiting the carrying of firearms in vehicles).

²⁴ *Klein v. Leis*, 99 Ohio St. 3d 537; 2003-Ohio-4779, 795 N.E.2d 633, at ¶15 (Ohio 2003). Note that in 2004, Ohio passed a law allowing the carrying of concealed weapons.

²⁵ The following analysis of state right to bear arms provisions is based in part on Sayre Weaver, Analysis of State Constitutional "Right to Keep and Bear Arms" Provisions, *supra* note 21.

²⁶ The District of Columbia has no separate constitution and has not adopted any laws establishing a right to bear arms.

²⁷ In New York, the state right to bear arms is conferred by statute, not by the state's constitution. See N.Y. Civ. Rights Law art. 2, § 4.

Preemption and Local Authority to Regulate Firearms and Ammunition

Preemption occurs when a higher level of government removes regulatory power from a lower level of government. For example, Congress may remove legislative authority from the states in certain areas. Likewise, state governments may, in some cases, remove local legislative authority.

Federal Preemption

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. When federal law removes state authority (and thus local authority) to regulate a specific subject matter, **the process is called “federal preemption.”** Federal preemption of state law is uncommon in the area of firearms regulation.

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.²⁸ When the challenged law is within an area of traditional state authority, the reviewing court will find preemption only when the court is **“absolutely certain”** that Congress intended to take away that authority.²⁹ Courts look for the existence of a pervasive scheme of federal legislation of the particular subject, or an irreconcilable conflict between the federal regulation and the challenged law, to determine congressional intent.³⁰

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.³¹ 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.

State Preemption

Most state constitutions allocate authority to local governments to regulate in the interests of the public health, safety and welfare (which generally includes regulation of firearms **and ammunition**). **“State preemption”** occurs when a state government removes a portion of a local government's legislative authority.

²⁸ *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).

²⁹ *Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991) (rejecting a federal preemption challenge to a Missouri law setting mandatory retirement age for state judges).

³⁰ *Richmond*, 896 F. Supp. at 285.

³¹ *Id.*

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 summary offered here is intended to be only an overview of an intricate and highly specialized area of law. LCAV 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.³²

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 implied intent to assert exclusive authority over that subject matter.³³

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:**³⁴ *Connecticut, Hawaii, Illinois, Massachusetts, New Jersey, New York*

³² S.D. Codified Laws § 7-18A-36.

³³ *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).

³⁴ The District of Columbia receives its legislative authority from Congress, which has expressly given the District broad regulatory power over all aspects of firearms. D.C. Code § 1-303.43. In recent years, NRA-backed proposals have been introduced in Congress to repeal and/or amend existing firearms laws in the District, and to remove its authority to regulate firearms **in the future**. **The bill, known as the "District of Columbia Personal Protection Act," passed the House in September 2004.** Similar bills were introduced in

In Connecticut, Hawaii, Illinois, Massachusetts, New Jersey and New York, there are no state laws expressly preempting local authority to regulate firearms or ammunition. In Connecticut, Illinois, 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.³⁵

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.³⁶ Connecticut courts have not found that the legislature has demonstrated an intent to occupy the field of firearms and ammunition regulation.³⁷ 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.³⁸ LCAV 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.

Illinois: Generally, local governments in Illinois, and **“home rule units” in particular,**³⁹ enjoy broad authority to regulate firearms and ammunition.⁴⁰ Illinois courts have rejected preemption challenges to local laws such as those banning handguns and requiring registration.⁴¹ In upholding a local handgun ban, the Illinois Supreme Court concluded that when the state enacted statutes relating to the ownership, possession and sale of firearms and ammunition, it did not preempt further regulation in this area.⁴²

both houses in 2005 and 2007. The 2005 bills were never heard and the 2007 bills have not come to the floor for a vote. A group of national organizations have teamed up with local District groups to form the **“National Coalition for DC Democracy and Safety” to fight this effort.**

³⁵ 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.)

³⁶ *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).

³⁷ 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).

³⁸ *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).

³⁹ A **“home rule unit”** is a county with an elected chief executive officer, any municipality which has a population of more than 25,000, or a municipality that has become a home rule unit by referendum. Ill. Const. art. VII, § 6(a).

⁴⁰ 430 Ill. Comp. Stat. 65/13.1; Ill. Const. art. VII, § 6(a).

⁴¹ *Kalodimos v. Vill. of Morton Grove*, 470 N.E.2d 266 (Ill. 1984) (upholding local handgun ban); *City of Chicago v. Taylor*, 774 N.E.2d 22 (Ill. App. Ct. 2002) (upholding local firearms registration ordinance).

⁴² *Kalodimos*, 470 N.E.2d at 276-77.

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.⁴³ Courts also may find that local law is preempted if it conflicts with state law.⁴⁴ 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.⁴⁵

New Jersey: New Jersey municipalities enjoy express authority to regulate and prohibit the sale and use of firearms.⁴⁶ However, local governments may not enact regulation that conflicts with any policy of the state.⁴⁷ 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.⁴⁸ 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.⁴⁹

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.⁵⁰ 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

⁴³ *Connors v. City of Boston*, 714 N.E.2d 335, 337-38 (Mass. 1999).

⁴⁴ *Id.*

⁴⁵ *Town of Amherst v. Att'y Gen.*, 502 N.E.2d 128 (Mass. 1986).

⁴⁶ **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.

⁴⁷ 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.

⁴⁸ *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 recent superior court case invalidated a local firearms ordinance limiting handgun sales and purchases to one per person per 30-day period, on preemption grounds. *Ass'n of N.J. Rifle & Pistol Clubs v. City of Jersey City*, Docket No. HUD-L-3600-06 (N.J. Super. Ct. Law Div., Dec. 13, 2006), appeal docketed, No. A-004443-06T2 (N.J. Super. Ct. App. Div. 2007). The decision was rendered without a written opinion. The City's appeal is pending.

⁴⁹ *Id.*

⁵⁰ *DJL Restaurant Corp. v. City of New York*, 749 N.E.2d 186, 190 (N.Y. 2001).

found that the state has intended to occupy only limited areas of firearms regulation.⁵¹ 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.⁵² In other areas, courts have found that local governments have a great deal of authority to regulate firearms and ammunition in their communities.⁵³ For example, courts have rejected preemption challenges to many local firearms and ammunition laws, including ordinances regulating junk guns, the location and operation of firearms dealers, and the sale and possession of firearms and ammunition on county-owned property.⁵⁴

⁵¹ 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).

⁵² **California 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 § 12026(b) (prohibiting permit or license with respect to the purchase, ownership, possession or carrying of a handgun in a residence or place of business).**

⁵³ 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).

⁵⁴ *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** 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.

Nebraska: A 1991 Nebraska statute requiring the licensing of handgun purchasers provides that “the state has a valid interest in the regulation of the purchase, lease, rental, and transfer of handguns,”⁵⁵ and that “[a]ny city or village ordinance existing on September 6, 1991, shall not be preempted” by state laws requiring handgun licensing.⁵⁶ Other state laws grant Nebraska cities (to varying degrees depending on their size) express statutory authority to regulate several aspects of firearms, including use, discharge and carrying concealed weapons.⁵⁷ There are no published cases addressing preemption of local firearms laws in Nebraska, nor are there any published opinions discussing the relationship between the statutes granting express authority to regulate firearms and the handgun licensing law.⁵⁸

3. States that have enacted broad preemption statutes

In the remaining 42 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. LCAV is available to assist public officials and activists in evaluating potential local strategies to prevent gun violence.

Home Rule Provisions⁵⁹

“Home rule” generally refers to local governments’ authority to regulate, usually within limitations set out by the state constitution or legislation, and is closely tied to the issue of preemption. Local governments in most states enjoy home rule power to varying degrees. In some jurisdictions, home rule power may supersede a state’s authority to preempt local law in a given area.⁶⁰

⁵⁵ Neb. Rev. Stat. Ann. § 69-2401.

⁵⁶ Neb. Rev. Stat. Ann. § 69-2425 (quoted as amended).

⁵⁷ Neb. Rev. Stat. Ann. §§ 14-102, 15-255, 16-227, 17-556.

⁵⁸ In a 1992 Nebraska Attorney General opinion upholding Omaha’s registration ordinance, the Attorney General opined, “by providing that state law shall not preempt ordinances existing before September 6, 1991, the statute contains a negative inference that state law does preempt or ‘occupy the field’ as against all future municipal legislation.” Att’y Gen. Op. No. 92079 (June 11, 1992), 1992 Neb. AG LEXIS 69. As noted above, there is no published Nebraska case law on this issue.

⁵⁹ LCAV has not yet conducted a comprehensive 50-state analysis of home rule authority to evaluate the extent to which home rule jurisdictions have the authority to regulate firearms notwithstanding preemption of firearms regulation under their respective state laws.

⁶⁰ In a recent 3-3 decision, the Colorado Supreme Court affirmed a trial court decision which found state laws expressly preempting firearms regulation unconstitutional and infringed on Denver’s home rule authority with respect to Denver’s 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). Ordinances and portions of ordinances addressing juvenile possession of firearms, carrying concealed firearms with a permit in a public park, and concealed weapon permitting were determined to involve matters of mixed local and state concern and were found invalid where they conflicted with state law.

In 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. The City of Cleveland has challenged the law as a violation of the Ohio Constitution’s Home Rule Amendment. *Complaint for Declaratory Judgment, City of Cleveland v. Ohio*, No. CV 07 618492 (Ct. of C.P. Cuyahoga County, filed March 14, 2007). The Ohio Supreme Court recently accepted an appeal from the City of Clyde, Ohio, from a decision finding that an ordinance

prohibiting carrying firearms in a city park was preempted by section 9.68. *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 2007-Ohio-1733, 2007 Ohio App. LEXIS 1600 (Ohio Ct. App. 2007), *appeal accepted for review*, 115 Ohio St. 3d 1408, 2007 Ohio 4884, 873 N.E.2d 1314 (Ohio 2007).

CLASSES OF WEAPONS

Assault Weapons.....	19
Large Capacity Ammunition Magazines	28
Fifty Caliber Rifles	34
Banning Handguns.....	38
Non-Powder Guns.....	42
Ammunition Regulation.....	48

Assault Weapons

Background

Assault weapons are a class of semi-automatic firearms designed with military features to allow rapid and accurate spray firing. They are not designed for "sport;" they are designed to kill humans quickly and efficiently. Features such as pistol grips and the ability to accept a detachable magazine clearly distinguish assault weapons from standard sporting firearms by enabling assault weapons to spray large amounts of fire quickly and accurately.

Assault weapons have been used in many high-profile shooting incidents, including the 1999 Columbine High School massacre in Colorado, the 1993 office shooting at the 101 California Street building in San Francisco, and the December 2007 shopping mall killings in Omaha, Nebraska. Some assault rifles are also accurate enough for use as sniper rifles, as illustrated by the Washington, D.C.-area sniper shootings in October 2002.

A recent 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 an assault weapon.¹ 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.² In response, law enforcement agencies are upgrading their arsenals to include more assault weapons.³

There is widespread public support for banning assault weapons. For example, 77% of likely 2004 presidential election voters supported renewal of the federal assault weapon ban, while only 21% opposed renewal.⁴ Sixty-five percent of Americans favored *strengthening* the federal assault weapon ban, including 51% of gun owners.⁵ Sixty-seven percent of *Field & Stream* readers did not consider assault weapons to be legitimate sporting guns.⁶

Summary of Federal Law

On September 13, 1994, Congress adopted the Violent Crime Control and Law Enforcement Act of 1994. That Act amended the Gun Control Act of 1968, making it "unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon."⁷

¹ 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>.

² International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 26-7 (Sept. 2007).

³ See, e.g. Susan Candiotti, *Cops Find Themselves in Arms Race with Criminals*, Cable News Network, Nov. 6, 2007, available at <http://www.cnn.com/2007/US/11/05/cops.guns/index.html> (last visited Nov. 26, 2007); Kevin Johnson, *Police Needing Heavier Weapons*, USA Today, Feb. 20, 2007, at 1A.

⁴ Third Way, *Taking Back the Second Amendment: Seven Steps Progressives Must Take to Close the Gun Gap* 5 (Jan. 2006), at http://third-way.com/data/product/file/21/taking_back_2nd_amendment.pdf.

⁵ Consumer Federation of America, *Consumers Strongly Support Renewing and Strengthening the Federal Assault Weapons Ban* 3 (Feb. 2004).

⁶ Field & Stream, *The 2003 National Hunting Survey* (July 2003).

⁷ 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.

The term "semiautomatic assault weapon" was defined 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.⁸ The two-feature test and the inclusion in the list of 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 1994 Act also banned the transfer and **possession of any "large capacity ammunition feeding device," defined to include magazines** manufactured after the enactment of the Act that are capable of holding more than 10 rounds of ammunition.⁹

The 1994 Act did not, however, prohibit the continued transfer or possession of assault weapons or large capacity ammunition magazines **manufactured before the law's effective date**. Manufacturers took advantage of this loophole by boosting production of assault weapons and large capacity magazines in the months leading up to the ban, creating a legal stockpile of these items. As a result, assault weapons and large capacity magazines continued **to be readily available – and legal – nationwide, except where** specifically banned by state or local law.

In addition, the assault weapon ban was enacted with a sunset clause, providing for its expiration after ten years. Despite overwhelming public support for its renewal, Congress and the President allowed the assault weapon ban to expire on September 13, 2004. Thus, semi-automatic, military style weapons that were formerly banned under the federal law are now legal unless banned by state or local law.¹⁰

SUMMARY OF STATE ASSAULT WEAPON LAWS

Seven states have enacted laws banning assault weapons: California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey and New York. In addition, Maryland, Minnesota and Virginia regulate assault weapons. The District of Columbia bans certain assault weapons indirectly, through laws banning other classes of weapons.

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.

⁸ 18 U.S.C. § 921(a)(30).

⁹ 18 U.S.C. §§ 921(a)(31), 922(w)(1). Additional information about large capacity ammunition magazines is contained in the section entitled Large Capacity Ammunition Magazines.

¹⁰ The 2007 report by the International Association of Chiefs of Police recommended that Congress enact an effective ban on military-style assault weapons. See *Taking a Stand: Reducing Gun Violence in Our Communities*, *supra* note 2, at 26-7.

State Bans

California	Cal. Penal Code §§ 12275 – 12290
Connecticut	Conn. Gen. Stat. §§ 53-202a – 53-202o
Hawaii (assault pistols)	Haw. Rev. Stat. Ann. §§ 134-1, 134-4, 134-8
Maryland (assault pistols)	Md. Code Ann., Crim. Law §§ 4-301 – 4-306
Massachusetts	Mass. Gen. Laws ch. 140, §§ 121, 122, 123, 131, 131M
New Jersey	N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13
New York	N.Y. Penal Law §§ 265.00(22), 265.02(7), 265.10

State Regulations

Maryland	Md. Code Ann., Pub. Safety § 5-101(p)
Minnesota	Minn. Stat. §§ 624.712 – 624.7141
Virginia	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

Other Laws

District of Columbia	D.C. Code Ann. §§ 7-2501.01(10), (12), 7-2502.01, 7-2502.02, 7-2551.01, 7-2551.02
----------------------	---

States that include a list of assault weapons banned by name

California
Connecticut
Maryland (assault pistols)
Massachusetts
New Jersey
New York

States that provide a generic feature definition of assault weapon (asterisks indicate states that use a one-feature test)

California*
Connecticut
Hawaii (assault pistols only)
Massachusetts
New Jersey*
New York

States that require registration of grandfathered weapons

California
Connecticut
Hawaii
Maryland
New Jersey

States that generally prohibit the transfer of grandfathered weapons

California
Connecticut
Hawaii
Maryland

States that limit the places a grandfathered weapon may be possessed or require a license for possession

California

Connecticut

Massachusetts (license)

New Jersey (license)

Description of State Laws Banning Assault Weapons

1. *Definition:* Most state assault weapon bans prohibit specific weapons by listing them by name. Some bans also list features that, when present, make a gun an assault weapon. These 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 the weapon.

California and New Jersey have the most comprehensive approaches to defining assault weapons. California law also bans roughly 75 assault weapon types, models and series by name and provides a one-feature generic test for rifles and pistols. New Jersey bans roughly 65 assault weapon types, models and series and uses a one-feature generic test for shotguns.¹¹ New Jersey also bans parts that may be readily assembled into an assault weapon. The generic feature tests in most other bans, including the expired federal ban, are two-feature tests.¹²

Connecticut, Hawaii (assault pistols only), Massachusetts and New York use the definition of **"assault weapon" from the expired federal law**. Connecticut and Hawaii use the generic feature definition from the federal law. Massachusetts and New York use both the federal **law's generic feature definition** and its list of named weapons.

2. *Prohibited Activities:* Assault weapon bans vary as to which activities are prohibited. California and Connecticut prohibit the broadest range of activities. Both prohibit possession, distribution, importation, transportation, and keeping or offering for sale of assault weapons.¹³ In addition, California prohibits the manufacture and transfer of assault weapons, while Connecticut also prohibits giving an assault weapon to another **person**. **New Jersey's law** is also comprehensive, prohibiting the manufacture, transportation, sale, shipping, transfer, disposing and possession of assault weapons.

¹¹ **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.

¹² Like the expired federal assault weapon ban, many of the state bans also include in their generic feature definitions some features that are purely cosmetic, such as bayonet mounts and grenade launchers. Defining a firearm as an assault weapon based on such cosmetic features creates a loophole, making it possible for **manufacturers to evade the ban by making cosmetic modifications to their weapons**. **Columbus, Ohio's assault weapon ban** (*see infra* p. 25) is the best example of a ban that does not include cosmetic features in its definition of assault weapon.

¹³ In 2006 California amended its law to make possession of an assault weapon a public nuisance. Cal. Penal Code § 12282.

3. *Grandfathering:* Assault weapon bans differ in their treatment of pre-ban weapons. Each state grandfathers pre-ban weapons. However, California, Connecticut, Hawaii, Maryland and New Jersey also require registration of such weapons.¹⁴ **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).** California, Connecticut, Hawaii, and Maryland prohibit transfer of all or most grandfathered weapons. Only California and Connecticut limit the places where a grandfathered weapon may be possessed.¹⁵ In Massachusetts and New Jersey, grandfathered weapons may only be sold and possessed if the owner has a license.

Description of State Regulations Governing Assault Weapons

1. *Maryland:* In addition to its ban on assault pistols, Maryland also regulates the sale of other assault weapons, defined to include a list of specified firearms or their copies. Assault weapons are defined as "regulated firearms" under state law, and transfers are subject to various regulations, including: requiring enhanced background checks on purchasers; requiring dealers to obtain a state license; and requiring private transfers to be processed through licensed dealers or a law enforcement agency. Additionally, purchasers: (1) must be age 21 or older; (2) are subject to a seven-day waiting period; and (3) are limited to one assault weapon in any 30-day period.¹⁶

2. *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.

3. *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."

¹⁴ 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.

¹⁵ 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 § 12285(c); Conn. Gen. Stat. § 53-202d(d). 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 § 12285(c)(6).

¹⁶ See Md. Code Ann., Pub. Safety §§ 5-101 – 5-143.

District of Columbia Regulations Governing Assault Weapons¹⁷

Although the District of Columbia does not have a specific ban on assault weapons, its handgun ban encompasses assault pistols and its machine gun ban encompasses firearms that can discharge “[s]emiautomatically, more than 12 shots without manual reloading.” Under a separate law, 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).¹⁸

¹⁷ In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia’s strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

¹⁸ 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. 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. In *District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008), the court affirmed a judgment on the pleadings in favor of defendants (various manufacturers, importers and distributors of firearms), concluding that the District’s claims under the Assault Weapon Manufacturing Strict Liability Act were barred by the PLCAA. See also *Ileto v. Glock, Inc.*, 421 F. Supp.2d 1274 (C.D. Cal. 2006) (granting defendants’ motion for judgment on the pleadings under PLCAA). By contrast, in 2005 a federal district court denied a motion to dismiss a suit brought by the City of New York against gun manufacturers and distributors alleging a public nuisance, finding that the case was not precluded by the PLCAA. *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp.2d 244, 298 (E.D.N.Y. 2005), *appeal pending*.

SUMMARY OF SELECTED LOCAL LAWS¹⁹ BANNING ASSAULT WEAPONS

Local Laws Banning Assault Weapons²⁰

Boston	1989 Mass. Acts 596, §§ 1-7
Chicago	Chicago, Ill., Code §§ 8-24-025, 8-20-030(h)
Cleveland	Cleveland, Ohio, Code §§ 628.01 – 628.99
Columbus	Columbus, Ohio, Code §§ 2323.11(L), (M), 2323.31, 545.04(a)
New York City	New York, N.Y., Admin. Code §§ 10-301(16), 10- 303.1; New York, N.Y., Rules tit. 38, § 17-01

Boston: With some exceptions, Boston prohibits possession, transfer, purchase and display of assault weapons, large capacity magazines and ammunition belts. “Assault weapons” are defined as semi-automatic rifles with a fixed magazine with a capacity exceeding ten rounds, shotguns with a fixed magazine with a capacity exceeding six rounds, and shotguns with a revolving cylinder. The definition also includes a list of named weapons and any rifle or shotgun determined to be an assault weapon by an assault weapon roster board. In addition, any rifle or shotgun that is substantially identical to a weapon included in the definition is deemed an assault weapon. Finally, any modified semi-automatic firearm with the same make, caliber and action as a weapon included in the definition is considered an assault weapon.

Within 90 days of the date the law took effect, any individual in lawful possession of an assault weapon and a firearm identification card for the weapon was permitted to apply for a license to possess it in his or her residence. Any person denied such a license was required to dispose of the weapon within 90 days of the denial. Any person lawfully in possession of an assault weapon obtained by bequest or intestate succession or recently added to the assault weapon roster has 90 days to apply for a license or dispose of the weapon.

Chicago: Chicago prohibits persons from selling, offering or displaying for sale, giving, lending, transferring, possessing or acquiring an **assault weapon** or “**assault ammunition**.”²¹ “**Assault weapon**” is defined to include a list of named weapons, and also includes any weapon that the Superintendent of Police defines as such by regulation. Chicago does not grandfather pre-ban assault weapons.

Cleveland: Cleveland prohibits any person from selling, offering or displaying for sale, giving, lending or transferring ownership of, acquiring or possessing any **assault weapon**. “**Assault**

¹⁹ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed **House Bill 347 (overriding the Governor’s veto)**, which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “**The Legal Background.**”

²⁰ Los Angeles passed the country’s first ban on assault weapons in February 1989. That law prohibited the transfer and possession of assault weapons within the city. San Francisco also banned the possession, sale and transfer of assault weapons. Later that year, California became the first state to ban assault weapons and both Los Angeles and San Francisco subsequently repealed their laws.

²¹ Chicago defines “**assault ammunition**” as any **ammunition** magazine with a capacity of more than 12 rounds of ammunition.

weapons” are defined as semiautomatic rifles and handguns that accept a detachable magazine with a capacity of 20 rounds or more, and semiautomatic shotguns with a magazine capacity of more than six rounds. Cleveland does not grandfather pre-ban weapons.

Columbus: In 2005, Columbus, Ohio became the first major U.S. city to ban assault weapons after the expiration of the federal ban. Columbus prohibits any person from knowingly selling, offering or displaying for sale, giving, lending or transferring ownership of, or acquiring or possessing any assault weapon. “Assault weapons” are defined using a one-feature test for semi-automatic rifles and pistols, and a two-feature test for semi-automatic shotguns.²² In addition, the city defines as “assault weapons” semi-automatic pistols with fixed magazines, and centerfire rifles with fixed magazines, that have the capacity to accept more than 10 rounds of ammunition, and revolving cylinder shotguns. Columbus grandfathers pre-ban assault weapons provided they are registered. The owner of a registered assault weapon may not sell, give, lend or transfer ownership of that weapon.

New York City: New York City prohibits possession or transfer of any assault weapon. “Assault weapon” is defined to include any semiautomatic centerfire or rimfire rifle or semiautomatic shotgun with one or more of a list of specified features. The definition also includes features and/or models of firearms that are “particularly suitable for military and not sporting purposes” as determined by the police commissioner. The city’s rules contain a list of named weapons that also are included in the definition of assault weapon. New York City does not grandfather pre-ban weapons.²³

FEATURES OF COMPREHENSIVE LAW BANNING ASSAULT WEAPONS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Definition of assault weapon is based on the generic features that characterize assault weapons (*California, New Jersey and Columbus have the most comprehensive definitions*)
- Definition of assault weapon is based on a one-feature test (*New Jersey uses a one-feature test for shotguns; California and Columbus use a one-feature test for rifles and pistols; New York City uses a one-feature test for rifles and shotguns*)
- 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

²² Columbus’ definition of assault weapons is derived in large part from LCAV’s model law banning assault weapons, which is contained in LCAV’s April 2004 report (reprinted August 2005), *Banning Assault Weapons—A Legal Primer for State and Local Action*, available at http://www.lcav.org/library/reports_analyses/assaultweaponreport.asp. LCAV’s model law uses a one-feature test for shotguns as well as rifles and pistols.

²³ In addition to criminal penalties, any person who violates the city’s ban on assault weapons is subject to a civil penalty of up to \$25,000 for each assault weapon possessed or transferred. Such penalty is recoverable in a civil action by the city’s corporation counsel. New York, N.Y., Admin. Code § 10-303.1(c).

appropriate governmental official or agency to add new and/or modified models to the list (*Chicago, New York City*)

- Prohibited activities include possession, sale, purchase, transfer, loan, pledge, transportation, distribution, importation, and manufacture of assault weapons (*California, Connecticut and New Jersey have the broadest prohibitions*)
- Pre-ban weapons are not grandfathered and instead are to be rendered inoperable or removed from the jurisdiction (*Chicago, Cleveland, New York City*)
- Alternatively, if pre-ban weapons are grandfathered, there is a registration mechanism for grandfathered weapons, with strict limits on their transferability, use and storage²⁴ (*California, Connecticut, Hawaii, Maryland, New Jersey, Boston, Columbus*)

²⁴ See section on 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 the section on Licensing of Gun Owners or Purchasers.

Large Capacity Ammunition Magazines

Background

Automatic and semi-automatic firearms often use a detachable magazine or feeding device to store cartridges (which hold ammunition). Inside the magazine, a spring forces the cartridges into position to be fed into **the chamber by operation of the firearm's** action.

Although the statutory definitions vary, magazines with a capacity of more than 10 rounds of ammunition are generally considered to be **"large capacity" magazines**. In some cases, large capacity magazines can hold up to 100 rounds of ammunition. Although detachable large capacity magazines are typically associated with machine guns or semi-automatic assault weapons, such devices are generally available for any semi-automatic firearm that accepts a detachable magazine.

Because of their ability to hold so many rounds of ammunition, large capacity magazines significantly increase the lethality of the automatic and semi-automatic firearms using them. Other types of firearms, in contrast, are generally capable of holding far less ammunition. For example, revolvers typically hold six rounds of ammunition in a rotating cylinder.

Bans on large capacity ammunition magazines are often adopted in concert with bans on assault weapons. However, the impact of large capacity ammunition magazine bans is not limited to assault weapons. 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. 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.¹ Assault weapons make up only about 1% of the firearms estimated to be in civilian hands.²

Crime data also support the conclusion that a ban on large capacity magazines would have a greater impact on gun crime than a ban on assault weapons alone. Guns equipped with large capacity magazines were involved in 14% to 26% of gun crimes prior to the assault weapon ban in 1994, as compared with assault weapons, which accounted for 6% of gun crimes.³ Thus, a ban on large capacity ammunition magazines would reduce the capacity and lethality of many more firearms than would a ban on assault weapons alone.

Summary of Federal Law

On September 13, 1994, Congress adopted the Violent Crime Control and Law Enforcement Act of 1994. That Act amended the Gun Control Act of 1968, making it **unlawful to transfer or possess a "large capacity ammunition feeding device" not lawfully**

¹ 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, United States Department of Justice 6, 18 (June 2004).

² Bureau of Justice Statistics Selected Findings, U.S. Department of Justice, *Firearms, Crime, and Criminal Justice: Guns Used in Crime 6* (July 1995).

³ Koper, *supra* note 1, at 18-19.

possessed on or before the law's enactment.⁴ The law also banned the manufacture, transfer and possession of semi-automatic assault weapons.⁵

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."⁶

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, except where specifically banned by state or local law. This loophole also made enforcement difficult, as most magazines do not have any identifying marks to distinguish those that were manufactured before or after the effective date of the ban.⁷

The federal law was enacted with a sunset clause, providing for its expiration after ten years. Congress and the President allowed the 10 year-old ban to expire on September 13, 2004, despite overwhelming support for its renewal. Thus, large capacity ammunition magazines (and semi-automatic, military style assault weapons) that were formerly banned under the federal law are now legal unless banned by state or local law.

SUMMARY OF STATE LAWS BANNING LARGE CAPACITY AMMUNITION MAGAZINES

Six states have enacted laws banning large capacity ammunition magazines: California, Hawaii, Maryland, Massachusetts, New Jersey and New York. All of these states also ban assault weapons.

State Bans

California	Cal. Penal Code § 12020(a)(2), (b), (c)(25)
Hawaii	Haw. Rev. Stat. Ann. § 134-8(c)
Maryland	Md. Code Ann., Crim. Law § 4-305
Massachusetts	Mass. Gen. Laws ch. 140, §§ 121, 131M
New Jersey	N.J. Stat. Ann. §§ 2C:39-9(h), 2C:39-1(y), 2C:39-3(j)
New York	N.Y. Penal Law §§ 265.00(23), 265.02(8), 265.10

⁴ 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.

⁵ Additional information on assault weapons is contained in the section on Assault Weapons.

⁶ 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).

⁷ 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).

States that ban large capacity magazines designed for use with any firearm

California
Maryland
Massachusetts
New Jersey
New York

States that ban large capacity magazines designed for use with handguns only

Hawaii

States that ban large capacity magazines capable of firing more than 10 rounds

California
Hawaii
Massachusetts
New York

States that ban large capacity magazines capable of firing more than 15 rounds

New Jersey

States that ban large capacity magazines capable of firing more than 20 rounds

Maryland

States that grandfather pre-ban magazines

Massachusetts
New York

Description of State Laws Banning Large Capacity Ammunition Magazines

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:* California, Maryland, Massachusetts, New Jersey and New York all ban large capacity ammunition magazines for use with any firearm.
2. *States that Ban 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, Hawaii, Massachusetts and New York define a large capacity magazine as a magazine that is capable of firing more than 10 rounds. The New Jersey definition includes magazines capable of firing more than 15 rounds, while Maryland includes magazines that can fire more than 20 rounds.
4. *States that Ban Manufacture, Transfer, Transportation and Possession of Large Capacity Magazines:* New Jersey and New York have the most comprehensive prohibitions, banning manufacture, transfer, transportation and possession of large capacity magazines. New Jersey allows possession of large capacity magazines by a

person who has registered an assault firearm 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.⁸

5. *States that Ban Other Activities Related to Large Capacity Magazines.* Other states ban various combinations of activities related to large capacity magazines. Hawaii bans manufacture, transfer and possession; Massachusetts bans transfer and possession; California bans manufacture, transfer and importation; and Maryland bans manufacture and transfer.

6. *States that Grandfather Pre-Ban Magazines.* The Massachusetts ban exempts magazines that were lawfully possessed on September 13, 1994 (the date the federal ban took effect). The New York ban applies to only those magazines manufactured after September 13, 1994. As noted above,⁹ 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.

SUMMARY OF SELECTED¹⁰ LOCAL LAWS BANNING LARGE CAPACITY AMMUNITION MAGAZINES

Local Laws Banning Large Capacity Ammunition Magazines

Boston	1989 Mass. Acts 596, §§ 1-7
Chicago	Chicago, Ill., Code §§ 8-20-030(i), 8-24-025
Columbus	Columbus, Ohio, Code §§ 2323.11(F), 2323.32(A), (B)(2)
Los Angeles	Los Angeles, Cal., Municipal Code ch. V, art. 5, § 55.13
New York City	New York, N.Y., Admin. Code §§ 10-131(i) 10-301(17), 10-306

Boston: With some exceptions, Boston prohibits possession, transfer, purchase and display of large capacity magazines and ammunition belts that can be used with semi-automatic rifles and shotguns. A large capacity magazine is defined as a box, drum or container which can hold more than 10 rounds of ammunition to be fed continuously into a semi-automatic rifle or shotgun. A large capacity ammunition belt is the same as a large capacity magazine except that the ammunition is held on a belt or strip. Magazines and belts which can be readily converted into large capacity versions are also banned.

⁸ New Jersey allows registration only of assault weapons with a legitimate target-shooting purpose. **Additional information on New Jersey's assault weapon ban is contained in the section on Assault Weapons.**

⁹ See *supra* note 7 and accompanying text.

¹⁰ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House **Bill 347 (overriding the Governor's veto), which created** Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of **this report titled "The Legal Background."**

Chicago: Chicago bans the transfer, acquisition or possession of any ammunition magazine having a capacity of more than 12 rounds.

Columbus: Columbus prohibits any person from knowingly possessing a large capacity magazine with a capacity of more than 20 rounds. Pre-ban magazines are grandfathered if the possessor has registered his or her assault **weapon and the magazine “belongs to or is a part of” the registered weapon.**¹¹

Los Angeles: Los Angeles prohibits the sale or other transfer of a clip, magazine, belt, drum, feed strip or similar device which has a capacity of, or which can be readily restored or converted to accept, more than 10 rounds of ammunition.¹²

New York City: New York City regulates ammunition feeding devices, which are defined as a magazine, belt, feedstrip, drum or clip that can be attached to or used with a firearm.

- *Ammunition feeding devices for use with handguns and short-barreled rifles and shotguns:* Subject to certain exceptions, New York City prohibits possession of ammunition feeding devices designed for handguns and short-barreled rifles and shotguns. One such exception allows handgun licensees to possess an ammunition feeding device designed for use in the handgun he or she is authorized to use, so long as the capacity of the device is not more than 17 rounds **and the device does not extend below the handgun’s grip.** Ammunition feeding devices designed for use in a handgun or short-barreled rifle or shotgun may not be transferred except between an authorized possessor and a dealer in handguns and short-barreled rifles and shotguns.
- *Ammunition feeding devices for use with rifles and shotguns:* Subject to limited exceptions, no person may possess an ammunition feeding device designed for use in a rifle or shotgun if the device has the capacity to hold more than five rounds of ammunition. Ammunition feeding devices designed for use in a rifle or shotgun may not be transferred except between an authorized possessor (a rifle or shotgun permit holder) and a dealer in rifles and shotguns.

FEATURES OF COMPREHENSIVE LAW BANNING LARGE CAPACITY AMMUNITION MAGAZINES

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area

¹¹ Note that Columbus’s ordinance banning large capacity ammunition magazines predates the ban on assault weapons enacted by Columbus in 2005, and has not been revised subsequently.

¹² The Los Angeles ordinance was adopted in 1998. In 1999, the State of California adopted a similar law. San Francisco also prohibited firearms dealers from selling any ammunition clip or magazine with the capacity to contain more than 10 rounds of ammunition, but repealed the ordinance after the State of California adopted the state law.

should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- **Definition of “large capacity ammunition magazine” includes magazines capable of holding in excess of 10 rounds** (*Hawaii, California, Massachusetts, New York, Boston, Los Angeles*)¹³
- **Ban applies to large capacity ammunition magazines for use with all firearms** (*California, Maryland, Massachusetts, New Jersey, New York, Chicago, Columbus, Los Angeles, New York City*)
- **Prohibited activities include possession, sale, purchase, transfer, loan, pledge, transportation, distribution, importation, and manufacture of large capacity ammunition magazines** (*New Jersey and New York are the most comprehensive, banning manufacture, transfer, transportation and possession*)
- **No allowance for pre-ban magazines** (*California,*¹⁴ *Hawaii, Maryland, New Jersey, Boston, Chicago, Los Angeles, New York City*)

¹³ While New York City does not define large capacity ammunition magazines based on the number of rounds they can hold, it does ban possession of large capacity ammunition feeding devices designed for use in a rifle or shotgun if the device has the capacity to hold more than five rounds. Possession of large capacity ammunition feeding devices for use in handguns is prohibited without regard to the capacity, although there is an exception for handgun licensees that allows possession of large capacity feeding devices so long as the capacity of the device is not more than 17 rounds and the device does not extend **below the handgun’s grip.**

¹⁴ Note, however, that California does not ban possession of large capacity ammunition magazines.

Fifty Caliber Rifles

Background

Fifty caliber rifles are military firearms, used by armed forces across the globe, that combine long range, accuracy, and massive power. 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.** The 50 caliber rifle is considered one of the most powerful and destructive weapons legally available to civilians in the United States.¹ It 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

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,³ incendiary, and combination armor-piercing and incendiary ammunition for 50 caliber rifles can significantly enhance their destructive capacity,⁴ particularly against chemical and industrial facilities⁵ and civil aviation targets.⁶ Federal law enforcement has **“identified some examples of criminal misuse** of the .50 caliber rifle with a nexus to terrorism, outlaw motorcycle gangs, international and domestic drug trafficking, and **violent crime.”**⁷

Despite their deadly power, or possibly because of it, 50 caliber rifles are proliferating on the civilian firearms market, yet are subject to less regulation than handguns.⁸

Although most of the data regarding 50 caliber firearms relate to rifles, the industry also has introduced 50 caliber handguns. Smith & Wesson now manufactures a handgun which can fire a 50 caliber round and which may be capable of penetrating the highest grade of concealable body armor typically worn by law enforcement officers.⁹

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).

² *Id.* at 8.

³ For additional information on armor-piercing ammunition, see section on Ammunition Regulation.

⁴ *Voting From the Rooftops*, *supra* note 1, at 12-20.

⁵ See generally Violence Policy Center, *Sitting Ducks: The Threat to the Chemical and Refinery Industry from 50 Caliber Sniper Rifles* (Aug. 2002).

⁶ See generally Violence Policy Center, *Just Like Bird Hunting: The Threat to Civil Aviation From 50 Caliber Sniper Rifles* (Jan. 2003).

⁷ Office of Special Investigations, U.S. General Accounting Office, *Weaponry: Availability of .50 Caliber Semiautomatic Rifles* 6-7 (June 30, 1999). See also Violence Policy Center, *Criminal Use of the 50 Caliber Sniper Rifle Fact Sheet* (2007), available at <http://www.vpc.org/snipercrime.htm> (last visited Nov. 27, 2007).

⁸ Violence Policy Center, *One Shot, One Kill: Civilian Sales of Military Sniper Rifles* 41-42 (May 1999); *Voting from the Rooftops*, *supra* note 1, at 62-68; and 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* 5 (July 2005).

⁹ Violence Policy Center, *Vest Buster: The .500 Smith & Wesson Magnum – The Gun Industry’s Latest Challenge to Law Enforcement Body Armor* 25 (June 2004).

Summary of Federal Law

Federal law does not ban 50 caliber rifles. Moreover, because 50 caliber rifles are classified as long guns, they can be purchased legally from a federally licensed dealer by an 18 year-old.¹⁰ Legislation was introduced in the U.S. Senate in 1999, 2001, 2003 and 2005 to bring 50 caliber rifles under the National Firearms Act, thereby imposing registration requirements and other regulations on their importation, manufacture and transfer. Similar legislation was introduced in the House of Representatives in 1999, 2001, 2004 and 2005. Some of the bills introduced in the House also would have banned the transfer and possession of 50 caliber rifles. To date, there has been no movement on these bills.¹¹

SUMMARY OF STATE LAWS REGARDING 50 CALIBER RIFLES

California is the only state that bans 50 caliber rifles. Connecticut bans a single model of 50 caliber rifle. Maryland imposes various regulations on transfers of 50 caliber rifles.

State Ban

California Cal. Penal Code §§ 12275.5(b), 12278, 12280 – 12289.5

Single Model Ban

Connecticut Conn. Gen. Stat. § 53-202a(a)(1)

State Regulation

Maryland Md. Code Ann., Pub. Safety §§ 5-101(p)(2)(ix), 5-102 – 5-143

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.

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.¹²

¹⁰ 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).

¹¹ A 2007 report by the International Association of Chiefs of Police (IACP) recommended that Congress enact an effective ban on 50 caliber sniper rifles. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 27 (Sept. 2007).

¹² 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 §§ 12301(a), 12303, 12303.6. Connecticut also bans distribution, transportation, importation, sale and transfer of armor piercing or incendiary 50 caliber bullets. Conn. Gen. Stat. § 53-202l.

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, 2006.¹³

2. *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.

3. *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.

SUMMARY OF SELECTED¹⁴ LOCAL LAWS BANNING 50 CALIBER RIFLES

Local Laws Banning 50 Caliber Rifles

Los Angeles

Los Angeles, Cal., Municipal Code ch. V, art. 5, § 55.18(a), (d)

San Francisco

San Francisco, Cal., Police Code art. 9, § 613.10-1(c), (d), (g)

Both Los Angeles and San Francisco enacted laws banning 50 caliber rifles. As highlighted below, Los Angeles also bans 50 caliber handguns, and San Francisco also bans 50 caliber ammunition and 50 caliber handguns.

Los Angeles: In June 2003, Los Angeles became the first jurisdiction to ban 50 caliber rifles (as well as 50 caliber handguns). Section 55.18 of Chapter V, Article 5 of the Los Angeles Municipal Code provides that no person “shall sell, give, transfer ownership of, transfer, offer for sale, or display for sale any large caliber firearm.” The term “large caliber firearm” is defined as any firearm “capable of firing a center-fire cartridge of .50 caliber or larger either by designation or actual measurement.” The term ‘large caliber firearm’ shall include any rifle or handgun.”¹⁵

San Francisco: San Francisco is the only jurisdiction that bans 50 caliber cartridges along with 50 caliber firearms. Section 613.10-1 of Article 9 of the San Francisco Police

¹³ 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.

¹⁴ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

¹⁵ The State of California adopted its ban on .50 BMG rifles in 2004. In June 2005, as a result of litigation challenging the Los Angeles ordinance, the city amended the law to exclude .50 BMG rifles.

Code provides that no person shall sell, give, transfer, offer for sale or display for sale any 50 caliber firearm (including rifles and handguns) or 50 caliber cartridge.

The San Francisco ordinance has a sunset provision which provides that if the State of California enacts legislation which is covered by the law, the requirements of the ordinance shall be suspended. The state's ban on 50 caliber rifles went into effect after San Francisco adopted its ordinance. Accordingly, that provision of the ordinance is no longer in effect. San Francisco's bans on 50 caliber handguns and 50 caliber cartridges remain in effect.

FEATURES OF COMPREHENSIVE LAW BANNING 50 CALIBER RIFLES

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Ban applies to 50 caliber rifles (*California, Los Angeles*¹⁶) and 50 caliber cartridges (*San Francisco*), and may include 50 caliber handguns (*Los Angeles, 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
- 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 weapons¹⁷ (*California*)

¹⁶ See *supra* note 15.

¹⁷ See section on 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 the section on Licensing of Gun Owners or Purchasers.

Banning Handguns

Background

Handguns are a generic class of weapons to be differentiated from long guns (i.e., rifles and shotguns) and generally include revolvers and pistols.¹ The policy issue of whether all handguns should be banned, as opposed to regulated, is a topic of debate inside, as well as outside, the gun violence prevention movement.² As noted below, there are no federal or state laws banning all handguns.³ The District of Columbia, Chicago and at least 12 other Illinois communities have adopted bans on the possession and/or sale of handguns as a generic class of weapons.

Handguns are a particular focus of regulatory efforts – up to and including total bans – because of their frequent use in violent crime as compared to other firearms. From 1993 to 2001, an average of 737,360 violent crimes were committed with handguns in the U.S. each year, making handguns seven times more likely to be used to commit violent crimes than other firearms.⁴ Although handguns make up only 34% of firearms, approximately 80% of firearm homicides are committed with a handgun.⁵ Women face an especially high risk of handgun violence.⁶ In 2005, 72% of female homicide victims were killed with a handgun.⁷

Suicides committed with handguns are also a major area of concern. A California study found that in the first year after the purchase of a handgun, suicide was the leading cause of death among handgun purchasers.⁸ In the first week after the purchase of a handgun, the firearm suicide rate among purchasers was 57 times as high as the adjusted rate in the general population.⁹

Several studies have documented the risks associated with guns in the home. Adults living in homes with guns are at a significantly higher risk of homicide and suicide than

¹ Federal law defines a handgun as “a firearm which has a short stock and is designed to be held and fired by the use of a single hand,” and any combination of parts from which such a firearm can be assembled. 18 U.S.C. § 921(a)(29).

² For a thorough discussion of various regulatory models other than outright bans for reducing death and injury caused by handguns, see generally David Hemenway, *Private Guns, Public Health* (2004).

³ A number of jurisdictions ban some types of handguns, including “ultracompact” handguns, junk guns and other unsafe handguns, assault pistols and 50 caliber handguns. These laws are described in the sections on Dealer Regulations, Design Safety Standards for Handguns: Regulating Junk Guns/Saturday Night Specials, Assault Weapons and 50 Caliber Rifles, respectively.

⁴ Office of Justice Programs, U.S. Department of Justice, *Bureau of Justice Statistics Special Report, National Crime Victimization Survey, 1993-2001 -- Weapon Use and Violent Crime* 3 (Sept. 2003).

⁵ Violence Policy Center, *Handgun Ban Backgrounder* (1999), at http://www.vpc.org/fact_sht/hgbanfs.htm.

⁶ Garen J. Wintemute et al., *Mortality among Recent Purchasers of Handguns*, 341 *New Eng. J. Med.* 1583, 1585 (Nov. 18, 1999).

⁷ Violence Policy Center, *When Men Murder Women: An Analysis of 2005 Homicide Data* 7 (Sept. 2007), at <http://www.vpc.org/studies/wmmw2007.pdf>.

⁸ Wintemute, *supra* note 6, at 1583-84.

⁹ *Id.* at 1585.

adults in homes without guns.¹⁰ The risk of unintentional firearm injury is also substantially higher for adults living in homes with guns,¹¹ with handguns in the home posing a particular threat.¹² For every incident in which a gun in the home is used in self-defense or in another legally-justified shooting, there are 22 unintentional or criminal shootings or suicide attempts using a gun kept at home.¹³

A 1991 study documented the effectiveness of **Washington, D.C.'s law banning handguns.**¹⁴ Following the enactment of the ban in 1976, there was a 25% decline in homicides committed with firearms and a 23% decline in suicides committed with firearms within the District of Columbia.¹⁵ No similar reductions were observed in the number of homicides or suicides committed by other means, nor were similar reductions found in the adjacent metropolitan areas in Maryland and Virginia.¹⁶ A recent study concluded that, as a result of **the District's handgun ban, the District of Columbia had the lowest rate of youth suicide in the nation – lower than any state.**¹⁷

This report discusses a number of policies that would reduce the risks of injury and death associated with handguns, short of banning the possession and/or sale of all handguns. The many gaps in federal regulation have prompted some communities to advance and test aggressive policies, such as handgun bans, in their attempt to solve the problem of **gun violence – policies that would not be politically viable** on a statewide or national level.

Handgun bans may prohibit a range of activities, such as possession and/or sale, manufacture, purchase, and transfer. Bans that include a prohibition on possession are generally more restrictive than bans prohibiting sale, manufacture, purchase and transfer because of their impact on existing gun owners.

Summary of Federal Law

There is no federal law banning handguns, although there is a ban on certain handgun ammunition.¹⁸

¹⁰ Douglas J. Wiebe, *Homicide and Suicide Risks Associated with Firearms in the Home: a National Case-Control Study*, 41 *Annals Emergency Med.* 771, 777-78 (June 2003).

¹¹ Douglas J. Wiebe, *Firearms in U.S. Homes as a Risk Factor for Unintentional Gunshot Fatality*, 35 *Accident Analysis & Prevention* 711, 713-14 (2003) (finding the relative risk of dying from an unintentional gunshot injury to be 3.7 times higher for adults living in homes with guns).

¹² *Id.*

¹³ Arthur L. Kellerman et al., *Injuries and Deaths Due to Firearms in the Home*, 45 *J. Trauma* 263, 265 (1998).

¹⁴ Colin Loftin et al., *Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia*, 325 *New Eng. J. Med.* 1615, 1615-1620 (Dec. 5, 1991).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Violence Policy Center, *Safe at Home: How D.C.'s Gun Laws Save Children's Lives* (July 2005), at <http://www.vpc.org/studies/dcsuicide.pdf>.

¹⁸ Federal law prohibits the manufacture, importation, sale or delivery of armor-piercing ammunition for use in handguns, except for certain uses (including use by federal, state or local governments, and for export). 18 U.S.C. § 922(a)(7), (8). For additional information on armor-piercing ammunition, see section on Ammunition Regulation.

SUMMARY OF HANDGUN BANS IN THE U.S.

No state bans all handguns. Chicago, a number of other Illinois communities¹⁹ and the District of Columbia²⁰ currently ban handguns.

Chicago and District of Columbia Handgun Bans²²

Chicago	Chicago, Ill., Code §§ 8-20-040, 8-20-050(c), 8-20-190, 4-144-061, 4-144-062
District of Columbia	D.C. Code Ann. §§ 7-2502.01, 7-2502.02, 7-2504.01, 7-2505.01, 7-2505.02, 7-2506.01

In both Chicago and the District of Columbia, handguns are banned via a regulatory scheme that requires all firearms within the jurisdiction to be registered. In both Chicago and the District of Columbia, handguns are defined as unregistrable weapons.

Chicago bans possession, retail sales and private sales or transfers of handguns and also bans the sale and/or transfer of certain handgun ammunition.

¹⁹ At least twelve other Illinois communities also ban handguns, making Illinois unique among the states in the number of local ordinances banning handguns. Other Illinois communities that ban the sale or transfer of handguns include Deerfield, Elk Grove Village, Evanston, Forest Park, Highland Park, Morton Grove, Niles, Northbrook, Oak Park, River Grove, Westmont and Wilmette. Evanston, Morton Grove, Oak Park and Wilmette also ban possession of handguns.

²⁰ In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

²¹ In November 2005, San Francisco voters approved Proposition H, an ordinance to prohibit the possession of handguns by San Francisco residents and ban the manufacture, distribution, sale and transfer of firearms and ammunition in the city. The National Rifle Association and others immediately challenged the ordinance, and in a recent decision an appellate court struck down the ordinance, finding it preempted by state law. *Fiscal v. City & County of San Francisco*, No. A115018, 2008 Cal. App. LEXIS 21 (Cal. Ct. App. Jan. 9, 2008). The City has indicated that it will appeal the decision. Additional information on state preemption of local firearm regulation is contained in the section of this report titled "The Legal Background."

²² Several courts have upheld local handgun bans. See, e.g., *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982) (rejecting Second, Fifth and Ninth Amendment challenges and state "right to bear arms" challenge to Village of Morton Grove handgun ban); *Seegars v. Ashcroft*, 297 F. Supp. 2d 201 (D.D.C. 2004), *rev'd in part* (on standing grounds), 396 F.3d 1248 (D.C. Cir. 2005), *en banc hearing denied sub nom. Seegars v. Gonzales*, 413 F.3d 1 (D.C. Cir. 2005), *cert. denied*, 546 U.S. 1157 (2006) (rejecting, on standing grounds, Second Amendment challenge to D.C. handgun ban); *Kalodimos v. Village of Morton Grove*, 470 N.E.2d 266 (Ill. 1984) (rejecting state "right to bear arms" challenge to Village of Morton Grove handgun ban). *But see Doe v. City and County of San Francisco*, 136 Cal. App. 3d 509 (Cal. Ct. App. 1982) (upholding state preemption challenge to San Francisco ordinance banning all handgun possession in the city).

The District of Columbia's ban is more comprehensive, prohibiting possession, sale, transfer, manufacture, purchase and repair of handguns.²³ The District also bans the possession and manufacture of handgun ammunition, as well as the sale and transfer of handgun ammunition to residents of the District (except to owners of validly registered handguns).

The District of Columbia and Chicago both require surrender of handguns to law enforcement but also allow registration of certain handguns owned prior to the effective date of the ban. In the District of Columbia, handguns registered prior to September 24, 1976 are exempt from the ban. Chicago allows possession of handguns registered prior to March 30, 1982, provided they have a safety mechanism and load indicator device.²⁴

FEATURES OF COMPREHENSIVE LAW BANNING HANDGUNS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Prohibited activities include possession and/or sale, purchase, transfer, loan, pledge, transportation, distribution, importation, and manufacture of handguns (*District of Columbia has most comprehensive list of prohibited activities*)
- If pre-ban handguns are grandfathered, there is a registration mechanism for grandfathered handguns, with strict limits on their transferability, use and storage²⁵ (*District of Columbia and Chicago require registration; Chicago requires registered handguns to have safety mechanism and load indicator*)
- Ban applies to handgun ammunition (*District of Columbia*)

²³ The ban on possession does not apply to federal, state or local law enforcement officers or members of the armed forces, so long as they are authorized to possess the firearm while on duty in the performance of authorized functions. D.C. Code Ann. § 7-2502.01. The manufacture ban applies to all firearms and ammunition. D.C. Code Ann. § 7-2504.01.

²⁴ "Load indicator" is defined as "a device which plainly indicates that a bullet is placed in the handgun in a way that pulling the trigger or otherwise handling the handgun may result in detonation." Chicago, Ill., Municipal Code § 8-20-030(z).

²⁵ See section on 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 the section on Licensing of Gun Owners or Purchasers.

Non-Powder Guns

Background

Non-powder guns, including BB, air and pellet guns, expel a projectile (usually made of metal or hard plastic) through the force of air pressure, CO₂ pressure, or spring action. Non-powder guns are distinguished from firearms, which use gunpowder to generate energy to launch a projectile. Because non-powder guns are designed to discharge a projectile, often at a high speed and with significant force, they should not be confused with toy guns.

The Centers for Disease Control and Prevention have compiled national data on non-powder gun injuries which illustrate the inherent danger of these weapons:

- **2005 – 19,675 people injured, including** 14,052 children age 19 or younger
- **2006 – 25,580 people injured, including** 17,325 children age 19 or younger.¹

From July 1993 to July 2003, non-powder guns caused 40 deaths nationwide.² Although injury rates for non-powder guns appear to have declined significantly since the early 1990's, **non-powder guns are becoming more powerful** and more accurate, and are often designed to appear almost indistinguishable from firearms.³

According to one study, there are an estimated 3.2 million BB/pellet guns sold in the U.S. each year.⁴ Numerous studies have documented the potentially severe or lethal nature of penetrating injuries from BB/pellet gunshots, especially those to the abdomen, chest, eye, and head of a child.⁵

Summary of Federal Law

There are no federal laws regulating the transfer, possession or use of non-powder guns. However, the Consumer Product Safety Commission (CPSC) has taken the position that non-powder guns and ammunition fall within its regulatory authority.⁶ Hence, non-powder guns are subject to generalized **statutory limitations involving “substantial**

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 2005 and 2006*, at <http://webapp.cdc.gov/sasweb/ncipc/nfirates2001.html>.

² Jennifer E. Keller et al., *Air-Gun Injuries: Initial Evaluation and Resultant Morbidity*, 70 Am. Surgeon 484, 484 (June 2004).

³ Ann Marie McNeill & Joseph L. Annett, *The Ongoing Hazard of BB and Pellet Gun-Related Injuries in the United States*, 26 Annals Emergency Med. 187, 191-92 (Aug. 1995); 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>.

⁴ M. H. Nguyen et al., *Trends in BB/Pellet Gun Injuries in Children and Teenagers in the United States, 1985-99*, 8 Injury Prevention 185, 185 (2002).

⁵ *Id.*

⁶ See 15 U.S.C. § 2052(a)(1)(E); Rev. Rul. 67-453, 1967-2 C.B. 378; CPSC Advisory Opinion No. 127.

product hazard[s]” and articles that create “a substantial risk of injury to children.”⁷ However, the written standards that the CPSC relies on with respect to non-powder guns are voluntary standards.⁸

SUMMARY OF STATE LAWS REGULATING NON-POWDER GUNS

States that Regulate the Transfer, Use or Possession of Non-Powder Guns

California	Cal. Penal Code §§ 626.10, 12551-12552, 12556
Colorado	Colo. Rev. Stat. § 22-33-106(1)(d)(II)(b)
Connecticut	Conn. Gen. Stat. § 53-206(a)
Delaware	Del. Code Ann. tit. 11, §§ 1445, 1457
Florida	Fla. Stat. Ann. § 790.22
Illinois	430 Ill. Comp. Stat. 65/1.1
Massachusetts	Mass. Gen. Laws ch. 269, §§ 12A, 12B
Michigan	Mich. Comp. Laws § 750.222(d)
Minnesota	Minn. Stat. §§ 609.66, 624.7181
Mississippi	Miss. Code Ann. § 97-37-17(4)
New Jersey	N.J. Stat. Ann. § 2C:39-1(f)
New York	N.Y. Penal Law § 265.05
North Carolina	N.C. Gen. Stat. §§ 14-316, 14-269.2
North Dakota	N.D. Cent. Code § 62.1-01-01(1)
Pennsylvania	18 Pa. Cons. Stat. § 6304
Rhode Island	R.I. Gen. Laws § 11-47-2(3)
Virginia	Va. Code Ann. §§ 15.2-915.4, 22.1-277.07
Washington	Wash. Rev. Code Ann. § 9A.1.280(1)(e)
Wisconsin	Wis. Stat. § 948.61 ⁹

States that Define All Non-Powder Guns as Firearms

New Jersey
Rhode Island

States that Treat Certain Non-Powder Guns as Firearms

Illinois
Michigan

⁷ 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).

⁸ 15 U.S.C. § 2056(b)(1); see also S.K. Presnell, *Comment: Federal Regulation of BB Guns: Aiming to Protect Our Children*, 80 N.C.L.Rev. 975, 1015 (2002).

⁹ 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).

States that Define Non-Powder Guns as Dangerous Weapons

Connecticut
Delaware
North Dakota

States that Impose Age Restrictions on Possession, Use, or Transfer of Non-Powder Guns

California
Delaware
Florida
Illinois
Massachusetts
Minnesota
New York
North Carolina
Pennsylvania
Virginia

States that Explicitly Regulate Possession of Non-Powder Guns on School Grounds

California
Colorado
Delaware
Minnesota
Mississippi
North Carolina
Virginia
Washington
Wisconsin

Description of State Laws Regulating Non-Powder Guns

Nineteen states regulate the transfer, possession or use of non-powder guns to some degree. State non-powder gun regulations can be broken down into the following general 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.
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 with a muzzle velocity of less than 700 feet per second. Michigan excludes the following non-powder guns from the definition of firearms: 1) smooth bore rifles or handguns designed and manufactured exclusively for propelling by gas or air; and 2) **BB's, not exceeding .177 caliber.**

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. 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.

SUMMARY OF SELECTED¹⁰ LOCAL LAWS REGULATING NON-POWDER GUNS

Local Laws Regulating Non-Powder Guns

Chicago	Chicago, Ill., Code §§ 4-144-140, 4-144-170, 4-144-180, 4-144-200, 4-144-210, 4-144-220
Cleveland	Cleveland, Ohio, Code § 627.10(a)
New York City	New York, N.Y., Admin. Code § 10-131(b)
Omaha	Omaha, Neb., Code § 20-195

Chicago: Chicago prohibits the sale of any air rifle or air gun **without a dealer’s license**. Dealers are required to submit daily reports of sales of air rifles and air guns. Dealers may not display air rifles or air guns in show cases, show windows, or on counters, and may not display any signs suggesting they are for sale. Purchasers are required to obtain a permit to purchase an air rifle or air gun from the Superintendent of Police. Permits may not be issued to minors or to persons who have been convicted of a crime. Chicago prohibits transfers of air rifles to persons under 18.

Cleveland: Cleveland prohibits any person from carrying or having in his or her possession or ready at hand any BB or pellet gun while at or about a public place.

¹⁰ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

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. Within the city, air pistol and rifle licensees may sell air pistols and rifles to each other. In addition, 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 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.

Omaha: Omaha prohibits any person from “knowingly or purposely” transporting or possessing off his or her premises any air gun or air rifle unless unloaded and contained in a gun case or broken down (several exceptions exist).

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 and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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*)¹¹
- 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 guns¹²

¹¹ While Chicago does not define all non-powder guns as firearms, it requires that transfers of all non-powder guns be made through licensed dealers and be reported to law enforcement. Chicago also requires purchasers to obtain a permit, which may not be issued to persons under 18.

¹² See section on Registration of Firearms for features of comprehensive registration laws. The most comprehensive system of regulating the purchase, possession and ownership of firearms combines

- **Minors are prohibited from possessing non-powder guns unless under direct adult supervision**

registration of firearms with licensing of gun owners. Additional information on licensing of firearm owners is contained in the section on Licensing of Gun Owners or Purchasers.

Ammunition Regulation

Background

Firearms are designed to deliver ammunition. Without ammunition, firearms are no more dangerous than any blunt object, causing some scholars to refer to ammunition as the “**actual agent of harm.**”¹ While firearms are subject to various regulations (including licensing of dealers and background checks on prospective purchasers), ammunition is largely unregulated.

Laws regulating the purchase and possession of ammunition can help limit access by children, convicted felons and other prohibited persons, and can reduce the threat of firearms in the hands of these and other dangerous individuals. Except in a small number of states and municipalities that regulate ammunition transfers, ammunition purchasers are not subject to a background check, and sellers are not required to be licensed, keep a record of ammunition sales, or even request a purchaser to show proof of age. While federal law bans mail-order and internet firearm transactions, sales of ammunition by mail or over the internet are subject to no federal oversight.²

These and other measures would help reduce an important supply line of ammunition to persons who are prohibited from possessing firearms or who supply firearms and ammunition to criminals. A two-month **study of Los Angeles’ ordinance requiring** ammunition purchasers to present identification prior to purchase, and requiring ammunition sellers to maintain a sales log, found that prohibited purchasers accounted for nearly 3% of all ammunition purchasers over this period, acquiring roughly 10,000 rounds of ammunition.³ The study noted that a background check at the time of the transaction would have largely eliminated sales at retail outlets to these prohibited purchasers.⁴ In addition, ammunition sales records can be used by law enforcement to find prohibited possessors of ammunition and, likely, prohibited firearms possessors.⁵

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.⁶

In addition, 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

¹ George E. Tita et al., *The Criminal Purchase of Firearm Ammunition*, 12 *Inj. Prevention* 308, 308 (2006).

² Massachusetts, which requires ammunition sellers to be licensed, has aggressively prosecuted unlicensed sellers who sell to its citizens over the internet. According to Massachusetts law, dealers must have a physical in-state location from which they conduct the ammunition sales. Mass. Gen. Laws ch. 140, § 122B. As of April, 2005, the Massachusetts Attorney General’s Office had obtained judgments against nine online firearms dealers for illegally selling ammunition over the internet. See Press Release, Office of Massachusetts Attorney General, *AG Reilly Stops Illegal Sale of Online Ammunition* (Apr. 6, 2005).

³ *The Criminal Purchase of Firearm Ammunition*, *supra* note 1, at 310.

⁴ *Id.*

⁵ *Id.*

⁶ 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).

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.

Summary of Federal Law

Federal law governing ammunition is limited to prohibiting sales to and purchases by certain categories of persons, and prohibiting the manufacture, importation and sale of armor-piercing ammunition.

The federal Gun Control Act of 1968 imposed a series of regulations on ammunition manufacturers, dealers and purchasers. The Act required all ammunition manufacturers and dealers to be licensed and maintain ammunition sales logs, prohibited licensees from selling any ammunition to persons under age 18 and handgun ammunition to persons under age 21, and prohibited interstate sales to unlicensed purchasers (proscribing mail-order transactions).⁷ The **Firearms Owners' Protection Act** repealed most of these provisions, however, including the licensing of ammunition dealers, ammunition sales recordkeeping, and the ban on interstate transfers of ammunition to unlicensed purchasers.⁸ None has been reenacted by Congress.⁹

Prohibited Purchasers: Federal prohibited purchaser categories for firearms also apply to ammunition.¹⁰ Ammunition may not be sold or otherwise transferred to any person who:

- Is underage;
- Has been convicted of, or is under indictment for, a crime punishable by imprisonment for more than one year;
- Is a fugitive from justice;
- Is an unlawful user of or addicted to a controlled substance;
- Has been adjudicated as a mental defective or committed to a mental institution;
- Is an illegal alien;
- 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

⁷ Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213.

⁸ **Firearms Owners' Protection Act, 99 Pub. L. No. 308, 100 Stat. 449 (1986).** Recordkeeping continues to be required for transfers of armor-piercing ammunition. See *infra* note 19 and accompanying text.

⁹ 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); 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).

¹⁰ Additional information on restrictions on firearm sales and purchases is contained in the section on Prohibited Purchasers.

- Has been convicted of a misdemeanor offense of domestic violence.¹¹

Federal law does not require ammunition sellers to conduct background checks to determine if a prospective purchaser falls into a prohibited category, however.

Minimum Age to Purchase or Possess Ammunition. Federal minimum age laws governing firearms also apply to ammunition used for those firearms. Federally licensed firearms dealers (FFLs) are prohibited from selling or transferring a shotgun or rifle, or ammunition for a shotgun or rifle, to any person the dealer knows or has reasonable cause to believe is under the age of 18.¹² Federal law provides no age limitations with respect to the sale of a long gun or long gun ammunition by an unlicensed person.

FFLs are prohibited from selling or transferring handguns or handgun ammunition to any person the dealer knows or has reasonable cause to believe is under the age of 21.¹³ Unlicensed persons may not sell, deliver or otherwise transfer a handgun or handgun ammunition to any person the transferor knows or has reasonable cause to believe is under the age of 18.¹⁴

Federal law prohibits, with certain exceptions, the possession of a handgun or handgun ammunition by any person under the age of 18.¹⁵ Federal law provides no minimum age for the possession of long guns or long gun ammunition.

Federal law does not require ammunition sellers to conduct background checks or otherwise verify that a prospective purchaser is of legal age to purchase or possess ammunition.

Licensing of Ammunition Manufacturers or Importers. Federal law requires any person engaged in importing or manufacturing ammunition to obtain a license from the Attorney General.¹⁶

Armor-Piercing Ammunition. Federal law prohibits the manufacture, importation, sale or delivery of armor-piercing ammunition, with very limited exceptions.¹⁷ Licensed dealers **are prohibited from “willfully” transferring armor-piercing ammunition.**¹⁸ Federally

¹¹ 18 U.S.C. § 922(b)(1), (d), (x)(1).

¹² 18 U.S.C. § 922(b)(1), (c)(1).

¹³ *Id.*

¹⁴ 18 U.S.C. § 922(x)(1), (5).

¹⁵ 18 U.S.C. § 922(x)(2), (5).

¹⁶ 18 U.S.C. § 923(a).

¹⁷ 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.

¹⁸ An exception exists for ammunition that was received and maintained by the dealer as business inventory prior to August 28, 1986, which may be transferred to federal, state or local law enforcement. 27 C.F.R. § 478.99(e).

licensed dealers, to the extent they can transfer armor-piercing ammunition, must keep a record of any transfer.¹⁹

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.²⁰ 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.”²¹

SUMMARY OF STATE LAWS REGULATING AMMUNITION

State Laws Requiring Licenses for Ammunition Sellers and/or Regulating Ammunition Sales

District of Columbia	D.C. Code Ann. §§ 7-2504.01, 7-2504.04(a)(3), 7-2504.07, 7-2531.01
Maryland	Md. Code Ann., Pub. Safety §§ 11-105(b)(1), 11-105(d)
Massachusetts	Mass. Gen. Laws ch. 140, §§ 122B, 124
Minnesota	Minn. Stat. § 609.663
Washington	Wash. Rev. Code Ann. §§ 9.41.010(10), 9.41.110(3)

State Laws Requiring a License to Purchase or Possess Ammunition

District of Columbia	D.C. Code Ann. §§ 7-2504.01(b), 7-2505.02(b), (d), (e)
Illinois	430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/4, 65/8
Massachusetts	Mass. Gen. Laws ch. 140, §§ 129B, 129C, 131, 131A, 131E
New Jersey	N.J. Stat. Ann. § 2C:58-3.3 (adopted January 2008)

¹⁹ 18 U.S.C. § 922(b)(5).

²⁰ 18 U.S.C. § 921(a)(17); 27 C.F.R. § 478.11.

²¹ *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).

State Laws Prohibiting Certain Persons from Purchasing or Possessing Ammunition

Alaska	Alaska Stat. § 33.16.150(b)(1)
California	Cal. Penal Code §§ 12101, 12316
Delaware	Del. Code Ann. tit. 11 § 1448
Florida	Fla. Stat. Ann. §§ 790.23 – 790.235
Hawaii	Haw. Rev. Stat. Ann. § 134-7
Illinois	430 Ill. Comp. Stat. 65/2, 65/8
Michigan	Mich. Comp. Laws § 750.223(3)
Nevada	Nev. Rev. Stat. Ann. § 202.362(1)
North Dakota	N.D. Cent. Code §§ 62.1-02-01, 62.1-02-08,
Tennessee	Tenn. Code Ann. § 39-17-1303(a)(2)
Texas	Tex. Penal Code Ann. § 46.06(a)(3) – (4)

State Laws Imposing a Minimum Age to Purchase or Possess Ammunition

Arizona	Ariz. Rev. Stat. §§ 1-215(22), 13-3109
California	Cal. Penal Code §§ 12101(b), 12316(a)
Delaware	Del. Code Ann. tit. 11, § 1445(4)
District of Columbia	D.C. Code Ann. § 7-2507.06(1)
Idaho	Idaho Code Ann. § 18-3308
Illinois	430 Ill. Comp. Stat. 65/2, 65/4
Iowa	Iowa Code § 724.22(1)-(5)
Maine	Me. Rev. Stat. Ann. tit. 17-a, § 554(1)(B)
Maryland	Md. Code Ann., Pub. Safety § 5-133(d)
Massachusetts	Mass. Gen. Laws ch. 140, § 130
Minnesota	Minn. Stat. § 609.66
New Jersey	N.J. Stat. Ann. § 2C:58-3.3c (adopted January 2008)
New York	N.Y. Penal Law § 265.05
Rhode Island	R.I. Gen. Laws §§ 11-13-3(a), 11-47-31(a), 11-47-32
South Dakota	S.D. Codified Laws § 23-7-46
Vermont	Vt. Stat. Ann. tit. 13, § 4007

States Laws Regulating Ammunition at Gun Shows

California	Cal. Penal Code § 12071.4(d)
Maine	Me. Rev. Stat. Ann. tit. 15, § 455-A(1-A)

States Laws Restricting where Ammunition May be Carried

California	Cal. Penal Code § 12316(c)
Minnesota	Minn. Stat. § 609.66, Subd. 1g

States Laws Requiring the Safe Storage of Ammunition in the Home

Hawaii	Haw. Rev. Stat. Ann. § 134-27
Washington	Wash. Rev. Code Ann. § 70.74.330

States Laws Regulating Certain Types of Unreasonably Dangerous Ammunition

Alabama	Ala. Code § 13A-11-60
California	Cal. Penal Code §§ 12020, 12022.2(a), 12301, 12303, 12303.6, 12305, 12320, 12321, 12323
Connecticut	Conn. Gen. Stat. § 53-202l
District of Columbia	D.C. Code Ann. §§ 7-2501.01(2), (13a), 7-2505.02(b), 7-2506.01(3), 7-2507.06(3)
Florida	Fla. Stat. Ann. § 790.31
Hawaii	Haw. Rev. Stat. Ann. § 134-8(a)
Illinois	720 Ill. Comp. Stat. 5/24-1(a)(11), 5/24-2.1, 5/24-2.2, 5/24-3.1(a)(6), 5/24-3.2
Indiana	Ind. Code Ann. § 35-47-5-11
Iowa	Iowa Code §§ 724.1(7), 724.2, 724.3
Kansas	Kan. Stat. Ann. § 21-4201(a)(8)
Kentucky	Ky. Rev. Stat. Ann. §§ 237.060, 237.080, 527.080
Louisiana	La. Rev. Stat. Ann. §§ 40:1810 – 40:1812
Maine	Me. Rev. Stat. Ann. tit. 17-A, § 1056
Michigan	Mich. Comp. Laws § 750.224c
Minnesota	Minn. Stat. § 624.74
Mississippi	Miss. Code Ann. § 97-37-31
Missouri	Mo. Rev. Stat. § 571.150
Nevada	Nev. Rev. Stat. Ann. § 202.273(1)
New Hampshire	N.H. Rev. Stat. Ann. § 159:18
New Jersey	N.J. Stat. Ann. §§ 2C:39-3(f), 2C:39-9(f)(1)
New York	N.Y. Penal Law §§ 265.00(18), 265.01(7), (8)
North Carolina	N.C. Gen. Stat. § 14-34.3(a)
Oklahoma	Okla. Stat. tit. 21, §§ 1289.19 – 1289.22
Oregon	Or. Rev. Stat. § 166.350
Pennsylvania	18 Pa. Cons. Stat. § 6121(a)
Rhode Island	R.I. Gen. Laws §§ 11-47-20.1 – 11-47-20.3
South Carolina	S.C. Code Ann. § 16-23-520
Tennessee	Tenn. Code Ann. §§ 39-17-1301(10), 39-17-1304(a), (b)
Texas	Tex. Penal Code Ann. §§ 46.01(12), 46.05(a)(7)
Utah	Utah Code Ann. § 65A-3-2(1)(d)
Virginia	Va. Code Ann. § 18.2-308.3
Wisconsin	Wis. Stat. § 941.296(2)

Description of State Laws Regulating Ammunition

1. *State Laws Requiring Licenses for Ammunition Sellers and/or Regulating the Sale of Ammunition.* Four states (Maryland, Massachusetts, Minnesota and Washington) and the District of Columbia impose licensing or other sales requirements relating to ammunition.

Massachusetts requires anyone selling ammunition to obtain a license. The District of Columbia requires all persons who regularly engage in the business of selling

ammunition to obtain a license.²² In Washington, firearms dealers are required to obtain a license to transfer firearms and ammunition.²³ Maryland requires any person engaging **in the business of “loading or reloading small arms ammunition” to obtain a license.**

The District of Columbia requires ammunition dealers to keep a record of all ammunition received into inventory and/or subsequently sold or transferred, including the brand and number of rounds of each caliber or gauge, the registration certificate number of the firearm for which the ammunition is purchased, the date of the transfer and the price. The records are subject to inspection on demand by the District Metropolitan Police Department during normal business hours. Licensed dealers may not display 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 or being repaired.

Minnesota does not require a license to sell ammunition, but 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.

2. *State Laws Requiring a License to Purchase or Possess Ammunition.* Illinois, Massachusetts, New Jersey and the District of Columbia require a license for all ammunition purchasers or possessors.

The District of Columbia provides that a licensed dealer may transfer ammunition only to limited categories of persons: 1) another licensed dealer; 2) a law enforcement officer; 3) a person with a registration certificate for a firearm or who held an ammunition **collector’s certificate on September 24, 1976;** or 4) to non-resident persons or businesses. The ammunition to be sold or transferred must be of the same caliber or gauge as the firearm described in the registration certificate. In the case of non-residents, purchasers must provide proof that the weapon is lawfully possessed in the jurisdiction where the person resides and is of the same gauge as the ammunition to be purchased. All transfers must be made in person, and the purchaser is required to sign a receipt which is maintained by the dealer for one year.

Illinois requires residents to **obtain a valid Firearm Owner’s** Identification (FOID) card before they can lawfully purchase or possess ammunition.²⁴

Massachusetts requires a firearm permit or license to purchase or possess ammunition. Any person with a Class A license is permitted 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. Class

²² The District of Columbia prohibits the manufacture of ammunition. D.C. Code Ann. § 7-2504.01.

²³ 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.

²⁴ For detailed information on the requirements for a FOID card under Illinois law, see section on Licensing of Gun Owners or Purchasers.

B license holders may purchase, rent, lease, borrow, possess and carry “non-large capacity” handguns, or any rifle or shotgun, including large capacity rifles and shotguns, and feeding devices and ammunition for these firearms.

Alternatively, in Massachusetts, any person may purchase and possess rifles, shotguns and “non large capacity” feeding devices and ammunition for rifles and shotguns with a valid firearm identification (FID) card. To purchase a handgun and ammunition for a handgun, a FID card holder must also obtain a permit to purchase a handgun.²⁵

New Jersey prohibits any person from selling or otherwise transferring, or purchasing or otherwise acquiring, any handgun ammunition unless the transferee is a licensed dealer, wholesaler or manufacturer, or possesses a valid Firearms Purchaser Identification Card, a valid copy of a permit to purchase a handgun, or a valid permit to carry a handgun and first exhibits such card or permit to the seller or transferor.²⁶

3. *State Laws Prohibiting Certain Persons from Purchasing or Possessing Ammunition*²⁷

Eleven states (Alaska, California, Delaware, Florida, Hawaii, Illinois, Michigan, Nevada, North Dakota, Tennessee, Texas) prohibit certain persons from purchasing or possessing ammunition. California, Delaware, Florida, Hawaii, Illinois and North Dakota prohibit the purchase or possession of ammunition by the same categories of persons who are ineligible to purchase or possess firearms under state law.²⁸ Similarly, Nevada prohibits the sale of ammunition to the same persons to which it prohibits the sale of firearms.

Michigan²⁹ and Texas³⁰ prohibit the transfer of ammunition to some, but not all, of the same categories of persons who are prohibited from purchasing firearms under state law.

In Alaska, the state parole board may require as a condition of special medical, discretionary, or mandatory parole, that a prisoner released on parole not possess or control ammunition.

²⁵ For detailed information on licensing requirements for firearm owners in Massachusetts, *see* section on Licensing of Gun Owners or Purchasers.

²⁶ N.J. Stat. Ann. § 2C:58-3.3a, b.; effective April 1, 2008.

²⁷ 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.

²⁸ *See* section on Prohibited Purchasers for more information on state law restrictions on firearm sales and purchases.

²⁹ Ammunition sellers in Michigan may not sell to any person convicted of, or under indictment for, a felony (defined as a violation of federal or state law that is punishable by imprisonment for 4 years or more) until 5 years have passed since the person was released from imprisonment and completed all conditions or probation and parole. Mich. Comp. Laws § 28.422(3).

³⁰ Texas prohibits any person from intentionally, knowingly, or recklessly selling ammunition to any person who is intoxicated, and from knowingly selling ammunition to any person who has been convicted of a **felony before the fifth anniversary of the later of: 1) the person’s release from confinement following conviction of the felony; or 2) the person’s release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony.**

Tennessee prohibits any person from intentionally, knowingly or recklessly selling ammunition to an intoxicated person.

4. *State Laws Imposing a Minimum Age to Purchase or Possess Ammunition.* Fifteen states and the District of Columbia impose a minimum age for purchase and/or possession of ammunition. Many of these state laws have exceptions for minors who have the consent of a parent or guardian.

a. *Under 21:* Illinois generally prohibits persons under age 21 from **obtaining a Firearm Owner's Identification** card, required to purchase or possess ammunition. Maryland prohibits the possession of ammunition designed for a handgun or assault weapon by a person under age 21. Massachusetts prohibits the sale of ammunition for a handgun, large capacity weapon or large capacity feeding device to a person under age 21. California and Iowa prohibit any person, corporation or dealer from selling handgun ammunition to persons under age 21. New Jersey prohibits any person from selling, giving, transferring, assigning or otherwise disposing of handgun ammunition to a person under age 21.

b. *Under 18:* Arizona, California (long gun ammunition), Delaware, Iowa (long gun ammunition), Massachusetts (long gun ammunition), Rhode Island, South Dakota and the District of Columbia limit the transfer of ammunition to, or purchase or possession of ammunition by, persons age 18 or older.³¹ Minnesota generally bans furnishing ammunition to a child under 18 years of age without the consent of the **minor's parent or guardian or the police department of the municipality.**³²

c. *Under 16:* Idaho, Maine, New York and Vermont prohibit the transfer of ammunition to, or purchase or possession of ammunition by, persons under 16.

5. *State Laws Regulating Ammunition at Gun Shows:* Only California and Maine regulate ammunition at gun shows in some manner.

In California, ammunition at a gun show can be displayed only in closed containers, unless the seller is showing the ammunition to a prospective buyer. In addition, no person at a gun show in California, other than security personnel or sworn peace officers, can possess at the same time both a firearm and ammunition that is designed to be fired in the firearm. Vendors selling such items at the show are exempt.

Maine requires that a warning regarding the safe storage of firearms and ammunition be conspicuously posed at all entrances of an organized gun show.

6. *State Laws Restricting where Ammunition May be Carried:* Two states, California and Minnesota, restrict the locations where ammunition may be carried. California prohibits carrying ammunition onto school grounds. Minnesota prohibits: 1)

³¹ In addition, South Dakota prohibits any person from selling, transferring, giving, loaning, furnishing, or delivering ammunition to any person under age 18, if such person knows or reasonably believes that the minor intends, at the time of transfer, to use the firearm or ammunition in the commission or attempted commission of a crime of violence.

³² Minnesota generally bans furnishing ammunition to a child under 14 years of age outside a municipality.

possessing ammunition within any courthouse complex; and 2) possessing ammunition in any state building within the Capitol Area other than the National Guard Armory.

7. *State Laws Requiring the Safe Storage of Ammunition.* Two states, Hawaii and Washington, require safe storage of ammunition. Hawaii requires all ammunition to be **confined to the possessor's business or residence** and only allows for the limited transport of ammunition in an enclosed container away from these locations. Washington requires small arms ammunition to be stored away from flammable liquids.

Many states require, by statute or regulation, that any firearms and ammunition kept or stored in child day care facilities, foster homes or similar locations be stored separately from each other, in locked safes or other containers.³³

8. *State Laws Regulating Certain Types of Unreasonably Dangerous Ammunition.* Thirty-one states and the District of Columbia 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. States Regulating Armor-Piercing Ammunition. 29 states and the District of Columbia regulate armor-piercing or metal-piercing ammunition. This is commonly defined as ammunition made of specific materials that is designed to be fired in a handgun and to penetrate metal or armor, including body armor commonly worn by police officers.

(1) Sale or Transfer: Nineteen states (Alabama, California, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Nevada, New Jersey, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina and Texas) and the District of Columbia prohibit the sale or transfer of armor-piercing ammunition.

(2) Purchase or Acquisition: Eight states (Hawaii, Illinois, Kansas, Louisiana, North Carolina, Oregon, Rhode Island and South Carolina) prohibit the purchase or acquisition of armor-piercing ammunition.³⁴

(3) Possession: Sixteen states (Alabama, California, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maine, Michigan, Mississippi, New Jersey, North Carolina, Oklahoma, Oregon, South Carolina and Texas) and the District of Columbia prohibit possession or use of armor-piercing ammunition. In addition, New York prohibits the possession of armor piercing ammunition with the intent to use it unlawfully against another, and Florida prohibits possession of armor piercing ammunition if the possessor knows of its capabilities and it is loaded in a handgun, or if the possessor has the intent to use the ammunition to assist in a criminal act.

³³ See, e.g., Ariz. Rev. Stat. § 41-1967, 225 Ill. Comp. Stat. 10/7, Ind. Code Ann. § 12-17.2-3.5-11, Mich. Admin. Code r. 400.12416(b), 391 Neb. Admin. Code § 6-007.07, Or. Admin. R. 414-350-0170(10)(d)), Nev. Admin. Code § 424.600, 22 Va. Admin. Code § 40-141-200.

³⁴ In Oregon, the statute requires an intent that ammunition be used in the commission of a felony.

(4) **Manufacture:** Eighteen states (California, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Nevada, New Jersey, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina and Texas) prohibit the manufacture of armor-piercing ammunition.

(5) **Importation:** Six states (California, Kentucky, Louisiana, North Carolina, Oklahoma and Rhode Island) prohibit importation of armor-piercing ammunition.

(6) **Transportation:** Seven states (California, Illinois, New Jersey, North Carolina, Oklahoma, South Carolina and Texas) prohibit transportation or carrying of armor-piercing ammunition.

(7) **Other laws governing armor-piercing ammunition:** Several states criminalize, or provide enhanced sentences for, the use or possession of armor-piercing ammunition in the commission or attempted commission of particular crimes. Alabama, California, Florida, Kentucky, Minnesota, Missouri, New Hampshire, Oregon, Pennsylvania, Rhode Island, Tennessee, Virginia and Wisconsin prohibit the possession or use of armor-piercing ammunition in the commission or attempted commission of a crime. Rhode Island specifically criminalizes the use of armor-piercing ammunition in the shooting of a law enforcement officer.

Connecticut prohibits distributing, transporting, importing, keeping for sale, offering for sale or giving any “armor piercing .50 caliber bullet.”³⁵

b. States Regulating Other Types of Ammunition

(1) **Exploding Ammunition:**³⁶ Eight states (California, Florida, Hawaii, Illinois, Iowa, New Hampshire, New York and Tennessee) regulate bullets or projectiles that are designed to explode, segment or detonate upon impact with a target.

³⁵ Fifty caliber rifle rounds are exceptionally dangerous, and possess great destructive power. Their use in the 50 caliber rifle, a weapon currently popular with the military but available to the general public, poses a particular threat, in light of the fact that the rifle can hit a target accurately from 1,000 to 2,000 yards. 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* 8 (Oct. 2001) available at <http://www.vpc.org/studies/roofcont.htm>. When these cartridges are designed with armor-piercing and incendiary qualities, which allow the shooter to pierce armor-reinforced vehicles and ignite and explode targets containing flammable liquids, the destructive power is significantly enhanced. *Id.* at 12-20. See generally *Sitting Ducks*, *supra* note 21. This ammunition is widely available on the civilian market, fueled by the sale of surplus ammunition from the U.S. military. See Minority Staff Report, Committee on Government Reform, U.S. House of Representatives, *Fifty Caliber Armor Piercing Military Ammunition in the United States Civilian Market* 5-10, Prepared for Rep. Rod R. Blagojevich and Rep. Henry A. Waxman (June 18, 1999). Additional information on fifty caliber rifles is contained in the section on Fifty Caliber Rifles.

³⁶ **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 Jan. 15, 2008).

California,³⁷ Florida, Hawaii, Illinois and Tennessee prohibit sale, transfer and manufacture of exploding ammunition. Hawaii and Illinois also prohibit acquisition of such ammunition, while California prohibits importation of exploding ammunition.

California, Hawaii and Illinois prohibit possession of exploding ammunition, while Tennessee prohibits use of such ammunition.

Iowa and New York generally prohibit any person from possessing any bullet or projectile containing any explosive substance designed to explode or detonate upon impact. Florida prohibits possession of exploding ammunition if the possessor knows of its exploding capabilities when loaded in a handgun, or intends to use an exploding bullet in the commission of a criminal act. New Hampshire prohibits the use or attempted use of any bullet or cartridge containing an explosive substance designed to explode upon impact when the person is committing any misdemeanor or felony.

(2) Flechette Ammunition: Three states (California, Florida and Illinois) regulate flechette ammunition, which are shells that expel two or more pieces of solid metal wire, or two or more solid dart-type projectiles.³⁸ California and Florida prohibit the manufacture and transfer of such ammunition. California also prohibits importation and possession of this ammunition.

Florida prohibits possession of flechette ammunition if the possessor knows of its capabilities and it is loaded in a firearm, or if the possessor has the intent to use a flechette shell in the commission of a criminal act.

Illinois prohibits manufacture, sale, purchase, possession, or carrying of any flechette shell, as well as the manufacture, sale or transfer of shells represented to be flechette shells. Illinois also bans the knowing or reckless discharge of a flechette shell.

(3) Incendiary Ammunition: Connecticut and Utah regulate incendiary ammunition. Connecticut bans distribution, transportation or importation into the state, keeping or offering for sale, or giving away of any incendiary .50 caliber bullet. This banned projectile is defined as a bullet that is designed for the purpose of, held out by the manufacturer or distributor as, or generally recognized as having a specialized capability to ignite upon impact, including, but not limited to, such bullets commonly designated as “M1 Incendiary,” “M23 Incendiary,” “M8 Armor-Piercing Incendiary” or “API,” or “M20 Armor-Piercing Incendiary Tracer” or “APIT.”

Utah bans firing any incendiary ammunition on state lands, except within the confines of an established military reservation. The state does not define incendiary ammunition.

³⁷ California Penal Code §§ 12301, 12303, 12303.6 prohibit 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 § 12305 provides for the limited issuance of permits to possess or transport any destructive device, issued at the discretion of the California Department of Justice.

³⁸ See Cal. Penal Code § 12020(a)(1); Fla. Stat. Ann. § 790.31.

(4) **Dragon's Breath & Bolo Shell Ammunition:** Three states, Florida, Illinois and Iowa, regulate 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.³⁹

A bolo shell is another type of shotgun shell that expels as projectiles two or more metal balls connected by solid metal wire.⁴⁰

Florida prohibits manufacture, sale, offering for sale or delivery of any dragon's breath or bolo shells. Possession of such ammunition is prohibited if the possessor knows of its capabilities and it is loaded in a firearm, or if the possessor intends to use such shells in the commission of a criminal act.

Illinois prohibits manufacture, sale, purchase, possession, or carrying of any dragon's breath or bolo shell. Illinois also prohibits manufacture, sale or transfer of shells represented to be dragon's breath or bolo shells, as well as the knowing or reckless discharge of a dragon's breath or bolo shell.

Iowa generally prohibits possession of dragon's breath ammunition.

(5) **Flanged Ammunition:** Kentucky prohibits the use of firearms loaded with flanged ammunition during the commission of a felony. Flanged ammunition is ammunition with a soft lead core and sharp flanges that are designed to expand upon impact.⁴¹

(6) **Hollow Nose or Dum-Dum Ammunition:**⁴² New Jersey prohibits hollow nose or dum-dum ammunition, which are terms associated with bullets designed to expand on impact. New Jersey prohibits possession of any hollow nose or dum-dum bullet. These terms are not specifically defined under New Jersey law.

³⁹ See Fla. Stat. Ann. § 790.31(1)(d); 720 Ill. Comp. Stat. 5/24-2.1. See also Holt Bodinson, *Of Dragon's Breath and Hammer-shells: From Bizarre to Basic, these Shotshells Can 'Lighten-up' Your Life!*, Guns Magazine (Sept. 2004), available at http://findarticles.com/p/articles/mi_m0BQY/is_9_50/ai_n6125526.

⁴⁰ See Fla. Stat. Ann. § 790.31(1)(e); 720 Ill. Comp. Stat. 5/24-2.1. See also Answers.com, Bolo Shell, <http://www.answers.com/topic/bolo-shell> (last visited Jan. 25, 2008).

⁴¹ Ky. Rev. Stat. Ann. §§ 237.060, 527.080.

⁴² 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), available at <http://www.firearmstactical.com/briefs12.htm>; see also *The Role of Ammunition in a Balanced Program of Gun Control: A Critique of the Moynihan Bullet Bills*, *supra* note 9, at 27. 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 sell 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.

SUMMARY OF SELECTED⁴³ LOCAL LAWS REGULATING AMMUNITION

Local Laws Regulating Ammunition⁴⁴

Chicago	Chicago, Ill., Code §§ 4-144-061, 4-144-080, 4-380-070(a), 8-20-030(a), (i), (j), 8-20-160, 8-20-170(b) (f), 8-24-025, 8-24-026, 15-28-755(a), (b)
Los Angeles	Los Angeles, Cal., Code ch. II, art. 1, § 21.167.1; ch. IV, art. 5, §§ 45.01(l), 45.02; ch. V, art. 5, §§ 55.09, 55.11, 55.12.1, 55.17(2), 57.55.10(A)
New York City	New York, N.Y. Admin. Code §§ 10-131(i), 10-306, 10-308, § 27-4041; New York, N.Y., Rules tit. 38, §§ 1-02, 1-05, 1-06, 2-06, 2-07, 3-07, 3-11, 3-14, 4-04, 5-23
Omaha	Omaha, Neb., Code § 19-392.1, 20-198, 20-199
San Francisco	San Francisco, Cal., Police Code art. 9, §§ 613, 613.1(b) – (c), 613.10(e) – (i), 613.10-1, 615; Ord. 3600A

Chicago: Chicago prohibits the sale or other transfer of most types of ammunition. No person may display any signs, posters or display cards suggesting the sale of any banned ammunition. Only licensed weapons dealers, shooting galleries or gun clubs may transfer ammunition. The sale of ammunition may not be licensed as a home occupation.

Chicago prohibits the possession of ammunition unless the person has registered with the City a firearm of the same gauge or caliber as the ammunition, and possesses the registration certificate for the firearm while in possession of the ammunition.⁴⁵

Chicago specifically prohibits the transfer, acquisition or possession of assault ammunition. The city also bans the transfer, acquisition, possession or manufacture of fragmenting or metal-piercing bullets or disc projectile ammunition.⁴⁶

⁴³ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

⁴⁴ Baltimore, Maryland implemented another innovative approach to ammunition sales, using municipal health code authority to change zoning laws and restrict ammunition sales to a certain distance from parks, churches, schools, public buildings and places of public assembly. Baltimore also requires that all ammunition sellers implement business practices requiring registration with the health department, requiring purchasers to show photo identification, and maintaining a log of every ammunition sale. These changes decreased the number of businesses eligible to sell ammunition by 46%. Nancy L. Lewin et al., *The Baltimore Youth Ammunition Initiative: A Model Application of Local Public Health Authority in Preventing Gun Violence*, 95 Am. J. Pub. Health 762, 763 (May 2005).

⁴⁵ For more information about Chicago's requirements for registration of firearms, see section on Registration of Firearms.

Chicago also prohibits storing any ammunition in any self-service storage facility or residential storage facility.

Los Angeles: Los Angeles prohibits any licensed firearms dealer or vendor involved in the retail sale of ammunition to sell or otherwise transfer ammunition without recording at the time of transfer the: 1) date of the transaction; 2) name, address and date of birth of **the transferee**; 3) **transferee's drivers license or other identification number and issuing state**; 4) brand, type and amount of ammunition transferred; 5) **transferee's signature**; and 6) name of the sales person who processed the transaction. The vendor must also obtain the right thumbprint of the transferee on the transaction form at the time of transfer.

The records must be maintained on the vendor's premises for at least two years from the date of the transfer, and are subject to inspection by law enforcement at any time during normal business hours.

Los Angeles prohibits any person from selling, giving, or loaning any ammunition, cartridges or shells to any person under age 18. Also, no person under age 18 may possess any ammunition, cartridges or shells.

Los Angeles generally prohibits any person, including retail gun dealers, from selling, giving, lending or transferring ownership of any firearm ammunition during the seven day period prior to, or on, January 1 and July 4 each year.

Sellers of ammunition are required to pay a **tax on the gross receipts of the seller's** business.

Los Angeles prohibits any person from possessing any ammunition as defined in California Penal Code § 12316 within the area of an airport to which access is controlled by inspection and within the area in which these inspections are conducted.⁴⁷

New York City:

Transfer Restrictions: New York City prohibits any person from transferring any ammunition unless he or she is a licensed dealer in firearms or in rifles and shotguns. Dealers cannot transfer any pistol or revolver ammunition of a particular caliber to any person not authorized to possess a pistol or revolver of that caliber within New York City, and no pistol or revolver ammunition may be transferred to any person unless he or she exhibits a license or permit authorizing such possession within New York City or exhibits proof of exemption.

⁴⁶ Disc projectile ammunition is defined as any ammunition composed of multiple disc-shaped objects stacked together to form a single round of ammunition, including but not limited to the following types of ammunition: (i) Magdisc type; and (ii) Shatterdisc type.

⁴⁷ California Penal Code § 12316(b)(2) defines "ammunition" to include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

Dealers in firearms may transfer rifle ammunition only to persons authorized to possess a rifle in New York City, and purchasers are required to show a rifle/shotgun permit and certificate of registration at the time of purchase. Rifle or shotgun ammunition may be sold only for the shotgun or for the specific caliber of rifle indicated on the certificate of registration.

Manufacturer Requirements: Manufacturers may not transport ammunition without the consent of the police commissioner. To obtain the police commissioner's consent, the manufacturer must notify the commissioner in writing of the name and address of the transporting manufacturer, the quantity, caliber and type of ammunition to be transported, and the place where the manufacturer regularly conducts business within New York City. Ammunition must be transported in a locked, opaque container.

Safety and Security Requirements: New York City prohibits any person from storing, selling or offering for sale more than 200 small arms cartridges without a storage permit from the Fire Commissioner. No storage permit will be issued for any premises: 1) where the building is occupied as a multiple dwelling, school, theatre or other place of public amusement or assembly; 2) used as a drug store, paint store, pawn shop or stationery store; 3) where cigars, cigarettes or tobaccos are stored or kept for sale; 4) where liquor is sold; 5) where other materials of a highly flammable nature are manufactured, stored or kept for sale; or 6) where fireworks are manufactured, stored or sold.

Rifle and shotgun dealer's licenses are not valid for the sale of ammunition unless the dealership is also in possession of a storage permit from the Fire Department. The sale or storage of ammunition without a valid permit is sufficient **cause to revoke a dealer's** license.

Ammunition must be stored in an area of the premises that can be reasonably secured, and that is not in view of the public. Holders of storage permits may not store, exhibit or display in the windows or doors of the permitted premises any cartridges or shells containing explosives.

Handgun ammunition may not be displayed in any area. Any handgun ammunition in a selling area must be kept in a locked container not visible to the public. Any other handgun ammunition must be stored in an area of the premises that can be secured and is not in view of the public.

Recordkeeping Requirements: Dealers must keep a record of each receipt and transfer of ammunition, including the quantity, caliber and type of ammunition transferred, the name and address of the transferee, the date and time of the transaction, and the number of the license or permit of the transferee. Dealers of rifle and shotgun ammunition must also record the caliber, make, **model, manufacturer's name and serial** number of the rifle or shotgun for which the transferee is purchasing ammunition, as well as the number of the certificate of registration exhibited or description of the proof of exemption exhibited. This information must be made available to all law enforcement agencies.

Loss/Theft Reporting. Rifle and shotgun dealers must report the loss or theft of any ammunition to the local police precinct, and must notify the Rifle/Shotgun Section of the License Division of the New York City Police Department by telephone on the next business day after discovery of the loss or theft, and in writing within 10 calendar days.

Possession Restrictions. Any person authorized to possess a pistol or revolver within New York City may possess ammunition for the pistol or revolver. Persons authorized to possess a pistol or revolver of a particular caliber within New York City cannot possess pistol or revolver ammunition of a different caliber.

Any person authorized to possess a rifle within the city of New York may possess ammunition for the rifle. Rifle or shotgun ammunition may not be possessed by any person unless they have a certificate of registration for the firearm, and only ammunition for the specific caliber of rifle or shotgun may be possessed.

Safe Storage for Owners. Owners of rifles or shotguns must keep them unloaded and locked in a secure location in the home, with the ammunition stored separately from the rifle or shotgun.

Omaha. Omaha prohibits any person from exhibiting or selling any ammunition in an assembled state at a firearms exhibition. Omaha also prohibits any person from exhibiting ammunition for sale or distribution in a display window or any other place which can be seen from a public thoroughfare.

Omaha prohibits the sale or delivery of any ammunition to persons under age 18, and prohibits the sale or delivery of ammunition for a concealable firearm to persons under age 21.

San Francisco. San Francisco prohibits engaging in the business of selling, leasing or otherwise transferring any ammunition or ammunition component without a city license. An ammunition component is defined as any cartridge or encasement, bullet or projectile, primer or propellant or explosive material used in the manufacture of ammunition.

Licensed ammunition dealers in San Francisco may not deliver any ammunition or ammunition component to a purchaser or other transferee unless that person presents clear evidence of his or her identity and age. A licensee may not display ammunition in any part of the business premises where it can be readily seen from outside, and may not display any sign advertising the sale of ammunition.

Licensed dealers are required to post conspicuously within the premises a notice stating that California law prohibits the sale of firearms and ammunition to any person under age 18.

Licensed dealers are required to record at the time of transfer of ammunition for any handgun, semiautomatic rifle or assault weapon: 1) the name of the vendor (including the name of the specific individual) transferring the ammunition; 2) the place of transfer; 3) the date and time of the transfer; 4) the name, address and date of birth of the transferee; 5) **the transferee's driver's license number or other identification number and issuing**

state; 6) the brand, type and amount of ammunition transferred; and 7) the transferee's signature. These records must be maintained on the vendor's premises for a minimum of two years from the date of the transfer, and are subject to inspection at any time during normal business hours.⁴⁸

San Francisco prohibits selling or offering for sale, transferring, or displaying for sale, 50 caliber cartridges.

Licensed dealers are prohibited from selling, leasing or otherwise transferring any ammunition that: 1) serves no sporting purpose; 2) is designed to expand upon impact and utilize the jacket, shot or materials embedded within the jacket or shot to project or disperse barbs or other objects that are intended to increase the damage to a human body or other target (including, but not limited to, Winchester Black Talon, Speer Gold Dot, Federal Hydra-Shok, Hornady XTP, Eldorado Starfire, Hollow Point Ammunition and Remington Golden Sabre ammunition); or 3) is designed to fragment upon impact (including, but not limited to, Black Rhino bullets and Glaser Safety Slugs).

FEATURES OF COMPREHENSIVE LAW REGULATING AMMUNITION

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- All ammunition sellers are required to be licensed firearms dealers (*Massachusetts, Chicago, New York City*)
- Ammunition dealers in residential and other sensitive neighborhoods are prohibited (*Chicago, Massachusetts (residential neighborhoods), New York City (other sensitive areas)*)⁴⁹
- Ammunition dealers are required to maintain records of all ammunition sales, and make such information available to law enforcement (*District of Columbia, Los Angeles, New York City, San Francisco*)
- Ammunition dealers are required to conduct a background check on all purchasers, to ensure that ammunition is not sold to prohibited persons

⁴⁸ In November 2005, San Francisco voters approved Proposition H, an ordinance to prohibit the possession of handguns by San Francisco residents and ban the manufacture, distribution, sale and transfer of firearms and ammunition in the city. The National Rifle Association and others immediately challenged the ordinance, and in a recent decision an appellate court struck down the ordinance, finding it preempted by state law. *Fiscal v. City & County of San Francisco*, No. A115018, 2008 Cal. App. LEXIS 21 (Cal. Ct. App. Jan. 9, 2008). The City has indicated that it will appeal the ruling. Additional information on state preemption of local firearm regulation is contained in the section of this report titled "The Legal Background."

⁴⁹ Additional information on features of comprehensive firearms dealer laws is contained in the section on Dealer Regulations.

- Ammunition dealers are required to take security precautions to reduce the risk of theft (*Minnesota, District of Columbia, New York City, Omaha, San Francisco*)
- Minimum age of 21 is imposed for purchase or possession of handgun ammunition; minimum age of 18 is imposed for purchase or possession of long gun ammunition (*Arizona, California, Delaware, District of Columbia, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, New York, Rhode Island, South Dakota, Vermont, Los Angeles, Omaha*)
- License is required for purchase and possession of ammunition (*District of Columbia, Illinois, Massachusetts, New York City*), and license is limited to possession of ammunition for the caliber of firearm the person is licensed to possess (*District of Columbia, New York City*)
- Ammunition may not be carried in sensitive areas (*California, Minnesota, Los Angeles*)
- Ammunition is required to be locked and stored separate from firearms in the home (*Hawaii, Washington, New York City (long guns)*)
- Manufacture, transfer, purchase and possession of specific types of unreasonably dangerous ammunition are prohibited (*31 states, District of Columbia, Chicago, Los Angeles, San Francisco*)

SALES AND TRANSFERS

Prohibited Purchasers.....	69
Minimum Age to Purchase and Possess Firearms	81
Domestic Violence and Firearms.....	88
Background Checks	105
Mental Health Reporting.....	115
Waiting Periods.....	134
Restrictions on Multiple Purchases or Sales of Firearms	139

Prohibited Purchasers

Background

Background checks are designed to identify persons who are ineligible to purchase firearms under federal or state law, and to prevent those persons from obtaining firearms. According to the U.S. Department of Justice, between February 29, 1994 and December 31, 2005, federal and state law enforcement officials performed 69.9 million background checks and prevented 1.36 million gun sales to convicted felons and other prohibited purchasers.¹

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, prohibits the sale of firearms to any person who:

- Is underage;²
- Has been convicted of, or is under indictment for, a crime punishable by imprisonment for more than one year;
- Is a fugitive from justice;
- Is an unlawful user of or addicted to a controlled substance;
- Has been adjudicated as a mental defective or committed to a mental institution;³
- Is an illegal alien;
- 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;⁴ or

¹ Bureau of Justice Statistics, U.S. Department of Justice, *Bulletin: Background Checks for Firearm Transfers, 2005* 2 (Nov. 2006).

² Additional information on the federal minimum age to purchase and/or possess firearms is contained in the section on Minimum Age to Purchase and Possess Firearms.

³ 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.

In 2008 President Bush signed into law the NICS Improvement Amendments Act of 2007, which, *inter alia*, changes the standard for persons deemed to be "adjudicated as a mental defective" or "committed to a mental institution" by a federal agency or department. The Act also deems an adjudication as a mental defective or commitment to a mental institution "not to have occurred" if a state grants an application for relief pursuant to a state created relief from disabilities program. Pub. L. No. 110-180, § 105, 121 Stat. 2559 (2008). For more information on these changes and other provisions relating to persons prohibited from purchasing or possessing firearms as a result of mental illness, see section on Mental Health Reporting.

⁴ Persons subject to restraining orders are prohibited from possessing firearms provided that the order:

- Has been convicted of a misdemeanor offense of domestic violence.⁵

SUMMARY OF STATE LAWS GOVERNING PROHIBITED PURCHASERS

Only Vermont has no state law requiring background checks or setting forth any basis for denial of a firearm to a prospective purchaser or possessor.⁶ Other state laws identifying persons prohibited from purchasing and/or possessing firearms are listed below:

Alabama	Ala. Code § 13A-11-72
Alaska	Alaska Stat. § 11.61.200
Arizona	Ariz. Rev. Stat. §§ 13-3101(A)(6), 13-3111, 13-3113
Arkansas	Ark. Code Ann. §§ 5-73-103(a), 5-73-129
California	Cal. Penal Code §§ 12021, 12021.1, 12076, 12077; Cal. Welf. & Inst. Code §§ 8100, 8101, 8103, 8105
Colorado	Colo. Rev. Stat §§ 18-12-108, 18-12-108.5, 18-12-111, 24-33.5-424
Connecticut	Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36l, 29-37a, 53a-217, 53a-217c
Delaware	Del. Code Ann. tit. 11, §§ 1448, 1448A; tit. 24, §§ 901, 903
District of Columbia	D.C. Code Ann. §§ 7-2502.02 – 7-2502.03
Florida	Fla. Stat. Ann. §§ 790.065, 790.18, 790.23, 790.233, 790.235
Georgia	Ga. Code Ann. §§ 16-11-131(b), (b.1), 16-11-132, 16-11-171 – 16-11-172
Hawaii	Haw. Rev. Stat. Ann. §§ 134-2, 134-7
Idaho	Idaho Code Ann. §§ 18-3308, 18-3316
Illinois	430 Ill. Comp. Stat. 65/1 – 65/16-3
Indiana	Ind. Code Ann. §§ 34-26-5-9(c)(4), (f), 35-47-1-7, 35-47-2.5-1 – 35-47-2.5-12, 35-47-14-1 – 35-47-14-9
Iowa	Iowa Code §§ 724.15 – 724.23, 724.26
Kansas	Kan. Stat. Ann. §§ 21-4204, 21-4204a
Kentucky	Ky. Rev. Stat. Ann. §§ 527.040, 527.100
Louisiana	La. Rev. Stat. Ann. § 14:95.1
Maine	Me. Rev. Stat. Ann. tit. 15, § 393(1)

(1) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; and (2) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. 18 U.S.C. § 922(d)(8). For more information on the prohibition on purchase and possession of firearms by persons subject to a domestic violence protective order, see section on Domestic Violence and Firearms.

⁵ 18 U.S.C. § 922(b)(1), (d), (x)(1). Federal law does not prohibit persons with other misdemeanor convictions from purchasing firearms. Misdemeanor convictions have been found to be a risk factor for future criminal activity among handgun owners. Garen J. Wintemute et al., *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*, 280 JAMA 2083 (1998). For more information on the prohibition on purchase and possession of firearms by domestic violence misdemeanants, see section on Domestic Violence and Firearms.

⁶ Federal law requiring background checks for all dealer sales does apply in Vermont, however, as it does in all other states.

Maryland	Md. Code Ann., Pub. Safety §§ 5-101(g), 5-117 – 5-127, 5-133, 5-134
Massachusetts	Mass. Gen. Laws ch. 140, §§ 129B, 130, 131, 131E
Michigan	Mich. Comp. Laws §§ 28.422, 750.224f
Minnesota	Minn. Stat. §§ 624.713 – 624.7132, 624.719
Mississippi	Miss. Code Ann. §§ 41-30-3, 97-37-5, 97-37-13, 97-37-14
Missouri	Mo. Rev. Stat. § 571.060.1(2)
Montana	Mont. Code Ann. §§ 45-8-313, 45-8-344
Nebraska	Neb. Rev. Stat. Ann. §§ 28-1204.01, 28-1206, 69-2401 – 69-2421
Nevada	Nev. Rev. Stat. Ann. §§ 202.300, 202.310, 202.360, 202.362
New Hampshire	N.H. Rev. Stat. Ann. §§ 159:3, 159:7, 159:8-a, 159:12, 173-B:5
New Jersey	N.J. Stat. Ann. § 2C:58-3
New Mexico	N.M. Stat. Ann. § 30-7-16
New York	N.Y. Penal Law §§ 265.00, 265.01, 400.00
North Carolina	N.C. Gen. Stat. §§ 14-402 – 14-406, 14-415.1, 14-415.3, 14-269.8
North Dakota	N.D. Cent. Code § 62.1-02-01
Ohio	Ohio Rev. Code Ann. §§ 2923.13, 2923.211
Oklahoma	Okla. Stat. tit. 21, §§ 1273, 1283, 1289.10, 1289.12
Oregon	Or. Rev. Stat. §§ 166.412, 166.250(1)(c), 166.470
Pennsylvania	18 Pa. Cons. Stat. §§ 6105, 6110.1, 6111, 6111.1; 23 Pa. Cons. Stat. §§ 6107(b)(3), 6108(a)(7)
Rhode Island	R.I. Gen. Laws §§ 11-47-5 – 11-47-7, 11-47-30; 11-47-35.2; 8-8.1-3; 15-15-3
South Carolina	S.C. Code Ann. § 16-23-30
South Dakota	S.D. Codified Laws §§ 22-14-15, 22-14-15.1, 23-7-44, 23-7-46
Tennessee	Tenn. Code Ann. §§ 39-17-1303, 39-17-1316
Texas	Tex. Penal Code Ann. §§ 46.04, 46.06
Utah	Utah Code Ann. §§ 76-10-503, 76-10-509, 76-10-509.4
Virginia	Va. Code Ann. §§ 18.2-308.1:1 – 18.2-308.2:2, 18.2-308.4, 18.2-308.7
Washington	Wash. Rev. Code Ann. §§ 9.41.040, 9.41.170
West Virginia	W. Va. Code §§ 61-7-7, 61-7-8
Wisconsin	Wis. Stat. §§ 941.29, 948.60
Wyoming	Wyo. Stat. Ann. § 6-8-102

Description of State Laws Governing Prohibited Purchasers

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 go beyond federal law are described below:

1. *Felons and Misdemeanor Offenders:* All states except Vermont prohibit the transfer of firearms to convicted 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, which could include persons convicted of certain 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 specifies certain felonies and misdemeanors relating to violence or unlawful use of firearms that disqualify persons from owning a firearm. In addition, California’s Department of Justice maintains a Prohibited Armed Persons File, an on-line database that tracks persons who are prohibited from owning or possessing a firearm. The database cross-references information on persons who own or possess a handgun (on or after January 1, 1991) against a list of individuals who have become ineligible to own or possess firearms.⁷ 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.⁸

Indiana includes convictions for resisting arrest and for any crime involving inability to handle a handgun safely as prohibitory offenses. 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.

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, as indicated above, define the disqualifying offenses to include some misdemeanors.⁹

State laws prohibiting firearm purchase or possession by persons with certain misdemeanor convictions

California	Minnesota
Connecticut (handguns only)	New Jersey
Delaware	New York
District of Columbia	North Dakota
Florida	Oregon
Hawaii	Pennsylvania
Illinois	South Dakota
Indiana (handguns only)	Tennessee
Iowa (handguns only)	Texas

(continued on next page)

⁷ Cal. Penal Code § 12010(a).

⁸ Cal. Penal Code § 12010(b).

⁹ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 75 (Nov. 2006).

State laws prohibiting firearm purchase or possession by persons with certain misdemeanor convictions (continued from previous page)

Louisiana

Virginia (handguns only)

Maryland (“regulated firearms”¹⁰ only)

Washington

Massachusetts

West Virginia

2. *Persons with Mental Illness:* Thirty-two states and the District of Columbia have laws that prohibit the purchase or possession of firearms by persons who are mentally ill. While most states use definitions of mental illness similar to the Brady Act¹¹ and its implementing regulations, several states have broadened the category of mentally ill persons who are prohibited from purchasing or possessing firearms.¹²

For example, under federal law persons who are voluntarily committed to a mental hospital are not prohibited from possessing firearms.¹³ Delaware, Illinois (within preceding 5 years), Massachusetts, Minnesota, North Carolina (handguns only), Utah and the District of Columbia (within preceding five years) have closed this gap by prohibiting firearm purchase or possession by persons who have been voluntarily or involuntarily committed to a mental hospital.

Several other states define more broadly than federal law those persons who are disqualified from possessing firearms due to mental illness. California law includes an extensive list of disqualifying factors relating to mental illness, including: communicating a serious threat of violence to a licensed psychotherapist and being under a court-ordered conservatorship because of a grave disability resulting from a mental disorder (in addition to being found not guilty of certain felonies by reason of insanity, or mentally incompetent to stand trial.)¹⁴

Hawaii prohibits possession by any person who is or has been diagnosed as having a significant behavioral, emotional, or mental disorder. Indiana includes a prohibition on persons with “documented evidence” of a “propensity for violent or emotionally unstable conduct.” 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. Illinois bars persons who have been patients of a mental institution within the past 5 years, persons impaired by a mental condition “of such a nature that it poses a clear and present

¹⁰ “Regulated firearms” in Maryland are defined to include handguns and assault weapons.

¹¹ 18 U.S.C. § 922. See also *supra* note 3.

¹² Even under state laws defining mental illness more broadly than federal law, privacy concerns may limit the availability of mental health records to agencies conducting background checks. Additional information on the availability of mental health records for background checks is contained in the section on Mental Health Reporting.

¹³ 27 C.F.R. § 478.11.

¹⁴ A person who communicates to a licensed psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims is barred for six months from possessing a firearm. The prohibition applies only if the psychotherapist complies with a state law requiring him or her to notify local law enforcement of the threat. Cal. Welf. & Inst. Code §§ 8100, 8105. The person may, however, possess a firearm if a Superior Court finds that the person is likely to use a firearm in a safe and lawful manner. Cal. Welf. & Inst. Code § 8100.

danger to the applicant, any other person or persons or the community,” and persons who are mentally retarded, from obtaining a Firearm Owner’s Identification (FOID) card.¹⁵

States that prohibit persons with mental illness from purchasing or possessing firearms

Arizona	Minnesota
Arkansas	Nevada
California	New Jersey
Connecticut (handguns only)	New York
Delaware	North Carolina (handguns only)
District of Columbia	North Dakota
Florida	Ohio
Hawaii	Oklahoma
Illinois	Oregon
Indiana	Pennsylvania
Iowa (handguns only)	Rhode Island
Kansas	South Carolina (handguns only)
Maine	Utah
Maryland (“regulated firearms” only)	Virginia
Massachusetts	Washington
Michigan (handguns only)	West Virginia
	Wisconsin

3. *Persons Subject to a Domestic Violence Protective Order.* Twenty states bar persons who are subject to a domestic violence protective order from purchasing or possessing some or all firearms. Many states exceed federal law by including a broader category of victims who may apply for a domestic violence protective order prohibiting firearms. Other states also apply the prohibition to ex parte protective orders. Additional information on state laws governing access to firearms by domestic abusers is contained in the section on Domestic Violence and Firearms.

States that bar persons subject to a restraining order from purchasing or possessing firearms¹⁶

California	Michigan (handguns only)
Connecticut	New Hampshire
Delaware	New Jersey
Florida	New York (handguns only)
Hawaii	North Carolina

(continued on next page)

¹⁵ 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).

¹⁶ Other states authorize, but do not require, issuance of domestic violence protective orders that prohibit firearm purchase or possession. For more information on these and other state laws governing access to firearms by domestic abusers, see section on Domestic Violence and Firearms.

States that bar persons subject to a restraining order from purchasing or possessing firearms (continued from previous page)

Illinois	Pennsylvania ¹⁷
Indiana ¹⁸	Texas
Maine	Virginia
Maryland (“regulated firearms” only)	West Virginia
Massachusetts	Wisconsin

4. *Drug and Alcohol Abusers and Offenders:* Federal law prohibits persons who are unlawful users of or addicted to a controlled substance from purchasing or possessing firearms. Twenty-eight states and the District of Columbia also prohibit drug abusers, offenders, and/or persons under the influence of controlled substances from purchasing some or all firearms. Eighteen states and the District of Columbia prohibit persons who are alcohol abusers, offenders, and/or under the influence of alcohol, from purchasing or possessing firearms.

States that restrict access to firearms by drug abusers, offenders, and/or persons under the influence of controlled substances

Alabama (handguns only)	Nevada
Alaska	New Jersey
California	North Carolina (handguns only)
Delaware	Ohio
District of Columbia	Oklahoma
Florida	Pennsylvania
Hawaii	Rhode Island
Illinois	South Carolina (handguns only)
Indiana (handguns only)	South Dakota
Iowa (handguns only)	Tennessee
Kansas	Texas
Maryland (“regulated firearms”)	Utah
Massachusetts	Virginia (handguns only)
Minnesota	Washington
	West Virginia

¹⁷Pennsylvania allows victims of domestic violence to seek protective orders that require the person subject to the order to relinquish his or her firearms and prohibit the subject of the order from possessing firearms for the duration of the order. Such orders are issued at the discretion of the court. See 23 Pa. Cons. Stat. §§ 6107(b)(3), 6108(a)(7).

¹⁸ Indiana permits victims of domestic or family violence to seek protective orders for themselves or a child. Such orders may impose a prohibition on the possession of a firearm by the person subject to the order. See Ind. Code Ann. § 34-26-5-9(c)(4), (f).

States that restrict access to firearms by alcohol abusers, offenders, and/or persons under the influence of alcohol

Alabama (handguns only)	Mississippi
Alaska	New Jersey
Delaware (handguns only)	Ohio
District of Columbia	Oklahoma
Hawaii	Pennsylvania
Indiana (handguns only)	Rhode Island
Iowa (handguns only)	South Carolina (handguns only)
Maryland (“regulated firearms”)	Tennessee
Massachusetts	Texas
	West Virginia

5. *Minors:* All states but Wyoming restrict access to firearms by juveniles. Additional information on restrictions on the transfer of firearms to minors is contained in the section on Minimum Age to Purchase and Possess Firearms.

6. *Juvenile Offenders:* Federal law does not restrict purchases of firearms by persons with juvenile convictions. Twenty-seven states prohibit persons with certain juvenile convictions from purchasing or possessing firearms.

States prohibiting juvenile offenders from purchasing and/or possessing firearms

Alaska	Maine
Arizona	Maryland (“regulated firearms” only)
California	Massachusetts
Colorado	Minnesota
Connecticut	New Jersey
Delaware	Ohio
Florida	Oklahoma
Georgia	Oregon
Hawaii	Pennsylvania
Illinois	Utah
Indiana (handguns only)	Virginia
Iowa	Washington
Kansas	Wisconsin
Kentucky	

SUMMARY OF SELECTED¹⁹ LOCAL LAWS GOVERNING PROHIBITED PURCHASERS

Local Laws Governing Prohibited Purchasers

Chicago	Chicago, Ill., Code § 4-144-070
Cleveland	Cleveland, Ohio, Code § 674.04(d)
Columbus	Columbus, Ohio, Code § 545.08(a)(4), (5)
Hartford	Hartford, Conn., Code §§ 21-71, 21-72
New York City	New York, N.Y., Admin. Code § 10-303; New York, N.Y., Rules tit. 38, §§ 5-01, 5-02
Omaha	Omaha, Neb., Code §§ 20-200, 20-253(b)

Only those categories that differ from federal law are indicated below.

Chicago: In Chicago, the following categories of persons are ineligible to obtain a local permit to purchase concealable firearms:²⁰

- Persons who are addicted to narcotics;
- Persons who have been released from a mental institution or from the custody of the Illinois Youth Commission within the preceding five years; or
- Persons who are mentally retarded.

Cleveland: Cleveland ordinances specify various categories of persons ineligible to obtain a handgun owner's identification card, including:

- Persons prohibited under state law (Ohio Rev. Code Ann. § 2923.13) from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance;
- Persons convicted of illegal use or possession of narcotics;
- Persons having more than one conviction for being drunk and disorderly or driving a motor vehicle while intoxicated (if either occurs within one year before the date of application); or
- Persons having more than one misdemeanor conviction involving the use of force and violence, or the threat of the use of force and violence, against another within two years before the date of application.

Columbus: Columbus prohibits the issuance of a firearm purchaser "weapon transaction permit" to several categories of applicants, including:

¹⁹ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

²⁰ Note that Chicago only issues handgun permits in those limited cases where possession is not banned entirely. Additional information on Chicago's law banning handguns is contained in the section on Banning Handguns.

- Persons convicted of any “offense of violence” as defined under state law, or any felony offense, within the preceding ten years; or
- Persons under a disability pursuant to state law (including persons under indictment for or previously convicted of various crimes involving drug abuse, drug dependency or chronic alcoholism, or individuals who are or were previously under adjudication of mental incompetence, adjudicated a mental defective or committed to a mental institution) who have not been relieved from such disability as provided by state law.

Hartford: Hartford prohibits any person from possessing any handgun outside of the home or a place of business without a “permit to carry a pistol or revolver.” To obtain the permit, applicants must submit:

- A notarized application form;
- Proof of citizenship (e.g., a birth certificate or naturalization papers); and
- Three character references from persons (not family members, or city police officers or police department employees) who can testify to the applicant’s character and reputation in the community.

In addition, applicants must supply fingerprints that will be used by the FBI to conduct a background check to determine if the applicant falls into a prohibited category under federal law.

New York City: New York City requires a rifle or shotgun permit for the purchase and/or possession of rifles and shotguns. To obtain a rifle or shotgun permit, the city police commissioner must determine that the applicant:

- Is 21 years of age or older;
- Is of good moral character;
- Has not been convicted of a felony, violation of the city assault weapon ban, or other specified offenses; and
- Presents no good cause for denial of the license.

The applicant must also provide information regarding his or her mental health and not be the subject of any of the specified court orders, including a domestic violence restraining order.

New York City issues five basic types of handgun licenses: (1) a “premises license” which allows possession of a handgun in a specific business or residence; (2) a “carry business license” which allows the holder to carry a concealed handgun; (3) a “limited carry business license” which allows the holder to carry a handgun to and from specific locations at specific times; (4) a “carry guard license/gun custodian license” which allows the holder to carry a handgun while engaged in work as a security guard or gun custodian; and (5) a “special license” which allows the holder of a state permit to carry a handgun while in New York City and/or while engaged in work as a security guard or gun custodian in New York City.

To receive any of the five types of handgun licenses, an applicant must:

- Be 21 years of age or older;

- Be of good moral character;
- Have no prior conviction for felonies, serious offenses or misdemeanor crime of domestic violence;
- Disclose information regarding mental illness and domestic violence restraining orders;
- Have no prior revocation or suspension of a firearms license;
- Have no condition that would hinder the safe possession of a handgun; and
- Reside or maintain a principal place of business in the city.

In addition, a license will not be issued if good cause exists for denial.²¹

Omaha: Omaha prohibits any person from selling or renting a concealable firearm to any person who has not obtained a written permit from law enforcement. Persons ineligible to obtain a concealable firearm permit include:

- Persons who are subject to an active protection order;
- Persons who have provided false information on the registration request;
- Persons with a conviction (which has not been pardoned or set aside under state or federal law) for any felony, carrying a concealed weapon or being a minor in possession of a concealable firearm, or (within the previous five years) assault, child abuse, or a violation of any provision of the Omaha municipal weapons code;
- Persons with a record of a mental disorder which would show the applicant to be a danger to self or to others; and
- Persons who are not citizens of the United States.

FEATURES OF COMPREHENSIVE LAW GOVERNING PROHIBITED PURCHASERS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- At a minimum, categories for prohibited purchasers are as extensive as federal law to allow state or local prosecution of violators
- Persons with convictions for violent and other serious misdemeanors are prohibited from purchasing firearms (*23 states, Cleveland (handguns only), Columbus, New York City, Omaha*)
- Persons with mental illness are prohibited from purchasing firearms, including persons voluntarily committed to a mental hospital (*Delaware, Illinois, Massachusetts, Minnesota, North Carolina (handguns only), Utah, District of*

²¹ Additional requirements apply depending on the type of license.

Columbia, Chicago) and persons with serious mental conditions (*California, Hawaii, Illinois, Maryland*)

- Prohibition on persons subject to a restraining order extends beyond orders involving intimate partners or children of partners (*19 states, Omaha*)²²
- Persons who are alcohol abusers and/or offenders are prohibited from purchasing firearms (*18 states, District of Columbia, Cleveland, Columbus*)
- Persons with certain juvenile convictions are prohibited from purchasing firearms (*27 states*)
- Persons under 21 are prohibited from purchasing handguns from licensed or unlicensed sellers (*California, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, Ohio, Rhode Island, South Carolina, District of Columbia, Boston*)²³
- Persons under 18 are prohibited from purchasing long guns from licensed or unlicensed sellers (*19 states*)²⁴
- A database of prohibited purchasers is maintained and regularly updated, to enable law enforcement to identify gun owners who may fall into a prohibited category (*California*)

²² Additional information about laws governing prohibitions on firearm purchase and possession by domestic abusers is contained in the section on Domestic Violence and Firearms.

²³ Note that California, Delaware and Maryland prohibit handgun sales to persons under 21.

²⁴ Additional information about laws governing minimum age to purchase and possess firearms is contained in the section on Minimum Age to Purchaser and Possess Firearms.

Minimum Age to Purchase and Possess Firearms

Background

Laws imposing minimum age requirements for the possession and purchase of firearms are intended to decrease children's access to firearms and, correspondingly, to decrease the number of suicides, homicides, and unintentional shootings among children.

Every day in the U.S., guns cause the deaths of 20 children and young people under the age of 25.¹ In 2005, 3,027 young people age 19 and under died from gunshot wounds.² Of these deaths, 1,972 were homicides; 822 were suicides; and 173 were the result of unintentional shootings.³ Firearms were used in 46% of suicide deaths among persons under 25 in 2005.⁴

Summary of Federal Law

Federal law prohibits firearms dealers from selling or delivering a shotgun or rifle, or ammunition for a shotgun or rifle, to any person the dealer knows or has reasonable cause to believe is under the age of 18.⁵ Federal law provides no age limitations with respect to the sale of a long gun or long gun ammunition by an unlicensed person.

Dealers are prohibited from selling or delivering firearms other than shotguns or rifles (e.g., handguns) or ammunition for those firearms to any person the dealer knows or has reasonable cause to believe is under the age of 21.⁶ Unlicensed persons may not sell, deliver or otherwise transfer a handgun or handgun ammunition to any person the transferor knows or has reasonable cause to believe is under the age of 18.⁷ Exceptions are provided for temporary transfers made for specified activities, including employment, ranching, farming, target practice and hunting.⁸

Federal law prohibits, with certain exceptions, the possession of a handgun or handgun ammunition by any person under the age of 18.⁹

Federal law provides no minimum age for the possession of long guns or long gun ammunition.

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) Injury Mortality Reports, 1999-2005*, at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ 18 U.S.C. § 922(b)(1), (c)(1).

⁶ *Id.*

⁷ 18 U.S.C. § 922(x)(1), (5).

⁸ 18 U.S.C. § 922(x)(3).

⁹ 18 U.S.C. § 922(x)(2), (5).

**SUMMARY OF STATE LAWS GOVERNING 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 three categories:

- States imposing a minimum age for all firearm 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.

States Imposing Minimum Age for All Firearm Purchases (from Licensed or Unlicensed Sellers)¹⁰

<i>State</i>	<i>Age (Handguns)</i>	<i>Age (Long guns)</i>	<i>Citation</i>
Alaska	18	18	Alaska Stat. § 11.61.210(a)(6)
Arizona	18	18	Ariz. Rev. Stat. § 13-3109
Arkansas	18	18	Ark. Code Ann. §§ 5-73-101(9), 5-73-109
California	21	18	Cal. Penal Code § 12072(a)(3)(A)
Delaware	21	18	Del. Code Ann. tit. 11, § 1445, tit. 24, § 903
District of Columbia	21	21	D.C. Code Ann. §§ 7-2502.03, 7-2507.06(1), 22-4507
Florida	18	18	Fla. Stat. Ann. §§ 790.17(2), 790.18
Hawaii	21	21	Haw. Rev. Stat. Ann. § 134-2(d)
Idaho	18	18	Idaho Code Ann. § 18-3302A
Illinois	21	21	430 Ill. Comp. Stat. 65/3(a), 65/4(a)(2)(i)
Iowa	21	18	Iowa Code § 724.22
Louisiana	18	18	La. Rev. Stat. Ann. § 14:91
Maine	18	16	Me. Rev. Stat. Ann. tit. 17-A, §§ 554-A, 554-B
Maryland	21 ¹¹	18	Md. Code Ann., Pub. Safety § 5-134
Massachusetts	21	18 ¹²	Mass. Gen. Laws ch. 140, § 130
Mississippi	18	18 ¹³	Miss. Code Ann. § 97-37-13
Missouri	18	18	Mo. Rev. Stat. § 571.060 ¹⁴

(continued on next page)

¹⁰ Note that some states appear to violate federal law, where the state's minimum age for purchases from licensed dealers is below the federal minimums of 18 for long guns and 21 for handguns.

¹¹ Maryland's minimum age requirement under the "handguns" column applies to "regulated firearms," which are defined as handguns and assault weapons.

¹² Massachusetts' minimum age for the purchase of large capacity rifles and shotguns is 21 and older.

¹³ Mississippi 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.

¹⁴ Missouri's statute prohibits "recklessly" selling firearms to persons under 18 without parental consent.

States Imposing Minimum Age for All Firearm Purchases (from Licensed or Unlicensed Sellers)

(continued from previous page)

<i>State</i>	<i>Age (Handguns)</i>	<i>Age (Long guns)</i>	<i>Citation</i>
Nevada	18	---	Nev. Rev. Stat. Ann. § 202.310
New Jersey	21	18	N.J. Stat. Ann. § 2C:58-6.1
North Dakota	18	--	N.D. Cent. Code § 62.1-03-02
Ohio	21	18	Ohio Rev. Code Ann. § 2923.21
Oklahoma	18	18	Okla. Stat. tit. 21, § 1273
Oregon	18	18	Or. Rev. Stat. §§ 166.250(1)(c)(A), 166.470
Pennsylvania	18	18	18 Pa. Cons. Stat. § 6110.1(c)(d)
Rhode Island	21	18	R.I. Gen. Laws §§ 11-47-30, 11-47-35(a)
South Carolina	21	---	S.C. Code Ann. § 16-23-30
Texas	18	18	Tex. Penal Code Ann. § 46.06(a)(2)
Vermont	16	16	Vt. Stat. Ann. tit. 13, § 4007
Wisconsin	18	18	Wis. Stat. § 948.60(2)(b)

States Imposing Stricter Minimum Age Requirements than Federal Law for Possession of Handguns

<i>State</i>	<i>Age</i>	<i>Citation</i>
Connecticut	21	Conn. Gen. Stat. § 29-36f
District of Columbia	21	D.C. Code Ann. § 7-2502.03(a)(1)
Hawaii	21	Haw. Rev. Stat § 134-2(d)
Illinois	21	430 Ill. Comp. Stat. 65/4(a)(2)(i); 720 Ill. Comp. Stat. 5/24-3.1
Iowa	21	Iowa Code § 724.22
Maryland ¹⁵	21	Md. Code Ann., Pub. Safety § 5-133(d)
Massachusetts	21	Mass. Gen. Laws ch. 140, § 131
New Jersey	21	N.J. Stat. Ann. § 2C:58-6.1
New Mexico	19	N.M. Stat. Ann. § 30-7-2.2
New York	21	N.Y. Penal Law § 400.00(1)(a)
South Carolina	21	S.C. Code Ann. § 16-23-30(B)

States Imposing Minimum Age Requirements for Possession of Long Guns

<i>State</i>	<i>Age</i>	<i>Citation</i>
Alaska	16	Alaska Stat. § 11.61.220(a)(3)
District of Columbia	21	D.C. Code Ann. § 7-2502.03(a)(1)
Florida	18	Fla. Stat. Ann. § 790.22(3)

(continued on next page)

¹⁵ Maryland's minimum age requirement applies to "regulated firearms," which are defined as handguns and assault weapons.

States Imposing Minimum Age Requirements for Possession of Long Guns

(continued from previous page)

<i>State</i>	<i>Age</i>	<i>Citation</i>
Hawaii	18	Haw. Rev. Stat. Ann. §§ 134-2(d), 134-4(a), 134-5
Idaho	18	Idaho Code Ann. §§ 18-3302E, 18-3302F
Illinois	21	430 Ill. Comp. Stat. 65/2(a)(1); 430 Ill. Comp. Stat. 65/4(a)(2)(i)
Indiana	18	Ind. Code Ann. § 35-47-10-5
Iowa	18	Iowa Code § 724.22
Michigan	18	Mich. Comp. Laws § 750.234f
Minnesota	16 ¹⁶	Minn. Stat. § 97B.021(a)
Montana	14	Mont. Code Ann. § 45-8-344
Nevada	18	Nev. Rev. Stat. Ann. § 202.300.1
New Jersey	18	N.J. Stat. Ann. § 2C:58-6.1
New York	16	N.Y. Penal Law §§ 265.05, 400.00(1)(a)
Oklahoma	18	Okla. Stat. tit. 21, § 1273
Oregon	18	Or. Rev. Stat. § 166.250
Pennsylvania ¹⁷	18	18 Pa. Cons. Stat. § 6110.1(a)
Rhode Island	18	R.I. Gen. Laws § 11-47-33
Utah	18	Utah Code Ann. § 76-10-509
Washington	18	Wash. Rev. Code Ann. § 9.41.040(2)(a)(iii)
Wisconsin	18	Wis. Stat. § 948.60(2)(a)

Description of State Laws Governing Minimum Age to Purchase and Possess Firearms

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. 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, South Carolina 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,

¹⁶ 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).

¹⁷ Pennsylvania's possession prohibition refers to handguns and to rifles and shotguns of a specified length. It does not encompass all long guns.

New York, South Carolina and the District of Columbia¹⁸ 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 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. Maryland limits possession of **“regulated firearms” (handguns and assault weapons)** to persons 21 or older.

¹⁸ While possession of handguns is prohibited in most circumstances in the District of Columbia, the law provides that even where lawful, handgun possession is limited to persons age 21 or older. Note that in 2007, the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia’s strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

SUMMARY OF SELECTED¹⁹ LOCAL LAWS GOVERNING MINIMUM AGE TO PURCHASE AND POSSESS FIREARMS

Local Laws Governing Minimum Age to Purchase and Possess Firearms

Boston	1993 Mass. Acts 491
Chicago	Chicago, Ill., Code § 8-16-090
Cleveland	Cleveland, Ohio, Code § 627.08
Columbus	Columbus, Ohio, Code § 545.08(a)(3)
New York City	New York, N.Y., Charter §§ 462-464

Boston: With some exceptions, Boston prohibits transfer of a handgun or short-barreled rifle or shotgun to a person under 21 years of age. In addition, no person under the age of 21 may possess, transfer or purchase a handgun or short-barreled rifle or shotgun.

Chicago: Chicago prohibits any person from selling, loaning, or furnishing to any minor²⁰ any gun, pistol or other firearm. Minors may be permitted, with the consent of their parents or guardians, to use firearms on the premises of a licensed shooting gallery or gun club. Chicago also prohibits any person from selling, loaning, or furnishing to any minor any toy gun, pistol or other firearm.

Cleveland: In Cleveland minors²¹ are prohibited from purchasing, owning, possessing, receiving, having on or about their person or using any firearm.

Columbus: Columbus requires that a person be at least 18 years of age to receive a permit for the purchase of a rifle or shotgun. A person purchasing a handgun must be age 21 or older to receive a permit.

New York City: In New York City, with some exceptions, no person under the age of 21 may be granted a permit or license to purchase, possess or carry a firearm. Persons under the age of 21 who held a permit or license to purchase or possess a firearm when this provision went into effect in 2001 were allowed to retain the permit or license. It is unlawful to transfer a firearm to any person under the age of 21 unless he or she has a valid permit or license or is otherwise exempted by law.

¹⁹ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

²⁰ "Minor" is undefined in this Chicago ordinance.

²¹ Cleveland does not define "minor." Under Ohio law, "minors" are generally defined to be persons age 18 or older. Ohio Rev. Code Ann. § 3109.01.

FEATURES OF COMPREHENSIVE LAW ESTABLISHING MINIMUM AGE TO PURCHASE AND POSSESS FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Minimum age of 21 is imposed for all handgun sales, from licensed or unlicensed sellers (*California, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, Ohio, Rhode Island, South Carolina, District of Columbia, Boston, New York City*)
- Minimum age of 18 is imposed for all long gun sales, from licensed or unlicensed sellers (*19 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, South Carolina, District of Columbia, Boston, New York City*)
- Minimum age of 18 is imposed for possession of long guns (*15 states*)
- Younger teens are allowed to possess long guns only under direct adult supervision

Domestic Violence and Firearms

Background

Firearms pose a particular threat to victims of domestic violence. Nationally, firearms were used to kill more than two-thirds of spouse and ex-spouse homicide victims between 1990 and 2005.¹ Studies reveal that the presence of firearms significantly increases the lethality of domestic violence incidents. According to one study, domestic violence assaults involving a firearm are 23 times more likely to result in death than those involving other weapons or bodily force.² Another study found that abused women are five times more likely to be killed by their abuser if the abuser owns a firearm.³

The impact of firearms in domestic violence situations is not limited to homicides. A recent 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.⁴ Over 79% of the respondents with firearms at home said the firearms made them feel less safe. In nearly two thirds (64.5%) of the households that contained a firearm, the intimate partner had used the firearm against the victim, usually threatening to shoot or kill her.⁵

Laws that prohibit the purchase of a firearm by a person subject to a domestic violence restraining order are associated with a reduction in the number of intimate partner homicides.⁶ However, as discussed below, there are a number of other policies that may also reduce the risks associated with the acquisition or possession of firearms by domestic abusers.⁷

Summary of Federal Law

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.⁸

Federal law 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

¹ Bureau of Justice Statistics, U.S. Dep’t of Justice, *Homicide Trends in the U.S.: Intimate Homicide* (July 2007), at <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>.

² Linda E. Saltzman, et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 JAMA, 3043-3047 (1992).

³ 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).

⁴ Susan B. Sorenson et al., *Weapons in the Lives of Battered Women*, 94 Am. J. Pub. Health 1412, 1413 (2004).

⁵ *Id.* at 1414.

⁶ 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).

⁷ For more information about the role firearms play in domestic violence incidents, see Violence Policy Center, *When Men Murder Women*, (1998) at <http://www.vpc.org/studies/dvreal.htm>.

⁸ 18 U.S.C. § 922(g)(8), (9).

force or threatened use of a deadly weapon as an element.⁹ In addition, the offender must:

- be a current or former spouse, parent, or guardian of the victim;
- share a child in common with the victim;
- 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.¹⁰

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.¹¹ 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.¹²

These federal prohibitions have significant limitations. First, 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 and/or have a child in common. The risk of domestic violence being committed by a dating partner is well-documented. Between 1990 and 2005, individuals killed by current dating partners made up almost half of all spouse and current dating partner homicides.¹³ In a recent study of applicants for domestic violence restraining orders in Los Angeles, 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.¹⁴ Many states have addressed this gap in federal law by enacting laws that expand the relationships subject to firearm purchaser prohibitions for domestic abusers.

Moreover, effective enforcement of the federal prohibitions on firearm possession by domestic abusers depends largely on state and local law enforcement. Background checks at the point of transfer can prevent the purchase of firearms by domestic abusers, but cannot facilitate the removal of firearms that are already in possession of an abuser.¹⁵

⁹ 18 U.S.C. § 921(a)(33).

¹⁰ *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.

¹¹ 18 U.S.C. § 922(g)(8).

¹² 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.

¹³ *Homicide Trends in the U.S.*, *supra* note 1.

¹⁴ 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).

¹⁵ In addition, background checks conducted by federally licensed firearms dealers at the time of transfer of a firearm rely on state and local authorities collecting and submitting to state and federal databases complete records on misdemeanor convictions and protective orders. For a discussion of the lack of participation by some states in entering domestic violence protective order information into the National

State laws requiring removal of firearms directly from abusers can help ensure that abusers will not have continued access to firearms to threaten or harm their victims.

SUMMARY OF STATE LAWS REGARDING DOMESTIC VIOLENCE AND FIREARMS¹⁶

State Laws that Exceed Federal Law in Prohibiting Domestic Violence Misdemeanants From Purchasing or Possessing Firearms and/or Ammunition

Arizona	Ariz. Rev. Stat. §§ 13-3101(A)(6), 13-3102(A)(4), 13-3601
California	Cal. Penal Code §§ 136.2(a)(7)(B), (d), (e)
Colorado	Colo. Rev. Stat. §§ 18-1-1001(3)(c), 18-12-108(6)(c)(I)
Delaware	Del. Code Ann. tit. 10, § 901(12); tit. 11, § 1448(a)(7), (9)(d)
Illinois	430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8(l), (m); 720 Ill. Comp. Stat. 5/12-3.2; 725 Ill. Comp. Stat. 5/112A-3
Iowa	Iowa Code §§ 236.2, 708.1, 708.2A, 708.11, 724.15(1)
Minnesota	Minn. Stat. §§ 518B.01, 609.749, subd. 8, 609.2242, 624.713, subd. 1(i)
Montana	Mont. Code Ann. § 45-5-206
New Jersey	N.J. Stat. Ann. §§ 2C:25-19(a), (d), 2C:25-26(a), 2C:39-7(b)(1), 2C:58-3(c)(1)
New York	N.Y. Crim. Proc. Law §§ 530.12(1), 530.14(1)(b)
Texas	Tex. Fam. Code Ann. § 71.001 <i>et seq.</i> ; Tex. Penal Code Ann. § 46.04(b); Texas Code Crim. Proc. Ann. art. 17.292
Virginia	Va. Code Ann. §§ 16.1-279.1, 18.2-308.1:4
Washington	Wash. Rev. Code Ann. §§ 9.41.010(17), 9.41.040(2)(i), 10.99.020(3)
West Virginia	W. Va. Code § 61-7-7(a)(8)

Crime Information Center database *see, e.g.*, Julissa Jose, *Disarming Domestic Violence Abusers* 3 (2003) at <http://www.endabuse.org/programs/publicpolicy/files/BradyReport.pdf>.

¹⁶ This section lists only state laws that exceed federal law governing prohibitions on firearm purchase and possession by domestic abusers.

State Laws that Exceed Federal Law in Prohibiting Subjects of Certain Domestic Violence Protective Orders From Purchasing or Possessing Firearms and/or

Ammunition

Alaska	Alaska Stat. §§ 18.66.100(c)(6), 18.66.990(5)
Arizona	Ariz. Rev. Stat. §§ 13-3601, 13-3602(G)(4), 13-3624(D)(4)
California	Cal. Penal Code §§ 136.2, 12021(g), 12316(b); Cal. Fam. Code §§ 6211, 6218, 6320-6322, 6389; Cal. Civ. Proc. Code § 527.6(k)
Connecticut	Conn. Gen. Stat. §§ 29-36f(b), 46b-15, 46b-38a, 53a-217, 53a-217c
Delaware	Del. Code Ann. tit. 10, §§ 1041(2), 1043(e), 1045(a)(8); tit. 11, § 1448(a)(6)
Florida	Fla. Stat. Ann. §§ 741.28(3), 741.30(1)(e), (6)(g), 741.31(4)(b)(1), 790.233(1)
Hawaii	Haw. Rev. Stat. §§ 134-7(f), 586-1, 586-3
Illinois	430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8(j); 725 Ill. Comp. Stat. 5/112A-3(3), 5/112A-14(b)(14.5); 750 Ill. Comp. Stat. 60/201(b), 60/214(b)(14.5)
Indiana	Ind. Code Ann. §§ 31-9-2-42, 31-9-2-44.5, 34-26-5-2, 34-26-5-9(c)(4), (f)
Maryland	Md. Code Ann., Fam. Law §§ 4-501, 4-506; Pub. Safety § 5-133(b)(8)
Massachusetts	Mass. Gen. Laws ch. 140, §§ 129B(1)(viii), 129C, 131(d)(vi); ch. 209A
Michigan	Mich. Comp. Laws §§ 28.422(3)(a)(iii), 600.2950(1)(e), (12)
Montana	Mont. Code Ann. §§ 40-15-102, 40-15-201, 45-5-206
Nevada	2007 Nev. Stat. 318, § 2; Nev. Rev. Stat. §§ 33.018, 33.020
New Hampshire	N.H. Rev. Stat. Ann. §§ 173-B:1, 173-B:4, 173-B:5
New Jersey	N.J. Stat. Ann. §§ 2C:25-19(d), 2C:25-28(f), (j), 2C:25-29(b), 2C:39-7(b)(3), 2C:58-3(c)(6)
New York	N.Y. Fam. Ct. Act §§ 822, 828(3), 842-a; N.Y. Penal Code § 400.00
North Carolina	N.C. Gen. Stat. § 50B-1, 50B-3(11), 50B-3.1
North Dakota	N.D. Cent. Code §§ 14-07.1-01, 14-07.1-02, 14-07.1-03
Pennsylvania	18 Pa. Cons. Stat. § 6105; 23 Pa. Cons. Stat. §§ 6102, 6107(b)(3), 6108(a)(7)
Rhode Island	R.I. Gen. Laws §§ 15-15-1, 15-15-3
Texas	Tex. Penal Code Ann. §§ 46.04; Tex. Fam. Code Ann. §§ 71.001 <i>et seq.</i> , 85.022(b)(6), (d)

(continued on next page)

State Laws that Exceed Federal Law in Prohibiting Subjects of Certain Domestic Violence Protective Orders From Purchasing or Possessing Firearms and/or Ammunition *(continued from previous page)*

Utah	Utah Code Ann. §§ 30-6-1(2)(c)(f), 30-6-4.2(2)(d), 30-6-4.3(2)
Virginia	Va. Code Ann. §§ 16.1-228, 16.1-253.1, 16.1-253.4, 18.2-308.1:4, 18.2-308.2:2
Washington	Wash. Rev. Code Ann. §§ 9.41.800, 10.99.040, 26.50.010, 26.50.070
West Virginia	W. Va. Code §§ 48-27-204, 48-27-305, 48-27-403(a), 48-27-502(b), 61-7-7(a)(7)
Wisconsin	Wis. Stat. §§ 813.12(1)(am), (b), (c), 941.29(1)(f), (g), (2)(d), (e)

State Laws Authorizing Law Enforcement to Remove Firearms and/or Ammunition at the Scene of a Domestic Violence Incident

Alaska	Alaska Stat. § 18.65.515(b)
Arizona	Ariz. Rev. Stat. § 13-3601
California	Cal. Penal Code §§ 12021.3, 12028.5(b)
Connecticut	Conn. Gen. Stat. § 46b-38b
Hawaii	Haw. Rev. Stat. §§ 134-7.5, 709-906
Illinois	725 Ill. Comp. Stat. 5/112A-30, 750 Ill. Comp. Stat. 60/304(2)
Indiana	Ind. Code Ann. § 35-33-1-1.5
Maryland	Md. Code Ann., Fam. Law § 4-511
Montana	Mont. Code Ann. § 46-6-603
Nebraska	Neb. Rev. Stat. § 29-440
New Hampshire	N.H. Rev. Stat. Ann. § 173-B:10
New Jersey	N.J. Stat. Ann. § 2C:25-21(d)
Ohio	Ohio Rev. Code Ann. §§ 2935.03(B)(3)(h), 2981.12(A)(2)
Oklahoma	Okla. Stat. tit. 22, § 60.8
Pennsylvania	18 Pa. Cons. Stat. § 2711
Tennessee	Tenn. Code Ann. §§ 36-3-620, 39-17-1317
Utah	Utah Code Ann. § 77-36-2.1(1)(b)
West Virginia	W. Va. Code § 48-27-1002

State Laws Requiring or Authorizing Removal or Surrender of Firearms and/or Ammunition When a Protective Order Is Issued¹⁷

Alaska	Alaska Stat. § 18.66.100(c)(7)
Arizona	Ariz. Rev. Stat. § 13-3602(G)(4)
California	Cal. Penal Code §§ 136.2, 12021(g)(3); Cal. Fam. Code § 6389(c)(1); Cal. Civ. Proc. Code §§ 527.6(k), 527.9
Delaware	Del. Code Ann. tit. 10, §§ 1043(e), 1045(a)(8)
Florida	Fla. Stat. Ann. § 741.31(4)(a)(8)
Hawaii	Haw. Rev. Stat. § 134-7(f)
Illinois	725 Ill. Comp. Stat. 5/112A-14(b)(14.5), 750 Ill. Comp. Stat. 60/214(b)(14.5)
Indiana	Ind. Code Ann. §§ 34-26-5-2, 34-26-5-9(c)(4), (f)
Maryland	Md. Code Ann., Fam. Law §§ 4-501, 4-506(d)(12)
Massachusetts	Mass. Gen. Laws ch. 209A, §§ 3B, 3C
Nevada	2007 Nev. Stat. 318, § 2-3, 5; Nev. Rev. Stat. § 33.020
New Hampshire	N.H. Rev. Stat. Ann. §§ 173-B:4, 173-B:5
New Jersey	N.J. Stat. Ann. §§ 2C:25-28(j), 2C:25- 29(b)(16)
New York	N.Y. Crim. Proc. Law §§ 530.11, 530.12, 530.14; N.Y. Fam. Ct. Act §§ 822, 828(3), 842-a
North Carolina	N.C. Gen. Stat. § 50B-3.1
North Dakota	N.D. Cent. Code §§ 14-07.1-02, 14-07.1-13
Pennsylvania	23 Pa. Cons. Stat. §§ 6107, 6108 – 6108.3
Rhode Island	R.I. Gen. Laws § 15-15-3
South Dakota	S.D. Codified Laws § 25-10-24
Wisconsin	Wis. Stat. § 813.12(4m)

Description of State Laws Regarding Domestic Violence and Firearms

1. *State Laws Prohibiting Domestic Violence Misdemeanants from Purchasing or Possessing Firearms and/or Ammunition¹⁸*

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

¹⁷ This list only includes statutes related to domestic violence protective orders. States may authorize judges to order the removal of firearms in other situations. *See, e.g.*, Colo. Rev. Stat. § 18-12-110 (allowing a judge to order the forfeiture of firearms used in a criminal episode for which the defendant has been convicted).

¹⁸ Note that federal law does not require background checks on ammunition purchasers. For more information on laws governing the transfer of ammunition, see section on Ammunition Regulation.

of firearms and/or ammunition by persons with misdemeanor convictions involving a broader class of victims.¹⁹

a. Firearms: Ten states (Arizona, Delaware, Illinois,²⁰ Iowa, Minnesota,²¹ Montana, New Jersey, Texas,²² Washington,²³ and West Virginia) prohibit firearm purchase or possession by persons convicted of misdemeanor domestic violence offenses that go beyond federal law.

- *Dating Partners:* Illinois, Minnesota, New Jersey, Texas, and Washington prohibit purchase or possession of a firearm by anyone found guilty of a domestic violence misdemeanor against a former or current dating partner or someone with whom the offender has had a romantic relationship.²⁴

- *Cohabitants:* Illinois, Minnesota, New Jersey, Texas, Washington and West Virginia prohibit purchase or possession of a firearm by anyone found guilty of a domestic violence misdemeanor against any present or former household member or cohabitant, regardless of their relationship to the offender. In addition, Delaware prohibits purchase or possession of a firearm by anyone found guilty of a misdemeanor against someone who resided with the offender at the time of the offense, but does not prohibit firearm purchase or possession by a misdemeanant who no longer resided with the victim at the time of the offense.²⁵ Iowa also prohibits anyone convicted of domestic abuse against a person who has been a household member within the past year or who was a household member at the time of the abuse from obtaining a permit to acquire a handgun.

¹⁹ In addition, some states, such as California and Hawaii, prohibit firearm purchase or possession by other **violent misdemeanants, without regard to the victim's relationship to the offender. California, Connecticut, Minnesota, New Jersey, New York, Pennsylvania, Tennessee and the District of Columbia** prohibit purchase or possession of a firearm by anyone with a misdemeanor conviction for stalking. Iowa prohibits anyone convicted of stalking from obtaining a permit to acquire a handgun. Additional information on state laws prohibiting firearm purchase or possession by persons with misdemeanor convictions is contained in the section entitled "Prohibited Purchasers."

²⁰ Illinois' prohibition applies to persons convicted of "domestic battery" committed on or after January 1, 1998.

²¹ Minnesota prohibits possession of a handgun by anyone convicted of an assault against a family or household member for three years following the conviction. Possession of other firearms is prohibited for at least three years as determined by the sentencing court if a firearm was used during the commission of the assault.

²² Texas prohibits firearm possession by domestic violence misdemeanants for five years following release from confinement or community supervision.

²³ Washington prohibits firearm possession by individuals who have committed certain domestic violence misdemeanors on or after July 1, 1993.

²⁴ In addition, in Montana, a court may prohibit an offender convicted of an assault of a dating partner from possessing or using the firearm used in the assault.

²⁵ Delaware only prohibits firearm purchase or possession by domestic violence misdemeanants for five years following conviction.

• *Family Members:* Arizona,²⁶ Delaware, Illinois, Minnesota, Texas and Washington prohibit purchase or possession of a firearm by anyone found guilty of a violent misdemeanor against specified family members, regardless of whether they reside with the offender.²⁷

b. Ammunition: Delaware and Illinois prohibit anyone convicted of a misdemeanor crime of domestic violence (as described above) from purchasing or possessing ammunition (in addition to firearms).

c. Persons Charged with a Domestic Violence Misdemeanor: Six states (California, Colorado, New Jersey, New York,²⁸ Texas, and Virginia) authorize 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.

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

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.** Many states go beyond federal law by giving judges discretion to order injunctive relief in protective orders issued without notice to the abuser or a hearing (known as **“ex parte” orders**). **In addition, some states exceed federal law by including a broader category of victims who may apply for a domestic violence protective order prohibiting firearms and/or ammunition.**

a. Ex Parte Protective Orders: Seventeen states (Arizona, California, Delaware, Hawaii, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin) prohibit firearm purchase or possession by persons subject to ex parte domestic violence protective orders, or authorize judges to prohibit firearm purchase or possession in ex parte protective orders.

Six states (California, Massachusetts, Texas, Virginia, West Virginia, and Wisconsin) prohibit firearm purchase or possession by any person subject to any ex parte domestic violence protective order. Six additional states (Hawaii,²⁹ New York,³⁰ North Carolina,³¹

²⁶ Arizona's prohibition on possession of firearms by domestic violence misdemeanants only applies while the person is on probation or parole, or under community supervision, work furlough, home arrest or other release in connection with the crime.

²⁷ In addition, Montana authorizes courts to prohibit an offender convicted of an assault of a family member from possessing or using the firearm used in the assault.

²⁸ New York's law applies to handguns only.

²⁹ Hawaii requires an ex parte domestic violence protective order to prohibit the abuser from possessing a firearm if the statement that forms the basis for the order shows that the abuser owns, possesses or intends to obtain a firearm and the firearm may be used to threaten, injure or abuse any person.

³⁰ New York requires an ex parte domestic violence protective order to prohibit the possession of handguns if the abuser has been convicted of a violent felony or stalking or has willfully failed to obey a prior order

Pennsylvania,³² Utah,³³ and Washington³⁴) prohibit access to firearms by persons subject to ex parte domestic violence protective orders in certain circumstances.³⁵

Five states (Arizona, Delaware, Michigan, New Hampshire, and New Jersey)³⁶ give judges discretion to prohibit firearm purchase or possession when issuing ex parte domestic violence protective orders.³⁷

*b. Individuals Who May Seek a Protective Order.*³⁸ Many states exceed federal law by including a broader category of victims who may apply for a domestic violence protective order prohibiting firearms.

- *Dating Partners:* The following eighteen states exceed federal law by allowing victims to seek a domestic violence protective order prohibiting purchase or possession of firearms against a former or current dating partner or anyone with whom

of protection and the failure involved the infliction of serious physical injury, the use or threatened use of deadly weapons, or a violent felony. New York also allows an ex parte domestic violence protective order to prohibit handgun possession if there is a substantial risk that the abuser may use or threaten to use a firearm unlawfully against the victim.

³¹ North Carolina requires an ex parte domestic violence protective order to prohibit the purchase or possession of firearms and ammunition if the abuser: has used or threatened to use a deadly weapon against, has threatened to seriously injure or kill, or has seriously injured the aggrieved party or child; or has threatened to commit suicide.

³² Pennsylvania prohibits the acquisition or possession of firearms by the subject of an ex parte domestic violence protective order if the petition demonstrates prior abuse involving a weapon or an immediate and present danger of abuse.

³³ Utah allows a court to issue an ex parte domestic violence protective order prohibiting firearm purchase or possession upon a finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the victim.

³⁴ Washington requires a court issuing an ex parte domestic violence protective order to prohibit the abuser from obtaining or possessing firearms if the abuser has used, displayed, or threatened to use a dangerous weapon in a felony.

³⁵ In addition, North Dakota allows a court issuing an ex parte domestic violence protective order to require the respondent to "surrender for safekeeping" any firearm in his or her possession so long as the court has probable cause to believe the respondent is likely to use, display, or threaten to use the firearm in further acts of violence.

³⁶ In addition, Montana allows the issuance of an ex parte domestic violence protective order if the court finds that harm may result if an order is not issued within 20 days, and allows an ex parte domestic violence protective order to prohibit the abuser from possessing or using the firearm that has already been used in the domestic violence incident.

³⁷ Many states authorize judges issuing protective orders to grant any appropriate injunctive relief, but do not specify whether a firearm prohibition is permissible. See D.C. Code Ann. § 16-1005; Haw. Rev. Stat. Ann. §§ 586-5(b), 586-5.5(b); Iowa Code §§ 236.2(2), 236.2(4)(a), 236.4(2), 236.5; Ky. Rev. Stat. Ann. §§ 403.740(1)(f), 403.750(1)(h); La. Rev. Stat. Ann. §§ 46:2135, 46:2136; Me. Rev. Stat. Ann. tit. 15, § 321; Minn. Stat. § 518B.01, subds. 2(b), 6(a)(12), 7; Miss. Code Ann. § 93-21-15; Mo. Rev. Stat. §§ 455.045, 455.050; Neb. Rev. Stat. Ann. §§ 42-903, 42-924, 42-925; N.M. Stat. Ann. §§ 40-13-2(D), 40-13-5(7); N.C. Gen. Stat. § 50B-2; Ohio Rev. Code Ann. §§ 2919.26(C), 3113.31(A)(3), (C), (E)(1)(h); S.D. Codified Laws §§ 22-19A-11, 25-10-5; Tex. Fam. Code Ann. § 83.001; Vt. Stat. Ann. tit. 15, § 1103; Va. Code Ann. §§ 16.1-253.1, 16.1-279.1; Wash. Rev. Code Ann. §§ 26.50.060(1)(f), 26.50.130; Wyo. Stat. Ann. § 35-21-105.

³⁸ 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.

they have had a romantic relationship: Alaska,³⁹ California, Connecticut, Delaware, Hawaii, Illinois,⁴⁰ Indiana, Massachusetts, Michigan, Montana,⁴¹ Nevada, New Jersey, North Carolina,⁴² Rhode Island,⁴³ Texas, Washington, West Virginia, and Wisconsin. In addition, North Dakota allows an application for a protective order to be brought by any person “if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order.”⁴⁴

- *Cohabitants:* Twenty states allow individuals to seek a domestic violence protective order prohibiting purchase or possession of firearms against any person who is presently or has in the past resided with the victim: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.⁴⁵

- *Family Members:* The following twenty-three states allow individuals to seek a domestic violence protective order prohibiting purchase or possession of firearms against any family member, even if the abuser has never resided with the victim: Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Maryland,⁴⁶ Massachusetts, Montana, Nevada, New Hampshire, New York, North Dakota, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

c. *Ammunition:* Of the states listed above, seven (California, Delaware, Hawaii, Illinois, Indiana, Massachusetts and New Hampshire) also prohibit subjects of domestic violence protective orders from purchasing or possessing ammunition.

³⁹ Alaska allows a domestic violence protective order prohibiting possession or use of firearms only if the court finds the abuser was in actual possession of or used a weapon during the commission of domestic violence.

⁴⁰ Illinois allows anyone to seek a protective order prohibiting purchase or possession of firearms only if the abuser has threatened or is likely to use firearms illegally against the victim.

⁴¹ Montana allows a domestic violence protective order prohibiting possession only of a firearm already used in an assault, and only if the victim is in danger of harm if the court does not issue an order immediately.

⁴² North Carolina allows only current or former dating partners of the opposite sex to seek a domestic violence protective order.

⁴³ Rhode Island allows an application for a protective order by a dating partner only if the relationship was **within the past one year and “at least one of the persons is a minor.”**

⁴⁴ N.D. Cent. Code § 14-07.1-02. North Dakota allows a court issuing a domestic violence protective order **to require the respondent to “surrender for safekeeping” any firearm in his or her possession so long as the court has probable cause to believe the respondent is likely to use, display, or threaten to use the firearm in further acts of violence.**

⁴⁵ **In addition, Maryland allows a “cohabitant” to seek a domestic violence protective order prohibiting possession of “regulated firearms” (handguns and assault weapons). However, “cohabitant” is defined as only a person who has had a sexual relationship with the abuser. Md. Code Ann., Fam. Law § 4-501.**

⁴⁶ **Maryland prohibits the subject of a domestic violence protective order from possessing “regulated firearms” only. “Regulated firearms” are defined as handguns and assault weapons.**

3. *State Laws Providing Statutory Authority for Law Enforcement to Remove Firearms and/or Ammunition at the Scene of a Domestic Violence Incident*⁴⁷

a. *States Requiring or Authorizing the Removal of Firearms:* Twelve states require, rather than simply authorize, law enforcement to remove at least some firearms at the scene of a domestic violence incident: California, Illinois, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, and West Virginia. Six states (Alaska, Arizona, Connecticut, Hawaii, Indiana, and Maryland) authorize, but do not require, law enforcement to remove firearms at the scene of a domestic violence incident.⁴⁸

b. *Firearms Subject to Removal:* The most comprehensive approach requires law enforcement to remove all firearms in the **abuser's possession, ownership or control**. Only New Hampshire allows law enforcement this broad authority, requiring removal of **all firearms in the abuser's control, ownership, or possession** at the time of a domestic violence incident. Other states allow the removal of only certain firearms, or allow the removal of firearms only if certain conditions are met.

- *Firearms in the Abuser's Possession:* In New Hampshire, law enforcement must remove all firearms and ammunition in an **abuser's control, ownership, or possession** whenever law enforcement determines that a domestic violence crime has occurred. Connecticut authorizes, but does not require, the removal of all firearms in the possession of the suspect at the location where domestic violence is alleged to have been committed. In Alaska, law enforcement may remove all firearms owned, used, possessed, or within the control of the abuser if any deadly weapon was possessed during or used in the domestic violence incident and law enforcement determines it is necessary to protect the victim, the **victim's family, the officer, or the public**.

- *Firearms Used in the Incident:* Ten states (Hawaii, Illinois, Montana, Nebraska, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, and West Virginia) authorize or require the removal of firearms used in the domestic violence incident. In six of those states (Illinois, Montana, Ohio, Pennsylvania, Tennessee and Utah), law enforcement must seize these firearms. Three states (Nebraska, Oklahoma, and West Virginia) require law enforcement to remove these firearms only if the abuser is simultaneously arrested. In Hawaii, law enforcement is authorized, but not required, to remove firearms used in the domestic violence incident.

- *Firearms "Observed at the Scene" or "in Plain View":* Three states (Indiana, Maryland and New Jersey) authorize **or require removal of firearms "observed at the scene" of a domestic violence incident**. In Maryland, law enforcement may remove

⁴⁷ The following analysis draws from the research conducted by Shannon Frattaroli and Jon S. Vernick for their article *Separating Batterers and Guns: A Review and Analysis of Gun Removal Laws in 50 States*, 30 Evaluation Rev. 296 (June 2006).

⁴⁸ Some states authorize law enforcement to take any appropriate action at the scene of a domestic violence incident, but do not specify the removal of firearms. *See, e.g.*, Ky. Rev. Stat. § 403.785; R.I. Gen. Laws § 15-15-5.

all firearms observed by law enforcement at the scene if the officer has probable cause to believe a crime of domestic violence has occurred. 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 these firearms expose the victim to danger. In Indiana, law enforcement is authorized, but not required, to remove firearms observed at the scene if they expose the victim to danger or there is reasonable belief that they were used in the domestic violence incident.

Another eight states (Alaska, Arizona, California, Connecticut, Hawaii, Nebraska, Tennessee and West Virginia) authorize or require removal of firearms "in plain view" at a domestic violence scene. In Connecticut, law enforcement may remove any firearms in plain view (in addition to any firearms in the abuser's possession at the scene) whenever law enforcement determines that a domestic violence crime has occurred. Alaska, Arizona and Hawaii authorize law enforcement to remove any firearms in plain view at the scene if law enforcement believes these firearms expose someone to danger. California requires removal of firearms under this circumstance. In Nebraska, Tennessee and West Virginia, law enforcement may remove firearms in plain view only if the abuser is arrested and it is necessary to protect the victim, the officer or the public.

- *Firearms Found in a Consensual Search:* Seven states (Arizona, California, Hawaii, Nebraska, New Jersey, Tennessee and West Virginia) authorize or require removal of firearms found pursuant to a consensual search. In Arizona, law enforcement may remove firearms found pursuant to a consensual search if law enforcement believes these firearms would expose the victim or other household member to danger. In California, law enforcement must remove firearms found pursuant to a consensual or other lawful search if law enforcement believes these firearms expose someone to danger. In Hawaii, law enforcement may remove any firearms found during a search to which the abuser has consented, if necessary to protect the officer or any family or household member. In New Jersey, law enforcement is required to seize firearms found in a consensual search if law enforcement believes the firearms expose the victim to danger. In Nebraska, Tennessee and West Virginia, law enforcement may remove firearms found in a consensual search, if the abuser is simultaneously arrested and it is necessary to protect the victim, the officer or the public.

c. States Authorizing the Removal of Ammunition: Four states (Hawaii, Indiana, Nebraska, and New Hampshire) authorize law enforcement to remove firearm ammunition from the scene of a domestic violence incident, subject to the conditions noted above.

d. 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,⁴⁹ 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.

⁴⁹ New Hampshire, Pennsylvania, Utah, and West Virginia do not address the issue when firearms removed from a domestic violence scene must be returned.

Six states (Alaska, Illinois, Indiana, Maryland, Montana and Tennessee) direct that firearms be held so long as they are needed for evidence or until the proceedings against the abuser are concluded. Tennessee requires that a firearm used or threatened to be used to commit domestic violence be sold, destroyed, or used for legitimate law enforcement purposes after completion of legal proceedings involving the weapon; other firearms must be returned to the abuser upon disposition of the case.⁵⁰ In Alaska and Illinois, the firearm must be returned when no longer needed as evidence; in Indiana and Maryland, the firearm must be returned at the conclusion of the proceeding against the abuser. Montana prohibits return of the firearm until acquittal or the return is ordered by the court. Similarly, Nebraska law states that the disposition of firearms seized at a domestic violence scene must be determined by court order.

Six states (Arizona, California, Connecticut, Hawaii, New Jersey and Oklahoma) specify that firearms be returned within 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. California requires that a firearm seized at a domestic violence scene be held for at least 48 hours, but it must be returned no later than 5 business days after the abuser has petitioned the Department of Justice and demonstrated eligibility to possess the firearm. New Jersey gives the prosecutor 45 days in which to petition for title of a firearm seized at a domestic violence scene; Oklahoma gives the district attorney 10 days. Connecticut requires the firearm to be returned within 7 days after removal unless a court orders otherwise. Hawaii requires the firearm to be returned within 7 working days unless it is retained for use as evidence or the abuser is ineligible to possess it.

4. *State Laws Requiring or Authorizing Removal or Surrender of Firearms and/or Ammunition When a Protective Order Is Issued*⁵¹

To ensure that firearms are taken from the homes of abusers, some state laws authorize judges issuing protective orders to direct law enforcement to remove firearms from the abuser, or to require the abuser to surrender his firearms.

a. *States Requiring or Authorizing Removal of Firearms and/or Ammunition by Law Enforcement from Abusers Subject to a Protective Order.* Three states (Hawaii, Massachusetts and New Jersey) authorize or require removal of firearms and/or ammunition by law enforcement officers from abusers subject to domestic violence protective orders, including ex parte protective orders.

⁵⁰ Tennessee also allows law enforcement to petition the court for permission to dispose of a firearm used or threatened to be used to commit domestic violence that is not needed as evidence in an official proceeding.

⁵¹ 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, New Jersey authorizes a judge issuing a protective order to direct law enforcement to search for and seize any firearms purchaser identification card or permit to purchase a handgun issued to the abuser. 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.

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**. 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 person granted protection by the court, the police officer must apply to the court for a search warrant for the purpose of seizing firearms and ammunition.

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**.

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

- *States Requiring Surrender of Firearms:* Seven states require certain domestic violence protective orders to include provisions requiring the abuser to surrender certain firearms: California, Illinois, Massachusetts, New Hampshire, New York, North Carolina, and Wisconsin.

California, New Hampshire, and Wisconsin require domestic violence protective orders to include provisions directing the abuser to surrender all firearms in his or her possession, regardless of the circumstances leading to the order. **California's law also applies to ex parte orders**. In New Hampshire, a provision for the surrender of firearms is authorized in ex parte orders but required in domestic violence protective orders issued with notice and a hearing. **Wisconsin's law does not apply to ex parte orders**.

In Hawaii, Illinois, Massachusetts, New York and North Carolina, domestic violence protective orders must direct the abuser to surrender firearms if certain conditions are met. In Hawaii, if a protective order (including an ex parte order) contains a prohibition on possession of firearms, the abuser must relinquish possession and control of any firearm owned by that person.⁵² Illinois requires a court issuing a domestic violence protective order after notice and a hearing to direct the abuser to surrender any firearms in his or her possession if the abuser has threatened or is likely to use firearms.⁵³

In Massachusetts, a domestic violence protective order (including an ex parte order) must require the abuser to surrender all firearms and ammunition in his or her possession if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In New

⁵² Hawaii requires an ex parte domestic violence protective order to prohibit the possession of firearms, and requires the abuser to surrender firearms if the statement that forms the basis for the order shows that the abuser owns, possesses or intends to obtain a firearm and the firearm may be used to threaten, injure or abuse any person.

⁵³ In Illinois, if the subject of a domestic violence protective order fails to surrender his or her firearms as ordered, the court must issue a warrant for seizure of any firearms in his or her possession.

York, a domestic violence protective order must require the surrender of firearms if the conduct which resulted in the order involved the infliction of serious physical injury, the use or threatened use of a dangerous weapon, or behavior constituting a violent felony.⁵⁴ In addition, the judge has discretion to require the surrender of firearms in a protective order (including an ex parte order) if the court finds a substantial risk that the abuser may use or threaten to use a firearm unlawfully against a person protected by the order. In North Carolina, a domestic violence protective order (including an ex parte order) must require the abuser to surrender all firearms and ammunition in his or her possession if the abuser threatened to use a deadly weapon or to seriously injure or kill the aggrieved party or the parties' minor child, to commit suicide, or has inflicted serious injuries upon the aggrieved party or the parties' minor child.

- *States Authorizing Surrender of Firearms:* Twelve states⁵⁵ authorize (but do not require) courts to issue protective orders that direct the abuser to surrender all firearms in his or her possession: Alaska,⁵⁶ Arizona,⁵⁷ Delaware, Florida⁵⁸, Indiana, Maryland, Nevada, North Dakota,⁵⁹ Pennsylvania,⁶⁰ Rhode Island and South Dakota.

Seven states also authorize firearm surrender provisions in certain ex parte domestic violence protective orders: Arizona, Delaware, Florida, New Hampshire, North Dakota, Pennsylvania, and South Dakota.

- *States Specifying To Whom the Abuser Must Surrender Firearms:* Ten states direct persons subject to protective orders to surrender their firearms to law enforcement: Arizona, Delaware, Illinois, Indiana, Maryland, Massachusetts, New Hampshire, North Carolina, North Dakota, and South Dakota.

Two states (California and Hawaii) require the abuser either to surrender his or her firearms to law enforcement, or to sell those firearms to a licensed gun dealer.

⁵⁴ New York requires an ex parte domestic violence protective order to require the surrender of firearms if the abuser has been convicted of a violent felony or stalking or has willfully failed to obey a prior order of protection and the failure involved the infliction of serious physical injury, the use of deadly weapons, or a violent felony.

⁵⁵ Other states grant judges discretion to include any appropriate injunctive relief in protective orders, but do not specifically mention the surrender or removal of firearms. *See supra* note 37.

⁵⁶ Alaska authorizes a protective order issued after notice and a hearing that requires the abuser to surrender firearms only if a firearm was used or threatened in a domestic violence incident.

⁵⁷ Arizona authorizes a protective order requiring the surrender of firearms only if the abuser is a credible threat to the physical safety of the plaintiff or other specifically designated persons. If a protective order prohibits the abuser from possessing firearms, it must also include a surrender requirement.

⁵⁸ Florida considers it a violation of a protective order to refuse to surrender firearms if ordered to do so.

⁵⁹ In North Dakota, a domestic violence protective order may require the abuser to surrender firearms in his or her possession only if the court has probable cause to believe the abuser is likely to threaten to use the firearm in further acts of violence.

⁶⁰ In Pennsylvania, a domestic violence protective order may require the abuser to relinquish all firearms and ammunition if the order was issued after notice and a hearing, or if the petition demonstrates prior abuse involving a weapon or an immediate and present danger of abuse.

In Nevada, the abuser must surrender his or her firearms to law enforcement or another person designated by the court, or may sell those firearms to a licensed dealer.

In New York, the abuser must surrender his or her firearms to an authority identified by the court, who must then notify the court of the surrender when it occurs.

Three states (Pennsylvania, Rhode Island and Wisconsin) permit the abuser to surrender his firearms to other designated third parties. In Pennsylvania, the abuser must surrender his or her firearms to law enforcement, to a licensed dealer, or to a third party; the latter two must sign an affidavit promising not to return the firearms to the abuser. In Rhode Island, the abuser may surrender his or her firearms to law enforcement, a licensed dealer, or to any individual not legally prohibited from possessing firearms who is not related to or dating the abuser. In Wisconsin, the abuser must surrender his or her firearms to law enforcement or a person designated by the abuser and approved by the court.

- *States Authorizing Surrender of Ammunition.* Six states (Hawaii, Indiana, Massachusetts, New Hampshire, North Carolina and Pennsylvania) authorize judges to issue protective orders that require the abuser to surrender ammunition as well as firearms.

SUMMARY OF SELECTED⁶¹ LOCAL LAWS REGARDING DOMESTIC VIOLENCE AND FIREARMS

Local Laws Regarding Domestic Violence and Firearms⁶²

New York City

New York, N.Y., Rules tit. 38-A, § 5-02(b), (c);
New York, N.Y., Admin. Code § 10-303

Omaha

Omaha, Neb., Code § 20-253

New York City: In New York City, no person with a prior conviction for a misdemeanor crime of domestic violence, as defined by federal law, may be granted a premises license allowing him or her to possess a handgun at a residence or business location, or a permit for the possession or purchase of rifles or shotguns. In addition, an applicant for a premises license must disclose whether he or she has ever been the subject or recipient of an order of protection.

⁶¹ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

⁶² In addition, Columbus, Ohio prohibits issuance of a weapons transaction permit to anyone convicted of an "offense of violence" as defined by state law, without reference to the relationship between the offender and the victim. Columbus, Ohio, Code § 545.08(4).

Omaha: Omaha prohibits anyone convicted of any charge of domestic violence or anyone subject to an active protective order from registering a concealable firearm.

FEATURES OF COMPREHENSIVE LAW REGARDING DOMESTIC VIOLENCE AND FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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 (*Illinois, Minnesota, New Jersey, Texas, Washington*)
- Courts are authorized to prohibit persons charged with a domestic violence misdemeanor from purchasing or possessing firearms (*California, Colorado, New Jersey, New York, Texas, Virginia*)
- Persons convicted of a domestic violence misdemeanor are prohibited from purchasing or possessing ammunition (*Delaware, Illinois*)
- 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 prohibited from purchasing or possessing firearms (*Connecticut, California, Hawaii, Massachusetts, Nevada, Texas, West Virginia, Wisconsin*)
- Persons subject to a domestic violence protective order issued without notice or a hearing are prohibited from purchasing or possessing firearms (*California, Massachusetts, Texas, Virginia, West Virginia, Wisconsin*)
- Persons subject to a domestic violence protective order are prohibited from purchasing or possessing ammunition (*California, Delaware, Florida, Hawaii, Illinois, Indiana, Massachusetts, New Hampshire*)
- 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** (*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*)

Background Checks

Background

At the federal level, background checks are conducted pursuant to the Brady Handgun Violence Prevention Act (the “Brady Act”), 18 U.S.C. § 921 *et seq.*, which is described in detail below. 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

Summary of Federal Law

The Brady Act requires federally licensed firearms dealers (FFLs) to perform background checks on prospective firearms purchasers to ensure that the firearm transfer would not violate federal, state or local law.² Since 1998, the Brady Act has been implemented through the National Instant Criminal Background Check System (NICS).³ NICS is used for purchasers of handguns and long guns, and for persons who redeem a pawned firearm.⁴ The Brady Act does not apply to unlicensed sellers.

States have the option of serving as a state Point of Contact (POC) and conducting their own NICS checks, or having those checks performed by the FBI.⁵ FBI checks are provided at no charge; state law determines the cost of background checks performed by POCs.⁶ FFLs 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).⁷ The FBI or POC must then conduct a name-based search of federal and state databases. FBI searches include three 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; and

¹ Categories of persons who are prohibited from possessing firearms under federal and state law are detailed in the section on Prohibited Purchasers.

² 18 U.S.C. § 922(s).

³ As originally adopted, the Brady Act included interim as well as permanent provisions. The Act's interim provisions, implemented on February 28, 1994, applied to handgun sales only. On November 30, 1998, the permanent provisions of the Brady Act went into effect, establishing the NICS system and extending the Act's application to purchasers of long guns and persons who redeem a pawned firearm.

⁴ 18 U.S.C. § 922(t).

⁵ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Transfers, 2005* 3-4 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/abstract/ssprfs05.htm>.

⁶ *Id.* at 3.

⁷ 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. The FFL is required to verify the identity of the prospective purchaser. *Id.*

- The NICS Index, which contains records of other persons prohibited under federal law from receiving or possessing firearms.⁸

A state POC search includes the three federal databases, and may include the state's independent criminal history database and mental health records.⁹

Once the initial search is complete, the FBI or POC notifies the FFL 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 FFL must record on Form 4473.¹⁰ The NICS check is valid for a single transaction for up to 30 calendar days from the date NICS was initially contacted.¹¹

If the FFL has not been notified within three business days that the sale would violate federal or state laws, the sale may proceed by default.¹²

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.¹³ Permits issued after November 30, 1998 qualify as exempt only if the approval process included a NICS check.¹⁴ This exemption could allow some prohibited persons to acquire firearms, in cases where a state permit holder falls into a prohibited category after issuance of the state 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.

Although the Brady Act provides an essential mechanism for keeping guns away from convicted felons and other prohibited purchasers, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), FBI and other federal agencies have made several recommendations to strengthen the law. Those recommendations include the following:

- **Close the private sale loophole – The Brady Act applies only to sales by FFLs. Accordingly, persons who purchase firearms from private sellers –**

⁸ Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, *National Instant Criminal Background Check System (NICS) Operations 2005* 2 (Jan. 2006), at http://www.fbi.gov/hq/cjisd/nics/ops_report2005/ops_report2005.pdf.

⁹ *Survey of State Procedures Related to Firearm Transfers, 2005*, *supra* note 5, at 3-4.

¹⁰ 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.

¹¹ 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.

¹² 18 U.S.C. § 922(t)(1).

¹³ 18 U.S.C. § 922(t)(3); 27 C.F.R. § 478.102(d).

¹⁴ 27 C.F.R. § 478.102(d).

estimated to be 40 percent of all gun purchasers – are not required to undergo background checks.¹⁵

- **Extend the three-day limit for background checks – Under the Brady Act, if the FFL has not been notified within three business days that the sale would violate federal or state laws, the sale may proceed by default.¹⁶ This default provision, known as a “default proceed,”** allowed 3,849 prohibited purchasers to buy guns during the first year of operation (November 30, 1998 through November 30, 1999) of NICS.¹⁷ Moreover, between November 1998 and December 31, 2005, ATF received 26,600 referrals from the FBI requesting further review, evaluation and possible retrieval of firearms that had been sold to ineligible persons by default.¹⁸ As a result, the FBI has recommended extending the maximum time allowed for conducting background checks 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.¹⁹
- **Improve access to state records –** At the end of 2003, only three out of four criminal history records were accessible through the NICS system.²⁰ According to the FBI, state background checks are more thorough than those performed by the FBI because the states can access their independent criminal history database in addition to the databases maintained by NICS. 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). Accordingly, the FBI is encouraging states to provide more complete records to the NICS system.²¹

¹⁵ See Educational Fund to Stop Gun Violence, *Closing Illegal Gun Markets: Extending Criminal Background Checks to All Gun Sales* (May 2002). Additional information about private transfers is contained in the section on Private Sales.

¹⁶ 18 U.S.C. § 922(t)(1). See also *Survey of State Procedures Related to Firearm Transfers, 2005*, *supra* note 5, at 3-4.

¹⁷ Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, *National Instant Criminal Background Check System (NICS) Operations Report (November 30, 1998-December 31, 1999)* 11 (March 2000). In fact, the FBI has found that a purchaser whose NICS check takes longer than 24 hours to complete is 20 times more likely to be a prohibited purchaser than other applicants. *Id.* at 6.

¹⁸ *NICS Operations 2005*, *supra* note 8, at 12.

¹⁹ U.S. General Accounting Office, *Gun Control: Implementation of the National Instant Criminal Background Check System* 13 (Feb. 2000), at <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=g100064.pdf&directory=/diskb/wais/data/gao>. FBI investigations of prohibited purchasers who were allowed to buy firearms by default typically take 25 days to complete. *Id.*

²⁰ Bureau of Justice Statistics, U.S. Department of Justice, *National Criminal History Improvement Program: Improving Criminal History Records for Background Checks, 2005* 3 (July 2006) at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ichrbc05.pdf>. The percentage of criminal records that are accessible for NICS checks varies by state. See U.S. General Accounting Office, *Gun Control: Options for Improving the National Instant Criminal Background Check System* 12-14 (Apr. 2000), at <http://www.gao.gov/archive/2000/gg00056.pdf>.

²¹ *Gun Control: Implementation of the National Instant Criminal Background Check System*, *supra* note 19, at 12-13.

- **Increase access to mental health records** – Although federal law prohibits the purchase of a firearm by any person who has been adjudicated as a mental defective or involuntarily committed to a mental institution, many states do not collect information about persons who fit this criteria or provide law enforcement access to this information. There are many Americans who have been involuntarily committed to mental institutions and are barred by federal law from possessing firearms, but, as of November 30, 1999, the FBI had received from all states a total of only 41 records of mentally ill persons.²² Although the number of **mental health records provided to NICS has increased – in 2007 there were approximately 400,000²³ – mental illness remains significantly underreported. As a result of the FBI’s lack of information** about mentally ill persons, a FBI background check is unlikely to find that a person is ineligible to possess a firearm due to mental illness. Because of these reporting deficiencies, mentally ill persons in this country are easily able to buy guns in violation of federal law.²⁴

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, provides financial incentives for states to provide to NICS information relevant to whether a person is prohibited from purchasing or possessing firearms.²⁵ Under the Act, states are eligible to receive a waiver of the 10% matching requirement for National Criminal History Improvement Grants²⁶ if they provide at least 90% of relevant records concerning persons who are prohibited from purchasing or possessing a firearm within specified deadlines.²⁷ The Act also authorizes 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.²⁸

²² *Gun Control: Options for Improving the National Instant Criminal Background Check System*, *supra* note 20, at 8.

²³ 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), at http://www.usdoj.gov/ag/speeches/2007/ag_speech_071129.html.

²⁴ For more information on access to records of persons with mental illness for firearm purchaser background checks, see section on Mental Health Reporting.

²⁵ Pub. L. No. 110-180, §§ 102, 104, 121 Stat. 2559 (2008).

²⁶ *See generally* 42 U.S.C. § 14601.

²⁷ Pub. L. No. 110-180, § 102, 121 Stat. 2559 (2008).

²⁸ *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 section on Mental Health Reporting.

SUMMARY OF STATE LAWS GOVERNING BACKGROUND CHECKS

Only Vermont has no state law governing background checks.²⁹ State laws describing important differences in the background check process are described below.

Alabama	Ala. Code § 13A-11-72
Alaska	Alaska Stat. § 11.61.200
Arizona	Ariz. Rev. Stat. §§ 13-3101(A)(6), 13-3111, 13-3113
Arkansas	Ark. Code Ann. § 5-73-103(a), 5-73-129
California	Cal. Penal Code §§ 12021, 12021.1, 12076, 12077; Cal. Welf. & Inst. Code §§ 8100, 8101, 8103, 8105
Colorado	Colo. Rev. Stat. §§ 13-5-142, 13-9-123, 18-12-108, 18-12-108.5, 24-33.5-424
Connecticut	Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36l, 29-37a, 53a-217, 53a-217c
Delaware	Del. Code Ann. tit. 11, §§ 1448, 1448A; tit. 24, §§ 901, 903
District of Columbia	D.C. Code Ann. §§ 7-2502.01 – 7-2502.10
Florida	Fla. Stat. Ann. §§ 790.065, 790.18, 790.23, 790.233, 790.235
Georgia	Ga. Code Ann. §§ 16-11-131(b), (b.1), 16-11-132, 16-11-171 – 16-11-172
Hawaii	Haw. Rev. Stat. Ann. §§ 134-2, 134-7
Idaho	Idaho Code Ann. § 18-3316
Illinois	430 Ill. Comp. Stat. 65/1 – 65/16-3
Indiana	Ind. Code Ann. §§ 35-47-1-7, 35-47-2.5-1 – 35-47-2.5-12
Iowa	Iowa Code §§ 724.15 – 724.23, 724.26
Kansas	Kan. Stat. Ann. §§ 21-4204, 21-4204a
Kentucky	Ky. Rev. Stat. Ann. §§ 527.040, 527.100
Louisiana	La. Rev. Stat. Ann. § 14:95.1
Maine	Me. Rev. Stat. Ann. tit. 15, § 393(1)
Maryland	Md. Code Ann., Pub. Safety §§ 5-101(g), 5-117 – 5-127, 5-133, 5-134
Massachusetts	Mass. Gen. Laws ch. 140, §§ 129B, 130, 131, 131E
Michigan	Mich. Comp. Laws §§ 28.422 – 28.422b, 750.224f
Minnesota	Minn. Stat. §§ 624.713 – 624.7132, 624.719
Mississippi	Miss. Code Ann. § 97-37-5, 97-37-13, 97-37-14
Missouri	Mo. Rev. Stat. §§ 571.060, 571.070, 571.080
Montana	Mont. Code Ann. § 45-8-313
Nebraska	Neb. Rev. Stat. Ann. §§ 28-1204.01, 28-1206, 69-2401 – 69-2421
Nevada	Nev. Rev. Stat. Ann. §§ 202.300, 202.310, 202.360, 202.362
New Hampshire	N.H. Rev. Stat. Ann. §§ 159-D:1, 159:3, 159:7, 159:8-a, 159:12, 173-B:5

²⁹ Federal law requiring background checks for all dealer sales does apply in Vermont, however, as it does in all other states.

New Jersey	N.J. Stat. Ann. § 2C:58-3
New Mexico	N.M. Stat. Ann. § 30-7-16
New York	N.Y. Penal Law §§ 265.00, 265.01, 400.00
North Carolina	N.C. Gen. Stat. §§ 14-402 – 14-406, 14-415.1, 14-415.3, 14-269.8
North Dakota	N.D. Cent. Code § 62.1-02-01
Ohio	Ohio Rev. Code Ann. §§ 2923.13, 2923.211
Oklahoma	Okla. Stat. tit. 21, §§ 1273, 1283, 1289.10, 1289.12
Oregon	Or. Rev. Stat. §§ 166.412, 166.250(1)(c), 166.414, 166.470
Pennsylvania	18 Pa. Cons. Stat. §§ 6105, 6110.1, 6111, 6111.1
Rhode Island	R.I. Gen. Laws §§ 11-47-5 – 11-47-7, 11-47-30, 11-47-33, 11-47-35 – 11-47-35.3, 8-8.1-3; 15-15-3
South Carolina	S.C. Code Ann. §§ 16-23-30
South Dakota	S.D. Codified Laws §§ 22-14-15, 22-14-15.1, 23-7-44, 23-7-46
Tennessee	Tenn. Code Ann. §§ 39-17-1303, 39-17-1307, 39-17-1316, 39-17-1319, 39-17-1321
Texas	Tex. Penal Code Ann. § 46.04, 46.06
Utah	Utah Code Ann. §§ 76-10-503, 76-10-509, 76-10-509.4
Virginia	Va. Code Ann. §§ 18.2-308.1:1 – 18.2-308.2:2, 18.2-308.4, 18.2-308.7
Washington	Wash. Rev. Code Ann. §§ 9.41.040, 9.41.090, 9.41.170
West Virginia	W. Va. Code § 61-7-7, 61-7-8
Wisconsin	Wis. Stat. §§ 175.35, 941.29, 948.60
Wyoming	Wyo. Stat. Ann. § 6-8-102

Description of State Laws Governing Background Checks

1. *State Points of Contact:* According to the FBI, state background checks are more thorough than those performed by the FBI because states can access their independent criminal history databases in addition to databases maintained by NICS.³⁰ Thirteen states serve as POC states for all firearm transfers.³¹ Eight states use a state or local POC for handgun background checks only, using the FBI for background checks on long gun transfers.³² The remaining twenty-nine states and the District of Columbia process all background checks through the FBI.³³

³⁰ *Gun Control: Implementation of the National Instant Criminal Background Check System*, *supra* note 19, at 12-13. See also *NICS Operations 2005*, *supra* note 8, at 5.

³¹ Criminal Justice Information Systems of the Federal Bureau of Investigation, U.S. Department of Justice, *NICS Program Summary* (July 2006), at <http://www.fbi.gov/hq/cjis/nics.htm>.

³² *Id.*

³³ *Id.*

POC States for All Firearms

California
Colorado
Connecticut
Florida
Hawaii
Illinois
Nevada
New Jersey
Oregon
Pennsylvania
Tennessee
Utah
Virginia

POC States for Handguns Only

Iowa
Maryland (“regulated firearms”)³⁴
Michigan
Nebraska
New Hampshire
North Carolina
Washington
Wisconsin

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-one states issue permits or licenses that exempt the holder from a background check.³⁵

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

Alaska (concealed weapons permits)
Arizona (concealed weapons permits)
Arkansas (concealed weapons permits issued on or after 4/1/99)
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)
Kentucky (concealed weapons permits issued on or after 7/12/06)
Michigan (licenses to purchase a pistol and concealed pistol licenses issued on or after 11/22/05)
Mississippi (concealed weapons permits, but not security guard permits)
Montana (concealed weapons permits)
Nebraska (handgun purchase certificates)
Nevada (concealed weapons permits)
New York (licenses to carry and possess handguns)
North Carolina (permits to purchase a handgun and concealed handgun permits)
North Dakota (concealed weapons permits issued on or after 12/1/99)
South Carolina (concealed weapons permits)

(continued on next page)

³⁴ Maryland defines “regulated firearms” as handguns and assault weapons.

³⁵ Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice, *Permanent Brady Permit Chart* (June 28, 2007), at http://www.atf.gov/firearms/bradylaw/permit_chart.htm (last visited Dec 4, 2007). 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).

States that Issue Permits or Licenses that Qualify the Holder for an Exemption from a NICS Check (continued from previous page)

Texas (concealed weapons permits)

Utah (concealed weapons permits)

Wyoming (concealed weapons permits)

3. *State Laws Addressing the Problem of "Default Proceeds."*³⁶ 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.

In California, all firearm transfers are subject to a 10-day waiting period.³⁷ If the background check information received is incomplete, preventing the background check from being approved or denied within the 10-day period, the California Department of Justice (DOJ) may notify the dealer of that fact.³⁸ The DOJ interprets this provision to allow (but not require) DOJ to notify the dealer to delay the transfer until the background check can be completed.

In Colorado, the state can deny a prospective purchaser's application if the background check cannot be completed within the 3-day default period.³⁹

In New Jersey, retail firearms dealers may not deliver 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)⁴⁰ while the permit application is processed.

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 information on the disposition of the arrest. After 30 days, if the

³⁶ LCAV has not undertaken a comprehensive survey of state approaches to "default proceeds." The states noted provide examples of ways to address this issue.

³⁷ Cal. Penal Code §§ 12071(b)(3)(A), 12072(c)(1).

³⁸ Cal. Penal Code § 12076(d)(4), (5).

³⁹ Colorado provides that an application must be denied in cases in which there has been no final disposition or the final disposition is not noted in the NICS or state databases, where the applicant: (1) has been arrested for or charged with a crime that would prohibit him or her from purchasing, receiving, or possessing a firearm under state or federal law; or (2) is the subject of an indictment, an information, or a felony complaint alleging that the prospective transferee has committed a crime punishable by imprisonment for a term exceeding one year as defined in 18 U.S.C. § 921(a)(20). This provision has a sunset clause and will be automatically repealed July 1, 2010, unless renewed. Colo. Rev. Stat. § 24-33.5-424(3)(b).

⁴⁰ N.J. Stat. Ann. §§ 2C:58-2a(5)(a), 2C:58-3. Note that FFLs may not sell handguns to out-of-state residents. Additional information on transfer restrictions imposed on FFLs is contained in the section on Dealer Regulations.

disposition still cannot be verified, the hold may be extended by a judicial order on a showing of good cause.⁴¹

In Wisconsin, if the background check indicates a felony charge without a recorded disposition, the state's 48-hour waiting period for handgun purchases is extended to the end of the third complete working day commencing after the day on which the finding is made. The Department of Justice must notify the firearms dealer of the extension as soon as practicable. During the extended period, the Department of Justice is required to make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable.⁴²

4. *Mental Health Reporting:* Although persons who have been adjudicated as mental defectives or involuntarily committed to mental institutions are prohibited by federal law from possessing firearms, the current status of the FBI databases makes it difficult to prevent such a person from obtaining firearms if the person undergoes only an FBI background check. As discussed above, that is because a great deal of information about mentally ill people is not reported to the FBI and the FBI does not currently have access to mental health records that are maintained by the states. A detailed discussion of state laws governing mental health reporting is contained in the section on Mental Health Reporting.

SUMMARY OF SELECTED⁴³ LOCAL LAWS GOVERNING BACKGROUND CHECKS

Local Laws Governing Background Checks

Cleveland	Cleveland, Ohio, Code §§ 674.04, 674.05
Columbus	Columbus, Ohio, Code §§ 545.06(a), 545.07
New York City	New York, N.Y., Admin. Code § 10-303, New York, N.Y., Rules tit. 38, §§ 5-01 - 5-07
Omaha	Omaha, Neb., Code § 20-253(b)

Cleveland: In Cleveland, background checks are required for issuance of handgun owner's identification cards and handgun registration cards.

⁴¹ Wash. Rev. Code Ann. § 9.41.090(3), (4).

⁴² Wis. Stat. §§ 175.35(2)(d), 175.35(2g)(c)4.c.

⁴³ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

Columbus: Firearms purchasers in Columbus are required to have a “weapon transaction permit” to purchase or possess any lawful weapon. The permit application process requires a background check on the applicant.

New York City: New York City requires a rifle or shotgun permit for the purchase and/or possession of rifles and shotguns. New York City also requires handgun licenses, which are granted for particular uses. A background check is required prior to issuance of rifle/shotgun permits and handgun licenses.

Omaha: Omaha requires handgun owners to register their firearms. A background check is required during the handgun registration process.

FEATURES OF COMPREHENSIVE BACKGROUND CHECK LAW

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Universal background checks are required on all firearm purchasers (*California, Rhode Island, District of Columbia, Chicago; Maryland requires universal background checks but only for purchases of handguns and assault weapons; Connecticut and Pennsylvania require universal background checks only for purchases of handguns*)⁴⁴
- State acts as a Point of Contact for all firearm transfers, and background checks **include search of state’s** independent criminal history and mental health records
- Transfer of any firearm is prohibited until the background check process has been completed (*Colorado, Washington*)
- Background check process includes search **of a state’s mental health records** (*15 states*)⁴⁵
- Mental health information is reported to federal and state databases of prohibited purchasers (*14 states*)⁴⁶
- Criminal history information 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

⁴⁴ Additional information on jurisdictions requiring universal background checks is contained in the section on Private Sales.

⁴⁵ Additional information on access to mental health records for firearm purchaser background checks is contained in the section on Mental Health Reporting.

⁴⁶ See *supra* note 45.

Mental Health Reporting

Background

Federal law prohibits the sale of firearms and ammunition to certain individuals with a history of mental illness, and requires licensed dealers (but not unlicensed sellers) to request a background check prior to transfer of a firearm to screen out prohibited purchasers.¹ However, federal law does not require states to make mental health information available to the federal or state agencies that perform background checks,² **and many states fail to report to the FBI's National Instant Criminal Background Check System (NICS) all relevant mental health information necessary for a background check to identify persons who are prohibited from purchasing firearms.**

Between November 1999 and November 2007, the number of disqualifying mental health records in the NICS Mental Defective File increased from about 90,000 to about 400,000.³ However, the U.S. General Accounting Office has estimated that there should be at least 2.7 million such records in the database.⁴ Hence, the total number of records currently reported to NICS is still a small fraction of the number of persons prohibited from purchasing firearms due to a history of mental illness. 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.⁵

When mental health information is submitted to NICS, it can be effective at preventing firearm transfers by licensed dealers to the mentally ill. 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.⁶

However, even states that report mental health information to NICS may fail to report *all* disqualifying mental health records due to loopholes in state law. As a result of the

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 the section on Private Sales.

² See 28 C.F.R. § 25.4; Legal Community Against Violence, *Lessons From Virginia Tech: Recommendations for State Law Changes to Close Loopholes in Background Check Systems* 4 n.16 (May 2007), at http://www.lcav.org/pdf/memo_re_state_loopholes.pdf.

³ 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), at http://www.usdoj.gov/ag/speeches/2007/ag_speech_071129.html. 200,000 records were submitted by California in October 2007. *Id.*

⁴ *Gun Control*, *supra* note 3, at 59.

⁵ U.S. Department of Justice, *Background Checks for Firearm Transfers, 2005*, Bureau of Justice Statistics Bulletin 5 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/bcft05.pdf>.

⁶ 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>.

underreporting of mental health information by some states, mentally ill individuals have been able to obtain firearms even though they are prohibited by law from doing so.

The most tragic incident involving such a loophole occurred in April 2007, when Virginia Polytechnic Institute and State University (Virginia Tech) student Seung-Hui Cho shot and killed 32 people and injured 17 others before committing suicide on the Virginia Tech campus in Blacksburg, Virginia.⁷ Cho was, in fact, prohibited from purchasing a firearm under federal law because of a history of mental illness.⁸ 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 information be submitted to NICS, it did not require reporting of orders adjudicating persons to be a danger to themselves or others if they were only directed to outpatient, as opposed to inpatient, mental health treatment.⁹ In response to the shooting, a panel convened by Virginia Governor Timothy Kaine issued a report recommending that all states report to NICS *all* information necessary to conduct federal background checks for firearm transfers.¹⁰

Similarly, soon after the shooting, Secretary of the Department of Health and Human Services Michael Leavitt, Secretary of the Department of Education Margaret Spellings, and then-Attorney General Alberto Gonzales issued a report finding that state laws and practices do not uniformly ensure that information regarding persons restricted from possessing firearms is appropriately captured and available to NICS, and recommending that states submit all relevant disqualifying information to NICS.¹¹ The National Association of Attorneys General also issued a report making the same recommendation.¹²

In an ABC News poll conducted after the Virginia Tech shooting, 83% of respondents answered that states should be required to report mentally ill people to a federal database, in order to prevent them from buying guns.¹³

The FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) also are encouraging states to provide more mental health records to NICS.¹⁴ Nevertheless, as of April 30, 2007, the FBI identified only 23 states as having submitted mental health

⁷ *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>.

⁸ 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.

⁹ *Id.* at 71-73.

¹⁰ *Id.* at 76.

¹¹ *Report to the President on Issues Raised by the Virginia Tech Tragedy* 10-11 (June 13, 2007), at <http://www.hhs.gov/vtreport.pdf>.

¹² National Association of Attorneys General Task Force on School and Campus Safety, *Report and Recommendations* (Sept. 2007), at <http://www.naag.org/assets/files/pdf/2007.TaskForceOnSchoolAndCampusSafety.pdf>.

¹³ ABC News Poll, *VA Tech, Guns, and Mental Illness* (Apr. 22, 2007), at <http://abcnews.go.com/images/US/1037a1VaTechGuns.pdf>.

¹⁴ Brand, *supra* note 6, at 10-11.

records to the FBI for inclusion in NICS.¹⁵ Thirteen of the 23 had submitted less than 50 records.¹⁶ Some had submitted only one record.¹⁷ A few more states began reporting mental health records to NICS soon after the Virginia Tech shooting. Nevertheless, according to Attorney General Michael Mukasey, as of November 2007, only 32 states had submitted mental health records to the FBI for inclusion in NICS.¹⁸

States that do not submit mental health records to NICS may nevertheless require a check of their own mental health records prior to a firearm transfer.¹⁹ 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.²⁰ 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 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

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.”**²¹ 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.**²² **The term “adjudicated as a mental defective” explicitly includes a finding of not guilty by reason of insanity or incompetence to stand trial.**²³

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.²⁴ The term is defined to include involuntary commitments, but does not include persons who are admitted to a mental institution voluntarily or for observation.²⁵

¹⁵ These states are: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, New Hampshire, New York, North Carolina, Ohio, South Carolina, Tennessee, Utah, Virginia, Washington and Wyoming. Brand, *supra* note 6, at 11-12.

¹⁶ *Id.* at 11.

¹⁷ *Id.*

¹⁸ Mukasey, *supra* note 3.

¹⁹ *See infra* p. 127.

²⁰ Brand, *supra* note 6, at 12.

²¹ 18 U.S.C. § 922(d)(4). Such persons are prohibited from possessing firearms. 18 U.S.C. § 922(g)(4).

²² 27 C.F.R. § 478.11.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* The term includes commitments for mental defectiveness, mental illness, and other reasons, such as drug use. *Id.*

The Brady Handgun Violence Prevention Act (the “Brady Act”) requires licensed dealers to request a background check prior to transfer of a firearm.²⁶ Background checks are performed through a search of the NICS system.²⁷ The NICS system includes three federal databases; two of these - the Interstate Identification Index and the NICS Index - contain information used to determine whether a person is disqualified from possessing firearms on the basis of mental health.

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. The NICS Index includes two files into which federal agencies and the states can enter information about individuals who have a disqualifying mental health history – the Mental Defective File and the Denied Persons File.²⁸ The Denied Persons File includes the names of individuals who are prohibited from purchasing a firearm but does not identify the reason they are prohibited.²⁹ Hence, states may avoid transferring private mental health information by identifying persons to NICS as prohibited purchasers without indicating that they are denied due to a mental health history.³⁰

Federal law does not require states to submit mental health information to NICS; participation is strictly voluntary.³¹ However, effective background checks on prospective firearm purchasers depend on having 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, 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

²⁶ 18 U.S.C. § 922(t).

²⁷ *Id.* In most states, dealers request background checks by contacting the FBI, which performs these background checks by searching NICS. Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 3-4 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>. 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.* For more information, see the section on Background Checks.

²⁸ Brand, *supra* note 6, at 10.

²⁹ *Id.*

³⁰ *Id.*

³¹ See 28 C.F.R. § 25.4.; Brand, *supra* note 6, at 5. There is considerable uncertainty regarding whether a federal statute requiring states to disclose mental health 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. See also Legal Community Against Violence, *Lessons From Virginia Tech: Recommendations for State Law Changes to Close Loopholes in Background Check Systems* 4 n.16 (May 2007), at http://www.lcav.org/pdf/memo_re_state_loopholes.pdf.

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 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 defectiveness, mental illness, and other reasons, such as drug use.³²

Federal and state privacy laws are frequently cited as reasons why states do not provide complete mental health records to the FBI.³³ However, 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 addition, 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 tightly controlled, and safeguards protect against unauthorized disclosures.³⁶

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,

³² 27 C.F.R. § 478.11. Note that state laws may prohibit additional categories of persons from purchasing or possessing firearms on the basis of mental illness. Detailed information on these laws is contained in the section on Prohibited Purchasers.

³³ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Records Included in Presale Background Checks: Mental Health Records, Domestic Violence Misdemeanor Records, and Restraining Orders, 2003* (Aug. 2004); Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 8 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>.

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 7, at 65. LCAV has not conducted an independent survey of all 50 states' privacy laws with respect to mental health records.

³⁶ 28 C.F.R. § 25.1, *et seq.*

provides financial incentives for states to provide to NICS information relevant to whether a person is prohibited from possessing firearms, including the names and other relevant identifying information of persons adjudicated as a mental defective or those committed to mental institutions.³⁷

The Act also changes the standard for persons **deemed to be “adjudicated as a mental defective” or “committed to a mental institution” by a federal agency or department.** Such adjudications or commitments by federal agencies and departments are **“deemed not to have occurred” for purposes of the federal prohibition** against purchase or possession of firearms if:

- **The adjudication or commitment has been “set aside or expunged;”**
- **The person has been “fully released or discharged from all mandatory treatment, supervision, or monitoring;”**
- A court, board, commission, or other lawful authority has found the person no longer suffers from the mental health condition that was the basis of the adjudication or commitment;
- The person has been found to be rehabilitated **“through any procedure available under law;”**
- The adjudication or commitment was based solely on a medical finding of disability without a hearing before a court, board, commission, or other lawful authority, and the person has not otherwise been adjudicated a mental defective; or
- **The person has been granted “relief” under a “relief from disabilities” program established by the federal agency or department in accordance with the Act’s requirements.**³⁸

Under the Act, states are eligible to receive a waiver of the 10% matching requirement for National Criminal History Improvement Grants³⁹ if they certify to the Attorney General at least once every two-year period that they have provided at least 90% of relevant records concerning persons who are prohibited from purchasing or possessing a firearm.⁴⁰ The Act also authorizes the Attorney General to make grants to the states for use in establishing and upgrading **the states’ ability to report information**, including mental health information, to NICS and to perform background checks pursuant to the Brady Act.⁴¹

³⁷ Pub. L. No. 110-180, §§ 102, 104, 121 Stat. 2559 (2008).

³⁸ *Id.*, §§ 101(c)(1)(A), (1)(B), (1)(C), (2)(B). Under prior law the prohibition on persons “adjudicated as a mental defective” or “committed to a mental institution” was permanent.

³⁹ *See generally* 42 U.S.C. § 14601. National Criminal History Improvement Grants are grants made by the federal government to states for programs to upgrade their criminal history record information systems. The federal grant may not exceed 90% of the costs of the program incurred by a state. *Id.*, § 14601(d).

⁴⁰ *Id.*, § 102. The Act also authorizes the Attorney General to withhold a certain percentage of the funding the state would receive under the Omnibus Crime Control and Safe Streets Act of 1968 for states that fail to submit a certain percentage of their relevant records. *Id.* § 104.

⁴¹ *Id.*, § 103(a), (b).

However, in order to be eligible for the grants authorized by the Act, a state must implement a “relief from disabilities” program that meets the Act’s requirements.⁴² More specifically, the state program must:

- Allow a person who has been adjudicated 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;⁴³
- Provide that a state court, board, commission, or other lawful authority shall grant a person this “relief” (thereby making the person once again eligible to purchase and possess firearms), “pursuant to State law” and in accordance with due process;⁴⁴
- Provide that a state court, board, commission, or other lawful authority will grant the relief if the circumstances regarding the adjudication or commitment, 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”;⁴⁵ and
- Permit a person whose application for relief is denied to file a petition with the appropriate state court for judicial review of the denial.⁴⁶

The Act provides that when an application for relief is granted under a state program, the adjudication or commitment that formerly rendered the person prohibited from purchasing or possessing firearms is then “deemed not to have occurred” for purposes of federal law.⁴⁷

In addition, the Act requires the Attorney General to establish regulations and protocols for protecting the privacy of mental health information provided by states to NICS.⁴⁸ The Attorney General must work with states, local law enforcement, and the mental health community to establish these regulations and protocols, and must meet with any mental health group seeking to express its views concerning them.⁴⁹

⁴² *Id.*, § 103(c)

⁴³ *Id.*, § 105(a)(1).

⁴⁴ *Id.*, § 105(a)(2).

⁴⁵ *Id.*

⁴⁶ *Id.*, § 105(a)(3).

⁴⁷ *Id.*, § 105(b).

⁴⁸ *Id.*, § 102(d).

⁴⁹ LCAV publicly has expressed concerns about the NICS Improvement Amendments Act of 2007, including: (1) the Act changes the standard by which mental health records are required to be submitted to NICS by federal agencies, which will result in far fewer records being submitted; and (2) the Act requires that federal agencies, and states that participate in the grant program, create relief from disability programs to restore the rights of some prohibited purchasers with mental health histories. Overall, the bill creates new loopholes that may allow dangerous individuals to gain access to firearms. *See* Legal Community Against Violence, *House of Representative Passes “NICS Improvement Act of 2007” with Troubling Amendments* (June 15, 2007) at: http://www.lcav.org/pdf/HR_2640.pdf.

**SUMMARY OF STATE LAWS GOVERNING THE REPORTING OF MENTAL
HEALTH INFORMATION⁵⁰**

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

Alabama	Ala. Code § 22-52-10.8
Colorado	Colo. Rev. Stat. §§ 13-5-142, 13-9-123, 15-14-102, 18-4-412(4), 19-1-304
Connecticut	Conn. Gen. Stat. §§ 17a-500(b), 29-36f(b)(8), 29-36l, 29-38b
Florida	Fla. Stat. Ann. § 790.065
Georgia	Ga. Code Ann. §§ 16-11-172(b), 35-3-34(e); Ga. Comp. R & Regs. 140-2-.17(6)
Illinois	430 Ill. Comp. Stat. 65/3.1, 65/4(3), 65/8.1; 740 Ill. Comp. Stat. 110/12(b)
Iowa	Iowa Code §§ 690.4, 692.17, 724.17
Kansas	Kan. Stat. Ann. §§ 59-2946, 75-7c25
Maine	Me. Exec. Order No. 02 FY 08/09 (July 3, 2007)
Michigan	Mich. Comp. Laws §§ 28.422, 28.243, 330.1464a, 700.5107, 769.16a – 769.16b; Mich. Admin. Code r. 28.5306
Missouri	Mo. Rev. Stat. §§ 43.503(6), 43.543, 552.030(7), 610.120(1), 630.140
Virginia	Va. Code Ann. §§ 19.2-389, 19.2-390, 37.2-819, 37.2-1014; Va. Exec. Order No. 50 (April 30, 2007)
Washington	Wash. Rev. Code Ann. §§ 9.41.040, 9.41.090, 9.41.094, 9.41.097, 9.41.170, 10.97.030(4), 10.97.045, 43.43.745(3); 71.05.390(17), 71.34.340

**States that Authorize or Require Reporting of Mental Health Records for In-State
Transfers Only**

Arkansas	Ark. Code Ann. §§ 5-2-310(b), 5-2-314, 20-47-214, 20-47-215, 2007 Ark. Acts 463, 2007 Ark. S.B. 184 (March 23, 2007)
California	Cal. Welf. & Inst. Code §§ 8100, 8103 – 8105; Cal. Penal Code § 12076
Delaware	Del. Code Ann. tit. 11, §§ 1448A(a), 8509; tit. 16, §§ 5001, 5161

(continued on next page)

⁵⁰ Many states report findings of not guilty by reason of insanity or incompetence to stand trial as part of their criminal history information to the Interstate Identification Index (III). The Bureau of Justice Statistics has determined that mental health information appears in the criminal histories of the following 24 states: Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Iowa, Maine, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, Oklahoma, South Dakota, Tennessee, Utah, Vermont, Virginia, and Washington. Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005*⁸⁴ (Nov. 2006) at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>. In some cases these states have no statute or formal regulation requiring this reporting. As a result, it is not clear that the records submitted are complete.

States that Authorize or Require Reporting of Mental Health Records for In-State Transfers Only (continued from previous page)

Hawaii	Haw. Rev. Stat. Ann. §§ 134-3.5, 334-2.5(c)(4); 334-60.2, 704-406, 704-411
Maryland	Md. Code Ann., Health-Gen. § 10-605; Md. Code Ann., Pub. Safety §§ 5-117, 5-118, 5-121; Md. Code Regs. 29.03.01.11(9), 29.03.01.26(5)
Massachusetts	Mass. Gen. Laws ch. 123, § 36; ch. 140, §§ 129B(2), 131(e)
Minnesota	Minn. Stat. §§ 245.041, 253B.09, 624.7131, 624.7132,
Nebraska	Neb. Rev. Stat. Ann. §§ 69-2409.01, 69-2402, 69-2410
New Jersey	N.J. Stat. Ann. § 2C:58-3; N.J. Admin. Code §§ 10:7-7.1, 13:54-1.4 – 13:54-1.6
New York	N.Y. Penal Law §§ 265.00 – 265.01, 400.00; N.Y. Crim. Proc. Law §§ 330.20, 730.60; N.Y. Correct. Law § 439; N.Y. Mental Hyg. Law § 9.11; N.Y. Comp. Codes R. & Regs. tit. 14, § 541.2
Oregon	Or. Rev. Stat. §§ 166.412, 166.432, 426.130
Pennsylvania	18 Pa. Cons. Stat. §§ 6109(i.1), 6111, 6111.1; 37 Pa. Code §§ 33.103(e), 33.120
Utah	Utah Code Ann. § 53-10-208.1
Wisconsin	Wis. Stat. § 51.20(13)(cv)(4)

States that Require a Transferee to Authorize Disclosure of Mental Health Records

Illinois	430 Ill. Comp. Stat. 65/4(3)
Hawaii	Haw. Rev. Stat. Ann. §§ 134-2(c), 134-3.5(2)
Maryland	Md. Code Regs. 29.03.01.03(A)(8)
Minnesota	Minn. Stat. § 624.7131
New Jersey	N.J. Stat. Ann. § 2C:58-3(e)
Washington	Wash. Rev. Code Ann. § 9.41.094

Description of State Laws Regarding Mental Health Reporting

1. *States that Authorize or Require Reporting of Mental Health Records to NICS:*
The following 13 states have statutes or formal regulations explicitly requiring or authorizing submission of at least some mental health records to the FBI for inclusion in NICS: Alabama, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Michigan, Missouri, Virginia, and Washington.⁵¹

⁵¹ This description reflects only state statutes and formal regulations explicitly authorizing or requiring the disclosure of mental health records to NICS and state agencies. State agencies may have informal policies or procedures that authorize or require additional reporting. In addition, states may have entered into informal agreements with the FBI regarding submission of records to NICS. Brand, *supra* note 5, at 12. Because they are likely to be unpublished, LCAV has not completed a survey of these informal policies, procedures, and agreements.

a. *States that Require Reporting of At Least Some Mental Health Records to NICS:* Eight states have statutes or regulations that make reporting of certain mental health information to NICS mandatory: Alabama, Colorado, Connecticut, Georgia, Illinois, Iowa, Kansas, and Maine.

• *States that require the reporting of all relevant mental health records to NICS:* Connecticut and Illinois both require state agencies to report to NICS all persons prohibited by federal law from purchasing or possessing a firearm due to mental illness.

Connecticut: In Connecticut, the Department of Public Safety is required to report to NICS' Denied Persons File the name, date of birth and physical description of any person "prohibited from possessing a firearm" pursuant to federal law. The Department of Public Safety, the Department of Mental Health and Addiction Services, and Judicial Department are required to enter into a memorandum of understanding with the FBI for the purpose of implementing NICS.

Illinois: In 2007 Illinois enacted a law requiring the Department of State Police (DSP) and the Department of Human Services, in accordance with state and federal law regarding confidentiality, to enter into a memorandum of understanding with the FBI for the purpose of implementing NICS.⁵² Effective June 1, 2008, the DSP must report the name, date of birth, and physical description of any person prohibited from possessing a firearm pursuant to Illinois or federal law to the NICS Denied Persons File. Court clerks, the Department of Human Services, and all public or private hospitals and mental health facilities are required to inform the DSP of any such individual.⁵³ The information disclosed is deemed privileged and confidential, and must be provided in such a way as to guarantee that no information is released beyond what is necessary to determine the eligibility of the person to possess a firearm.⁵⁴

• *States that require the reporting of some, but not all, mental health records to NICS:* Six states (Alabama, Colorado, Georgia, Iowa, Kansas, and Maine) require reporting of some, but not all, mentally ill persons prohibited by federal law from purchasing or possessing firearms to the NICS database.⁵⁵

Alabama: Alabama requires judges who enter final orders for involuntary commitment for inpatient treatment to the Department of Mental Health and Mental Retardation or a Veterans' Administration hospital, to forward such orders to the state's

⁵² 2007 Ill. Laws 564, S.B. 940, Public Act 95-564, § 5 (Aug. 31, 2007) (amending 430 Ill. Comp. Stat. 65/3.1).

⁵³ *Id.* § 10 (amending 740 Ill. Comp. Stat. 110/12); 2007 Ill. Laws 581, S.B. 1094, Public Act 95-581, § 5 (Aug. 31, 2007) (amending 430 Ill. Comp. Stat. 65/8.1).

⁵⁴ 740 Ill. Comp. Stat. 110/12(b).

⁵⁵ For the number of records submitted by each state to the Mental Defective File as of April 30, 2007, see Brand, *supra* note 6, at 11. Note that states can alternatively submit the names of persons disqualified from firearm purchase and possession to the Denied Persons File without identifying the reason they are disqualified. *Id.* at 10. It is not clear how many names of persons disqualified for mental health reasons the states have submitted to the Denied Persons File. *Id.*

Criminal Justice Information Center. This requirement applies only to commitment orders based on evidence that the person has a history of inappropriate use of firearms or poses a threat to use firearms inappropriately. The Criminal Justice Information Center must enter the information into the NICS Denied Persons File.

Colorado: In Colorado, court clerks are required to report periodically to NICS the name of each person determined by the court to be: incapacitated; committed to the custody of the Division of Alcohol and Drug Abuse in the Department of Human Services; ordered for involuntary certification for short-term treatment of mental illness; ordered for extended certification for treatment of mental illness; or ordered for long-term care and treatment for mental illness.

Georgia: In Georgia, court clerks are required to provide the Georgia Crime Information Center with information regarding all individuals adjudicated mentally incompetent to stand trial or not guilty by reason of insanity, or involuntarily hospitalized as an inpatient as a risk to self or others, or unable to care for himself or herself.⁵⁶ However, the Center is required to forward to NICS only information concerning persons involuntarily hospitalized; it is authorized to forward other information to NICS.

Iowa: In Iowa, the warden of the Iowa Medical and Classification Center must forward to the state Department of Public Safety and the FBI fingerprint records and photographs of persons committed to that institution.

Kansas: Kansas requires all district courts to forward all orders of involuntary commitment for care and treatment to the Kansas Bureau of Investigation for entry into **“the appropriate state and federal databases.”**

Maine: On July 3, 2007, the Governor John Baldacci of Maine issued an Executive Order requiring the Maine Department of Public Safety to work cooperatively with the Judicial Branch to collect the identities of individuals determined by a court to be not guilty by reason of insanity or not competent to stand trial in a criminal matter. The Department must then work with the FBI to transmit this information to NICS.⁵⁷

b. States that Authorize Reporting of Mental Health Records to NICS: The following five states authorize, but do not require, reporting of certain mentally ill individuals to NICS: Florida, Michigan, Missouri, Virginia and Washington. Only Florida authorizes the reporting of all relevant disqualifying mental health information.⁵⁸

Florida: Effective February 1, 2007, court clerks in Florida must submit to the Department of Law Enforcement for entry into an automated database the names of persons

⁵⁶ Georgia maintains records of involuntary hospitalizations only for five years.

⁵⁷ The Maine Executive Order also created a Task Force to evaluate the state record systems as they relate to the timely transmission to federal officials of final adjudication rulings concerning involuntary mental health commitments. Me. Exec. Order No. 02 FY 08/09 (July 3, 2007).

⁵⁸ Many states report fewer records to NICS than their laws allow. See Brand, *supra* note 6, at 11-12. For this reason, state laws that authorize but do not require the reporting of mental health records to NICS are less effective in terms of ensuring that complete information is reported to NICS.

who are prohibited from purchasing a firearm based on adjudications of mental defectiveness or commitments to mental institutions.⁵⁹ The Department is authorized to disclose the collected data to agencies of the federal government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer.⁶⁰

Michigan: In Michigan, upon entry of a court order directing that an individual be involuntarily hospitalized or involuntarily undergo a program of alternative treatment or a program of combined hospitalization and alternative treatment, the court must immediately order the Department of State Police to enter the court order into the Law Enforcement Information Network (LEIN). Findings of legal incapacity and not guilty by reason of insanity are treated in the same manner. The FBI has access to this information.⁶¹

Missouri: In 2007, Missouri enacted a law making available to the Missouri State Highway Patrol for reporting to NICS the records and files of any person detained because of a mental disorder who presents a likelihood of serious harm to himself or to others.⁶²

Virginia: In Virginia, the chief law enforcement officer of a county or city must ensure that any acquittal by reason of insanity is reported to the Department of State Police (DSP). In addition, court clerks are required to certify and forward a copy of all court orders requiring involuntary commitment of an individual, or containing a finding that an individual is “incapacitated,” to DSP.⁶³ DSP is then authorized to forward this information to the FBI for inclusion in the NICS database.⁶⁴ In response to the Virginia Tech tragedy, Virginia Governor Timothy Kaine issued an Executive Order on April 30, 2007 directing all executive branch employees and law enforcement to consider court-ordered outpatient treatment as involuntary admission to a mental health facility, and to report it to the State Police and NICS.⁶⁵

⁵⁹ Florida defines “adjudicated as a mental defective” or “committed to a mental institution” as those terms are defined under federal law.

⁶⁰ While Florida law allows the disclosure of all relevant mental health records to NICS, it is not clear to what extent these records have been submitted to NICS.

⁶¹ Mich. Admin. Code r. 28.5306 grants a federal criminal justice agency access to LEIN data under certain conditions.

⁶² 2007 Mo. S.B. 3 § A (approved by Governor July 13, 2007) (amending Mo. Rev. Stat. § 630.140).

⁶³ The definition of “incapacitated” under Virginia law is not as broad as the definition of “mental defective” under federal law. Virginia law defines “incapacitated person” as an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to: (i) meet the essential requirements for his or her health, care, safety, or therapeutic needs without the assistance or protection of a guardian; or (ii) manage property or financial affairs or provide for his or her support or for the support of his or her legal dependents without the assistance or protection of a conservator. Va. Code Ann. §§ 18.2-308.1:2, 37.2-1000. A person found to be a danger to himself, herself, or others is a “mental defective” under federal law, but is not necessarily “incapacitated” under Virginia law. See 27 C.F.R. § 478.11.

⁶⁴ A 2002 Virginia Attorney General Opinion determined that the Department of State Police is authorized to provide mental health information to the FBI so long as the information is kept confidential and used only to determine a person’s eligibility to possess, purchase or transfer a firearm. Va. Att’y Gen. Op. No. 01-062, 2002 Va. AG LEXIS 72 (April 4, 2002).

⁶⁵ Va. Exec. Order No. 50 (April 30, 2007).

Washington: In Washington, information and records regarding involuntary commitments in excess of 14 days may be disclosed only for specified purposes, including to law enforcement officers as necessary to enforce the prohibition against firearm possession.⁶⁶ In addition, an 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 Facilities release information relevant to **the person's eligibility** to purchase a handgun.

2. *States that Authorize or Require Reporting of Mental Health Records to an In-State Database Only.* Fourteen states (Arkansas, California, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Utah, and Wisconsin) collect some of their own state mental health records and check them prior to approving a firearm transfer, even though they have no statute or formal regulation authorizing submission of that information to NICS.⁶⁷ This ensures that a background check will identify mentally ill individuals whose records have been reported in the state where the mental health record exists, but will not prevent such a person from purchasing a firearm in another state. Nine states (California, Delaware, Hawaii, Massachusetts, New Jersey, Oregon, Pennsylvania, Utah, and Wisconsin) search in-state mental health records in connection with all firearm transfers; five states (Arkansas, Maryland, Minnesota, Nebraska and New York) search records only for transfers of certain firearms. None of these states authorize or require the collection of the records of all mentally ill persons prohibited by federal law from possessing firearms.

a. *States that Search In-State Mental Health Records For Transfers of All Types of Firearms:* Arkansas, California, Delaware, Hawaii, Massachusetts, New Jersey, Oregon, Pennsylvania, Utah, and Wisconsin collect some mental health information in a state database for use in connection with firearm transfers. In all of these states except Arkansas a state agency is required to search that database prior to transfers of all types of firearms.⁶⁸ None of these states explicitly authorize or require submission of this information to NICS.⁶⁹

⁶⁶ For an extensive discussion of Washington's laws regarding the reporting of mental health information for firearm transfers, see Rob McKenna, Attorney General of the State of Washington, *White Paper: Restricting Access to Firearms by Persons with Mental Health Commitments in Washington State* (Dec. 13, 2007), at

[http://www.atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2007/White%20Paper%20FINAL%20\(Complete\)%20\(12-13-07\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2007/White%20Paper%20FINAL%20(Complete)%20(12-13-07).pdf).

⁶⁷ In addition, Ohio and Oklahoma gather mental health information, but state law requires them to utilize this information only when issuing concealed handgun permits. Ohio Rev. Code Ann. §§ 2923.129(B)(1), 5122.311; Ohio Admin. Code 109:5-3-01; Okla. Stat. tit. 21, § 1290.12(A)(11). Arizona, Kentucky, Louisiana and the District of Columbia report mental health information to a centralized database, but there is no indication in statutes or regulations for these jurisdictions that the database is used in connection with firearm transfers or sent to the FBI. Ariz. Rev. Stat. § 36-540(N); Ky. Rev. Stat. Ann. §§ 202B.200, 17.150; La. Rev. Stat. Ann. §§ 15:578, 15:590, 15:591; D.C. SCR-MH Rule 6.

⁶⁸ Arkansas law is ambiguous with respect to the circumstances under which its database of mental health records created for use in connection with firearm transfers is searched.

⁶⁹ In addition, in North Carolina, a report of the disposition of criminal charges must be made to the State Bureau of Investigation within 60 days. N.C. Gen. Stat. § 15A-1382. A "disposition" may be a finding of a defendant's incapacity to proceed, or a verdict of not guilty on the ground that the defendant was insane at the time of the commission of the offense charged. *Id.*, § 15A-1381. An applicant for a permit to purchase

Arkansas: In 2007, Arkansas enacted a law stating that its purpose is to require the submission of information to a confidential database that may only be used for firearm sales or transactions.⁷⁰ The law requires a court clerk to forward to the Arkansas Crime Information Center a copy of any order:

- Finding that a defendant lacks the capacity to understand the proceeding against him or her or to assist effectively in his or her own defense as a result of mental disease or defect;
- Committing a person acquitted of a crime by reason of a mental disease or defect, who continues to be affected by the mental disease or defect, to the custody of the director of the Department of Health and Human Services for an examination by a psychiatrist or a licensed psychologist;
- Detaining a person for treatment for 45 days after determining that a person is a danger to self or others; or
- Detaining a person beyond 45 days because he or she continues to be a danger to self or others.

These orders must be submitted to the Center as soon as they are filed with the court. The statute does not indicate whether these orders are searched prior to all in-state firearm transfers or whether the orders are reported to NICS.

California: In California, with certain limited exceptions, courts must immediately report to the state Department of Justice when they adjudicate someone to be a danger to others as a result of a mental disorder or mental illness, a mentally disordered sex offender, not guilty of a crime by reason of insanity, or mentally incompetent to stand trial. Mental health facilities must immediately report to the state Department of Justice whenever, as a result of a mental disorder or impairment by chronic alcoholism, any individual is taken into custody and determined to be a danger to him or herself or others or gravely disabled. Licensed psychotherapists also are required to report to local law enforcement the identity of a person who communicates a serious threat of physical violence against a reasonably identifiable victim or victims. The Department of Mental Health and mental health facilities must also make available to the Department of Justice all records pertinent to whether a person receiving inpatient treatment is a danger to self or others, even if that person consented to the treatment. These reports from mental health facilities, the Department of Mental Health, and psychotherapists may only be used to determine the person's eligibility to possess a firearm.

Delaware: Delaware requires every person in responsible charge of an institution to transmit to the State Bureau of Identification the names, dates of birth and social security numbers of all adults committed to that institution who have been declared to be not guilty by reason of mental illness or incompetent to stand trial for criminal offenses, or involuntarily committed as mentally ill. Delaware law requires any licensed dealer to

a handgun must sign a release authorizing the sheriff to access this information before issuing a permit to purchase a handgun. *Id.*, § 14-415.13. For additional information regarding the reporting of mental health information as part of criminal histories, see *supra* note 50.

⁷⁰ 2007 Ark. Acts 463, 2007 Ark. S.B. 184 (Mar, 23, 2007).

request an **“involuntary commitment of an adult” record check** from the State Bureau of Identification before any firearm is transferred.

Hawaii: In Hawaii, the Department of Health is required to keep a medical record of each person committed to the custody of the department or hospitalized because the person is dangerous and there is no less restrictive alternative available, because he or she lacks fitness to proceed in a criminal case, or because he or she has been acquitted on grounds of mental disorder or defect, is dangerous and is not a proper subject for conditional release. Individuals seeking to purchase a firearm must waive their rights to confidentiality with respect to certain mental health records and allow mental health providers to disclose this information.

New Jersey: Individuals in New Jersey seeking to purchase a firearm must obtain either a permit to purchase a handgun or a firearms purchaser identification card. Applicants for these permits and cards must sign a waiver of their rights to confidentiality of mental health records. A state regulation **requires the “county adjuster” to search for** any history of psychiatric admissions of these individuals within the county.

Massachusetts: In Massachusetts, a person must obtain a Class A or B license or a Firearm Identification Card before purchasing a firearm. The Colonel of State Police is charged with determining whether applicants are eligible for these licenses and cards. The Department of Mental Health is required keep records of all persons admitted to facilities under its supervision, and in searching for any disqualifying history of an applicant for a Class A or B license or a Firearm Identification Card, the Colonel must utilize the files maintained by the Department of Mental Health.

Oregon: Oregon requires courts to report all mentally ill individuals who appear reasonably likely to constitute a danger to themselves or others or the community at large to the sheriff of the county, who enters the information into the Law Enforcement Data System. In addition, the Department of Human Services must provide the Department of State Police with direct electronic access to information identifying these individuals, as well as other individuals committed to the Department of Human Services. All background checks include a search of the Law Enforcement Data System and the **“Oregon mental health data system.”**

Pennsylvania: Pennsylvania requires judges, mental health review officers, and county mental health and mental retardation administrators to notify the Pennsylvania State Police of the identity of any person adjudicated incompetent or involuntarily committed to a mental institution for inpatient care and treatment.

Utah: Utah requires magistrates and court clerks to report all orders of civil **involuntary commitment and judgments of “guilty and mentally ill” and “not guilty by**

reason of insanity” to the Criminal Investigations and Technical Services Division of the state Bureau of Criminal Identification, which maintains criminal records.⁷¹

Wisconsin: Wisconsin requires court clerks to report to the Wisconsin Department of Justice when a person is involuntarily committed and there is a substantial probability that the person may use a firearm to cause physical harm to him or herself or to endanger public safety.

b. States that Search In-State Mental Health Records For Some Firearm Transfers Only: **Four states – Maryland, Minnesota, Nebraska and New York – collect some mental health records for purposes of conducting background checks in connection with certain in-state firearm transfers. None of these states authorize or require the collection of the records of all mentally ill persons prohibited by federal law from possessing firearms.**

Maryland, Nebraska and New York require a search of mental health commitments prior to transfer of a handgun, but not other firearms. Minnesota requires a search of mental health commitments prior to transfers of handguns and assault weapons only.

Maryland: Maryland requires any facility that admits an individual with a mental disorder to submit a report to the State Department of Health and Mental Hygiene within **10 days after admission. Maryland’s privacy laws appear to prohibit the use of the Department’s records for use in background checks.**⁷² As a result, the firearm application form used by the State Police requires handgun applicants to authorize release of their mental health records.⁷³

Minnesota: The Minnesota Commissioner of Human Services receives a copy of **any commitment order through the state’s Supreme Court** information system whenever a patient is committed to a state-operated facility for persons who are mentally ill, or to a treatment program or facility other than a state-operated program or facility. The Commissioner must provide commitment information to local law enforcement agencies by means of electronic data transfer through the Minnesota Crime Information System when individually requested for the sole purpose of facilitating a background check for purchasers of handguns or assault weapons. A person seeking to purchase a handgun or assault weapon must authorize the release of this information for this purpose.

⁷¹ Although Utah law prohibits a person from possession of firearms if he or she has been “adjudicated as mentally defective as provided in” the Brady Act, Utah law does not explicitly require courts to report these adjudications. Utah Code Ann. § 76-10-503(1)(b)(vii).

⁷² Md. Code Ann., Health-Gen. § 4-307 governs the privacy of mental health records, and makes no provision for release of information for the purpose of background checks for firearm transfers.

⁷³ Lisa Rein, *Md. Mental Records to be Checked in Gun Buys; State Requirement is Adopted After Va. Tech Shootings*, Wash. Post, Sept. 18, 2007, at B01. In addition, a court must notify the Criminal Justice Information System Central Repository of any commitment ordered upon a determination that a defendant is incompetent to stand trial, or a determination that a person is not criminally responsible because of a mental disorder or mental retardation. State law is unclear, however, as to whether this information affects firearm transfers. Md. Code Ann., Crim. Proc. §§ 3-106(h); 3-112(d).

Nebraska: The Nebraska Department of Health and Human Services maintains a database of all persons ordered committed by the various courts or mental health boards after a determination that the person is or will be dangerous to himself or herself or others by reason of mental illness or defect. Court clerks are required to furnish this information to the Department within 30 days of the order of commitment.⁷⁴ Any such information maintained or disclosed is confidential and may not be utilized for any purpose other than **determining the person's eligibility to possess a handgun.**

New York: In New York, local law enforcement may access the records of the Department of Mental Health to verify that an applicant for a license to purchase a handgun is not prohibited from possessing a handgun.⁷⁵ The Commissioner of Mental Health may require the director of a hospital that admits a mentally ill person to forward information about the person to the Department of Mental Health within 5 days. In **addition, orders of commitment following a verdict or plea of not responsible "by reason of mental disease or defect" are directed either to the Commissioner of Mental Health or the Commissioner of Mental Retardation and Development Disabilities.** A similar requirement applies when a local criminal court issues an order of commitment upon a finding that a defendant lacks fitness to proceed, and when a person in the custody of the department of corrections is committed to an institution for the mentally retarded.

3. States that Require a Transferee to Authorize Disclosure of Mental Health Records: State privacy laws may limit the disclosure and release of mental health records. As a result, five states (Hawaii, Illinois, Maryland, Minnesota, and New Jersey) require applicants for firearm licenses or persons seeking to purchase firearms to authorize disclosure of mental health information.⁷⁶ Hawaii, Illinois and New Jersey require persons applying for licenses to purchase firearms to agree to the disclosure of mental health records. In Minnesota persons applying for a permit to purchase a handgun or assault weapon are required to authorize the disclosure of mental health records.⁷⁷ Maryland requires a person purchasing a handgun from a licensed dealer to authorize disclosure of all such records.

⁷⁴ This information is not retained for persons who have been discharged from those commitments more than five years previously.

⁷⁵ Also, the director or physician in charge of a hospital or institution for mental illness may certify to law enforcement that certain persons are not suitable to possess a long gun. Whenever a person is so certified, a member of the police department to which such certification is made, or of the state police, must then seize any rifle or shotgun possessed by such person. N.Y. Penal Law §§ 265.00(16), 265.01.

⁷⁶ Under Washington law, an application to purchase a handgun is deemed a waiver of confidentiality with respect to mental health records.

⁷⁷ For more information on state licensing laws, see section on Licensing of Gun Owners or Purchasers.

SUMMARY OF SELECTED⁷⁸ LOCAL LAWS REGARDING MENTAL HEALTH REPORTING

Local Laws Regarding Mental Health Reporting

New York City

New York, N.Y., Admin. Code § 10-303

New York City requires the Department of Mental Hygiene to make its records available for inspection by an officer of the police department who is investigating an applicant for a permit to purchase and possess a rifle or shotgun.

FEATURES OF COMPREHENSIVE MENTAL HEALTH REPORTING LAW

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- State law requires reporting to the FBI for inclusion in NICS all persons prohibited by federal law from purchasing or possessing a firearm due to mental illness, as determined by a court, public or private hospital, institution, or mental health facility (*Connecticut, Illinois*)
- Complete reporting by states to the FBI for inclusion in NICS of all persons prohibited by federal law from purchasing or possessing a firearm due to mental illness includes the following:
 - A determination 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 an inpatient or outpatient as a result) (*Connecticut, Illinois, Virginia*);
 - A determination 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 (*Connecticut, Illinois*);

⁷⁸ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House **Bill 347 (overriding the Governor's veto), which created** Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "**The Legal Background.**"

- A finding that a person is not guilty by reason of insanity, mental disease or defect, or lack of mental responsibility in a criminal case (*Connecticut, Illinois, Maine*);
 - A finding that a person is guilty but insane in a criminal case;
 - A finding that a person is incompetent to stand trial (*Connecticut, Illinois, Maine*); and
 - An order formally committing a person involuntarily to a mental institution or asylum for mental defectiveness, mental illness, or other reasons, such as drug use (*Colorado, Connecticut, Georgia, Illinois, Kansas*).
- Mental health records are reported to NICS immediately upon an adjudication or commitment that renders a person prohibited from purchasing or possessing a firearm (*Alabama, Illinois, Kansas*)
 - In jurisdictions where use and disclosure of mental health information may violate privacy laws, all applications for firearm transfers include a waiver of confidentiality to permit release of mental health records for the limited purpose of determining eligibility to obtain a firearm (*Illinois, Hawaii, Maryland (handguns only), Minnesota (handguns and assault weapons), New Jersey*)

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 purpose of a waiting period is 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.

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.¹ If the FBI is unable to complete a background check within three business days, the dealer may complete the transfer by default.²

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.³

SUMMARY OF STATE LAWS GOVERNING WAITING PERIODS

Twelve states and the District of Columbia currently have waiting periods that apply to the purchase of some or all firearms.

States Imposing Waiting Periods for Purchases of All Firearms

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
California	10 days	Cal. Penal Code §§ 12071(b)(3)(A), 12072(c)(1)
Hawaii	14 days	Haw. Rev. Stat. Ann. § 134-2(e)
Illinois	24 hours (long guns) 72 hours (handguns)	720 Ill. Comp. Stat. 5/24-3(A)(g)
Rhode Island	7 days	R.I. Gen. Laws §§ 11-47-35(a)(i), 11-47-35.1, 11-47-35.2

States Imposing Waiting Periods for Purchases of Handguns and Assault Weapons

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
Maryland	7 days	Md. Code Ann., Pub. Safety §§ 5-123, 5-124
Minnesota	7 days ⁴	Minn. Stat. § 624.7132, subd. 4, subd. 12

¹ 18 U.S.C. § 922(t)(1).

² *Id.* See section on Background Checks for more information on default proceeds.

³ Detailed information about private sales is contained in the section on Private Sales.

⁴ 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."

States Imposing Waiting Periods for Handguns Only

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
District of Columbia ⁵	48 hours	D.C. Code Ann. § 22-4508
Florida	3 days ⁶	Fla. Stat. Ann. § 790.0655(1); Fla. Const. art. I, § 8(b)
Iowa	3 days	Iowa Code § 724.20
New Jersey	7 days	N.J. Stat. Ann. §§ 2C:58-2a(5)(a), 2C:58-3f
South Dakota	48 hours	S.D. Codified Laws § 23-7-9
Wisconsin	48 hours	Wis. Stat. §§ 175.35(2)(d), 175.35(2g)(c)4.c

States Imposing Waiting Periods for Long Guns Only

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
Connecticut	2 weeks	Conn. Gen. Stat. § 29-37a

Description of State Laws Governing Waiting Periods

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

1. *States Imposing a Waiting Period on All Firearm Purchases:* California and Rhode Island impose a statutory waiting period on all firearm purchases. Subject to limited exceptions, California requires a ten-day waiting period for all firearm purchases.⁷ Rhode Island imposes a seven-day waiting period for all purchases of firearms unless the purchaser is a concealed handgun license holder or a law enforcement officer. However, the seller must deliver the firearm to the purchaser if within seven

⁵ Note that the District of Columbia bans possession of handguns except in very limited circumstances. In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008. Additional information on the District of Columbia's law prohibiting possession of handguns is contained in the section on Banning Handguns.

⁶ Florida's three-day waiting period excludes weekends and legal holidays.

⁷ In California, if the background check information received is incomplete, preventing the background check from being approved or denied within the ten-day period, the California Department of Justice (DOJ) may notify the dealer of that fact. Cal. Penal Code § 12076(d)(4), (5). The DOJ interprets this provision to allow (but not require) DOJ to notify the dealer to delay the transfer until the background check can be completed.

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, law enforcement officers, 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.⁸ 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. The Department of State Police must approve the transfer or inform the dealer 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:* Both Maryland and Minnesota impose seven-day waiting periods on purchases of handguns and assault weapons.

In Maryland, any person who transfers a "regulated firearm" (handguns and assault weapons) 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.

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.⁹ 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.

3. *States Imposing Waiting Periods on Purchases of Handguns Only:* Florida, Iowa, New Jersey, South Dakota, Wisconsin and the District of Columbia have waiting periods for handgun purchases only.¹⁰

⁸ 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 the section on Registration of Firearms.

⁹ 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.

¹⁰ 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. Wash. Rev. Code Ann.

a. *48 hours:* South Dakota imposes a 48-hour waiting period for retail handgun sales. Wisconsin prohibits federally licensed firearms dealers from transferring any handgun to any person until 48 hours have elapsed from the time the dealer has been notified, via a background check confirmation number from the Wisconsin Department of Justice, that the transferee is an eligible purchaser.¹¹ In the District of Columbia, in the rare circumstances in which handgun possession is lawful, no seller may deliver a handgun to a prospective purchaser until 48 hours have elapsed from the time of the application.

b. *3 days:* Florida¹² imposes a mandatory three-day waiting period 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.¹³

c. *7 days:* 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)¹⁴ while the permit application is processed.

d. *Exceptions:* Florida, Iowa, South Dakota, and Washington exempt concealed weapons permit holders from the statutory waiting periods. Florida also exempts persons trading in another handgun. Most states exempt sales to law enforcement.

§ 9.41.090(1)(c). The waiting period can be 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. /z/ However, the waiting period does not apply to concealed handgun license holders, or in cases where the dealer is notified in writing by the local sheriff or chief of police in the jurisdiction where the purchaser resides that the purchaser is eligible to possess a handgun. Wash. Rev. Code Ann. § 9.41.090(1).

¹¹ In Wisconsin, if the 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.

¹² **Florida's constitution authorizes counties to enact three to five-day waiting periods 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). Fla. Stat. Ann. § 790.33(2) limits a county's authority to adopt a waiting period on handgun sales to three working days, subject to various exceptions.**

¹³ After the permit is issued, the holder may purchase additional handguns without a waiting period for the duration of the license (one year).

¹⁴ 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 the section on Dealer Regulations.

4. *States Imposing Waiting Periods on Purchases of Long Guns Only:* In Connecticut, it is unlawful for a person to sell a long gun at retail until two weeks have passed after the date the purchase application is completed and the transferor has received authorization to transfer the firearm to the purchaser. This waiting period does not apply to certain law enforcement officers and military personnel, holders of valid permits to carry handguns, holders of valid hunting licenses, or holders of valid eligibility certificates to possess handguns.

SUMMARY OF SELECTED¹⁵ LOCAL LAWS GOVERNING WAITING PERIODS

Local Laws Governing Waiting Periods

Columbus

Columbus, Ohio, Code § 545.06(b)

Columbus provides that no weapon transaction permit may be issued until at least seven days have elapsed from the date of the permit application.

FEATURES OF COMPREHENSIVE LAW GOVERNING WAITING PERIODS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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-10 days, Hawaii-14 days, Rhode Island-7 days, Columbus-7 days*)
- Transfer of firearms is prohibited until the background check process has been completed, regardless of whether the waiting period has elapsed (*Colorado*)¹⁶

¹⁵ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House **Bill 347 (overriding the Governor's veto), which created** Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "**The Legal Background.**"

¹⁶ **Colorado 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 in these jurisdictions is contained in the section on Background Checks.

Restrictions on Multiple Purchases or Sales of Firearms

Background

Laws restricting multiple purchases or sales of firearms are designed to reduce the number of guns entering the illegal market and to stem the flow of firearms between states. 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 Jurisdictions with weaker firearms laws may attract gun traffickers who make multiple purchases and resell those guns in jurisdictions with stronger firearms laws.²

Efforts to limit multiple purchases or sales generally focus on handguns. Studies show that handguns sold in multiple sales to the same individual purchaser are frequently used in crime.³ **“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.⁴ ATF crime gun trace data revealed that 22% of all handguns recovered in crime in 1999 had been transferred to a purchaser involved in a multiple sale.⁵ Crime gun trace data from 2000 showed that 20% of all retail handguns recovered in crime were purchased as part of a multiple sale.⁶

One-gun-a-month laws prohibit the purchase of more than one handgun per person in any **30-day period**. A study of Virginia’s one-gun-a-month law demonstrated that the law was effective in reducing the number of crime guns traced to Virginia dealers. Virginia initially adopted its law in 1993 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.⁷

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 See, e.g., 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); 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).

⁴ 18 U.S.C. § 923(g)(3)(A).

⁵ *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999) National Report*, *supra* note 3, at 40.

⁶ *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) National Report*, *supra* note 3, at 50.

⁷ 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). As discussed below, in 2004 the Virginia legislature adopted measures backed by the National Rifle Association that significantly weakened the law by allowing concealed handgun permit holders and persons who purchase handguns through private sales to purchase more than one handgun per month. Va. Code Ann. § 18.2-308.2:2(P)(2).

Summary of Federal Law

Federal law does not limit the number of guns a person can buy in any given time period. Federal law does require FFLs to report multiple sales of handguns to ATF and other specified law enforcement agencies.⁸ The law enforcement agencies are not charged with any investigative duties regarding those sales, however. State and local law enforcement agencies are prohibited from disclosing reports of multiple sales (other than those involving prohibited purchasers) and must destroy such reports and related records within 20 days of receipt.⁹

SUMMARY OF STATE LAWS RESTRICTING MULTIPLE PURCHASES OR SALES OF FIREARMS

Three states, California, Maryland and Virginia, have enacted laws limiting firearm purchases or sales to one per month.¹⁰

States Restricting Multiple Purchases or Sales of Firearms

California	Cal. Penal Code §§ 12072(a)(9), (c)(6), 12071(b)(7)(F)
Maryland	Md. Code Ann., Pub. Safety § 5-128(a), (b)
Virginia	Va. Code Ann. § 18.2-308.2:2(P)

Description of State Laws Restricting Multiple Purchases or Sales of Firearms

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.¹¹
2. *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.
3. *Virginia:* It is generally unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period in Virginia. In 2004, exceptions were added for concealed weapon permit holders and any person purchasing a handgun in a private sale, thereby weakening the law significantly. Prospective purchasers who complete an "enhanced background check" and a special application to the Department of State Police, among other requirements, may also be permitted to make a multiple purchase. The applicant must list the number and type of handguns to be

⁸ 18 U.S.C. § 923(g)(3)(A).

⁹ 18 U.S.C. § 923(g)(3)(B).

¹⁰ South Carolina enacted a one-handgun-a-month law but repealed the provision in 2004, due in part to strong lobbying by the firearms industry and National Rifle Association.

¹¹ Because all firearm transfers must be conducted through licensed dealers in California, the restriction on multiple handgun sales necessarily also applies to private sellers.

purchased and the purpose for the purchase above the limit (including lawful business or personal use, as part of a collection, or as a bulk purchase from an estate sale). Applications must be signed under oath and require proof of residency and identity. Applicants satisfying these requirements are issued a nontransferable certificate, which is valid for seven days from the date of issue. The certificate must be surrendered to the dealer by the prospective purchaser prior to the transfer.

SUMMARY OF SELECTED¹² LOCAL LAWS RESTRICTING MULTIPLE PURCHASES OR SALES OF FIREARMS

Local Laws Restricting Multiple Purchases or Sales of Firearms

Los Angeles

Los Angeles, Cal., Code ch. V, art. 5, § 55.14

New York City

New York, N.Y. Admin. Code, § 10-302.1

Los Angeles: Los Angeles' ordinance provides that no person shall make application to a firearms dealer to purchase a handgun within 30 days of making a prior application for the purchase of a handgun within the State of California. It also prohibits firearms dealers from transferring the title of any handgun to any person whom the dealer knows has made application to purchase more than one handgun within the state within a 30-day period prior thereto.¹³

New York City: New York City limits sales of handguns, rifles and shotguns, prohibiting dealers from selling more than one handgun, rifle or shotgun to any one person as part of the same transaction. In addition, no dealer may sell a handgun, rifle or shotgun to a person if he or she knows or should know that the person has purchased a firearm within the prior 90 days. New York City also provides that no person may acquire more than one handgun in a 90-day period, and that no person may acquire more than one rifle or shotgun in a 90-day period.

¹² This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

¹³ The Los Angeles ordinance was enacted in 1999. Later that year, the State of California adopted its one-handgun-a-month law, effective January 1, 2000.

FEATURES OF COMPREHENSIVE LAWS RESTRICTING MULTIPLE PURCHASES OR SALES OF FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- The restriction applies to both multiple purchases (*California, Maryland*) and sales (*California, New York City*) of specified classes of weapons
- The restriction on multiple sales applies to both licensed dealers and private sellers (*California*)
- The restriction applies to handguns (*California, Maryland*), 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, Maryland¹⁴*), but stricter limitations may be used (*New York City restricts sales of handguns, rifles and shotguns to no more than one per person every 90 days*)

¹⁴ Although Virginia also limits handgun purchases to one per month, recent amendments to the law weaken it significantly.

GUN DEALERS AND OTHER SELLERS

Dealer Regulations..... 145
Private Sales..... 162
Gun Shows..... 169

Dealer Regulations

Background

A firearms dealer is a person licensed by the federal government to engage in the business of purchasing and reselling firearms. Once licensed, a dealer may purchase unlimited quantities of firearms through the mail, at wholesale prices, without being subject to background checks or state waiting periods, if any.

As discussed below, federally licensed firearms dealers (FFLs) must comply with several federal statutes, including those requiring dealers to initiate background checks on unlicensed purchasers, document gun sales and report the loss or theft of a firearm. Federal law does not require all firearm sellers to obtain a license, however. 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”** is exempt from federal licensing laws.¹

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.² 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.³

The Gun Control Act of 1968⁴ established the federal licensing system for firearms dealers. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), **however, that system was “overly simple” from 1968 until 1993.**⁵ During that time, 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.⁶ As a result, the number of FFLs soared, reaching a peak of more than 284,000 in 1992.⁷ In 1993, ATF estimated that 46% of all FFLs conducted no business at all, but used their licenses to buy and sell firearms in violation of state and local zoning or tax laws.⁸

¹ 18 U.S.C. § 921(a)(21)(C). Additional information about unlicensed sellers is contained in the section on Private Sales.

² 18 U.S.C. § 922(a)(1)(A).

³ 18 U.S.C. § 921(a)(21)(C).

⁴ 18 U.S.C. § 922.

⁵ Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 11 (Feb. 2000).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 13.

In 1993 and 1994, Congress adopted laws to strengthen the licensing system. The 1993 Brady Handgun Violence Prevention Act increased the license fee to \$200 for the first three years and \$90 for each additional three-year period.⁹ That law also required applicants to certify that they had informed local law enforcement of their intent to apply for a license.¹⁰ The Violent Crime Control and Law Enforcement Act of 1994 required applicants 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.¹¹

The FFL population decreased substantially as a result of these reforms. 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 107,554.¹² As of December 1, 1999, that number had fallen to 103,845, the lowest number since 1969.¹³ The total number of FFLs has remained significantly below pre-reform levels. As of 2007, there were 108,842 FFLs nationwide.¹⁴ **The number of "Type 1" FFLs¹⁵ saw an even more dramatic decline since the reforms of the early 1990's.** The number of Type 1 FFLs dropped 79 percent between 1994 and 2007 (from 245,628 to 50,630).¹⁶

According to ATF, the reduction in the number of FFLs has been beneficial because it has enabled ATF to inspect a higher proportion of licensees.¹⁷ **ATF's inspection of FFLs** remains inadequate, however. The U.S. Department of Justice Office of the Inspector General issued a report in July 2004 **assessing the effectiveness of ATF's program for inspecting FFLs.** That report stated:

We found that the ATF's inspection program is 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. 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.¹⁸

⁹ 18 U.S.C. § 923(a)(3)(B).

¹⁰ 18 U.S.C. § 923(d)(1)(F)(iii).

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

¹² Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 14 (Feb. 2000).

¹³ *Id.* at 15.

¹⁴ Federal firearms licensee totals as of November 8, 2007 were provided by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.

¹⁵ A **"Type 1" license is the basic license required** for selling firearms (as opposed to manufacturing firearms or selling ammunition or curios).

¹⁶ Violence Policy Center, *An Analysis of the Decline in Gun Dealers: 1994 to 2007* (Aug. 2007). The Violence Policy Center report is based on data compiled as of February 13, 2007.

¹⁷ *Commerce in Firearms in the United States*, *supra* note 12, at 17.

¹⁸ 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).

Another study found that between 1975 and 2005, ATF revoked, on average, fewer than 20 federal firearms licenses per year.¹⁹ Furthermore, ATF prosecuted only 88 corrupt gun dealers between 2000 and 2002.²⁰ ATF faces numerous obstacles that limit its ability to enforce the law. For example, ATF may conduct only one unannounced inspection of each FFL per year, the burden of proof for prosecution and revocation are extremely high, serious violations of firearms law have been classified as misdemeanors rather than felonies, and ATF has historically been grossly understaffed.²¹

The ability to conduct effective inspections and enforcement against corrupt FFLs is crucial. According to ATF, one percent of FFLs are responsible for selling almost sixty percent of the guns that are found at crime scenes and traced to dealers.²² Therefore, identifying and stopping even one corrupt dealer could lead to a significant reduction in the number of crime guns.

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

- Initiate background checks on unlicensed firearm purchasers;²³
- Maintain records of the acquisition and sale of firearms;²⁴
- 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),²⁵ and
- Report the theft or loss of a firearm within 48 hours after the theft or loss is discovered.²⁶

¹⁹ 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.

²⁰ Americans for Gun Safety Foundation, *The Enforcement Gap: Federal Gun Laws Ignored* 4 (May 2003).

²¹ *Shady Dealings, Illegal Gun Trafficking From Licensed Gun Dealers*, *supra* note 19, at 24-25.

²² *Commerce in Firearms in the United States*, *supra* note 12, at 9.

²³ The FFL 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). Detailed information on these requirements is contained in the section on Background Checks.

²⁴ 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).

²⁵ 18 U.S.C. § 923(g)(3)(A).

²⁶ The report must be made to the Attorney General and to the **“appropriate local authorities.”** 18 U.S.C. § 923(g)(6).

FFLs must also submit to a maximum of one ATF inspection per year to ensure compliance with federal recordkeeping requirements.²⁷ More frequent inspections are permitted if a federal magistrate has issued a search warrant or if the search is incidental to a criminal investigation.²⁸ In addition, FFLs 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.²⁹

A FFL may not sell or deliver: (1) a handgun to a resident of another state; (2) 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; or (3) a handgun or handgun ammunition to a person the dealer knows or has reasonable cause to believe is under the age of 21.³⁰

FFLs may temporarily conduct business at a location other than that specified on the FFL's license if the temporary location is a gun show in the state specified on the license.³¹

ATF has found that FFLs who violate federal laws are a major source of trafficked firearms. In June of 2000, ATF issued a comprehensive report of firearms trafficking in this country. That report analyzed 1,530 trafficking investigations during the period July 1996 through December 1998, involving more than 84,000 diverted firearms.³² ATF found that FFLs were associated with the **largest number of trafficked guns – over 40,000 – and concluded that “FFLs’ access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law.”**³³ Random inspections by ATF have uncovered that a large percentage of FFLs do violate federal law and that this percentage is growing.³⁴

Finally, according to a 1998 ATF random sample of FFLs nationwide, 56% of all dealers operated out of their homes.³⁵ Of the remaining 44%, 25% operated out of commercial premises that were gun shops or sporting goods or hardware stores.³⁶ The remainder were located in businesses that are not usually associated with gun sales, such as funeral homes or auto parts stores.³⁷

²⁷ 18 U.S.C. § 923(g)(1)(B).

²⁸ 18 U.S.C. § 923(g)(1)(A), (B).

²⁹ 18 U.S.C. § 923(g)(7).

³⁰ 18 U.S.C. § 922(b)(1), (3).

³¹ 18 U.S.C. § 923(j).

³² Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix (June 2000).

³³ *Id.* at x.

³⁴ Brady Center to Prevent Gun Violence, “‘Trivial Violations’? The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers” 1 (September 2006).

³⁵ *Commerce in Firearms in the United States*, *supra* note 12, at 16.

³⁶ *Id.*

³⁷ *Id.*

SUMMARY OF STATE LAWS REGULATING FIREARMS DEALERS

Twenty-nine states and the District of Columbia have adopted laws regulating firearms dealers. In states that do not license firearms dealers, regulations cited below apply to FFLs. The most significant areas of regulation are described below.

States that Require Dealer Licensing

Alabama	Ala. Code §§ 13A-11-78, 13A-11-79
California	Cal. Penal Code §§ 12070(a), 12071(a)
Connecticut	Conn. Gen. Stat. § 29-28
Delaware	Del. Code Ann. tit. 24, § 901
District of Columbia	D.C. Code Ann. § 7-2504.01(b)
Georgia	Ga. Code Ann. § 43-16-2
Hawaii	Haw. Rev. Stat. Ann. § 134-31
Indiana	Ind. Code Ann. §§ 35-47-2-14 – 35-47-2-16
Maryland	Md. Code Ann., Pub. Safety §§ 5-101, 5-106
Massachusetts	Mass. Gen. Laws ch. 140, § 128
New Hampshire	N.H. Rev. Stat. Ann. §§ 159:8, 159:10
New Jersey	N.J. Stat. Ann. § 2C:58-2(a)
New York	N.Y. Penal Law §§ 265.00(9), 400.00(2)
Pennsylvania	18 Pa. Cons. Stat. § 6112
Rhode Island	R.I. Gen. Laws § 11-47-38
South Carolina	S.C. Code Ann. § 23-31-130
Washington	Wash. Rev. Code Ann. § 9.41.110
Wisconsin	Wis. Admin. Code Jus § 10.04

States that Ban Residential Dealers

Massachusetts	Mass. Gen. Laws ch. 140, § 123
---------------	--------------------------------

States that Require Employee Background Checks

Connecticut	Conn. Gen. Stat. § 29-37f
Delaware	Del. Code Ann. tit. 24, § 904(b)
New Jersey	N.J. Stat. Ann. § 2C:58-2(a)
Virginia	Va. Code Ann. § 18.2-308.2:3
Washington	Wash. Rev. Code Ann. § 9.41.110(5)(b)

States that Require Security Measures

Alabama	Ala. Code § 13A-11-79
California	Cal. Penal Code § 12071(b)(4), (14)
Connecticut	Conn. Gen. Stat. § 29-37d
District of Columbia	D.C. Code Ann. § 7-2504.07
Massachusetts	Mass. Gen. Laws ch. 140, § 123
Minnesota	Minn. Stat. § 624.7161
New Jersey	N.J. Stat. Ann. § 2C:58-2(a), N.J. Admin. Code §§ 13:54-3.11, 13:54-6.2-13:54-6.5

(continued on next page)

States that Require Security Measures *(continued from previous page)*

Pennsylvania	18 Pa. Cons. Stat. Ann. § 6113
Rhode Island	R.I. Gen. Laws § 11-47-40(b)
West Virginia	W. Va. Code § 61-7-10(a)(1)

States that Require Reporting of Sales to State and/or Local Law Enforcement

Alabama	Ala. Code § 13A-11-79
California	Cal. Penal Code § 12076(b)(3)
Connecticut	Conn. Gen. Stat. §§ 29-33(e), 29-37a(b)
Maryland	Md. Code Ann., Pub. Safety §§ 5-101(p), 5-123(d)
Massachusetts	Mass. Gen. Laws ch. 140, §§ 123, 128B
Michigan	Mich. Comp. Laws § 28.422a(2)
New Jersey	N.J. Stat. Ann. § 2C:58-2(e)
New York	N.Y. Penal Law § 400.00(12)
Oregon	Or. Rev. Stat. § 166.427(2)
Pennsylvania	18 Pa. Cons. Stat. § 6111(b)(1)
Washington	Wash. Rev. Code Ann. § 9.41.110(9)

States that Require Warnings to Purchasers

California	Cal. Penal Code §§ 12071(b)(7)(A)-(F), 12088.1(b), 12088.3
Connecticut	Conn. Gen. Stat. § 29-37b
Florida	Fla. Stat. Ann. § 790.175
Maine	Me. Rev. Stat. Ann. tit. 15, § 455-A(1)
Massachusetts	Mass. Gen. Laws ch. 140, § 123
Michigan	Mich. Comp. Laws § 28.435(6)
Minnesota	Minn. Stat. § 624.7162
Nebraska	Neb. Rev. Stat. Ann. § 69-2426
New Hampshire	N.H. Rev. Stat. Ann. § 650-C:1(VII)
New Jersey	N.J. Stat. Ann. §§ 2C:58-16(b), 2C:58-17
New York	N.Y. Gen. Bus. Law § 396ee
North Carolina	N.C. Gen. Stat. § 14-315.2
Ohio	Ohio Rev. Code Ann. §§ 2923.25, 5502.63
Texas	Tex. Penal Code Ann. § 46.13(g)
Wisconsin	Wis. Stat. § 175.37

States that Require Theft or Loss Reporting

California	Cal. Penal Code § 12071(b)(13)
Massachusetts	Mass. Gen. Laws ch. 140 §§ 123, 129c
New Jersey	N.J. Admin. Code § 13:54-6.6

States that Impose Strict Liability

Connecticut	Conn. Gen. Stat. §§ 52-571f, 53a-8(b)
District of Columbia	D.C. Code Ann. §§ 7-2531.02(a), 7-2531.03, 7-2551.02, 7-2551.03
Pennsylvania	18 Pa. Cons. Stat. §§ 6111(g)(5), 6111(g)(6)

Description of State Laws Regulating Gun Dealers

1. *Dealer Licensing.* Seventeen states and the District of Columbia require firearms dealers to obtain a 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,³⁸ 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”), Georgia, Indiana, Maryland (dealer sales of “regulated firearms,” defined as handguns and assault weapons), New Hampshire, New York (dealer sales of handguns, assault weapons and large capacity ammunition feeding devices) and South Carolina.

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.”

³⁸ 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.

In Delaware, employee background checks must be conducted annually.

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.**³⁹ California law explicitly permits local governments to require background checks of firearms dealer employees.⁴⁰

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 (firearms and ammunition). 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 also must install a state-approved theft detection and prevention system and implement security and safe storage measures.⁴¹

In Washington, D.C., 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. *Sales Reporting.* Twelve states require dealers to report firearm sales to state and/or local law enforcement. Three of **those states** -- California, Connecticut and Massachusetts -- **require reporting** of all firearm sales. Connecticut requires reporting to state and local law enforcement, while California and Massachusetts require reporting only to state law enforcement.

Nine states require the reporting of sales of handguns or other specified firearms only: Alabama, Maryland (handguns and assault weapons), Michigan (sales to concealed weapons licensees only), New Jersey, New York (handguns, short-barreled rifles and shotguns, and assault weapons), Pennsylvania (handguns, rifles and shotguns with specified dimensions) and Washington. 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.⁴²

³⁹ Cal. Penal Code § 12071(b)(20)(A), (B).

⁴⁰ Cal. Penal Code § 12071(b)(20)(C), (D).

⁴¹ Note that South Carolina requires applicants for a dealers license to post a bond, a cash deposit, or deposit of other sureties, worth ten thousand dollars. S.C. Code Ann. § 23-31-150.

⁴² In Virginia, the governing body of any county may require sellers of handguns to furnish to the clerk of the circuit court of the county, within ten days of the sale, information regarding the handgun and purchaser. Va. Code Ann. § 15.2-1207.

6. *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 (applies to all retail firearms sellers), 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.**⁴³

7. *Theft or Loss Reporting:* Three states require dealers to report to state and/or local authorities the theft or loss of any firearm. 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 state police within 48 hours.

8. *Strict Liability.*⁴⁴ **Two states – Connecticut and Pennsylvania – as well as the**

⁴³ In addition, Colorado requires FFLs to post a sign **describing the state's prohibition** on straw purchasers. Colo. Rev. Stat. § 18-12-111.

⁴⁴ 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. In 2005, a federal district court denied a motion to dismiss a suit brought by the City of New York against gun manufacturers and distributors alleging a public nuisance, finding that the case was not precluded by the PLCAA. *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp.2d 244, 298 (E.D.N.Y. 2005), *appeal docketed*, No. 05-6942 (2d Cir. argued Sept. 21, 2007). In 2007, the Court of Appeals of Indiana upheld the denial of a motion to dismiss a similar suit brought by the City of Gary Indiana. The court found that **the PLCAA did not apply to the City's case.** *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. Ct. App. 2007). *But see District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008); and *Ileto v. Glock, Inc.*, 421 F. Supp.2d 1274 (C.D. Cal. 2006), *appeal docketed* Nos. 06-56872, 07-15403, 07-15404 (9th Cir. Jan. 4, 2007) (**both granting defendants' motion for judgment on the pleadings under PLCAA.**)

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.⁴⁵

⁴⁵ In *District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008), the court affirmed judgment on the pleadings in favor of defendants (various manufacturers, importers and **distributors of firearms**), **concluding that the District’s claims under the Assault Weapon Manufacturing Strict Liability Act were barred by the PLCAA.** See also *supra* note 44.

SUMMARY OF SELECTED⁴⁶ LOCAL LAWS REGULATING FIREARMS DEALERS

Local Laws Regulating Firearms Dealers

Chicago	Chicago, Ill., Code §§ 4-144-010, 4-144-040, 4-144-061, 4-144-080, 4-380-070, 17-9-0202-C
Cleveland	Cleveland, Ohio, Code §§ 674.07, 674.09, 627.16, 627A.03
Columbus	Columbus, Ohio, Code §§ 545.02, 545.04(c), 2323.20
Hartford	Hartford, Conn., Code §§ 21-51, 21-58, 21-60
Los Angeles	Los Angeles, Cal., Code ch. X, art. 3, div. 9, § 103.314, Los Angeles, Cal. Code ch. V, art. 5, §§ 55.11, 55.15, 55.16
New York City	New York, N.Y., Admin. Code §§ 10-302, as amended by Local Law 30 (July 27, 2006), 10-303.2(b), 10-306(c), 10-131(i), New York, N.Y., Rules tit. 38, §§ 1-04 – 1-06, 4-04
Omaha	Omaha, Neb., Code §§ 19-51, 19-363, 19-371, 19-373, 19-376, 20-199, 20-202
San Francisco	San Francisco, Cal., Police Code art. 9, §§ 613, 613.2, 613.3, 613.9, 613.10-2, 613.10-3, 613.13, 615, San Francisco, Cal., Police Code art. 35, § 3502

Chicago: Chicago requires a local dealer license for all firearm sales, and daily sales reporting by dealers to the Superintendent of Police. Chicago prohibits any person from exhibiting handguns (including specified ammunition) in show cases, in show windows, on counters, or in any other public manner, or displaying signs, posters, cartoons or display cards suggesting the sale of such weapons. A firearms dealer may not operate out of his or her residence.

Cleveland: Handgun dealers are required to obtain a local license. Dealers engaged in such business at more than one location must obtain a separate license for each location. Dealer businesses are restricted to locations within general retail districts or semi-industrial districts, and dealer licenses will not be issued for business locations within 1,000 feet of a school, church, day care center, liquor establishment or another handgun dealer. Dealers must provide records of handgun sales to local law enforcement within twenty-four hours of sale.

⁴⁶ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

Cleveland prohibits dealers from exhibiting for sale in show cases or show windows any revolvers, and from displaying any signs, posters, cartoons or display cards suggesting the sale of revolvers.

When selling any firearm, a licensed dealer must offer to sell or give the purchaser a trigger lock or similar device which prevents the firearm from discharging. Licensed dealers also must conspicuously post a warning at every purchase counter, as follows: **"IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM WHERE CHILDREN CAN OBTAIN ACCESS."** This warning also must be distributed to each firearm purchaser at the time of sale.

Columbus: Columbus requires a license to engage in the business of dealing in weapons (including firearms). Dealers are required to report transactions to law enforcement within 24 hours. Dealers are prohibited from knowingly exhibiting firearms in show windows, **and must report to law enforcement "forthwith" the loss or theft of any firearm in the dealer's possession or control.**

Hartford: Hartford requires that any person who (1) advertises, sells, delivers, offers or exposes for sale or delivery; (2) has in his or her possession with intent to sell or deliver; (3) loans; (4) exchanges; (5) gives away or (6) otherwise transfers the ownership or possession of any pistol or revolver at retail must obtain a permit. Sellers of handguns must keep a record of all handguns transferred and provide such records to law enforcement each month.

Los Angeles: Firearms dealers in Los Angeles are required to: (1) obtain a permit; (2) locate in an area that is not in a residential neighborhood; (3) obtain the right thumbprint of each firearms purchaser;⁴⁷ (4) obtain a policy of insurance with limits of liability of at least \$1 million; (5) conduct employee background checks; (6) sell trigger locks with all firearms;⁴⁸ (7) post warnings regarding the dangers of guns in the home; and (8) comply with security requirements to deter theft.

Firearms dealers (and other ammunition vendors) must maintain records of ammunition purchases and obtain the right thumbprint of each ammunition purchaser.

No firearms dealer or other person may sell, lend, give, transfer ownership of, or **otherwise transfer any "ultracompact firearm."**⁴⁹

New York City: No person or business may engage in the business of transferring firearms in New York City without a license. The city issues separate licenses for two

⁴⁷ In 2003, California passed Penal Code § 12077(b)(2),(c)(2), which requires dealers to obtain the right thumbprint of all firearm purchasers.

⁴⁸ In 1999, California enacted a law requiring that firearm safety devices be sold with all firearms. Cal. Penal Code §§ 12087.6, 12088 – 12088.9, 12126.

⁴⁹ Los Angeles also prohibits dealers from selling junk guns. In 1999, California passed Penal Code § 12125, which prohibits the sale of junk guns in the state. Additional information on laws banning junk guns is contained in the section on Design Safety Standards for Handguns: Regulating Junk Guns/Saturday Night Specials.

principal types of firearms dealers: (1) dealers in rifles and shotguns; and (2) dealers in handguns and short-barreled rifles and shotguns. To obtain either license, the city police commissioner must determine that the applicant is of good moral character; has not been convicted of a felony, serious offense, or violation of the city assault weapon ban; has no mental defects that would impair his or her ability to safely possess a firearm; and that there is no good cause for denial of the license. In addition, applicants must be U.S. citizens, more than 21 years of age, and maintain a business in the city.

Transfer Restrictions: No dealer in rifles and shotguns may transfer a rifle or shotgun unless the purchaser exhibits a valid rifle and shotgun permit or proof that he or she is exempt from the permitting requirement. Rifle or shotgun ammunition and rifle and shotgun ammunition feeding devices capable of holding five rounds or less may be transferred only to persons with a rifle and shotgun permit and registration certificate, both of which must be displayed at the time of transfer.

Similarly, handgun ammunition or ammunition feeding devices designed for use in a handgun may not be transferred to any person who does not exhibit a handgun license or proof that he or she is exempt from the licensing requirement. Furthermore, no firearms dealer may transfer handgun ammunition of any caliber to a person not authorized to possess a handgun of the same caliber within the city.

Employee Restrictions: New York City requires all employees of a licensed rifle and shotgun dealer to personally possess a valid rifle and shotgun permit or handgun license. Licensees must submit a list of employees to law enforcement and must report any change in personnel or change in an **employee's address** within 48 hours of the change. No person who has been convicted of a felony, misdemeanor, serious offense or who is the subject of certain court orders may be employed by a firearms dealer. In addition, the fitness of an employee is subject to review by the Police Commissioner who may direct the licensee to terminate an employee based on various factors, including his or her **"character or reputation."**

Safety and Security Requirements: New York City requires dealers in rifles and shotguns to take safety precautions such as installing alarms and using high-security cylinder locks to make the premises secure. In addition, licensees must allow law enforcement to conduct a survey of the premises after which recommendations for increased security measures will be made.

Dealers in handguns and short-barreled rifles and shotguns may not display weapons in the store windows or doors but may display them enclosed in a glass case within the premises so long as they are removed and safeguarded when the business is closed. When not displayed, weapons must be locked in an enclosed security room or safe. Ammunition may not be displayed in any area. Dealers in handguns and short-barreled rifles and shotguns are required to conduct a physical inventory of their premises twice a year, and report the results as directed by the Police Commissioner.⁵⁰

⁵⁰ On July 27, 2006, New York City Mayor Michael Bloomberg signed into law Local Law 30, which requires dealers in handguns and short-barreled rifles and shotguns to perform a physical inventory twice a

Any dealer who sells a handgun or short-barreled rifle or shotgun must provide a warning printed on a label attached to the firearm and on a separate sheet of paper which reads, **“THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS.”**

Theft or Loss Reporting: Rifle and shotgun dealers must report to the local police precinct and to the Rifle/Shotgun Section of the License Division of the New York City Police Department the loss or theft of any **rifle or shotgun, ammunition, dealer’s license,** or record by telephone on the next business day after discovery of the loss or theft and in writing within 10 calendar days of the discovery. Dealers in handguns and short-barreled rifles and shotguns must also take an inventory twice a year of all firearms and forward a copy to local law enforcement.

Civil Liability: New York City imposes civil liability, including punitive damages, for any injury or death caused by a firearm that a manufacturer or dealer has transferred if the injury or death results from the use of a firearm by a person not authorized to possess the firearm in the city. Liability may be imposed only if the **manufacturer or dealer “or any other individual or entity acting subsequent to such manufacturer or dealer” unlawfully transferred the firearm** at any time prior to the injury or death. Any manufacturer or dealer that has complied with a list of standards during the year immediately preceding the transfer of the firearm is exempt. The standards address transfers at gun shows, recordkeeping and access to records, limiting handgun transfers to one a month, and compliance with all applicable laws governing firearms transfers. In addition, a manufacturer or dealer is exempt if during the year preceding the transfer of the firearm at issue, he or she has not transferred a firearm to any other **manufacturer or dealer “in circumstances in which the manufacturer or dealer transferring such firearm knew or should have known that such manufacturer or dealer had not complied” with the standards listed above.** However, if the manufacturer or dealer can prove that the injury or death was not directly or indirectly related to any act or omission by him or her, liability will not attach.⁵¹

Omaha: Omaha prohibits any person from engaging in the business of firearms dealer without obtaining a permit. The permit requirement applies to anyone engaged in the business of buying, selling, renting, pawning, pledging or trading firearms. A dealer must obtain a separate permit for each location at which he or she does business.

year and report to the Police Department. Local Law 30 was one of four bills signed into law by Mayor Bloomberg on July 27, 2006. The other laws are: (1) Local Law 29, establishing a Gun Offender Registry requiring certain individuals convicted of criminal possession of a weapon to register with the Police Department; (2) Local Law 31, limiting handgun sales and purchases to one every 90 days; and (3) Local Law 32, banning deceptively colored firearms and the use and sale of gun coloration kits used to paint guns to look like toy guns.

⁵¹ Note that the New York City civil liability ordinance was enacted prior to the passage of the Protection of Lawful Commerce in Arms Act (PLCAA). See *supra* note 44.

Any person engaged in the sale, pawning, exchange, loan, rental or delivery of firearms must complete and furnish to law enforcement a daily report of all such transactions.

Firearm dealers are required, as part of their application for a permit, to execute a bond to the city in the sum of \$2,000.

San Francisco: San Francisco has adopted comprehensive dealer regulations. Those regulations require dealers to: (1) obtain a license from the Police Department; (2) undergo a background check and identify all employees who will have access to or control of workplace firearms so that those individuals can undergo a background check; (3) comply with security measures as required by the Chief of Police to discourage firearm theft; and (4) obtain liability insurance with minimum limits of liability of \$1 million.

San Francisco also prohibits dealers from: (1) operating in residential neighborhoods and near other “sensitive” areas (e.g., schools, churches and other firearms dealers); (2) selling certain types of ammunition (e.g., Black Talon and other bullets that are designed to increase damage to the human body or other target) (3) selling “ultracompact” firearms; (4) allowing minors or other prohibited purchasers to enter the dealer’s premises unless firearms and related accessories are kept or displayed within a separate room; and (5) displaying firearms, imitation firearms, ammunition or firearm or ammunition advertising where it can be readily seen from outside the premises..

Dealers must twice annually provide law enforcement with a detailed inventory of all firearms, including those that have been lost or stolen. San Francisco also requires dealers (and other ammunition vendors) to maintain records of ammunition sales.

San Francisco imposes strict tort liability on dealers, manufacturers and importers of firearms for direct and consequential damages arising from bodily injury or death that result from the discharge of a firearm within the City and County of San Francisco, for firearms manufactured, imported, distributed, sold, leased or otherwise transferred by the manufacturer, importer and/or dealer. This provision does not apply to shotguns or rifles without a magazine, or with a fixed magazine of four or fewer rounds. Other exemptions include: (1) actions based on discharge of a firearm during the commission of a crime; (2) actions based on discharge of a firearm by a law enforcement official; (3) actions based on discharge of a firearm that was equipped with an internal personalized safety feature at the time of its first retail sale; and (4) actions seeking to recover damages for self-inflicted injuries.⁵²

⁵² Note that this ordinance was enacted prior to the passage of the Protection of Lawful Commerce in Arms Act (PLCAA), which grants firearms dealers and others immunity from some civil lawsuits. 15 U.S.C. §§ 7901 - 7903. *See supra* note 44.

FEATURES OF COMPREHENSIVE DEALER LICENSING AND REGULATION LAW

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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, Chicago, Columbus, Los Angeles, New York City, Omaha, San Francisco*)⁵³
- Dealers in residential and other sensitive neighborhoods are prohibited (*Massachusetts, Chicago, Cleveland, Los Angeles, San Francisco*)
- Dealer employees are required to undergo background checks (*Connecticut, Delaware, New Jersey, Virginia, Washington, Los Angeles, New York City, San Francisco*)
- 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, Chicago, Cleveland, Columbus, Los Angeles, New York City, San Francisco,*)
- Dealers are required to report all firearm sales to state and local law enforcement (*Connecticut*)
- Dealers are required to maintain records of ammunition sales (*Los Angeles, San Francisco*)
- Dealers are required to provide law enforcement with a physical inventory of all firearms at least annually (*New York City, San Francisco*)
- Dealers are required to obtain liability insurance to ensure that persons harmed by **the dealers' actions will be adequately compensated** (*Los Angeles, San Francisco*)
- Dealers are required to post warnings to consumers (*California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Texas, Wisconsin, Cleveland, Los Angeles, New York City*)
- Dealers are required to report the theft or loss of any firearm to state and local authorities (*Massachusetts*)

⁵³ A 2007 report by the International Association of Chiefs of Police (IACP) recommended that state and/or local governments license all gun dealers. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (2007). IACP noted that state and local requirements can respond to specific community concerns and bring additional resources to identify and stop corrupt gun dealers.

- Dealers are prohibited from selling any firearm unless the firearm includes a locking device (*California, Massachusetts, Michigan, New York, Pennsylvania*)⁵⁴
- 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 firearms⁵⁵

⁵⁴ Additional information on laws governing locking devices is contained in the section on Locking Devices.

⁵⁵ 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 new Protection of Lawful Commerce in Arms Act (PLCAA). *See supra* note 44.

Private Sales

Background

Private sales are firearm sales by persons other than federally licensed firearms dealers. Private sellers are not subject to federal laws governing licensed dealers.

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 firearm sales, regardless of where they occur.¹

Summary of Federal Law

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 multiple sales; and (5) report the theft or loss of a **firearm from the licensee’s inventory.**² 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.³ 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.**”⁴

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.**”⁵

Consequently, unlicensed sellers may sell firearms without conducting background checks or documenting the transaction in any way. 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. As a result, convicted felons, minors and other prohibited purchasers can easily buy guns from unlicensed sellers.

¹ Issues specific to gun shows are discussed in the section on Gun Shows.

² 18 U.S.C. §§ 922(t), 923(g).

³ 18 U.S.C. § 921(a)(21)(C).

⁴ *Id.*

⁵ *Id.*

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.”⁶ A June 2000 ATF report found that unlicensed sellers were involved in about a fifth of the trafficking investigations and associated with nearly 23,000 diverted guns.⁷ A national survey of firearm ownership conducted in 1994 determined that 60 percent of all firearm sales in the U.S. involved federally licensed dealers, while the remaining 40 percent of firearms were acquired from unlicensed sellers.⁸

SUMMARY OF STATE REGULATION OF PRIVATE SALES⁹

Five states (California, Connecticut, Maryland, Pennsylvania and Rhode Island) and the District of Columbia require universal background checks on firearm purchasers, including purchases from unlicensed sellers. In California, Rhode Island and the District of Columbia, universal background checks are required for transfers of all classes of weapons; Maryland’s law applies only to handguns and assault weapons; the Connecticut and Pennsylvania laws are limited to handguns. Delaware, Nevada and Oregon have laws allowing voluntary background checks by unlicensed sellers.

Alaska, Illinois, Massachusetts and Washington have a variety of recordkeeping requirements that apply to private transactions.

Universal Background Check States

California

Cal. Penal Code §§ 12072(d), 12082

Connecticut (handguns only)

Conn. Gen. Stat. § 29-33(c)

District of Columbia

D.C. Code Ann. §§ 7-2502.01, 7-2502.03, 7-2505.01, 7-2505.02

Maryland (“regulated firearms” only)¹⁰

Md. Code Ann., Pub. Safety §§ 5-101(r), 5-124, 5-130(j)

Pennsylvania (handguns only)

18 Pa. Cons. Stat. §§ 6111(b), 6111(c), 6111(f)(1), (2)

Rhode Island

R.I. Gen. Laws §§ 11-47-35 – 11-47-35.2

Voluntary Background Check States

Delaware

Del. Code Ann. tit. 24, § 904A

Nevada

Nev. Rev. Stat. Ann. § 202.254

Oregon

Or. Rev. Stat. § 166.436

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* 13-14 (Jan. 1999).

⁷ Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* xi (June 2000).

⁸ 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 <http://www.ncjrs.org/pdffiles/165476.pdf>.

⁹ Colorado, Connecticut, Illinois, New York and Oregon have partially addressed the private sale loophole by requiring background checks on all purchasers at gun shows. Additional information about background checks and other requirements at gun shows is contained in the section on Gun Shows.

¹⁰ In Maryland, “regulated firearms” are defined to include handguns and assault weapons.

States Imposing Recordkeeping or Reporting Requirements on Private Sellers

Alaska	Alaska Stat. § 08.76.010
California	Cal. Penal Code §§ 12071(b)(17), (b)(18), 12076(b)
Connecticut (handguns only)	Conn. Gen. Stat. § 29-33(e)
Illinois	430 Ill. Comp. Stat. 65/3(b)
Maryland (regulated firearms only)	Md. Code Ann., Pub. Safety §§ 5-101(p), 5-123(d), 5-124(e)
Massachusetts	Mass. Gen. Laws ch. 140, §§ 128A, 128B
Pennsylvania	18 Pa. Cons. Stat. § 6111(b)(1)
Rhode Island	R.I. Gen. Laws § 11-47-35(a)(2)
Washington	Wash. Rev. Code Ann. § 19.60.020

Description of State Laws Regulating Private Sales

1. *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. California, Rhode Island¹¹ and the District of Columbia require that, prior to any firearm transfer, a licensed dealer or law enforcement agency conduct a background check on the prospective firearm transferee.

In California, all transfers must be processed through licensed dealers. Processing transfers by private sellers through licensed dealers helps to ensure that a background check will be conducted prior to any transfer. 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. In the District of Columbia, no person may take possession of a firearm until he or she applies for and obtains a registration certificate. To obtain a registration certificate, an applicant must pass a background check conducted by the Chief of Police.¹² Registered firearms may be transferred only to a licensed dealer.

¹¹ In Rhode Island, the background check requirement does not apply to persons licensed to carry a concealed handgun. R.I. Gen. Laws §§ 11-47-35.1, 11-47-35.2.

¹² **The District of Columbia's registration law serves** as a ban on most classes of firearms within the District. Sawed-off shotguns, machine guns (including certain semiautomatic assault weapons), short-barreled rifles, and handguns not registered to the current owner before September 24, 1976, may not be registered. D.C. Code Ann. § 7-2502.02. Note that in 2007, the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008. Additional information on the District of Columbia's registration law is contained in the section on Registration of Firearms.

Maryland requires a background check on every prospective transferee of “regulated firearms” (defined as handguns and assault weapons), which may be conducted by a licensed dealer or a designated law enforcement agency. Connecticut requires a background check prior to any handgun transfer. Pennsylvania requires that all handgun sales be completed by licensed dealers (thereby necessitating a background check).

2. *Voluntary Background Checks by Private Sellers:* In Delaware, Nevada and Oregon, 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 Delaware, the seller makes the request to a licensed dealer, who must facilitate the transfer. 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.

3. *Recordkeeping and Reporting Requirements for Private Sellers:* In California (all firearms) and Pennsylvania (handguns), because all transfers must be processed through a licensed dealer, private transfers are subject to the recordkeeping and sales reporting requirements for licensed dealers. Licensed dealers are required to maintain records of all transfers (including transfers by private sellers).¹³ California and Pennsylvania also require dealers to report handgun sales to law enforcement.¹⁴

Connecticut requires all sellers of handguns to maintain records of all handgun transfers for at least five years, and to send copies of the transfer receipt to the Commissioner of Public Safety and the Chief of Police. Illinois requires any person who transfers a firearm to keep records of all such transfers for 10 years. Maryland requires all sellers of regulated firearms to report the completed transaction to the Secretary of the Maryland State Police.¹⁵ Massachusetts requires all private sellers to submit a written report documenting each firearm transfer to the executive director of the state’s Criminal History Systems Board. Purchasers of firearms from private sellers are also required to submit the same information. In Rhode Island, all sellers of handguns must maintain records of transfers for six years. Alaska and Washington require pawnbrokers and second-hand dealers to maintain written records of all firearms transactions.

4. *Other State Regulation of Private Transactions:* A number of states prohibit private transferors from selling firearms to purchasers who do not have the requisite state license or permit, or who are ineligible under state law. State permits to purchase firearms that have a short duration require purchasers to undergo background checks

¹³ Federally licensed firearms dealers are required to maintain sales records indefinitely. 27 C.F.R. §§ 478.124(b), 478.125(e). State laws in California and Pennsylvania also require dealers to retain sales records. Additional information about recordkeeping requirements on licensed dealers is contained in the section on Dealer Regulations.

¹⁴ Pennsylvania’s requirement applies to transfers of handguns, and rifles and shotguns of specified dimensions. Additional information about sales reporting requirements is contained in the sections on Dealer Regulations and Retention of Firearm Sales and Background Check Records.

¹⁵ Maryland also requires sellers to submit copies of any firearm application to the Secretary of State Police. Md. Code Ann., Pub. Safety § 5-120.

within a short time prior to taking possession of the firearm. These permits are required for purchases from dealers and private sellers. Hawaii, for example, requires all handgun purchasers to obtain a handgun permit prior to transfer.¹⁶ Handgun permits in Hawaii are valid for 10 days and may be used for purchase of only one handgun. Massachusetts and Michigan also issue 10-day handgun purchase licenses to some, but not all, handgun purchasers.¹⁷ These and other state licensing requirements are discussed in detail in the section on Licensing of Gun Owners or Purchasers.

SUMMARY OF SELECTED¹⁸ LOCAL LAWS REGULATING PRIVATE SALES

Local Laws Regulating Private Sales¹⁹

Chicago	Chicago, Ill., Code § 8-20-170
Columbus	Columbus, Ohio, Code §§ 2323.20, 2323.21
New York City	New York, N.Y., Admin. Code §§ 10-131(i)(1), 10-303, 10-304; New York, N.Y., Rules tit. 38, § 5-26
Omaha	Omaha, Neb., Code §§ 20-198(a) – 20-202

Chicago: Chicago requires that all firearm transfers, including those by private sellers, be conducted through licensed dealers, and that ammunition transfers go through a licensed shooting gallery, licensed gun club, or licensed dealer.²⁰

Columbus: Columbus prohibits any person from: (1) knowingly exhibiting for sale a firearm in a show window; (2) selling a firearm to another person unless the transferee has obtained a valid weapon transaction permit; and (3) knowingly failing to report to law enforcement “forthwith” the loss or theft of any firearm in the person’s possession or control. Columbus also prohibits any person from: (1) selling any firearm to a person under age 18; (2) selling any handgun to a person under age 21; and (3) furnishing any firearm to a person under age 18 (narrow exceptions to this prohibition exist).

New York City: New York City prohibits any non-firearms dealer from transferring ammunition to any person other than a firearms dealer.

¹⁶ Haw. Rev. Stat. Ann. § 134-2.

¹⁷ Mass. Gen. Laws ch. 140, §§ 131A, 131E; Mich. Comp. Laws §§ 28.422, 28.422a. In both states, certain license holders need not obtain a handgun purchase permit, and would not be subject to a background check within 10 days of purchase from a private seller.

¹⁸ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

¹⁹ Local requirements regarding licensing and permitting of firearm purchasers are detailed in the section on Licensing of Gun Owners or Purchasers.

²⁰ Note that Chicago prohibits the transfer of handguns, assault weapons and assault ammunition. See Chicago, Ill., Code §§ 8-20-030(h), (i), 8-20-040, 8-20-050, 8-24-025.

With limited exceptions, no person other than a licensed dealer may transfer a rifle or shotgun unless he or she has a certificate of registration for the firearm. An individual may transfer a rifle or shotgun only to a licensed firearms dealer, the holder of a permit to possess and purchase a rifle or shotgun, a person who is exempt from the permitting requirement, or a non-resident of the city. Any person who transfers a rifle or shotgun must report information about the firearm, the seller and the purchaser to the police commissioner within 72 hours of the transfer.

Any person lawfully in possession of a handgun may transfer it only after providing written notice to law enforcement.

Omaha: Omaha prohibits any person from selling or otherwise transferring any firearm, component parts or ammunition to any person under age 18, or any concealable firearm, or component parts or ammunition for that type of firearm, to any person under age 21. No person may sell or rent a concealable firearm to any person who has not obtained a written permit. Omaha prohibits any person from pawning, pledging or storing a concealable firearm, or accepting such a firearm in pawn or as a pledge or for storage from any person who has not registered the firearm. Any person engaged in the sale, pawning, exchange, loan, rental or delivery of firearms is required to preserve and provide a record of such transactions daily to the Chief of Police. Omaha prohibits any person from “purposely or knowingly” exhibiting for sale or transfer in a display window or any other place which can be seen from a public thoroughfare any firearm or ammunition for a firearm.

FEATURES OF COMPREHENSIVE LAW REGULATING PRIVATE SALES

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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, District of Columbia, Chicago*)²¹

²¹ A 2007 report by the International Association of Chiefs of Police (IACP) recommended that all gun sales be proceed through an FFL, thereby ensuring that a mandatory background check will be conducted on the transferee. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (Sept. 2007). IACP also noted that the requirement that FFLs keep a record of gun sales would allow law enforcement to trace the gun to the last point of sale should it be criminally misused, lost or stolen.

- 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 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 (*Massachusetts and New York City require reporting of firearm transfers to law enforcement*)

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. 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 5,200.¹ 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.²

A recent study compared gun shows in California, which has extensive regulation of 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.³

Summary of Federal Law

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.”⁴ A federally licensed firearms dealer (FFL) may conduct business at a gun show or event located in the same state specified on the license.⁵ FFLs must conduct background checks on prospective purchasers and maintain sales records of transactions at gun shows.⁶

Persons who are not federally licensed firearms dealers are also permitted to transfer firearms at gun shows, however. Because unlicensed, private sellers are exempt from the federal background check requirement, this **creates a loophole (the “private sale” loophole)** that enables certain categories of persons prohibited from purchasing or **possessing firearms – such as felons, domestic violence perpetrators and mentally ill individuals – to obtain them.** Likewise, private sellers at gun shows (and elsewhere) are not required to maintain records of sales.⁷

¹ 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).

² *Id.* 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).

³ 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).

⁴ 27 C.F.R. § 478.100(b).

⁵ 27 C.F.R. § 478.100(a)(1).

⁶ 27 C.F.R. § 478.100(c).

⁷ **Additional information on the “private sale” loophole** is contained in the section on Private Sales.

Gun shows are a popular venue for private sales. A 1999 ATF study found that 25 to 50% of gun show vendors are unlicensed.⁸ Another ATF study⁹ 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. According to the study, gun shows rank second to corrupt dealers as a source for illegally trafficked firearms.¹⁰

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.¹¹ **From 2004 – 2006, ATF conducted 202** investigative operations at 195 gun 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.¹² Offenses included convicted felons buying guns, straw purchases, unlicensed individuals selling firearms as a business, FFLs failing to document transfers or conducting background checks on purchasers, and persons possessing prohibited firearms, including machine guns and sawed-off shotguns.¹³

SUMMARY OF STATE GUN SHOW REGULATION

Two states and the District of Columbia require universal background checks on all firearm purchases, including purchases at gun shows. Three other states require universal background checks on purchases of some firearms. Five states specifically require background checks on purchases of all firearms at gun shows. Eight states impose other regulations on gun shows.

Universal Background Check States

California

Cal. Penal Code §§ 12072(d), 12082

Connecticut (handguns only)

Conn. Gen. Stat. § 29-33c

District of Columbia

D.C. Code Ann. §§ 7-2502.01, 7-2502.03, 7-2505.01, 7-2505.02

Maryland (“regulated firearms” only)¹⁴

Md. Code Ann., Pub. Safety §§ 5-101(r), 5-124, 5-130(j)

Pennsylvania (handguns only)

18 Pa. Cons. Stat. §§ 6111(b), 6111(c), 6111(f)(1), (2)

Rhode Island

R.I. Gen. Laws §§ 11-47-35 – 11-47-35.2

⁸ *Gun Shows: Brady Checks and Crime Gun Traces*, *supra* note 2, at 4.

⁹ 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).

¹⁰ *Id.* at 12.

¹¹ *The Bureau of Alcohol, Tobacco, Firearms and Explosives’ Investigative Operations at Gun Shows*, *supra* note 1, at iii.

¹² *Id.* at iv-v.

¹³ *Id.* at v.

¹⁴ In Maryland, “regulated firearms” are defined to include handguns and assault weapons.

Gun Show Background Check States

Colorado	Colo. Rev. Stat. §§ 12-26.1-101 – 12-26.1-108
Connecticut	Conn. Gen. Stat. §§ 29-37g, 29-36l
Illinois	430 Ill. Comp. Stat. 65/3, 65/3.1
New York	N.Y. Gen. Bus. Law §§ 895 – 897; N.Y. Penal Law § 400.00
Oregon	Or. Rev. Stat. §§ 166.432 – 166.441

Other State Regulation of Gun Shows

California	Cal. Penal Code §§ 12071(b)(1), 12071.1, 12071.4
Colorado	Colo. Rev. Stat. § 12-26.1-102
Connecticut	Conn. Gen. Stat. §§ 29-33, 29-37g
Illinois	430 Ill. Comp. Stat. 65/3
Maryland	Md. Code Ann., Pub. Safety §§ 5-106, 5-130(c), (i)
New York	N.Y. Gen. Bus. Law §§ 895 – 897
Oregon	Or. Rev. Stat. §§ 166.432 – 166.441
Virginia	Va. Code Ann. §§ 54.1-4200, 54.1-4201.1

Description of State Laws Regulating Gun Shows

1. *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. California, Rhode Island¹⁵ and the District of Columbia require that, prior to any firearm transfer, a licensed dealer or law enforcement agency conduct a background check on every prospective firearm transferee. Maryland requires a background check on every prospective transferee of certain “**regulated firearms**” (defined as handguns and assault weapons). Connecticut requires a background check prior to any handgun transfer, and Pennsylvania requires that all handgun sales be completed by licensed dealers (thereby necessitating a background check).
2. *Background Checks at Gun Shows:* Colorado, Connecticut, New York and Oregon require unlicensed sellers to request a licensed dealer or law enforcement agency to perform a background check prior to any firearm transfer at a gun show. Illinois requires unlicensed sellers at gun shows to request the Department of State Police to conduct a background check on the prospective recipient of a firearm.
3. *Additional State Gun Show Regulations:* Several states impose additional requirements on gun shows.
 - 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

¹⁵ In Rhode Island, the background check requirement does not apply to persons licensed to carry a concealed handgun. R.I. Gen. Laws §§ 11-47-35.1, 11-47-35.2.

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.

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.

c. *Recordkeeping requirements:* Several states impose various types of recordkeeping requirements on gun show promoters and/or sellers.¹⁶ Colorado, Illinois, New York and Oregon require that records be maintained of all firearm transactions at gun shows. New York requires that dealers retain records for 10 years; Oregon calls for records to be kept by the transferor for 5 years. In Illinois, the record of a firearm transfer at a gun show must include the unique identification number assigned to the transfer by the State Police. The record of the gun show transfer, like all firearm transfer records in Illinois, must be kept by the transferor for 10 years.

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.

¹⁶ Federal law requires licensed dealers to maintain firearm sales records indefinitely. 18 U.S.C. § 923(g)(1)(A).

SUMMARY OF SELECTED¹⁷ LOCAL LAWS REGULATING GUN SHOWS¹⁸

Local Laws Regulating Gun Shows¹⁹

Omaha

Omaha, Neb., Code §§ 19-383, 19-384, 19-386, 19-387, 19-391, 19-392, 19-392.1, 19-392.2

Omaha requires that any person promoting or sponsoring a “firearms exhibition” first obtain a permit. Applicants for such a permit must have a federal firearms dealer license.

The fee for firearms exhibition permits is \$10. Firearms exhibitions may not last more than three consecutive days.

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 also must record all firearms transferred or acquired, and make this information available to law enforcement. Exhibitors are required to retain these records for two years.

Omaha prohibits the exhibition or sale of ammunition “in an assembled state” at firearms exhibitions.

¹⁷ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

¹⁸ Several California counties prohibit the sale or possession of firearms and ammunition on county-owned property, effectively prohibiting gun shows on such property. Los Angeles County prohibits the sale of firearms and ammunition on county-owned property. L.A. County, Cal., Code §§ 13.67.010 – 13.67.070. Alameda County prohibits the possession of firearms and ammunition on county-owned property. Alameda County, Cal., General Ordinance Code § 9.12.120. The local bans include county fairgrounds, where gun shows were typically held. The Los Angeles County ordinance was upheld by the California Supreme Court in *Great Western Shows, Inc. v. County of Los Angeles*, 44 P.3d 120 (Cal. 2002). Litigation challenging the Alameda County ordinance is pending in the trial court, following the Ninth Circuit’s decision rejecting the plaintiffs’ motion for preliminary injunction raising First and Second Amendment claims. See *Nordyke v. King*, 319 F.3d 1185 (9th Cir. 2003). The California Supreme Court also rejected a preemption challenge to the Alameda County ordinance in *Nordyke v. King*, 44 P.3d 133 (Cal. 2002). Marin, San Mateo and Sonoma Counties have ordinances similar to the Alameda County ordinance. Marin County, Cal., Code § 6.50.040; San Mateo County, Cal., Code § 3.53.010; Sonoma County, Cal., Code § 19-14.

¹⁹ Chicago, Columbus and New York have other regulations that affect gun shows indirectly. These ordinances are detailed in the section on Private Sales.

Nonresidents who attend firearms exhibitions may legally possess concealable firearms at the exhibition site, and while in direct route to or from the exhibition, without registering them with local law enforcement.

FEATURES OF COMPREHENSIVE LAW REGULATING GUN SHOWS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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, so that background checks will be completed on all purchasers (including purchases from unlicensed sellers), and sales records will be maintained (*California, District of Columbia, Chicago*)
 - 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 (*Colorado, Connecticut, Illinois, New York, Oregon*);
 - retain records of all firearm transfers for a lengthy period (*Illinois and New York require records to be retained for 10 years*); and
 - report all such transfers to state and local law enforcement
- 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

GUN OWNERSHIP

Licensing of Gun Owners or Purchasers	177
Registration of Firearms	188
Reporting Lost or Stolen Firearms.....	197
Carrying Concealed Weapons.....	203

Licensing of Gun Owners or Purchasers

Background

Licensing laws require an individual to obtain a license or permit authorizing the individual to purchase and/or possess a firearm. Although licensing laws vary, those that are the most comprehensive require all gun owners – not just owners of handguns or prospective firearm purchasers – to obtain a license. That license will only be issued after the applicant has provided proof of residency and fingerprints, and 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.

Once an applicant has passed these tests, as well as a thorough background check, he or she is issued a card with a number, photograph and other identifying information, **including the licensee's address** and date of birth. The license must be displayed and its authenticity verified by a firearms dealer prior to the purchase of a firearm. In addition, the license must be renewed after a specified time period.

Licensing laws have the following goals: (1) to reduce the number of unintentional shootings by ensuring that gun owners know how to safely use and store firearms; (2) to increase compliance with existing firearms laws by requiring gun owners to demonstrate knowledge of those laws; and (3) to decrease illegal gun sales and possession by ensuring that all licensees are eligible to possess firearms under federal and state law.

Licensing laws are most effective when combined with laws requiring registration of firearms.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 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 This suggests that licensing and registration laws may make it more difficult for criminals, juveniles and other prohibited purchasers to obtain guns.

Public opinion polls show that Americans strongly support licensing laws. A nationwide poll conducted in May of 2001 found that 85% of respondents – including 73% of gun owners – favored laws requiring handgun purchasers to obtain a permit before buying a handgun.³ That poll also found that 70% of the respondents mistakenly believed that a

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 registration in their licensing laws, and vice versa. Hawaii is the only state that has a combined licensing and registration system. Detailed information on laws requiring registration of firearms is contained in the section on Registration of Firearms.

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 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>.

system of licensing and registration already exists.⁴ Another poll, conducted by the Opinion Research Corporation International in June of 2001, found that 82% of the respondents supported laws requiring the licensing and registration of handguns.⁵

Summary of Federal Law

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

SUMMARY OF STATE LAWS GOVERNING LICENSING OF GUN OWNERS OR PURCHASERS⁶

In general, licensing laws fall into two broad categories. Some jurisdictions mandate that prospective firearm purchasers obtain a permit or license prior to purchase. These laws are sometimes known as “**permit to purchase**” licensing schemes. The permit to purchase typically has a limited duration (though some jurisdictions employ permits to purchase with a long duration) and may apply to the purchase of a limited number of firearms. Other jurisdictions require a license to own a firearm. Unlike a permit to purchase, a license to own or possess a firearm generally has a longer duration and entitles the holder to possess firearms so long as the license remains valid. Some jurisdictions employ both permits to purchase and licenses to possess, depending on the type of firearm. Other jurisdictions require one license for both purchase and possession. State licensing laws vary significantly. This summary is intended to highlight the most pertinent features of those laws.

Four states require licenses for all firearm purchasers or owners, while seven states license all handgun purchasers or owners.

States that Require a License or Permit for Purchasers or Owners of All Firearms

Hawaii	Haw. Rev. Stat. Ann. §§ 134-2, 134-13
Illinois	430 Ill. Comp. Stat. 65/1 – 65/15a
Massachusetts⁷	Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E, 131P
New Jersey	N.J. Stat. Ann. § 2C:58-3

⁴ *Id.*

⁵ Lois Hess, Editorial, *Bush Undermining Gun Control Laws*, Balt. Sun, July 31, 2001, at 11A, available at <http://www.commondreams.org/views01/0731-03.htm>.

⁶ 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 the sections on Carrying Concealed Weapons and Background Checks.

⁷ Massachusetts requires licenses for the purchase of handguns, rifles and shotguns, and for ammunition feeding devices for those firearms.

States that Require a License or Permit for Handguns Only⁸

California	Cal. Penal Code §§ 12071(b)(8), 12800 – 12808
Connecticut	Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36i
Iowa	Iowa Code §§ 724.15 – 724.20
Michigan	Mich. Comp. Laws §§ 28.422, 28.422a
New York	N.Y. Penal Law §§ 400.00 – 400.01
North Carolina	N.C. Gen. Stat. §§ 14-402 – 14-404
Rhode Island	R. I. Gen. Laws §§ 11-47-35 – 11-47-35.1

States that Allow the Purchase of Only a Single Handgun with Each License or Permit

Hawaii
Massachusetts
Michigan
New Jersey
New York
North Carolina

States that Require Firearm Safety Training or a Safety Exam Prior to Issuance of a License or Permit

California (handguns only)
Connecticut (handguns only)
Hawaii (handguns only)
Massachusetts
Michigan (handguns only)
Rhode Island (handguns only)

Duration of License or Permit to Purchase

California – 5 years⁹
Hawaii – 10 days (handguns); 1 year (long guns)
Iowa – 1 year
Massachusetts – 10 days (permits to purchase handguns)
Michigan – 10 days
New Jersey – 90 days (handgun permits)¹⁰
North Carolina – 5 years

⁸ In addition, the state of Nebraska issues handgun certificates, although handgun purchasers outside Omaha who purchase from licensed dealers may choose to submit to an instant background check at the time of purchase, in lieu of obtaining a handgun certificate. Neb. Rev. Stat. Ann. §§ 69-2404, 69-2409. Purchasers from private sellers must obtain a handgun certificate. // Handgun certificates are valid for 3 years. Neb. Rev. Stat. Ann. § 69-2407.

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 Handgun Safety Certificate (HSC). To address the problem posed by handgun owners who could fall into a prohibited category while the HSC 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 handgun (on or after January 1, 1991) against a list of individuals who have become ineligible to own or possess firearms. Cal. Penal Code § 12010(a). 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 § 12010(b).

¹⁰ New Jersey's permit may be extended for an additional 90 days upon a showing of good cause.

Duration of License or Permit to Purchase and Possess

Connecticut – 5 years

Illinois – 5 years

Massachusetts – 6 years

New Jersey – so long as holder remains eligible (firearm purchaser identification cards)

New York – valid until revoked (except in New York City and certain counties (see below))

Rhode Island – unspecified

License or Permit Fee

California – \$15-25

Connecticut – \$35

Hawaii – actual cost charged by FBI for fingerprint check, for first permit only

Illinois – \$5

Iowa – no cost

Massachusetts – \$100

Michigan – no cost

New Jersey – \$2 (handgun permit); \$5 (firearm purchaser identification card)

New York – \$3-10 (determined by each county)

North Carolina – \$5

Rhode Island – no cost

Description of State Laws Governing Licensing of Gun Owners or Purchasers

1. *States Requiring Licenses for Purchasers or Owners of All Firearms:* The following states require licenses to possess and/or permits to purchase for all firearms. 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.**

Hawaii – Permit to Purchase: In Hawaii, anyone wishing to acquire a firearm must obtain a permit from the county chief of police.¹¹ 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 exist to the 14-day waiting period, including transfers to law enforcement officers, persons licensed to carry a handgun, and sales to licensed dealers.) Permits may be revoked for good cause.

- **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.

¹¹ Hawaii also requires registration of all firearms. Registration requirements are outlined in the section on Registration of Firearms.

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 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.

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. The DSP conducts an automated search of its criminal history record information files and those of the Federal Bureau of Investigation, including the National Instant Criminal Background Check System (NICS), and of the files of the Department of Human Services relating to mental health and developmental disabilities to obtain any felony conviction or patient hospitalization information which would disqualify a person from obtaining or require revocation of a currently valid FOID card.¹² The DSP has the authority to revoke a FOID card if the holder becomes a prohibited purchaser.

- **Duration:** FOID cards are valid for five years from the date of issue. Effective June 1, 2008, FOID cards will be valid for ten years.¹³
- **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

¹² Illinois prohibits any person who has been a patient in a mental institution within the past five years from obtaining a FOID card. 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.

¹³ 430 Ill. Comp. Stat. 65/7. In Illinois and other states that do not require universal background checks, the long duration of firearm licenses undermines the benefits of the licensing scheme. For example, in Illinois, while a background check is required at the time of issuance of the FOID card, purchases of firearms from private sellers are not subject to background checks at the time of purchase (except purchases from private sellers at gun shows). As a result, if a licensee falls into a prohibited category while the license is still valid, he or she could continue to purchase firearms illegally from a private seller.

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.¹⁴ 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.¹⁵ 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.

2. *States Requiring Licenses or Permits for Handguns Only:* California, Connecticut, Iowa, Michigan, New York, North Carolina and Rhode Island all require licenses or permits for purchase or possession of handguns.¹⁶

California: California requires a Handgun Safety Certificate (“HSC”) prior to purchase of a handgun. The HSC is valid for 5 years.

Connecticut: Connecticut requires a permit to carry a handgun or a handgun eligibility certificate. Permits and certificates are valid for 5 years. Permits and certificates may be revoked in the event the holder becomes disqualified.¹⁷

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

Michigan: Michigan requires either a license to carry a concealed handgun or a handgun purchase license.¹⁸ A handgun purchase license is valid for 10 days, and may be

¹⁴ Massachusetts defines “large capacity weapon” to include assault weapons, certain semi-automatic weapons, and certain large capacity rotating-cylinder firearms.

¹⁵ 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).

¹⁶ State laws in Iowa, Michigan, New York and North Carolina explicitly require a background check prior to issuance of the requisite license or permit.

¹⁷ Connecticut also issues temporary permits to carry handguns. These permits are valid for 60 days and may not be renewed. Conn. Gen. Stat. § 29-30(c).

¹⁸ In addition to obtaining a license, persons acquiring handguns in Michigan are required to present the handgun to local law enforcement for a safety inspection. If the person is eligible to possess the weapon and it passes the inspection, a certificate of inspection is issued which includes identifying information about the owner and a description of the handgun. Copies of the certificate are kept by state and local law enforcement. Mich. Comp. Laws § 28.429.

used for the purchase of a single handgun. A license to carry a concealed handgun is valid for 4-5 years, depending on the date of issue.

New York: New York requires a license to purchase and possess a handgun.¹⁹ Handgun licenses in New York are valid until revoked, except in New York City, where the duration is 3 years, and in Nassau, Suffolk and Westchester Counties, where the duration is 5 years. The license is valid for purchase of a single handgun.²⁰

North Carolina: North Carolina requires 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.

Rhode Island: Rhode Island requires a pistol/revolver safety certificate issued by the state Department of Environmental Management. The duration is unspecified.

3. *States Requiring Safety Training or a Safety Exam Prior to Issuance of a License or Permit.*²¹ 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.

California, Connecticut, Hawaii, Michigan and Rhode Island require safety training or a safety exam prior to issuance of a handgun license or permit.

California requires anyone purchasing a handgun to obtain a Handgun Safety Certificate (HSC) prior to purchase. To obtain a HSC, the applicant must pass a written safety test. In addition, subject to limited exceptions, all handgun purchasers are required to perform a safe handling demonstration with the handgun 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 handgun to be purchased.

In Connecticut, applicants for a handgun eligibility certificate must successfully complete an approved course in the safety and use of handguns. 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. Permit

¹⁹ 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.

²⁰ Outside of New York City, licensees in New York may seek a license amendment to allow the purchase of more than one handgun per license.

²¹ Although permits are not required in Maryland, the application process for purchase of a regulated firearm (handguns and assault weapons) includes a requirement that the applicant complete a firearms safety training course conducted by the Police Training Commission. This requirement applies only to the first purchase of a regulated firearm after January 1, 2002, and does not apply to handgun carry permit holders.

applicants in Michigan must pass a basic pistol safety review questionnaire. 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.²²

SUMMARY OF SELECTED²³ LOCAL LAWS REQUIRING LICENSING OF GUN OWNERS OR PURCHASERS

Local Laws Requiring Licensing of Gun Owners or Purchasers²⁴

Chicago	Chicago, Ill., Code §§ 4-144-060, 4-144-070
Cleveland	Cleveland, Ohio, Code §§ 674.02, 674.04
Columbus	Columbus, Ohio, Code §§ 545.06(a), 545.07, 545.08 545.09
Hartford	Hartford, Conn., Code § 21-59
New York City	New York, N.Y., Admin. Code §§ 10-303 <i>et seq.</i> , 10-131(a), (i); New York, N.Y., Rules tit. 38, §§ 3-09, 5-01, 5-22, 5-25
Omaha	Omaha, Neb., Code §§ 20-200, 20-251, 20-254

Chicago: Chicago requires a local permit to purchase concealable firearms. Chicago only issues handgun permits in those limited cases where possession is not banned entirely.

Cleveland: Cleveland provides that no person shall receive, possess, have on or about his or her person or use any handgun unless the person has a local “handgun owner’s identification card.” The handgun owner’s identification card is valid from the date of issuance until three years after the birthday of the applicant that follows the date of issuance. The card holder is required to return the card to the Chief of Police if he or she becomes ineligible to possess it. Background checks are required for issuance of a handgun owner’s identification card.

Cleveland prohibits any person from using or attempting to use his or her handgun owner’s identification card to obtain a handgun for any person who does not have a valid

²² 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).

²³ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

²⁴ Local provisions governing background checks and describing qualifications for obtaining a local license or permit are described in the sections on Background Checks and Prohibited Purchasers.

identification card. Similarly, no person shall knowingly permit his or her identification card to be used by another to purchase, own, possess, receive, have on or about the person or use any handgun or handgun ammunition.

Columbus: Columbus requires persons to obtain a **“weapon transaction permit,”** issued by local law enforcement, to purchase or possess any lawful weapon. Applicants are required to undergo a background check. Transaction permits are valid for 30 days and are good for only one firearm/weapon. Permits may be revoked if the holder becomes disqualified.

Hartford: Hartford requires handgun purchasers to complete an application to purchase a handgun before any transfer will be made. The application is submitted to the state Commissioner of Public Safety for processing, with a copy submitted to the Hartford Police Chief.

New York City: New York City requires a rifle or shotgun permit for the purchase and/or possession of rifles and 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. Persons under 21 may carry, fire or use a rifle or shotgun (except an assault weapon) 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.

A rifle or shotgun permit is also required for possession of rifle or shotgun ammunition and a rifle or shotgun ammunition feeding device.

Permittees must report lost or stolen permits and rifles or shotguns to law enforcement within five calendar days of the loss.

For handguns, the city issues five basic types of licenses: (1) a **“premises license”** which allows possession of a handgun in a specific business or residence; (2) a **“carry business license”** which allows the holder to carry a concealed handgun; (3) a **“limited carry business license”** which allows the holder to carry a handgun to and from specific locations at specific times; (4) a **“carry guard license/gun custodian license”** which allows the holder to carry a handgun while engaged in work as a security guard or gun custodian; and (5) a **“special license”** which allows the holder of a state permit to carry a handgun while in New York City and/or while engaged in work as a security guard or gun custodian in New York City.

All handgun licenses require a background check. They are revocable at any time and authorize the holder to possess only the handgun(s) listed on the license. Licensees must immediately report to law enforcement any loss or theft of the handgun or the license or **change in the licensee’s status that** would affect eligibility for a license.

Prior to purchasing a handgun in New York City, a handgun licensee must obtain written permission from law enforcement. Such authorization is valid for only 30 calendar days

from the date of issuance. The licensee must have the handgun and required safety locking device inspected by law enforcement within 72 hours of purchase.²⁵ The weapon may not be used prior to the inspection.

New York City provides that a license to carry or possess a handgun in the city may be issued for no less than one nor more than three years at a fee of \$340. No person, other than a rifle and shotgun dealer, who is not authorized to possess a handgun in the city may possess handgun ammunition. A person may possess handgun ammunition only in a caliber corresponding to a handgun he or she is licensed to possess.

*Omaha.*²⁶ Omaha prohibits any person from selling or renting a concealable firearm to any person who has not obtained a written permit from the chief of police.²⁷

FEATURES OF COMPREHENSIVE LAW LICENSING GUN OWNERS OR PURCHASERS²⁸

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- License is required for possession of any firearm, and must be shown prior to purchase of any firearm (*Illinois, Massachusetts, Columbus, New York City*)
- License conditions include:
 - Thorough background check (*Hawaii, Illinois, Massachusetts, New Jersey, Columbus, New York City; Connecticut, Iowa, Michigan, New York, North Carolina and Cleveland also require background checks, but only for handgun licenses*)
 - Safety training (*Massachusetts; Connecticut, Hawaii and Rhode Island also require safety training, but only for handgun licenses*)
 - Hands-on testing, including firing testing, to demonstrate safe use of firearms

²⁵ Additional information on New York City's requirements for handgun locking devices is contained in the section on Locking Devices.

²⁶ Note that Omaha's licensing ordinance predates the state law requiring purchasers of handguns from private sellers to obtain a handgun certificate. Neb. Rev. Stat. Ann. § 69-2409. See also *supra* note 8.

²⁷ Omaha's licensing system is a hybrid of licensing and registration. The concealable firearm permit is issued following approval of an application for registration of a concealable firearm. Additional information about Omaha's registration requirements is contained in the section on Registration of Firearms.

²⁸ 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 registration of firearms, including the features of comprehensive registration laws, is contained in the section on Registration of Firearms.

- Written testing to demonstrate knowledge of applicable firearm laws
(*California and Michigan require testing on firearms laws, but only for handgun licenses*)
- License has finite duration (*Hawaii, Illinois, Massachusetts; California, Connecticut, Iowa, 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 (*New York City*)
- License is subject to revocation in cases where licensee becomes a prohibited purchaser (*Hawaii, Illinois, Massachusetts, New Jersey, Columbus; Connecticut, Iowa and Cleveland also provide 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
- Additional requirements are imposed for handgun permit to purchase:
 - Short duration applies to handgun permit to purchase (*Hawaii – 10 days, Massachusetts – 10 days, Michigan – 10 days, New Jersey – 90 days, Columbus – 30 days, New York City – 30 days*)
 - Permit to purchase is limited to one handgun per permit (*Hawaii, Massachusetts, Michigan, New Jersey, New York, North Carolina, Columbus, Hartford*)

Registration of Firearms

Background

Although registration laws vary, they typically require gun owners to record the ownership of their firearms with a designated law enforcement agency. The ownership record should include a full description of the firearm and identifying information about the registrant. In addition, the firearm should be re-registered whenever title to the firearm is transferred, and law enforcement should be notified whenever the weapon is lost or stolen.¹

A comprehensive registration law would 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 would undergo an additional background check to ensure that they have not fallen into a class prohibited from owning firearms.

Registration laws provide a cornerstone of responsible gun policy because they: (1) furnish law enforcement with essential information about firearm ownership, facilitating fast and reliable tracing of crime guns; and (2) reduce illegal firearm sales by creating accountability for gun owners.

Studies note that “the increased information generated by a registration system could speed the tracing of firearms used in crime and could aid police in identifying the type(s) of firearms to which an individual may have access. . . . Registration would in effect function as a super tracing system, offering clear benefits to law enforcement.”²

Registration laws are most effective when combined with laws requiring licensing of firearm owners and purchasers.³ 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.⁴ This suggests that licensing and registration laws may make it more difficult for

¹ Sales reporting laws, unlike registration laws, require the seller of a firearm to report the sale to state or local law enforcement, thus placing the duty of compliance on the seller and not on the firearm owner. In addition, sales reporting occurs only at the time of purchase and not at regular intervals thereafter. Additional information on sales reporting requirements and retention of sales records is contained in the sections on Dealer Regulations and Retention of Firearm Sales and Background Check Records.

² Violence Policy Center, *Handgun Licensing and Registration: What It Can and Cannot Do, Section Two: Licensing and Registration* (Sept. 2000), at <http://www.vpc.org/studies/lrtwo.htm>.

³ 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. Hawaii is the only state that has a combined licensing and registration system. Detailed information on laws requiring licensing of firearm owners and purchasers is contained in the section on Licensing of Gun Owners or Purchasers.

⁴ 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.

criminals, juveniles and other prohibited purchasers to obtain guns, and help ensure that firearm owners remain eligible to possess their weapons.

Opinion polls show that the American public overwhelmingly supports handgun registration. A May 2001 poll found that 83% of respondents, including 72% of gun owners, favored registration of all newly-purchased handguns.⁵

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.⁶

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.⁷

In 1986, Congress banned the transfer and possession of machine guns not already in lawful circulation.⁸ 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.⁹ 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.¹⁰

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.

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>.

⁶ 28 C.F.R. § 25.9(b)(3).

⁷ 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.

⁸ 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.

⁹ *Id.* The National Firearms Act requires each importer, manufacturer, or dealer in firearms covered by the Act to register annually with the Secretary of the Treasury. 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 National Firearms Act Branch of ATF maintains the registry, known as the National Firearms Registration and Transfer Record. Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Dep't of Justice, *Brochure of the National Firearms Act Branch*, at <http://www.atf.gov/pub/nfab/>. 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.

¹⁰ 18 U.S.C. § 922(b)(4).

SUMMARY OF STATE LAWS CONCERNING REGISTRATION OF FIREARMS

Seven states and the District of Columbia require registration of some or all firearms. Conversely, nine states have statutes prohibiting them from maintaining a registry of firearms.

States that Require Registration of All Firearms

District of Columbia	D. C. Code Ann. §§ 7-2502.01, 7-2502.02, 7-2502.03(b), 7-2502.06(a), 7-2502.07, 7-2502.08
Hawaii	Haw. Rev. Stat. Ann. §§ 134-3(a), (b), 134-4

States that Require Registration of Pre-Ban Assault Weapons or 50 Caliber Rifles

California	Cal. Penal Code §§ 12276, 12276.1, 12276.5, 12280, 12285(a) (assault weapons and 50 caliber rifles)
Connecticut	Conn. Gen. Stat. § 53-202d(a) (assault weapons)
Hawaii	Haw. Rev. Stat. Ann. §§ 134-3(a), (b), 134-4 (assault weapons)
Maryland	Md. Code Ann., Crim. Law § 4-303 (assault weapons)
New Jersey	N.J. Stat. Ann. §§ 2C:39-5f, 2C:58-12 (assault weapons)

Other State Registration Laws

Louisiana	La. Rev. Stat. Ann. §§ 40:1781, 40:1783
Michigan	Mich. Comp. Laws § 28.429

States that Prohibit Registries of Firearms

California	Cal. Penal Code § 11106(b) (long guns only)
Delaware	Del. Code Ann. tit 11, § 1448A(d)(1), (3)
Florida	Fla. Stat. Ann. § 790.335(2), (3)
Georgia	Ga. Code Ann. § 16-11-129(a)
Idaho	Idaho Const., art. 1, § 11
Pennsylvania	18 Pa. Cons. Stat. § 6111.4 (long guns only)
Rhode Island	R.I. Gen. Laws § 11-47-41
South Dakota	S.D. Codified Laws § 23-7-8.6
Vermont	Vt. Stat. Ann. tit. 20, § 8(b)(3)(B)

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.¹¹ 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.¹²)

The District of Columbia's registration law serves as a ban on most classes of firearms within the District. While the District requires a registration certificate for every gun that is possessed, controlled or purchased in the District, most classes of firearms may not be registered. Sawed-off shotguns, machine guns (which include certain semiautomatic assault weapons), short-barreled rifles, and handguns¹³ not registered to the current owner before September 24, 1976, may not be registered.¹⁴

The District of Columbia requires that an application for registration be made before taking possession of a firearm or, in some circumstances, immediately after a firearm is brought into the District. In addition to providing identifying information about the applicant and the firearm, applicants are also required to provide detailed information concerning: (1) whether and, if so, the reasons for any denial of a firearms license; **(2) the applicant's role in any mishap** involving a firearm, including the date, place, time, circumstances, and the names of the persons injured or killed; (3) the intended use of the firearm; and (4) where the firearm generally will be kept. Applicants undergo a background check conducted by the Chief of Police.¹⁵

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. Certificate holders must also notify the Chief of the sale, transfer, or other disposition of the firearm at least 48 hours before delivery, and must return the registration certificate for any firearm which has been lost, stolen, destroyed, or otherwise disposed of or transferred.¹⁶ The District does not require renewal of the registration.

¹¹ 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.

¹² Hawaii's permitting laws are described in the section on Licensing of Gun Owners or Purchasers.

¹³ In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

¹⁴ Although the code does not directly identify the types of firearms that *may* be registered, at least one court has stated that long guns may be registered in the District of Columbia. *See Kuhn v. Cissel*, 409 A.2d 182, 186 (D.C. 1979).

¹⁵ Note that these features of the District of Columbia's registration law are comparable to some states' licensing requirements. Additional information about state and local licensing laws is contained in the section on Licensing of Gun Owners or Purchasers.

¹⁶ 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.

2. *States that Require Registration of Pre-Ban Assault Weapons or 50 Caliber Rifles:* Five states (California, Connecticut, Hawaii, Maryland and New Jersey) have banned assault weapons,¹⁷ but allow continued possession of such weapons if they were lawfully owned on a specified date and are 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.¹⁸

3. *Other State Registration Laws:* Louisiana requires the registration of certain firearms, including short-barreled shotguns and rifles, shotguns or rifles modified to have an overall length of less than 26 inches, concealable firearms with obliterated serial numbers, machine guns and mufflers or silencers for any firearm.

While Michigan does not require registration *per se*, it does require persons acquiring handguns to present the handgun to local law enforcement for a safety inspection. If the person presenting the handgun is eligible to possess it, a certificate of inspection will be issued reflecting his or her name, age, address, description and signature, as well as a full description of the handgun. Copies of the certificate are kept by state and local law enforcement, thereby creating a record of all legally acquired handguns possessed in the state and their owners.¹⁹

4. *States That Prohibit Registration of Some or All Firearms:* Seven states are explicitly prohibited by law from maintaining a registry of any firearms. Delaware, Florida,²⁰ Georgia, Idaho, Rhode Island, South Dakota and Vermont prohibit keeping any registry of privately owned firearms. California and Pennsylvania²¹ prohibit any registry of long guns. California, Delaware, Florida and Rhode Island have exceptions for records required for a criminal prosecution and/or investigation.

¹⁷ Hawaii and Maryland ban assault pistols.

¹⁸ Additional information on assault weapons and 50 caliber rifles is contained in the sections on Assault Weapons and Fifty Caliber Rifles, respectively.

¹⁹ Michigan also requires handgun owners and purchasers to obtain either a license to carry a handgun or a handgun purchase license. Additional information about Michigan's licensing laws is contained in the section on Licensing of Gun Owners or Purchasers.

²⁰ Florida's prohibition does not apply to records relating to licenses to carry concealed firearms.

²¹ 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.

SUMMARY OF SELECTED²² LOCAL LAWS CONCERNING GUN REGISTRATION

Local Gun Registration Laws

Chicago	Chicago, Ill., Code §§ 8-20-040 – 8-20-150, 8-20-200
Cleveland	Cleveland, Ohio, Code §§ 674.02, 674.05
New York City	New York, N.Y., Admin. Code §§ 10-303, 10-304, 10-305(m)
Omaha	Omaha, Neb., Code §§ 20-251, 20-253 – 254

Chicago: Chicago has a comprehensive system of firearm registration.²³ All firearms in the city must be registered before the transferee takes possession of the firearm. No registration certificate may be issued to any person unless such person:

- Possesses a valid Illinois Firearm Owner's Identification (FOID) card;
- Has not been convicted of a crime of violence (defined as any felony committed while armed with a weapon);
- Has not been convicted within the preceding five years of aggravated assault or any violation of any law relating to the use, possession or sale of any narcotic or dangerous drug;
- Has vision better than or equal to that required to obtain an Illinois driver's license; and
- Is not otherwise ineligible to possess a firearm under any federal, state or local law.

Applicants for registration are required to submit a sworn application to the Superintendent of Police. Applications for registration must include the following information:

- Name, social security number, residential and business address of the applicant;
- Age, sex and citizenship of the applicant;
- Manufacturer, caliber or gauge, model, type and serial number of the firearm to be registered;
- Source from which the firearm was obtained;

²² This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

²³ Note that assault weapons, sawed-off shotguns, machine guns and short-barreled rifles may not be registered. Chicago, Ill., Code § 8-20-050. Handguns may not be registered unless they were validly registered prior to March 30, 1982, and have a trigger lock and load indicator device. *Id.* Thus, the effect of the registration provisions is to ban certain classes of weapons, similar to the District of Columbia registration law described above. Unlike the District of Columbia law, however, Chicago has an independent provision banning assault weapons (Chicago, Ill., Code §§ 8-24-025, 8-24-026).

- Evidence that the applicant meets the criteria described above; and
- Two recent photographs of the applicant.

The applicant may also be required to submit to fingerprinting if necessary to establish his or her identity. Upon receipt of an application for registration, the Superintendent of Police must investigate the information contained in the application to determine whether the application and firearm meet the requirements for registration.

Registrants are responsible for reporting the sale or transfer of a firearm 48 hours prior to delivery, and a firearm's theft or loss immediately upon discovery. Registration certificates must be renewed annually, and applications for renewal are subject to all the requirements of registration. Failure to comply with the renewal requirement causes the firearm to become unregistrable.

Cleveland: Cleveland prohibits any person from receiving, possessing, having on or about the person, or using any handgun unless the person has a registration card for each handgun. Cleveland also prohibits any person from delivering, transferring or furnishing any handgun to any person unless the transferee exhibits at the time of transfer a registration card for each handgun.

When satisfied that the applicant holds a valid identification card and is not prohibited from possessing the handgun, the Chief of Police issues a registration card to the applicant no sooner than three days and no more than sixty days after the date of application. Registration cards are serially numbered according to a system devised by the Chief of Police. The cards bear date of issue, the name of the Chief of Police, the applicant's name, home address, identification card number, the signature of the applicant, and the name, type, caliber, and serial number of the handgun. A copy of each application and registration card is retained permanently by the Chief of Police, but is deemed not to be a public record and may not be disclosed to unauthorized persons.

Any person who sells or otherwise transfers possession of a registered handgun must, within five days of the date of transfer of possession of the handgun, surrender the registration card for the handgun to the Chief of Police.

There is no requirement for renewal of the registration.

New York City: New York City requires every person in possession of a rifle or shotgun to have a certificate of registration for the weapon. The certificate must be exhibited to law enforcement upon demand when the weapon is carried. A transferee with a valid permit to purchase and possess a rifle or shotgun will be issued a rifle or shotgun registration certificate by the dealer at the time of transfer, or by the police commissioner if the seller is not a licensed dealer. There is no requirement for renewal of the registration.

New York City residents acquiring a rifle or shotgun outside the city are required to apply for a registration certificate within 72 hours after bringing the weapon into the city.

Omaha: Omaha prohibits any person from owning, possessing, or maintaining control over any concealable firearm that has not been registered with the Chief of Police.

A concealable firearm will not be registered to any person who:

- Is the subject of an active protection order;
- Has provided false information on the registration request;
- Has a conviction (which has not been pardoned or set aside under state or federal law) for: (a) any felony; (b) carrying a concealed weapon or being a minor in possession of a concealable firearm; or (c) within the previous five years, assault, child abuse, or violation of any provision of the Omaha municipal weapons code;
- Has been convicted of any charge of domestic violence, including stalking or harassment;
- Has a record of mental disorder which would show the applicant to be a danger to self or to others;
- Is a fugitive from justice;
- Has been dishonorably discharged from the U.S. Armed Forces;
- Is a user of, or addicted to, unlawful controlled substances;
- Is not a citizen of the United States; or
- Is under age 21.

Qualified applicants receive a permit from the Chief of Police.²⁴

A corporation may register a concealable firearm in its corporate name, but may only allow persons to possess or control the firearm if the person:

- Is a part-time or full-time employee;
- Is acting within the scope of his or her employment; and
- Possesses a current identification card authorizing the cardholder to carry concealed weapons.²⁵

There is no requirement for renewal of the registration.

²⁴ It is unlawful for any person in Omaha to sell or rent a concealable firearm to any person who has not obtained a written permit from the Chief of Police, as described above. Therefore, Omaha's registration system functions as a hybrid of licensing and registration. Additional information about Omaha's licensing requirements is contained in the section on Licensing of Gun Owners or Purchasers.

²⁵ The requirements for obtaining an identification card authorizing the carrying of concealed weapons in Omaha include completion of a firearms safety training program. Additional information about the requirements for obtaining a concealed firearm identification card is contained in the section on Carrying Concealed Weapons.

FEATURES OF COMPREHENSIVE FIREARM REGISTRATION LAW²⁶

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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, Chicago; Hawaii requires registration within 5 days of acquisition of 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, Chicago*)
- Registered owners are required to renew registration annually, including submitting to a background check (*Chicago*)
- 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 (*District of Columbia, Chicago*), and to turn in their registration card or certificate upon loss, theft or transfer (*District of Columbia, Cleveland (handguns only)*)
- 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 (e.g. assault weapons, 50 caliber rifles))

²⁶ 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 the section on Licensing of Gun Owners or 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 assist lawful gun owners by facilitating the recovery of their lost or stolen property.

Laws requiring the reporting of lost or stolen guns deter gun trafficking (the diversion of firearms from the legal to illegal market) by providing to law enforcement 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 gun owner may falsely claim that the gun was lost or stolen to hide their involvement in trafficking or straw purchasing. Reporting laws put law enforcement on notice of such suspicious patterns of behavior by persons who repeatedly fail to file reports yet claim that their guns were lost or stolen after they are recovered from a crime scene. In addition, reporting laws put law enforcement on notice of persons who repeatedly report their guns lost or stolen, another indicator that the person may be trafficking firearms or engaging in straw purchasing.

Reporting laws make gun owners more accountable for their weapons, and protect gun owners by preventing unwarranted criminal accusations against owners who suffer thefts or losses. The requirement also protects law-abiding gun owners by making it easier for law enforcement to locate a lost or stolen firearm and return it to its owner. Timely reporting of gun thefts or losses enables police to trace guns more effectively, and makes the successful prosecution of users of stolen guns more likely.

Stolen guns also supply the market for crime guns. A 2002 Americans for Gun Safety (AGS)² study found that between January 1993 and August 2002 nearly 1.7 million firearms were reported stolen.³ Of those stolen guns, over one million remained missing.⁴ The actual number of gun thefts likely is much larger than reported. Survey research indicates that at least 500,000 firearms are stolen annually from residences.⁵ The number of guns stolen likely is much higher than the number reported stolen.⁶

Many stolen guns are used to commit other 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 – including 10%**

¹ A “straw purchaser” is a person who buys firearms on behalf of a convicted felon, juvenile or other prohibited purchaser.

² Americans for Gun Safety is no longer an independent organization, but is now an initiative within Third Way, which describes itself as a “non-profit, non-partisan strategy center for progressives.”

³ Americans for Gun Safety, *Stolen Firearms: Arming the Enemy* 6, 8 (Dec. 2002). This equates to 16.8 stolen firearms for every 1,000 U.S. households.

⁴ *Id.* at 6.

⁵ 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.atf.gov/pub/fire-explo_pub/pdf/followingthegun_internet.pdf.

⁶ Bureau of Justice Statistics Selected Findings, U.S. Department of Justice, *Firearms, Crime, and Criminal Justice: Guns Used in Crime* 3 (July 1995), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/guic.pdf>.

percent of the investigations which involved guns stolen from residences.⁷ A 1997 U.S. Department of Justice survey found that 8.4% of state prison inmates who used or possessed a firearm during the offense for which they were incarcerated obtained the gun from the illegal market.⁸

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 requires that licensed firearms dealers 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.⁹

SUMMARY OF STATE LAWS GOVERNING REPORTING OF LOST OR STOLEN FIREARMS

Seven states and the District of Columbia require firearm owners to report the loss or theft of their firearms to law enforcement. Four other states have adopted loss or theft reporting provisions for specific circumstances, but the reporting is not mandatory.

Mandatory Loss/Theft Reporting

Connecticut	Conn. Gen. Stat. § 53-202g
District of Columbia	D.C. Code Ann. §§ 7-2502.08(1)(A), 7-2502.09(4)
Massachusetts	Mass. Gen. Laws ch. 140, § 129C
Michigan	Mich. Comp. Laws § 28.430
New Jersey	N.J. Stat. Ann. § 2C:58-19 (adopted January 2008)
New York	N.Y. Penal Law § 400.10
Ohio	Ohio Rev. Code Ann. § 2923.20(A)(5), (B)
Rhode Island	R.I. Gen. Laws § 11-47-48.1

Other Loss/Theft Reporting Laws

California	Cal. Penal Code § 12072(a)(9)(B)(xi)
Maryland	Md. Code Ann., Pub. Safety § 5-128(a)(8)
New Jersey	N.J. Stat. Ann. § 2C:58-12(g)
Virginia	Va. Code Ann. § 18.2-308.2:2(P)(2)(f)

Description of State Laws Governing Reporting of Lost or Stolen Firearms:

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. Local law enforcement in New York then reports the information to the state

⁷ *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, *supra* note 5, at 11, 41.

⁸ Bureau of Justice Statistics Special Report, U.S. Department of Justice, *Firearm Use by Offenders: Survey of Inmates in State and Federal Correctional Facilities* 6 (Nov. 2001), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fuo.pdf>.

⁹ 18 U.S.C. § 923(g)(6).

police. New Jersey requires 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's reporting** requirement applies to any firearm¹⁰ or assault weapon, requiring owners to report the loss or theft to local law enforcement within 72 hours of discovery. Local law enforcement in Connecticut reports the information to the state police.

In Massachusetts, firearm owners are required to report the loss or theft of any firearm to the state police and the local licensing authority; no time period is specified for reporting. Penalties for a violation of the Massachusetts law include suspension or permanent **revocation of the owners' firearm identification card or license to carry firearms**.

The District of Columbia's law applies to any registered firearm,¹¹ and applies **"immediately" upon discovery of the loss or theft**. Registration certificates are revoked if the owner fails to report any registered firearm that is lost or stolen.

Ohio law requires that an owner report to law enforcement **"forthwith" the loss or theft of any firearm "in the person's possession or under the person's control."**

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."**¹²

2. *Other Loss/Theft Reporting Laws.* In California and Virginia, persons who report the theft or loss of a handgun may claim an **exception to the state's prohibition on the purchase of more than one handgun in any 30-day period**. Maryland law is similar, but applies to handguns and assault weapons. In both states, any person whose gun is irretrievably lost or stolen within the 30-day period and who deems it essential that the gun be replaced immediately may apply to purchase another firearm within the period, provided he or she reports the loss or theft to law enforcement, obtains a copy of the official police report, and provides that report to a firearms dealer prior to purchasing the replacement.

¹⁰ Connecticut law defines "firearm" to include any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. Conn. Gen. Stat. § 53a-3(19).

¹¹ The District of Columbia's registration law serves as a ban on most classes of firearms within the District. Sawed-off shotguns, machine guns (including certain semiautomatic assault weapons), short-barreled rifles, and handguns not registered to the current owner before September 24, 1976, may not be registered. Although the statute does not directly identify the types of firearms that *may* be registered, at least one court has stated that long guns may be registered in the District of Columbia. *See Kuhn v. Cissel*, 409 A.2d 182, 186 (D.C. 1979). Note that in 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

¹² Mich. Comp. Laws § 28.430(1).

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 will 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.

SUMMARY OF SELECTED¹³ LOCAL LAWS REQUIRING REPORTING OF LOST OR STOLEN FIREARMS

Local Laws Requiring Loss/Theft Reporting

Chicago	Chicago, Ill., Code §§ 8-20-140(a)(1), (b), 8-20-120(d)
Cleveland	Cleveland, Ohio, Code § 627.06(a)(4)
Columbus	Columbus, Ohio, Code § 2323.20(A)(4)
Hartford	Hartford, Conn., Code §§ 21-61 – 21-63
Los Angeles	Los Angeles, Cal., Code ch. V, art. 5, § 55.12
New York City	New York, N.Y., Rules tit. 38, §§ 3-09, 5-30
San Francisco	San Francisco, Cal., Police Code art. 9, § 616

Chicago: Chicago requires registered owners of firearms to report the loss, theft or destruction of a registration certificate or registered firearm immediately upon discovery of the loss, theft or destruction. A firearm registrant must immediately return his or her copy of the registration certificate for any firearm which is lost, stolen or destroyed. The registration certificate will be revoked if the registrant fails to report the loss, theft or destruction of a registered firearm.

Cleveland: Cleveland requires any person with a firearm **“in such person’s possession or under his or her control”** to report **“forthwith”** the loss or theft of the firearm. Knowing failure to report imposes criminal liability.

Columbus: Columbus prohibits any person from **knowingly failing to report “forthwith” the loss or theft of any firearm in the “person’s possession or under his or her control.”**

Hartford: Any lawful firearm owner in Hartford must report the loss or theft of a firearm **“from premises in the city or from their person” within 72 hours** of becoming aware of the loss or theft. In the event a lost or stolen firearm is determined to have been used to aid or abet the commission of a felony and the Hartford Police determine that the owner of the firearm failed to report its loss or theft as required by ordinance, the City of

¹³ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled **“The Legal Background.”**

Hartford, on a showing of good cause, may sue the owner to recover the costs to the city of police services and other expenses associated with the investigation and prosecution of the felony.

Los Angeles: Owners or possessors of firearms in Los Angeles must report the theft or loss of the firearm within 48 hours of becoming aware of the theft or loss, whenever: 1) the person resides in Los Angeles; or 2) the theft or loss of the firearm occurs in Los Angeles. In addition, any person who has experienced the theft or loss of a firearm within the five years prior to the effective date of the ordinance – **December 3, 2006** – without the firearm having been recovered during that period, and who meets the general reporting requirements in the ordinance, was required to report the theft or loss within 60 days of the effective date of the ordinance.

New York City: In New York City, any person with a rifle or shotgun permit must report all lost or stolen permit documents and rifles or shotguns to the precinct where the person resides or where the loss or theft was discovered. A handgun licensee must immediately report an “incident” – which includes the loss or theft of a handgun or license – to the city License Division’s Incident Section for handguns and to the precinct where the loss or theft occurred.

San Francisco: Any firearm owner or possessor in San Francisco must report the theft or loss of his or her firearm within 48 hours of becoming aware of the loss or theft, if: 1) the owner resides in San Francisco; or 2) the theft or loss of the firearm occurs in San Francisco.

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 and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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 (*Ohio, District of Columbia, Chicago, Cleveland, Columbus, New York City – immediately; New York, Rhode Island – within 24 hours*)
- Require owners of firearms lost or stolen (and not recovered) within a designated time period prior to the adoption of the law to report to law enforcement within a reasonable period (*Los Angeles – applies to losses/thefts within 5 years prior to effective date of ordinance, owners must report within 60 days*)
- Reporting requirements should apply to all firearm types (*Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island, District of*

Columbia, Chicago, Cleveland, Columbus, Hartford, Los Angeles, New York City, San Francisco)

- 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, Hartford*)
- 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, Chicago*)

Carrying Concealed Weapons

Background

Carrying concealed weapons (CCW) laws determine the circumstances, if any, under which a person is permitted to carry a concealed firearm in public. Illinois and Wisconsin are the only states that do not permit carrying concealed firearms. Most states allow carrying of concealed weapons after issuance of a permit, and the recent trend is toward more permissive laws.¹

Several studies have analyzed the impact of permissive CCW laws. The Violence Policy Center examined a CCW law adopted in Texas in 1995 to overturn the state's 125-year ban on concealed weapons.² The study found that between January 1, 1996 and August 31, 2001, Texas concealed handgun license holders were arrested for 5,314 crimes, including murder, rape, kidnapping and theft.³ The investigation discovered 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.⁴

On October 3, 2000, the Los Angeles Times published the results of a yearlong investigation of the Texas law. That investigation found that since the law took effect, **more than 400 criminals – including rapists and armed robbers – had been issued CCW permits.** The investigation also found that thousands of the 215,000 permit holders in Texas had been arrested for criminal behavior or found to be mentally unstable.⁵ The investigation specifically noted **that the “largest category of problem licensees involve[d] those who committed crimes after getting their state” permits.**⁶

In an investigation of Florida's concealed weapons system, the South Florida Sun-Sentinel found that those licensed to carry guns in the first half of 2006 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.⁷

The number of defensive gun uses is dwarfed by the frequency of crimes committed with guns. According to the Federal Bureau of Investigation Uniform Crime Reports, the number of crime victims who successfully use firearms to defend themselves is very

¹ Note that the gun lobby has made it a priority in recent years to increase the number of “shall issue” states.

² Violence Policy Center, *License to Kill IV: More Guns, More Crime* (June 2002), at <http://www.vpc.org/graphics/ltk4.pdf>.

³ *Id.* at 2.

⁴ *Id.* at 5.

⁵ 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.

⁶ *Id.*

⁷ 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.

small. Of the 30,694 Americans who died by gunfire in 2005, only 147 were shot in justifiable homicides by private citizens with firearms.⁸

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.⁹ 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.¹⁰

Under federal law, any **“qualified retired law enforcement officer”** with proper identification also may carry a concealed firearm.¹¹ 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;

⁸ National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *WISQARS Injury Mortality Reports, 1999-2005* (2008), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html; Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States, 2006* Expanded Homicide Data Table 14, at http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_14.html. A **“justifiable homicide”** is defined by the FBI as the killing of a felon, during the commission of a felony, by a private citizen.

The effect of permissive CCW laws remains controversial, however. Gun rights advocates claim that **“shall issue” CCW laws are associated with** a significant reduction in violent crime. See, e.g., John Lott, Jr. & David Mustard, *Crime, Deterrence and Right-to-Carry Concealed Handguns*, 26 J. Legal Stud. 1 (1997). Recent analyses have criticized the methodology and conclusions of these studies. See, e.g., Daniel Webster & Jens Ludwig, *Myths about Defensive Gun Use and Permissive Gun Carry Laws*, Berkeley Media Studies Group (2000); and John J. Donohue, *The Impact of Concealed-Carry Laws, in Evaluating Gun Policy: Effects on Crime and Violence* (Jens Ludwig & Philip J. Cook eds., 2003). A 2003 study concluded that there is no statistical evidence that shall-issue concealed weapons laws reduce crime. Ian Ayres & John J. Donohue III, *Shooting Down the More Guns, Less Crime Hypothesis*, Center for the Study of Law and Society Jurisprudence and Social Policy Program, Papers Presented in the Center for the Study of Law and Society Bag Lunch Speaker Series (University of California, Berkeley), Paper 5, 101, 146, 156 (Apr. 2003), at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1026&context=csls>. Rather, the study found that the adoption of shall-issue laws generally will increase crime. *Id.*

⁹ 18 U.S.C. § 926B.

¹⁰ 18 U.S.C. § 926B(c).

¹¹ 18 U.S.C. § 926C.

- 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.¹²

Both statutes supersede state and local laws regarding CCWs for 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.

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.¹³ Permits issued after November 30, 1998 qualify as exempt only if the approval process included a NICS check.¹⁴ This exemption could allow some prohibited persons to acquire firearms, in cases where a state permit holder falls into a prohibited category after issuance of the state 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.

SUMMARY OF STATE CCW LAWS

Concealed Carry Prohibited

Illinois

Wisconsin¹⁵

720 Ill. Comp. Stat. 5/24-1(a)(10), 5/24-1(a)(4)

Wis. Stat. § 941.23

¹² 18 U.S.C. § 926C(c).

¹³ 18 U.S.C. § 922(t)(3); 27 C.F.R. § 478.102(d).

¹⁴ 27 C.F.R. § 478.102(d).

¹⁵ The Wisconsin Supreme Court has held that the state constitutional right to "keep and bear arms" for personal security under Art. 1, § 25 of the Wisconsin Constitution, when exercised within an individual's own home or place of business, and supported by a factual determination that the individual had no unlawful purpose behind

Concealed Carry Allowed

Most states allow the carrying of concealed weapons by persons who obtain a permit. States that issue CCW permits are generally categorized as either “shall issue” or “may issue” states. 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). Once a permit has been issued, the permit holder is allowed to carry a loaded, concealed firearm in public places, although a number of states prohibit concealed weapons in government buildings and other specified locations. “May issue” states give discretion to the issuing official to grant or deny the permit, based on various statutory factors. Only two states allow the carrying of concealed weapons without a permit.

“Shall Issue” States

Arizona	Ariz. Rev. Stat. §§ 13-3112, 13-3102
Arkansas	Ark. Code Ann. §§ 5-73-119, 5-73-120, 5-73-122, 5-73-301 – 5-73-319, 5-73-401 – 5-73-402
Colorado	Colo. Rev. Stat. §§ 18-12-201 – 18-12-216
Florida	Fla. Stat. Ann. §§ 790.01, 790.015, 790.06, 790.0601
Georgia	Ga. Code Ann. § 16-11-126 – 16-11-130
Idaho	Idaho Code Ann. §§ 18-3302, 18-3302C, 18-3302D
Indiana ¹⁶	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
Kansas	Kan. Stat. Ann. §§ 12-4516, 21-4201, 21-4619, 75-7c01 – 75-7c18
Kentucky	Ky. Rev. Stat. Ann. §§ 237.110, 527.020
Louisiana	La. Rev. Stat. Ann. §§ 40:1379.1, 40:1379.3, 40:1379.3.1
Maine	Me. Rev. Stat. Ann. tit. 25, §§ 2001-A – 2006
Michigan	Mich. Comp. Laws §§ 28.421a – 28.429c
Minnesota ¹⁷	Minn. Stat. § 624.714
Mississippi	Miss. Code Ann. §§ 45-9-101, 97-37-17
Missouri	Mo. Rev. Stat. §§ 571.101 – 571.121
Montana	Mont. Code Ann. §§ 45-8-321 – 45-8-329

(continued on next page)

concealing the firearm, provides a defense to a violation of Wis. Stat. § 941.23. *State v. Hamdan*, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785.

¹⁶ 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.

¹⁷ In 2003, the Minnesota Legislature enacted this statute to transform Minnesota from a “may issue” state to a “shall issue” state. The statute was found to violate the Minnesota Constitution’s single subject requirement, *Unity Church of St. Paul v. Minnesota*, 694 N.W.2d 585 (Minn. Ct. App. 2005), and in 2005, the legislature re-enacted the “shall issue” law (with only technical amendments). On November 14, 2006, in a challenge brought by Edina Community Lutheran Church and others, a Hennepin County District Court found that the law violates federal and state constitutional provisions that protect religious freedom, and permanently enjoined the state from enforcing the provisions of the law that bar the plaintiffs from prohibiting firearms on religious property. *Edina Community Lutheran Church, et al. v. State of Minnesota*, No. 27-CV-06-11659 (Hennepin County, Minn., Nov. 14, 2006).

“Shall Issue” States *(continued from previous page)*

Nebraska	Neb. Rev. Stat. Ann. §§ 28-1202, 69-2427 – 2447
Nevada	Nev. Rev. Stat. Ann. §§ 202.3653 – 202.369
New Hampshire	N.H. Rev. Stat. Ann. §§ 159:6 – 159:6-f, 159:19
New Mexico	N.M. Stat. Ann. §§ 29-19-1 – 29-19-13, 30-7-2.4, 30-7-3, 30-7-13
North Carolina	N.C. Gen. Stat. §§ 14-415.10 – 14-415.24, 14-269.2, 14-269.3, 14-277.2
North Dakota	N.D. Cent. Code §§ 62.1-04-01 – 62.1-04-05, 62.1-02-04 – 62.1-02-05
Ohio	Ohio Rev. Code Ann. §§ 2923.11 – 2923.1213
Oklahoma	Okla. Stat. tit. 21, §§ 1277, 1290.1 – 1290.26
Oregon	Or. Rev. Stat. §§ 166.291 – 166.295, 166.370
Pennsylvania	18 Pa. Cons. Stat. §§ 6106, 6109, 912, 913; 55 Pa. Code §§ 3270.79, 3280.79, 3800.101, 6400.86
South Carolina	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
South Dakota	S.D. Codified Laws §§ 23-7-7 – 23-7-8.6, 22-14-23, 13-32-7
Tennessee	Tenn. Code Ann. §§ 39-17-1351 – 39-17-1360, 39-17-1305, 39-17-1309
Texas ¹⁸	Tex. Gov't Code Ann. §§ 411.171 – 411.208, Tex. Penal Code Ann. §§ 30.06, 46.15, 46.02, 46.03, 46.035
Utah	Utah Code Ann. §§ 53-5-701 – 53-5-710, 78-7-6, 76-8-311.1, 76-8-311.3, 76-10-529, 76-10-530
Virginia	Va. Code Ann. §§ 18.2-308 – 18.2-308.1:5, 18.2-283, 18.2-283.1, 18.2-287.01
Washington	Wash. Rev. Code Ann. §§ 9.41.070 – 9.41.075, 9.41.097, 9.41.280, 9.41.300, 9.41.800
West Virginia	W. Va. Code §§ 61-7-4 – 61-7-7, 61-7-11a, 61-7-14

“May Issue” States

Alabama	Ala. Code §§ 9-11-304, 13A-11-52, 13A-11-59, 13A-11-73 – 13A-11-75
California	Cal. Penal Code §§ 12050-12054, 12590
Connecticut	Conn. Gen. Stat. §§ 29-28 – 29-30, 29-32 – 29-32b, 29-35, 29-37
Delaware	Del. Code Ann. tit. 11, § 1441

(continued on next page)

¹⁸ 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. Firearms in vehicles must be hidden from plain view. *Id.*

"May Issue" States (continued from previous page)

District of Columbia ¹⁹	D.C. Code Ann. §§ 22-4502.01 – 22-4506
Hawaii	Haw. Rev. Stat. Ann. § 134-9
Iowa	Iowa Code §§ 724.4, 724.4B, 724.7 – 724.13
Maryland	Md. Code Ann., Pub. Safety §§ 5-301 – 5-314
Massachusetts	Mass. Gen. Laws ch. 140, §§ 131, 131C, 131P; ch. 269, § 10
New Jersey	N.J. Stat. Ann. §§ 2C:58-3, 2C:58-4, 2C:39-5
New York	N.Y. Penal Law §§ 400.00, 265.01, 265.20
Rhode Island	R.I. Gen. Laws §§ 11-47-8 – 11-47-18
Wyoming ²⁰	Wyo. Stat. Ann. § 6-8-104

No Permit Required

Alaska	Alaska Stat. § 11.61.220(a)
Vermont	Vt. Stat. Ann. tit. 13, §§ 4004, 4016

States that Require a Showing of Good Cause for Issuance of a Concealed Weapons Permit

Alabama
California
Delaware
District of Columbia
Hawaii
Iowa
Maryland
Massachusetts
New Jersey
New York
Rhode Island

¹⁹ Note that in 2007, the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, prohibiting the carrying of pistols without a license, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

²⁰ In *Mecikalski v. Office of Att'y Gen.*, 2 P.3d 1039, 1046-47 (Wyo. 2000), the Supreme Court of Wyoming held that a local sheriff and chief of police correctly denied plaintiff's application for a concealed weapons permit pursuant to Wyo. Stat. Ann. § 6-8-104(g). The court found that section 6-8-104(g) and the legislative intent behind it give local law enforcement broad discretion to deny a permit when there are reasonable grounds, based in fact, to believe that the permit would endanger the community. *Mecikalski*, 2 P.3d at 1046-47.

States that Require Applicants for Concealed Weapons Permits to be of Good Character

Alabama
California
Connecticut
Delaware
District of Columbia
Hawaii
Massachusetts
New Jersey
New York
Rhode Island

States that Require Applicants for Concealed Weapons Permits to Demonstrate Knowledge of Firearm Use and/or Safety

California	Missouri
Connecticut	Nebraska
Delaware	New Jersey
Hawaii	North Carolina
Iowa	Oregon
Kansas	Rhode Island
Kentucky	South Carolina
Massachusetts	Texas
Michigan	Utah

States that Limit the Locations Where Concealed Weapons May be Carried

Alabama	Maine	Ohio
Alaska	Maryland	Oklahoma
Arizona	Massachusetts	Pennsylvania
Arkansas	Michigan	South Carolina
California	Minnesota	South Dakota
Colorado	Mississippi	Tennessee
Connecticut	Missouri	Texas
District of Columbia	Montana	Utah
Florida	Nebraska	Vermont
Georgia	Nevada	Washington
Idaho	New Hampshire	West Virginia
Indiana	New Jersey	Wyoming
Iowa	New Mexico	
Kansas	New York	
Kentucky	North Carolina	
Louisiana	North Dakota	

Description of State Laws Governing the Carrying of Concealed Weapons

1. *Standards for Issuing Concealed Weapons Permits in "May Issue" States:*
In "may issue" states, concealed weapons permits are issued at the discretion of the licensing authority. In Alabama, California, Connecticut, Hawaii, Iowa, Massachusetts, New Jersey, New York, Rhode Island, Wyoming and the District of Columbia, concealed

weapons permits are issued by local law enforcement agencies. Concealed weapons permits in Maryland are issued by the state police. (Massachusetts and New Jersey also authorize the state police to issue concealed weapons permits, in addition to local law enforcement.) In Delaware and New Jersey, court approval is required.

In addition to requiring applicants to pass a background check, concealed weapons laws in these states contain a variety of standards to guide licensing authorities in exercising their discretion:

a. *States Requiring a Showing of Good Cause for Issuance of a Permit:*

Most “may issue” states require a showing of need by the applicant to carry a concealed firearm. Alabama, California, Delaware, Hawaii, Iowa, Maryland, Massachusetts, New Jersey, New York, Rhode Island and the District of Columbia require applicants for concealed weapons permits to demonstrate good cause or a justifiable need to carry a concealed weapon. Some states further delineate the circumstances that constitute good cause or justifiable need: Alabama, 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.”

b. *States Requiring Applicants to be of Good Character:* **Most “may issue”**

states also require the licensing authority to consider the character of the applicant. Alabama, Connecticut, Hawaii, Massachusetts, Rhode Island and the District of Columbia allow permits to be issued only to **“suitable persons.”** California, Delaware and New York require the licensing authority to find 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.**

2. *States Requiring Applicants to Demonstrate Knowledge of Firearm Use and/or*

Safety: **Among “may issue” states, California, Connecticut, Delaware, Hawaii, Iowa, 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 license only, is particularly strong, specifying 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.

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.²¹

Among “shall issue” states, Kansas, Kentucky, Louisiana, Michigan, Missouri, Nebraska, North Carolina, Oregon, South Carolina, Texas and Utah require firearm safety training. Kansas, Kentucky, Michigan, North Carolina, South Carolina and Texas require live firing as part of the firearm training component of the law.

3. *States Limiting the Locations where Concealed Weapons May be Carried:* Most states that allow carrying concealed weapons impose some restrictions on the locations where they may be carried. The majority of states prohibit concealed weapons on school property, in prisons or jails, courthouses and other government buildings, and at locations where liquor is served. A smaller number of jurisdictions prohibit concealed weapons in a wide range of other locations, including places of worship (Arkansas, Georgia, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, Texas, Utah, Virginia and Wyoming); polling places (Arizona, Arkansas, Florida, Kansas, Louisiana, Mississippi, Missouri, Nebraska, South Carolina and Texas); sports arenas (Kansas, Michigan, Missouri, Nebraska and Oklahoma); hospitals and/or medical facilities (Michigan, Missouri, Nebraska, South Carolina and Texas); sites where gambling is permitted (Indiana, Missouri, North Dakota and Oklahoma); and mental health facilities (Kansas, Ohio, Pennsylvania and Washington).

²¹ In addition, 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.

SUMMARY OF SELECTED²² LOCAL LAWS GOVERNING THE CARRYING OF CONCEALED WEAPONS

Local Laws Governing the Carrying of Concealed Weapons²³

Chicago	Chicago, Ill., Code §§ 8-20-010, 8-24-020
Cleveland	Cleveland, Ohio, Code §§ 627.02(a) and (d), 627.10(a), 674.01 <i>et seq.</i>
Columbus	Columbus, Ohio, Code § 2323.12(A), (E)(3)
Hartford	Hartford, Conn., Code §§ 21-71, 21-72(d)
New York City	New York, N.Y., Admin. Code §§ 10-131(h)(1), (2); New York, N.Y., Rules tit. 38, § 5-01
Omaha	Omaha, Neb., Code §§ 20-192, 20-194, 20-195, 20-204 – 20-208, 19-392.2

Chicago: Chicago prohibits carrying concealed weapons.

Cleveland: While Cleveland prohibits the knowing carrying of a concealed deadly weapon, this prohibition does not apply to firearms that are loaded, or for which the **offender has ammunition “ready at hand.”**²⁴ Cleveland also prohibits knowingly carrying, possessing, or having **“ready at hand” any handgun or long gun** at or about a public place.

Cleveland requires that any person receiving, possessing, having on or about the person or using any handgun must have an identification card and a registration card for the handgun.

Columbus: Like Cleveland, Columbus prohibits any person from knowingly carrying or having concealed on his or her person or concealed ready at hand any deadly weapon, but this prohibition does not apply to firearms that are loaded or for which the offender has ammunition ready at hand.²⁵

²² This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House **Bill 347 (overriding the Governor’s veto), which created** Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled **“The Legal Background.”**

²³ Note that the Cleveland and Columbus ordinances predate the Ohio concealed carry law. Ohio Rev. Code Ann. §§ 2923.11 – 2923.1213. Likewise, the Omaha ordinance was in effect before Nebraska enacted its concealed carry law. Neb. Rev. Stat. Ann. §§ 28-1202, 69-2427 – 2447.

²⁴ Ohio state law prohibits the knowing carrying of a firearm concealed on the person or ready at hand without a permit. Enhanced penalties apply in cases where the firearm is loaded, or for which the offender **has ammunition “ready at hand.”**

²⁵ *Id.*

Hartford: Hartford prohibits any person from possessing a handgun without a local permit, except in his or her dwelling house or place of business. Permit applicants must complete a firing range safety and qualifications test.

New York City: New York City prohibits the carrying of a loaded rifle or shotgun in public within the city limits. Unloaded rifles or shotguns carried in public within the city limits must be completely enclosed or contained in a non-transparent carrying case. With limited exceptions, state-issued licenses to carry concealed weapons are not valid in New York City.²⁶ The city issues five basic types of handgun licenses: (1) a “premises license” which allows possession of a handgun in a specific business or residence; (2) a “carry business license” which allows the holder to carry a concealed handgun; (3) a “limited carry business license” which allows the holder to carry a handgun to and from specific locations at specific times; (4) a “carry guard license/gun custodian license” which allows the holder to carry a handgun while engaged in work as a security guard or gun custodian; and (5) a “special license” which allows the holder of a state permit to carry a handgun while in New York City and/or while engaged in work as a security guard or gun custodian in New York City.²⁷ Licenses to carry a handgun are issued for maximum terms of three years, for a fee of \$340.

Omaha: Omaha prohibits any person except law enforcement from “purposely or knowingly” carrying a concealed firearm. Omaha also prohibits any person from knowingly carrying or transporting a concealable firearm in a motor vehicle (with several exceptions).

Omaha has established a firearms safety training program and licensing scheme. If a person successfully completes the program, he or she will receive an “identification card” and be exempt from the concealable firearm prohibition. The identification card is valid for three years from the date of issue. Omaha prohibits any person under age 21 from possessing a concealable firearm.

Nonresidents who exhibit firearms at a firearms exhibition in Omaha may legally possess concealable firearms at the exhibition site, and while in direct route to or from the exhibition, without registering them with local law enforcement.

COMMENT ON CCW LAWS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

²⁶ N.Y. Penal Law § 400.00(6).

²⁷ With some exceptions, no person may knowingly possess a firearm at a place that he or she knows or should know is a school zone. New York, N.Y., Charter § 460.

LCAV believes that sound public policy requires a prohibition on carrying concealed weapons. However, the gun lobby has been successful in securing permissive CCW laws in all but two states, Illinois and Wisconsin. In states that permit carrying concealed weapons, LCAV notes that the following types of provisions would help to mitigate, but would not eliminate, the serious risks of permissive CCW laws to public health and safety:

- A license or permit to carry is required *(46 states and the District of Columbia)*²⁸
- Law enforcement has discretion to issue permits based on strict guidelines *(12 states and the District of Columbia are "may issue" states; of these 13 jurisdictions, nine of them, Alabama, California, Delaware, Hawaii, Massachusetts, New Jersey, New York, Rhode Island and the District of Columbia, issue permits only for good cause to persons of good character)*
- 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
- 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 *(43 states and the District of Columbia)*

²⁸ Additional information on features of comprehensive licensing laws is contained in the section on Licensing of Gun Owners or Purchasers.

CONSUMER AND CHILD SAFETY

Design Safety Standards for Handguns: Regulating Junk Guns/
Saturday Night Specials..... 217

Locking Devices 223

Personalized Firearms..... 230

Child Access Prevention..... 233

Design Safety Standards for Handguns: Regulating Junk Guns/Saturday Night Specials

Background

The terms “junk guns” and “Saturday Night Specials” describe low-quality handguns which are composed of inferior metals 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. Handguns widely acknowledged to be junk guns are also disproportionately associated with criminal misuse, especially by juveniles and young adults.¹

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 guns which accounted for one-third of all U.S. handguns produced in the early 1990s.² Numerous experts criticize 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.³ Because these guns are so poorly constructed, inaccurate, and unreliable, they are widely considered inappropriate for either personal protection or sporting purposes.⁴

By 2003, five of the six original Ring of Fire companies had declared bankruptcy.⁵ Nevertheless, because so many of the junk guns they produced are still in circulation, five of the 10 crime guns most frequently traced by ATF in 2000 were manufactured by Ring of Fire companies.⁶ Additionally, the average time between the purchase of the firearm and its recovery in a crime is much faster for guns manufactured by Ring of Fire companies.⁷

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 ban resulted in an 8.6% decrease in firearm homicides in the state – an average of 40 lives saved per year – between 1990 and 1998.⁸

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 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).

³ *Id.* at 17-51.

⁴ *Id.*

⁵ 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.*

⁶ *Id.*

⁷ *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000)*, *supra* note 1, at 33-38.

⁸ 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*

Summary of Federal Law

The federal Consumer Product Safety Act, which imposes health and safety standards on consumer products, *exempts* firearms and ammunition from its requirements.⁹ Federal law does prohibit the importation of junk guns through a ban on importation of firearms **not suited for “sporting purposes.”**¹⁰ However, because the federal government has not regulated the safety of domestically-produced firearms, there is effectively a protected market for domestic models of junk guns.¹¹

SUMMARY OF STATE REGULATION OF JUNK GUNS

Eight states require design and/or safety standards for handguns: California, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New York and South Carolina.

States Regulating Junk Guns Through Handgun Design and Safety Standards

California	Cal. Penal Code §§ 12125 – 12133
Hawaii	Haw. Rev. Stat. Ann. § 134-15(a)
Illinois	720 Ill. Comp. Stat. 5/24-3(A)(h)
Maryland	Md. Code Ann., Pub. Safety, §§ 5-405, 5-406
Massachusetts	Mass. Gen. Laws ch. 140, §§ 123, 131½, 131¾; 501 Mass. Code Regs §§ 7.01 – 7.16; 940 Mass. Code Regs. §§ 16.01 – 16.09
Minnesota	Minn. Stat. §§ 624.712, 624.716
New York	N.Y. Penal Law § 400.00(12-a); N.Y. Comp. Codes R. & Regs. tit. 9, § 482.1 – 482.7
South Carolina	S.C. Code Ann. § 23-31-180

States Requiring Drop Testing and Firing Testing

California
Massachusetts
New York

Maryland's Law Banning Saturday Night Special Handguns on Crime Guns, 5 Inj. Prevention 259, 261-263 (Dec. 1999).

⁹ 15 U.S.C. § 2052(a)(1)(ii)(E), referencing 26 U.S.C. § 4181.

¹⁰ 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*.

¹¹ 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).

States Imposing Melting Point Tests

Hawaii
Illinois
Massachusetts
Minnesota
New York
South Carolina

States Requiring Specific Handgun Safety Features

California
Massachusetts
New York

States Using a List of Approved Handguns

California
Maryland
Massachusetts

Description of State Laws Regulating Junk Guns

Eight 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, New York, and South Carolina. California, Massachusetts and New York also require that all handguns have certain safety features.

1. *Design and Safety Standards:* Design and safety standards are intended to ensure the structural integrity of the firearm and to prevent the firearm 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 an appropriate safety, 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.¹² 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 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 comprised 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, New York and South Carolina 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 to protect users against unintended discharge, including 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.¹³

In California, as of January 1, 2006, an “unsafe handgun” will include any pistol that does not have either a chamber load indicator or a magazine disconnect mechanism. As of January 1, 2007, handguns in California will be required to have both a chamber load indicator and, if they have a detachable magazine, a magazine disconnect mechanism.

¹² 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, LCAV has concluded that the Illinois Attorney General has similar authority. This analysis is contained in LCAV’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).

¹³ See Cal. Penal Code § 12126(c), (d).

When this provision takes effect in 2007, California will be the only state that requires both a chamber load indicator and a magazine safety disconnect. As of January 1, 2010, California will require that all new semiautomatic pistols be equipped with microstamping technology in order to be sold in California.¹⁴

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.¹⁵

3. *Use of Roster of Approved Handguns:* California, Maryland and Massachusetts 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.

¹⁴ Detailed information on microstamping technology is contained in the section on Ballistic Identification.

¹⁵ 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).

SUMMARY OF SELECTED¹⁶ LOCAL LAWS REGULATING JUNK GUNS

In California, Los Angeles and San Francisco (and at least 54 other communities) 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 2001.¹⁷

FEATURES OF COMPREHENSIVE DESIGN SAFETY LAW FOR HANDGUNS¹⁸

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Drop testing and firing testing are required, and 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, South Carolina*)
- 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, Maryland, Massachusetts*)
- All testing is conducted by a certified independent lab (*California, Massachusetts*)

¹⁶ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House **Bill 347 (overriding the Governor's veto), which created** Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "**The Legal Background.**"

¹⁷ In addition, Chicago prohibits the transfer of any handgun that does not contain a load indicator device and a safety mechanism such as a trigger lock. Chicago, Ill., Code § 4-144-062. Additional information on **Chicago's requirements is contained** in the section on Locking Devices.

¹⁸ A comprehensive design safety law for handguns may also include required locking devices. A detailed discussion of locking devices is contained in the section on Locking Devices.

Locking Devices

Background

Every year, firearms cause thousands of unintentional deaths and injuries. According to the U.S. Centers for Disease Control and Prevention (CDC), 789 people died from unintentional firearm injuries in 2005.¹ Moreover, 15,000 persons in the United States are treated each year in hospital emergency rooms for unintentional gunshot wounds.² Children and young adults are frequent victims of such accidents.³ A 1991 study found that 8% of accidental shooting deaths resulted from shots fired by children under the age of six.⁴

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

The presence of unlocked guns in the home increases the risk not only of accidental gun injuries but of intentional shootings as well. A recent 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.⁷ At least two studies have found that the risk of suicide increases in homes where guns are kept loaded and/or unlocked.⁸

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 (8%) and a loading indicator (23%).⁹ A recent study found that the practices of keeping

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) Injury Mortality Reports, 1999-2005*, at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

² Karen E. Gotsch et al., *CDC Surveillance Summary No. SS-2, Surveillance for Fatal and Nonfatal Firearm-Related Injuries – United States 1993-1998* (Apr. 13, 2001), at <http://www.cdc.gov/mmwr/pdf/ss/ss5002.pdf>.

³ *Id.* at 1-2.

⁴ U.S. General Accounting Office, *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented* 17 (Mar. 1991), at <http://161.203.16.4/d20t9/143619.pdf>.

⁵ Mark A. Schuster et al., *Firearm Storage Patterns in U.S. Homes with Children*, 90 *Am. J. Pub. Health* 588, 590 (Apr. 2000).

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 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).

⁸ 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).

⁹ *Accidental Shootings*, *supra* note 4, at 17. A loading indicator, also known as a “chamber load indicator,” is a safety device that indicates at a glance whether a firearm is loaded and whether a round remains in the chamber.

firearms locked, unloaded, and storing ammunition in a locked location separate from firearms serves as a “protective effect” and may assist in reducing youth suicide and unintentional injury in homes with children and teenagers where guns are stored.¹⁰

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.

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.¹¹ The Act creates various exceptions, including transfers to other licensees, law enforcement officers, or federal, state or local agencies. The legislation does not apply to transfers by private sellers, and does not require that transferees use the device.

The Act 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.” “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.¹²

There are no federal standards for locking devices.¹³

¹⁰ David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (2005).

¹¹ 18 U.S.C. § 922(z). A “secure gun storage or safety device” is defined in 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.

¹² 18 U.S.C. § 922(z)(3).

¹³ 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)(1)(ii)(E), referencing 26 U.S.C. § 4181. 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. It has not done so.

SUMMARY OF STATE LAWS GOVERNING LOCKING DEVICES

Eleven states and the District of Columbia have laws concerning firearm locking devices. California requires locking devices on all firearms manufactured, sold or transferred in the state. Four states require that licensed firearms dealers provide or offer a locking device with all firearms prior to transfer. Six states require dealers to provide locks with the sale of some or all handguns. One state (Massachusetts) requires safety devices with the sale of handguns and assault weapons. Finally, Massachusetts and the District of Columbia require that all firearms be stored with a lock in place.

States Requiring Locking Devices on Some or All Firearms

California	Cal. Penal Code §§ 12087.6, 12088 – 12088.9, 12126; Cal. Code Regs. tit. 11, §§ 4093 - 4095
Connecticut	Conn. Gen. Stat. §§ 29-33(d), 29-37b
District of Columbia ¹⁴	D.C. Code Ann. § 7-2507.02
Illinois	720 Ill. Comp. Stat. 5/24-9.5
Maryland	Md. Code Ann., Pub. Safety § 5-132
Massachusetts	Mass. Gen. Laws ch. 140, §§ 131K, 131L(a); 940 Mass. Code Regs. 16.05 – 16.07
Michigan	Mich. Comp. Laws § 28.435
New Jersey	N.J. Stat. Ann. § 2C:58-2a(5)(d), (e)
New York	N.Y. Gen. Bus. Law § 396-ee; N.Y. Comp. Codes R. & Regs. tit. 9, § 471.2
Ohio	Ohio Rev. Code Ann. § 2923.25
Pennsylvania	18 Pa. Cons. Stat. § 6142
Rhode Island	R.I. Gen. Laws § 11-47-60.3

States Requiring Locking Devices on Firearms Manufactured, Sold or Transferred

California
Massachusetts (handguns and assault weapons)

States Requiring Locking Devices on All Firearms Transferred by Licensed Dealers¹⁵

Michigan
New York

¹⁴ In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

¹⁵ In Ohio, dealers are required to offer to sell locking devices with all firearm transfers.

States Requiring Locking Devices with Sales of Handguns

Connecticut
Illinois
Maryland
New Jersey
Pennsylvania (handguns and certain rifles and shotguns)
Rhode Island

States Requiring that All Firearms be Stored with a Lock in Place

District of Columbia
Massachusetts

States that Set Standards for Locking Devices or Maintain a Roster of Approved Devices

California
Maryland
Massachusetts
New York

Description of State Laws Governing Locking Devices

1. *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,¹⁶ must be accompanied by a firearms safety device approved by the California Department of Justice (“DOJ”). **A firearms 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.¹⁷

2. *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 storage case. This does not apply if the purchaser presents to the dealer at the time of sale of the firearm a trigger lock or gun case or storage container, together with a copy of

¹⁶ Because California requires that all firearm transfers (including private transfers) be conducted through a licensed dealer, all firearm sales and transfers effectively are subject to this requirement.

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 the section on Design Safety for Handguns: Regulating Junk Guns/Saturday Night Specials.

the receipt for the trigger lock or storage container for the dealer to keep. In addition, in Ohio, at the time of sale of any firearm, dealers must offer to sell the purchaser a trigger lock, gun lock or gun locking device appropriate to the firearm.

3. *States Requiring Locking Devices with Handgun Sales:* Connecticut, Illinois, Maryland, Pennsylvania and Rhode Island require trigger locks on all handguns sold by retail dealers. 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 Connecticut, all handguns sold (other than at wholesale) must be equipped with a locking device constructed of material sufficiently strong to prevent it from being easily disabled. The lock must also have a mechanism accessible by key, or electronic or mechanical accessory specific to the device to prevent unauthorized removal. 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 firearm. In Pennsylvania, sales of handguns and certain rifles and shotguns 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 that is designed to prevent the operation of the firearm by anyone not having access to the device.

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.

4. *States Requiring that All Firearms be Stored with a Locking Device in Place:* Massachusetts and the District of Columbia require that all firearms be stored with a locking device in place. In Massachusetts, it is unlawful to store or keep any firearm unless it is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device. In the District of Columbia, all firearms must be kept unloaded and disassembled or bound by a trigger lock.¹⁸

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.

Maryland and Massachusetts maintain rosters of approved locking devices. In Maryland, **the list of "Approved Integrated Mechanical Safety Devices" is issued by the state**

¹⁸ A number of states require safe storage of firearms in circumstances where children are likely to access the firearms. These laws are discussed in the section on Child Access Prevention.

Handgun Roster Board. In Massachusetts, safety devices must be approved by the Colonel of the Department of State Police.

New York has general standards for locking devices, requiring 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."**¹⁹

SUMMARY OF SELECTED²⁰ LOCAL LAWS GOVERNING LOCKING DEVICES

Local Laws Governing Locking Devices

Chicago	Chicago, Ill., Code §§ 8-20-140(c), 4-144-062
Cleveland	Cleveland, Ohio, Code § 627A.03
Los Angeles	Los Angeles, Cal., Code ch. X, art. 3, div. 9, § 103.314(o)
New York City	New York, N.Y., Admin. Code §§ 10-311, 10-312(a)

Chicago: Chicago generally requires any person with a registered firearm to keep the firearm unloaded and disassembled or bound by a trigger lock or similar locking device, unless the firearm is in his or her possession **at the person's place of residence or business**, or while being used for lawful recreational purposes within the city. Chicago also prohibits the transfer of any handgun that does not contain a load indicator device and a safety mechanism such as a trigger lock or solenoid use-limitation device.²¹

Cleveland: In Cleveland, when selling any firearm, a licensed firearms dealer must offer to sell or give the purchaser a trigger lock or similar device which prevents the firearm from discharging.

Los Angeles: Los Angeles requires firearms dealers to sell a trigger lock with all firearms.²²

¹⁹ While Connecticut does not have standards for locking devices, in 1991 the Connecticut Attorney General issued an opinion concluding that only a lock which requires the use of a removable device (i.e., a key), such that the absence of the removable device would prevent the firearm from being discharged, would constitute an appropriate locking device. The Attorney General further opined that a combination **lock would also constitute an appropriate locking device, but that a "reusable plastic or wire tie" would not be an appropriate device.** 1991 Conn. AG LEXIS 67.

²⁰ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House **Bill 347 (overriding the Governor's veto), which created** Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled **"The Legal Background."**

²¹ **The ordinance defines "solenoid use-limitation device" as "a device which precludes, by use of a solenoid, the firing of the handgun unless a magnet of the appropriate strength is placed in proximity to the handle of the weapon."**

²² In 1999, after Los Angeles adopted its ordinance, the State of California adopted a law requiring that all firearms manufactured or sold in California be accompanied by a firearms safety device approved by the

New York City: New York City prohibits the sale 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.”²³ In addition, no person may obtain a firearm without obtaining a safety locking device at the same time. The city also 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.

FEATURES OF COMPREHENSIVE LAW REQUIRING FIREARM LOCKING DEVICES

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Locking devices are required on all firearms manufactured, sold or transferred in the jurisdiction (*California*)
- Standards are set for locking devices (*California, 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*)
- All firearms are required to be stored with a locking device in place (*Massachusetts, District of Columbia, Chicago, New York City*)

California Department of Justice. Cal. Penal Code §§ 12087.6, 12088 – 12088.9, 12126. San Francisco required firearms dealers to sell or otherwise provide a trigger lock or similar locking device with all firearms, but repealed the ordinance after the State of California enacted its law.

²³ 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 Firearms

Background

“Personalized” firearms, also known as “smart” guns, are firearms that can only be fired by authorized users. Personalized guns are designed to prevent shootings, both intentional and unintentional, by children 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 thieves and criminals who gain access to law enforcement weapons during the course of an arrest or other encounter.

Personalized guns incorporate a variety of design technologies, including magnetic devices and radio frequency transponders. Fingerprint identification and other biometric technologies (i.e., those that rely on the **authorized user’s unique physical characteristics**) are also being developed.

While experts agree that personalized gun technology is scientifically feasible,² those experts also generally agree that the technology is not yet commercially viable. Manufacturers have estimated that handgun personalization will increase the cost of handguns by about 50%, but with the decreasing cost of electronics and economies of scale, the cost of personalization should substantially decrease.³ Moreover, some of the usual incentives to produce a safer product, such as federal consumer safety laws, do not apply to gun manufacturers (see discussion below under Summary of Federal Law).⁴

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.⁵ Accordingly, the CPSC currently has no authority to require gun manufacturers to produce personalized guns or otherwise improve the safety of their products.

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 Stephen P. Teret et al., *Making Guns Safer*, *Issues in Science and Technology* 37, 37-39 (Summer 1998).

³ *Id.* at 39.

⁴ In 2007, Legal Community Against Violence developed and released a model law to require personalization of handguns. The model law is available at http://www.lcav.org/library/model_laws/Personalized_Handgun_Model_Law.pdf.

⁵ 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 the section on Locking Devices.

SUMMARY OF STATE LAWS CONCERNING PERSONALIZED FIREARMS

Maryland and New Jersey are the only states that have laws addressing personalized gun technology.

State Laws Concerning Personalized Firearms

Maryland	Md. Code Ann., Pub. Safety § 5-132
New Jersey	N.J. Stat. Ann. §§ 2C:39-1dd, 2C:58-2a(5)(e), 2C:58-2.2 – 2C:58-2.5.

Description of State Laws Concerning Personalized or Smart Guns

Note that laws in place in Maryland and New Jersey focus on personalized handguns.

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.

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.”

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.

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.

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).

SUMMARY OF SELECTED⁶ LOCAL LAWS CONCERNING PERSONALIZED OR SMART GUNS

LCAV has not identified any local ordinances concerning personalized guns.

FEATURES OF COMPREHENSIVE LAW REQUIRING PERSONALIZED FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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

⁶ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House **Bill 347 (overriding the Governor's veto), which created** Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "**The Legal Background.**"

Child Access Prevention

Background

Child access prevention (CAP) laws impose criminal liability on adults who negligently leave firearms accessible to children or otherwise allow children access to firearms. Researchers have found that millions of children live in homes with easily accessible guns. 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.¹ A 2005 study on adult firearm keeping 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.²

The presence of unlocked guns in the home increases the risk of both accidental gun injuries and intentional shootings. A recent 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 October of 2000, the U.S. Secret Service published a study of 37 school shootings in 26 states. 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

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 2005 study found that the practices of keeping firearms locked, unloaded, and storing ammunition in a locked location separate from firearms serves as a protective measure to reduce youth suicide and unintentional injury in homes with children and teenagers where guns are stored.⁷

¹ Mark A. Schuster et al., *Firearm Storage Patterns in U.S. Homes with Children*, 90 Am. J. Pub. Health 588, 590 (Apr. 2000).

² 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>.

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 United States Secret Service, U.S. Department of the Treasury, *An Interim Report on the Prevention of Targeted Violence in Schools* 6 (Oct. 2000).

⁶ Peter Cummings et al., *State Gun Safe Storage Laws and Child Mortality Due to Firearms*, 278 JAMA 1084, 1084 (Oct. 1997).

⁷ David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (2005).

Summary of Federal Law

There are no child access prevention laws at the federal level.⁸

SUMMARY OF STATE CHILD ACCESS PREVENTION LAWS

States with Child Access Prevention Laws

California	Cal. Penal Code §§ 12035, 12036; Cal. Civ. Code § 1714.3
Colorado	Colo. Rev. Stat. § 18-12-108.7
Connecticut	Conn. Gen. Stat §§ 29-37i, 52-571g, 53a-217a
Delaware	Del. Code Ann. tit. 11, §§ 603, 1456
District of Columbia ⁹	D.C. Code Ann. § 7-2507.02
Florida	Fla. Stat. Ann. § 790.174
Georgia	Ga. Code Ann. § 16-11-101.1
Hawaii	Haw. Rev. Stat. Ann. §§ 134-10.5, 707-714.5
Illinois	720 Ill. Comp. Stat. 5/24-9(a); 430 Ill. Comp. Stat. 65/4(c)
Indiana	Ind. Code Ann. § 35-47-10-7
Iowa	Iowa Code § 724.22(7)
Kentucky	Ky. Rev. Stat. Ann. § 527.110
Maryland	Md. Code Ann., Crim. Law § 4-104
Massachusetts	Mass. Gen. Laws ch. 140, § 131L
Minnesota	Minn. Stat. § 609.666
Mississippi	Miss. Code Ann. §§ 97-37-14, 97-37-15
Missouri	Mo. Rev. Stat. § 571.060.1(2)
Nevada	Nev. Rev. Stat. Ann. §§ 41.472, 202.300(1) – (3)
New Hampshire	N.H. Rev. Stat. Ann. § 650-C:1
New Jersey	N.J. Stat. Ann. § 2C:58-15
North Carolina	N.C. Gen. Stat. § 14-315.1
Oklahoma	Okla. Stat. tit. 21, § 1273(B)
Rhode Island	R.I. Gen. Laws § 11-47-60.1

(continued on next page)

⁸ Federal law does prohibit federally licensed firearms dealers from transferring handguns to persons under 21 and long guns to persons under 18. Unlicensed sellers may not transfers handguns to persons under 18. 18 U.S.C. §§ 922(b)(1), 922(x)(1) and (2). Federal and state laws imposing a minimum age for purchase and possession of firearms are discussed in the section on Minimum Age to Purchase and Possess Firearms.

⁹ In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

States with Child Access Prevention Laws *(continued from previous page)*

Tennessee	Tenn. Code Ann. §§ 39-17-1319, 39-17-1320
Texas	Tex. Penal Code Ann. § 46.13
Utah	Utah Code Ann. § 76-10-509.6
Virginia	Va. Code Ann. § 18.2-56.2
Wisconsin	Wis. Stat. § 948.55

State Laws Based on Negligent Storage

California	Massachusetts
Connecticut	Minnesota
Florida	New Hampshire
Hawaii	New Jersey
Illinois	North Carolina
Iowa	Rhode Island
Maryland	Texas

**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**

Hawaii
Maryland
Massachusetts
Minnesota
New Jersey
Texas

States Imposing Criminal Liability Only if a Child Uses or Possesses the Firearm

California
Connecticut
Florida
Illinois
Iowa
New Hampshire
North Carolina
Rhode Island

States Imposing Criminal Liability for Negligent Storage of Unloaded Firearms

California
Hawaii
Massachusetts

State Laws Prohibiting Intentional, Knowing or Reckless
Provision of Firearms to Minors

Colorado	Nevada
Delaware	Oklahoma
Georgia	Tennessee
Indiana	Utah
Kentucky	Virginia
Mississippi	Wisconsin
Missouri	

Description of State Child Access Prevention Laws

The majority of states have laws designed to prevent children from accessing firearms. These 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 liability 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 (California, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, North Carolina, Rhode Island, and Texas) 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.**

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. Massachusetts and Minnesota impose liability in circumstances where a child *may* (Massachusetts) or *is likely to* (Minnesota) gain access to a firearm. In Hawaii, Maryland, New Jersey and Texas, liability exists 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.

b. *States Imposing Criminal Liability Only if Child Uses or Possesses the Firearm:* California, Connecticut, Florida, Illinois, Iowa, New Hampshire, North

Carolina¹⁰ and Rhode Island require that the child possess or use the firearm in some way before liability attaches. In California, Connecticut, Illinois, Iowa, and Rhode Island, the statute applies when the child uses the firearm to cause death or serious injury. California,¹¹ Iowa, Florida, New Hampshire and North Carolina also impose 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 liability when the child uses the firearm in the commission of a crime.

c. *States Imposing Criminal Liability for Negligent Storage of Unloaded Firearms:* Hawaii and Massachusetts impose liability even if the firearm is unloaded. In the case of handguns only, California imposes liability when the child carries a loaded or unloaded handgun off-premises. All other states require that the firearm be loaded for liability to attach.

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, Florida, Hawaii, Illinois, Iowa, Minnesota, New Hampshire, New Jersey, North Carolina,¹² Rhode Island, Texas). Another common exception applies where the minor gains access to the firearm via illegal entry of the premises (California, Connecticut, 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 and/or agricultural purposes, where the minor uses the firearm in defense of self or others, where the firearm is used in aid of 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. Colorado, Delaware, Georgia, Indiana, Kentucky, Mississippi, Missouri, Nevada, Oklahoma, Tennessee, Utah, Virginia and Wisconsin prohibit persons from intentionally, knowingly, and/or recklessly providing some or all firearms to children.

a. *All firearms:* Indiana, Missouri, Nevada,¹³ Oklahoma and Utah¹⁴ laws apply to all firearms.

b. *All loaded firearms:* Delaware,¹⁵ Wisconsin¹⁶ and Virginia¹⁷ prohibit persons from providing loaded firearms to children.

¹⁰ North Carolina's statute only applies to the negligent storage of firearms by persons who reside with a minor.

¹¹ California criminalizes the negligent storage of any firearm a child finds and carries to any school or school-sponsored event or activity.

¹² In North Carolina, liability is imposed if the firearm is stored or left "in a condition that the firearm can be discharged."

¹³ Nevada makes it a crime to "aid or knowingly permit" a child to possess a firearm, except for hunting under the immediate supervision of an authorized adult.

¹⁴ Utah's law applies only to parents and guardians.

- c. *Handguns only:* Colorado,¹⁸ Georgia, Kentucky, Mississippi¹⁹ and Tennessee laws only prohibit providing handguns to minors.
- d. *Lesser standard for parents/guardians:* Georgia, Indiana, Kentucky, Oklahoma, Tennessee and Utah impose a lesser standard on parents and guardians, providing that parents may be held liable 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, Georgia, Indiana, Kentucky, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Tennessee, Utah
- Under 17: Texas
- Under 16: Connecticut, 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 and the District of Columbia require that all firearms be stored with locking devices in place to prevent accidental discharge. These laws are another important means to protect children from gaining unauthorized access to firearms and causing death or injury.²⁰

¹⁵ In Delaware, the minor must use the firearm to cause death or serious injury.

¹⁶ 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.

¹⁷ Virginia also prohibits any person from knowingly authorizing a child under 12 to use a firearm, except when supervised by an adult.

¹⁸ Colorado prohibits providing firearms other than handguns to minors without parental consent.

¹⁹ Mississippi's statute applies only to parents and guardians.

²⁰ Additional information about locking devices is contained in the section on Locking Devices.

5. *States Imposing Civil Liability on Persons who Fail to Store Firearms Properly.*²¹ California imposes civil liability on the parent/guardian of a minor for damages resulting from the minor's discharge of a firearm, where the parent/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/guardian, that parent/guardian becomes liable for civil claims for damages resulting from the minor's use of firearms or ammunition. In Nevada, a parent/guardian is jointly and severally liable with the minor for civil damages caused by permitting the minor to possess a firearm, where the parent/guardian knows or has reason to know that the minor has a propensity to commit violent acts, intends to use the firearm for an unlawful purpose, or has been previously adjudicated delinquent.²²

SUMMARY OF SELECTED²³ LOCAL CHILD ACCESS PREVENTION LAWS

Local Child Access Prevention Laws

Chicago

Chicago, Ill., Code §§ 8-16-090, 8-20-140(c)

Cleveland

Cleveland, Ohio, Code §§ 627A.02, 627A.03(b)

Chicago: Chicago prohibits any person from selling, loaning, or furnishing to any minor any gun, pistol or other firearm. Minors may be permitted, with the consent of their parents or guardians, to use firearms on the premises of a licensed shooting gallery or gun club.²⁴ Chicago also requires any person with a registered firearm to keep the firearm

²¹ In October 2005, as part of the Protection of Lawful Commerce in Arms Act (PLCAA), Congress passed and the President signed into law legislation requiring that sales or transfers of handguns by licensed dealers, manufacturers and importers be accompanied by a secure gun storage or safety device. 18 U.S.C. § 922(z). The PLCAA also immunizes 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. "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). LCAV has not analyzed the impact, if any, of these provisions on civil liability provisions of state child access prevention laws. LCAV notes that in June 2006, the U.S. House of Representatives voted to include in the 2007 appropriations bill funding the Department of Justice (which includes ATF) a provision prohibiting use of the appropriated funds for enforcement of the safety device law. H. Amdt. 1156 to H.R. 5672, 109th Cong. (2006).

²² 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.

²³ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

²⁴ Chicago does not define "minor" for purposes of this provision.

unloaded and disassembled or bound by a trigger lock or similar locking device, unless the firearm is in his or her possession at the **person's place of residence** or business, or while being used for lawful recreational purposes within the city.²⁵

Cleveland: Cleveland prohibits any person, including a parent or legal guardian, from storing or leaving a loaded or unloaded firearm in any place where the person knows or reasonably should know that a child under age 18 is able to gain access to it. The prohibition is subject to specified exceptions, including supervised use for firearm safety or marksmanship, where access was gained by unlawful entry, and use for lawful self-defense within a domicile.

FEATURES OF COMPREHENSIVE CHILD ACCESS PREVENTION LAW

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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 (*Massachusetts, Minnesota, Cleveland*)
- Criminal liability is imposed on persons who negligently store firearms even when the firearm is unloaded (*Hawaii, Massachusetts, Cleveland*)
- Civil liability for damages resulting from the discharge of a firearm is imposed on persons who negligently store firearms when a minor gains access²⁶

²⁵ New York City also requires firearm owners to render their weapons inoperable by use of a safety locking device while the weapon is out of their immediate possession or control. New York, N.Y., Admin. Code §§ 10-311, 10-312(a). Additional information on locking devices is contained in the section on Locking Devices.

²⁶ Civil liability laws require careful drafting in light of the new Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA, passed by Congress and signed into law by the President in 2005, 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

- “Minor” is defined as a child under the age of 18 for long guns (*California, Colorado, Delaware, Georgia, Indiana, Kentucky, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Tennessee, Utah*), and a child 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, District of Columbia, Chicago, New York City*)

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. In 2005, a federal district court denied a motion to dismiss a suit brought by the City of New York against gun manufacturers and distributors alleging a public nuisance, finding that the case was not precluded by the PLCAA. *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp.2d 244, 298 (E.D.N.Y. 2005); *but see District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008); and *Ileto v. Glock, Inc.*, 421 F. Supp.2d 1274 (C.D. Cal. 2006) (both granting defendants’ motion for judgment on the pleadings under PLCAA). *See also supra* note 21.

CRIME DETECTION

Ballistic Identification..... 243

Retention of Firearm Sales and Background Check Records..... 247

Ballistic Identification

Background

All firearms leave unique markings on the bullets and shell casings they fire.¹ Ballistic identification (sometimes called ballistic “fingerprinting”) laws make it possible to link bullets and shell casings recovered at crime scenes to the firearm that fired them by requiring gun manufacturers to test-fire the firearms they produce. Images of the unique ballistic markings left on bullets and shell casings by each weapon are then stored in a database so that law enforcement can later determine whether a particular gun fired a particular bullet. Ballistic identification systems can identify the make, model, and serial number of the gun from which a bullet or cartridge case was fired without recovering the gun itself.²

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.³ 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.⁴

IBIS equipment is used to compare images of bullets and shell casings 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.

ATF has found that its automated ballistics imaging database “provides an invaluable opportunity to law enforcement. . . .”⁵ ATF has also concluded that “[n]umerous violent crimes involving firearms have been solved through use of the system, many of which would not have been solved without it.”⁶

For NIBIN to reach its fullest potential, however, it must overcome one fundamental limitation – it only contains ballistic fingerprints from guns recovered from crime scenes. A national ballistic fingerprinting law would improve significantly upon the existing system because it would require gun makers to test-fire and ballistically image all new guns. Law enforcement officials would then be able to directly link bullets and shell casings found at a crime scene to a particular gun, even if the gun itself had not been recovered.

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 The Educational Fund to Stop Gun Violence, *Cracking the Case: The Crime-Solving Promise of Ballistic Identification 2* (July 2004).

³ 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).

⁴ Thompson, *supra* note 1, at 4.

⁵ *Id.* at 26.

⁶ *Id.* at 2.

There is strong public support for such a law. In an October 2002 poll conducted for ABC News, 73% of the respondents favored ballistic fingerprinting.⁷

Ammunition serialization is another law enforcement tool that can assist in solving more 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.⁸ 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 cartridge casing is found at a crime scene, the spent cartridge could be quickly traced back to the purchaser. This aids law enforcement investigations into shooting crimes. Serialization of ammunition can also deter the use of guns in crimes and the sharing of ammunition. California considered adopting a serialization requirement in 2005, but withdrew the legislation pending further study.⁹

Summary of Federal Law

Federal law does not require ballistic identification.

SUMMARY OF STATE LAWS CONCERNING BALLISTIC IDENTIFICATION

In 2007 California passed legislation that requires handgun microstamping for every new semiautomatic handgun manufactured or sold in the state. Two states, Maryland and New York, have created statewide ballistics imaging databases for new handguns sold in those states. Connecticut operates a statewide firearms evidence databank that stores ballistic information on handguns recovered or used by police.

States With Laws Concerning Ballistic Identification

California	Cal. Penal Code § 12126(b)(7)
Connecticut	Conn. Gen. Stat. § 29-7h
Maryland	Md. Code Ann., Pub. Safety § 5-131
New York	N.Y. Gen. Bus. Law § 396-ff

Description of State Laws Governing Ballistic Identification

1. *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**

⁷ In the poll conducted by TNS Intersearch for ABC News, 1,032 adults nationally were asked if they favored a law requiring every gun sold in the country to be test-fired so that authorities would have its ballistic fingerprint in case the firearm were ever used in a crime. Eighty-two percent of non-gun owners favored the law. Sixty-one percent of gun owners were in favor with 73% of the respondents overall favoring such legislation. ABC News Poll (October 16-20, 2002), at <http://pollingreport.com/guns2.htm>.

⁸ 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.

⁹ James P. Sweeney, *Lockyer Holsters Ammo-Coding Measure*, San Diego Union-Tribune, Aug. 24, 2005, at A-3.

October 13, 2007, Governor Arnold Schwarzenegger signed into law the Crime Gun Identification Act, which requires all new semiautomatic handguns manufactured or sold in California after January 1, 2010 to be etched with a microscopic array of characters that identify the make, model and serial number of the firearm. These characters would be transferred to each cartridge case when the handgun is fired, thereby enabling law enforcement to match a cartridge case found at a crime scene to the gun that fired it and, ultimately, through an existing database maintained by the California Department of Justice, to the gun's owner.

2. *Maryland:* Maryland requires manufacturers to test-fire all handguns shipped into the state after October 1, 2000, and provide a spent shell casing to the purchasing firearms dealer. Once the gun is sold, the dealer must forward the casing to the state police, who then enter its unique markings in a database for possible use in future criminal investigations.

3. *New York:* New York enacted legislation similar to Maryland's in August of 2000, which requires ballistic fingerprinting of all handguns shipped into the state after March 1, 2001.

4. *Connecticut:* Connecticut requires that the Division of Scientific Services ("Division") of the Connecticut Department of Public Safety establish a firearms evidence databank. The databank is a computer-based system that scans a "test fire" from a handgun and stores an image of the test fire in a manner suitable for retrieval and comparison to other test fires and to other evidence in a criminal investigation. All handguns recovered by the police through a criminal investigation, as found property, or for destruction must be submitted to the Division laboratory for collection of a test fire. Police departments are also required to submit test fires from all handguns issued to employees.

SUMMARY OF SELECTED¹⁰ LOCAL LAWS REQUIRING BALLISTIC IDENTIFICATION

LCAV has not identified any local laws requiring ballistic identification.

FEATURES OF COMPREHENSIVE LAW REQUIRING BALLISTIC IDENTIFICATION

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or

¹⁰ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- 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, New York*)
- A ballistics imaging database is established for new handguns sold in the jurisdiction (*Maryland, New York*)¹¹
- An alternative approach is to require that all new handguns manufactured or sold in the jurisdiction be microstamped with an array of microscopic characters that identify the make, model and serial number of the firearm, so that the markings will be recorded on the cartridge case when the gun is fired (*California*)¹²
- 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 registration¹³
- For other weapons of particular concern to law enforcement, such as assault weapons and 50 caliber rifles, ballistic identification also may be required (*proposed in New York for grandfathered assault weapons*)

¹¹ A 2007 report by the International Association of Chiefs of Police (IACP) recommends that state and local governments should mandate that a ballistic fingerprint be recorded for every gun sold. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 15 (Sept. 2007). IACP noted that recording the ballistic fingerprint of every gun sold could enhance public safety and curtail gun violence.

¹² This approach also requires the jurisdiction to establish and maintain a database of handgun owners, as in California. *See supra* at 175.

¹³ Additional information on registration of firearms is contained in the section on Registration of Firearms.

Retention of Firearm Sales and Background Check Records

Background

Records of background checks of prospective firearms purchasers and records of completed firearms sales are critical tools for law enforcement. These records are most useful to law enforcement when they are collected in a central database and retained indefinitely.

Federally licensed firearm dealers (FFLs) are required to conduct background checks on prospective firearms purchasers to ensure that the firearm transfer would not violate federal or state law.¹ Although background check records do not identify the firearm to be purchased, they can help law enforcement deter fraud and detect dealers who might be providing false information about a prohibited person. 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.² By **accessing the background check records, law enforcement can verify that a dealer's transaction records match the information submitted to NICS.**³

Sales records, completed after a background check is approved, include information about the firearm(s) being purchased, as well as the purchaser.⁴ Sales records are an indispensable tool for tracing the ownership of firearms recovered in crimes.⁵ Without a central repository of firearm sales records, gun tracing is a slow, cumbersome process.⁶

¹ Additional information on background checks is contained in the section on Background Checks. Some states also require private sellers to conduct background checks on prospective purchasers. Additional information on private sales is contained in the section on Private Sales.

² Office of the Inspector General, U.S. Department of Justice, *Inspections of Firearm Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives, Evaluation & Inspection Report I-2004-005 x-xi* (July 2004), at <http://www.usdoj.gov/oig/reports/ATF/e0405/final.pdf> [hereinafter *Evaluation & Inspection Report*].

³ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 13 (Nov. 2006) [hereinafter *Survey of State Procedures*], at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>.

⁴ FFLs record sales information on a federal Firearms Transaction Record (ATF Form 4473), which includes identification of the prospective purchaser and, if the transaction is approved, the firearm(s) to be purchased. Additional information on ATF Form 4473 is contained in the section on Background Checks.

⁵ 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 the section on Registration of Firearms.

⁶ The National Tracing Center (NTC) of the Bureau of Alcohol, Tobacco, Firearms and Explosives (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. Using that information, ATF contacts the manufacturer of the firearm to determine which FFL purchased the gun. ATF then must contact the FFL to obtain information on the original retail purchaser of the firearm. In 2003, the NTC was able to identify the initial retail purchaser of a crime gun 50 to 60% of the time. *Evaluation & Inspection Report, supra* note 2, at 8-9. After learning the identity of the initial retail

Crime gun tracing also allows law enforcement to discover potential firearms trafficking and unlawful business practices by firearms dealers.⁷ A number of states collect and retain firearms sales information reported by firearms dealers. Collecting sales information from dealers falls short of a complete repository, however, because it does not include transfers made by private sellers, except in jurisdictions that require private sellers to conduct transfers through licensed dealers.⁸

Summary of Federal Law

Background Check Records: Until 2004, information on approved NICS background checks was retained by NICS for ninety days.⁹ This information helped ATF deter fraud and detect dealers who might be providing false information about a prohibited person, by **inspecting a dealer's records within the ninety-day period** and verifying that the records matched the information earlier submitted to NICS.¹⁰ If discrepancies were found, ATF could conduct a further investigation of the dealer to determine whether the dealer submitted false information to NICS.¹¹ In a recent review of trafficking investigations, ATF determined that corrupt dealers are a significant source of trafficked firearms.¹²

As of July 2004, approved purchaser information is no longer kept for ninety days but is instead destroyed within twenty-four hours of the official NICS response to the dealer.¹³ 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. The Department of Justice Inspector General noted that the shortened retention time makes it much easier for corrupt firearm dealers to avoid detection.¹⁴ Federal law also specifically prohibits using NICS to create any system of registration of firearms or firearm owners.¹⁵

purchaser, agents must then contact him or her to begin the process of manually tracing each subsequent owner.

⁷ *Id.* at 8-9.

⁸ Detailed information on laws governing private sellers is contained in the section on Private Sales.

⁹ *Evaluation & Inspection Report, supra* note 2, at x.

¹⁰ *Id.* at 51-54.

¹¹ *Id.*

¹² Violence Policy Center et al., *Comments On Regulations Proposed by the Federal Bureau of Investigation, Department of Justice Regarding Changes to Regulations Implementing the National Instant Criminal Background Check System* 10 (Sept. 4, 2001).

¹³ The requirement that approved purchaser information be destroyed within twenty-four hours has been included in the appropriations bills funding the Department of Justice (which includes ATF and the FBI) every year since 2004. *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); Commerce, Justice, Science, and Related Agencies Appropriations Act, 2008, H.R. 3093, 100th Cong. § 511 (2007). Each of these acts contains additional provisions which restrict disclosure of data obtained by ATF via crime gun traces. In 2006, Congress failed to pass H.R. 5005, which would have codified and made permanent the restrictions on disclosure of crime gun trace data.

¹⁴ *Evaluation & Inspection Report, supra* note 2, at x-xi; 51-54.

¹⁵ 28 C.F.R. § 25.9(b)(3).

The FBI maintains indefinitely the records of prospective purchasers whose applications are denied.¹⁶

Sales Records: FFLs are required to maintain records of the acquisition and sale of firearms indefinitely.¹⁷ **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.**¹⁸ 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.¹⁹ When a firearms business is discontinued, these records are delivered to the successor or, if none exists, to the Attorney General.²⁰

With very limited exceptions, records of firearm sales are not maintained at the federal level. The National Firearms Act Branch of 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.²¹

SUMMARY OF STATE LAWS CONCERNING RETENTION OF FIREARM SALES AND BACKGROUND CHECK RECORDS

State laws governing retention of firearm sales records fall into the following categories: (1) states that require sellers to retain sales records for a specified time period; and (2) states that retain records of firearms sales as reported by sellers to law enforcement.²² Application of these laws to licensed dealers and private sellers is explained below. 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.

States that Require Sellers to Retain Firearm Sales Records

Alabama
California
Colorado

Ala. Code § 40-12-143
Cal. Penal Code § 12076(b)(2)
Colo. Rev. Stat. § 12-26-102

(continued on next page)

¹⁶ *Survey of State Procedures*, *supra* note 3, at 17.

¹⁷ 18 U.S.C. § 923(g)(1)(A).

¹⁸ 27 C.F.R. § 478.125(e).

¹⁹ *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.

²⁰ 18 U.S.C. § 923(g)(4).

²¹ 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.

²² This summary does not discuss retention of records generated pursuant to state registration of firearms or state permit or license requirements. Detailed information on these topics is contained in the sections on Registration of Firearms and Licensing of Gun Owners or Purchasers.

States that Require Sellers to Retain Firearm Sales Records

(continued from previous page)

Connecticut	Conn. Gen. Stat. §§ 29-31, 29-33(e), 29-37a(b)
Delaware	Del. Code Ann. tit. 24, § 904
District of Columbia	D.C. Code Ann. § 7-2504.04(a)(3)
Georgia	Ga. Code Ann. § 43-16-10.1
Illinois	430 Ill. Comp. Stat. 65/3(b)
Maine	Me. Rev. Stat. Ann. tit. 15, § 455
Maryland	Md. Code Regs. 29.03.01.09(D)
Massachusetts	Mass. Gen. Laws ch. 140, § 123
Michigan	Mich. Comp. Laws §§ 28.422a(2), 750.232
Mississippi	Miss. Code Ann. § 97-37-11
New Jersey	N.J. Stat. Ann. § 2C:58-2b
New York	N.Y. Penal Law § 400.00(12)
North Carolina	N.C. Gen. Stat. § 14-406
Oregon	Or. Rev. Stat. §§ 166.412(2)(f), 166.434
Pennsylvania	18 Pa. Cons. Stat. §§ 6111(b)(1), 6111(b)(1.1), 6111(b)(1.4), 6111(c), 6113(a)(5), 6113(d), 37 Pa. Code § 33.111
Rhode Island	R.I. Gen. Laws §§ 11-47-35(a)(2), 11-47-35.2(b)
Tennessee	Tenn. Code Ann. § 39-17-1316(c)
Vermont	Vt. Stat. Ann. tit. 13, § 4006
Washington	Wash. Rev. Code Ann. § 9.41.110(9)

States that Require Sellers to Retain Records of All Firearm Sales

<i>State</i>	<i>Length of Retention</i>
California	3 years
Connecticut	5 years ²³
District of Columbia	unspecified
Georgia	5 years
Illinois	10 years
Maine	unspecified
Massachusetts	unspecified
Michigan	unspecified
Oregon	5 years
Pennsylvania	20 years
Rhode Island	6 years
Tennessee	unspecified ²⁴

²³ Under Conn. Gen. Stat. § 29-31, dealers are required to keep sales records for pistols and revolvers for six years.

²⁴ Tennessee requires the seller to keep the thumbprint form accompanying the transaction record for one year.

States that Require Sellers to Retain Handgun Sales Records

<i>State</i>	<i>Length of Retention</i>
Alabama	permanent
Colorado	unspecified
Delaware	unspecified
Mississippi	unspecified
New Jersey	unspecified
North Carolina	unspecified
Vermont	6 years
Washington	6 years

States that Require Sellers to Retain Records of Other Firearm Sales

<i>State</i>	<i>Length of Retention</i>
Maryland (“regulated firearms”) ²⁵	3 years
New York (handguns, assault weapons, and rifles and shotguns of certain dimensions)	unspecified
Pennsylvania (handguns and Certain rifles and shotguns)	20 years

States That Retain Seller-Reported Sales Information

Alabama	Ala. Code § 13A-11-79
California ²⁶	Cal. Penal Code §§ 11105, 11106(c)
Connecticut	Conn. Gen. Stat. §§ 29-33(e), 29-37a(b)
Maryland	Md. Code Ann., Pub. Safety §§ 5-101(p), 5-123(d), 5-124(e)
Massachusetts	Mass. Gen. Laws. ch. 140, §§ 123, 128A, 128B
Michigan	Mich. Comp. Laws § 28.422a(2)
New Jersey	N.J. Stat. Ann. § 2C:58-2e
New York	N.Y. Penal Law §§ 265.00(3), 400.00(12)
Pennsylvania	18 Pa. Cons. Stat. §§ 6111(b)(1), 6111(b)(1.4)
Washington	Wash. Rev. Code Ann. §§ 9.41.110(9), 9.41.129

States that Retain Seller-Reported Information on All Firearm Sales

Connecticut
Massachusetts

States that Retain Seller-Reported Information on Handgun Sales

Alabama
California
Michigan
New Jersey
Washington

²⁵ Maryland defines “regulated firearms” to include handguns and assault weapons.

²⁶ Although California dealers report all sales to state law enforcement, only records of handgun sales are retained. Cal. Penal Code § 11106(c).

States that Retain Dealer-Reported Information on Other Firearm Sales

Maryland (“regulated firearms”)

New York (handguns, assault weapons, and short-barreled rifles and shotguns)

Pennsylvania (handguns and certain rifles and shotguns)

States that are Required by Statute to Purge Background Check Records

Delaware	Del. Code Ann. tit 11, § 1448A(d)
Florida	Fla. Stat. Ann. § 790.065(4)(a)
Nebraska	Neb. Rev. Stat. Ann. § 69-2412
New Hampshire	N.H. Rev. Stat. Ann. § 159-D:2
Rhode Island	R.I. Gen. Laws §§ 11-47-35(a)(2), 11-47-35.2(b)
Tennessee	Tenn. Code Ann. § 39-17-1316(j)
Utah	Utah Code Ann. § 76-10-526(8)
Virginia	Va. Code Ann. § 18.2-308.2:2(B)(3)
Wisconsin	Wis. Admin. Code Jus 10.10(2)(c), § Wis. Stat. § 175.35(2k)(ar)

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

1. *States that Require Sellers to Retain Firearm Sales Records:* Twenty-one states and the District of Columbia require sellers to maintain sales records reflecting the identity of the purchaser and the firearm purchased.

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

- *Licensed Dealers:* California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Michigan, Oregon, Pennsylvania, Rhode Island, Tennessee and the District of Columbia require licensed dealers to maintain records of sales of all firearms. Maine, Massachusetts, Michigan, Tennessee 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:* Private sellers in Illinois and Rhode Island are also required to maintain records of sales of all firearms. In California and the District of Columbia, all firearm transfers must be conducted through licensed dealers, thereby ensuring that the recordkeeping requirements on licensed dealers will include records of private sales.²⁷

²⁷ In addition, Alaska and Washington require pawnbrokers and second-hand dealers to maintain written records of all firearms transactions. Records in Washington must be kept for three years; the retention period in Alaska is unspecified. Alaska Stat. § 08.76.010; Wash. Rev. Code Ann. § 19.60.020. Mississippi also requires pawnbrokers to maintain records of sales of pistols for an unspecified retention period. Miss. Code Ann. § 97-37-11.

b. *States that Require Sellers to Retain Records of Handgun Sales Only*

- *Licensed Dealers:* Alabama, Colorado, Delaware, Mississippi, New Jersey, North Carolina, Vermont and Washington require licensed dealers to maintain records of handgun sales only. The retention period is typically six years. Delaware, Mississippi, New Jersey and North Carolina do not specify the period of retention.
- *Private Sellers:* Connecticut requires private sellers to maintain handgun sales records.

c. *States that Require Sellers to Retain Records of Other Firearm Sales:*

Maryland requires dealers to maintain copies of the application for transfer of a regulated firearm (defined as handguns and assault weapons) for three years. New York requires dealers to maintain copies of transaction reports for handguns, assault weapons, and rifles and shotguns of certain dimensions. The time of retention is unspecified. In Pennsylvania, all transfers of handguns and rifles and shotguns with specified dimensions must be conducted through licensed dealers, thereby ensuring that the recordkeeping requirements on licensed dealers will include records of private sales of these firearms.

2. *States that Retain Firearm Sales Information Reported by Sellers to Law Enforcement:* Ten 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.

a. *States that Retain Seller-Reported Information on All Firearm Sales*

- *Licensed Dealers:* **Two states – Connecticut and Massachusetts** – maintain records submitted by dealers of all firearm transactions.²⁸
- *Private Sellers:* Massachusetts retains sales records for all firearms reported by private sellers.

b. *States that Retain Seller-Reported Information on Handgun Sales Only:*

- *Licensed Dealers:* Alabama, California, Michigan,²⁹ New Jersey and Washington retain records of all handgun sales reported to state law enforcement by licensed dealers.
- *Private Sellers:* Connecticut retains handgun sales records reported by private sellers. In California, all firearm transfers must be conducted through licensed dealers, thereby ensuring that sales reporting requirements will include private sales. California retains reports of handgun sales.

²⁸ In addition, Oregon statutes provide that the state *may* retain records of firearm transactions reported by dealers for up to five years. Or. Rev. Stat. §§ 166.412, 166.434.

²⁹ In Michigan, sales that must be reported are those to concealed weapons license holders.

c. *States that Retain Seller-Reported Information on Other Firearms Sales*

- *Licensed Dealers:* Maryland retains records of transfers of “regulated firearms,” which are defined as handguns and assault weapons. In New York, every licensed firearms dealer must keep a record of handgun, short-barreled rifle and shotgun, and assault weapon sales, copies of which are delivered to and retained by the New York State Police. Pennsylvania maintains records of handgun sales and sales of rifles and shotguns with specified dimensions.³⁰
- *Private Sellers:* Maryland and Pennsylvania also retain records of private transfers of the specified firearms.

3. *States that are Required by Statute to Purge Background Check Records:* Nine states (Delaware, Florida, Nebraska, New Hampshire, Rhode Island, Tennessee,³¹ Utah, Virginia³² and Wisconsin) specify short time limits after which firearm background check records must be purged, ranging from twenty-four hours to sixty days after the application is approved.³³

SUMMARY OF SELECTED³⁴ LOCAL LAWS CONCERNING RETENTION OF FIREARM SALES AND BACKGROUND CHECK RECORDS

LCAV has not identified any local laws governing retention of background check records. The following local laws address retention of firearm sales records.

Local Laws Concerning Retention of Firearm Sales Records

Chicago	Chicago, Ill., Code §§ 4-144-040, 4-144-050
Cleveland	Cleveland, Ohio, Code § 674.09
Columbus	Columbus, Ohio, Code § 545.04(c)
Hartford	Hartford, Conn., Code §§ 21-58, 21-60

³⁰ 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.

³¹ Tennessee also provides that dealers “may” destroy the firearms transaction thumbprint form one year after its completion. Tenn. Code Ann. § 39-17-1316(c)(6).

³² 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(B)(3). Dealers in Virginia are required to retain for two years the original consent form completed by applicants prior to the background check. Va. Code Ann. § 54.1-4201.

³³ The majority of states retain records of transfers that are denied. *Survey of State Procedures, supra* note 3, at 79.

³⁴ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

New York City

New York, N.Y., Admin. Code §§ 10-131(i)(13), 10-302(n), 10-306(e); New York, N.Y., Rules, tit. 38, §§ 1-05(b), 4-06

Omaha

Omaha, Neb., Code §§ 19-362, 19-363

Chicago: Chicago requires firearms dealers to maintain registers of all firearms and ammunition sold, loaned, rented or given away, including the names of the purchasers and descriptions of the firearms and ammunition. Chicago also requires daily sales reporting by dealers to the Superintendent of Police. In Chicago, all firearm transfers, including those by private sellers, must be conducted through licensed dealers, thereby subjecting all transfers to the recordkeeping and reporting requirements.³⁵

Cleveland: In Cleveland, every handgun dealer must record the purchase and sale of handguns. The records of any sale must be given to the Chief of Police within 24 hours of the sale. The Chief of Police keeps permanent records of handgun sales.

Columbus: In Columbus, every firearms dealer must record any firearm transaction and provide the local division of police a report of all transactions in the preceding 24 hours.

Hartford: In Hartford, sellers of handguns must keep a record of all handguns transferred, and make the records available to law enforcement or the city clerk **“at all reasonable times.”** Transferors also must submit a record of the handgun transfer information to the Chief of Police no later than the last business day of the month in which the handgun was transferred.

New York City: Firearms dealers in New York City must maintain a record of every transaction involving a firearm. Such records are subject to inspection at all times by law enforcement.

Rifle and shotgun dealers must maintain a record book provided by the Rifle/Shotgun Section of the License Division of the New York City Police Department. The record book must contain a record of all rifles and shotguns purchased and transferred by the dealer.

Dealers in handguns and short-barreled rifles and shotguns also must maintain a record book detailing all transactions. When a handgun or short-barreled rifle or shotgun is received or transferred, the dealer must record the name, address, age, occupation and a **description of the recipient or transferee’s** authority to purchase, carry or possess the weapon. In addition, the make, caliber and serial number of each firearm transferred, the date and time of the transaction and the name of the dealer or employee effecting the transaction must be recorded. When a dealer transfers a handgun or short-barreled rifle or shotgun, he or she must also record the number of **the transferee’s** license to purchase, carry or possess the weapon, and the name of the police officer who issued it.

³⁵ Chicago, Ill., Code § 8-20-170.

The records of rifle and shotgun dealers as well as handgun and short-barreled rifle and shotgun dealers must be maintained on the premises permanently and surrendered to the police department when a dealer ceases to do business.

Handgun and short-barreled rifle and shotgun dealers also must complete and forward a **“Pistol Index” card to the police department’s Stolen Property Inquiry Section** within 72 hours of every transfer of a handgun or short-barreled rifle or shotgun to an authorized transferee. Dealers who acquire a second-hand pistol or short-barreled rifle or shotgun **must forward a “Dealer’s Report on Second-Hand Guns” to the Stolen Property Inquiry Section** within 72 hours of the acquisition of the weapon.

Each time handgun ammunition is transferred by a dealer in New York City, he or she must record the quantity, caliber and type of ammunition; the name and address of the transferee; the date and time of the transaction; the number of the license or permit exhibited or description of the proof that the transferee exhibited showing why he or she is exempt from the licensing requirement. For each rifle and shotgun ammunition transfer, the dealer must record the same information described above as well as the caliber, make, **model and manufacturer’s name and serial number** of the rifle or shotgun for which the purchaser is purchasing ammunition.

Omaha: All persons engaging in the business of a firearm dealer in Omaha are required to record the details of any purchase, sale, rental, pawn, pledge or trade of a firearm. Firearms dealers also must provide daily reports to the Chief of Police of all firearms purchased or otherwise received by the dealer.

FEATURES OF COMPREHENSIVE LAW GOVERNING RETENTION OF FIREARM SALES AND BACKGROUND CHECK RECORDS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Dealers are required to retain records of all firearms transfers (*California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Michigan, Oregon, Pennsylvania, Tennessee, District of Columbia, Chicago, New York City, Omaha*)
- Private sellers are subject to similar recordkeeping requirements as licensed dealers, either because all transfers are conducted through licensed dealers (*California, District of Columbia, Chicago; Pennsylvania requires transfers to be conducted through licensed dealers, but only for handguns*), or because the requirements separately are imposed on private sellers (*Illinois; Connecticut imposes recordkeeping requirement on private sellers, but only for handguns*)
- 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 state (*Massachusetts*) and local (*Chicago*) law enforcement
- Law enforcement is required to retain firearm transfer information indefinitely
- Law enforcement is required to retain background check records indefinitely

Appendix A

Snapshot of Federal, State and Selected Local Gun Laws

This Appendix accompanies LCAV's report, *Regulating Guns in America – An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws*. The chart identifies jurisdictions that regulate within the listed policy areas but does not attempt to show all the differences in regulatory strategy. Please read the corresponding section of the report for a more in-depth comparison. The chart and accompanying report are based on legal research conducted by LCAV through December 2007.

Copyright © 2008 by Legal Community Against Violence. All Rights Reserved.

Snapshot of Federal, State and Selected Local* Gun Laws

February 2008

Policy Area	Federal Law?	Summary of State Laws	Summary of Local Laws
Classes of Weapons			
Assault Weapons	Expired 9/04	7 states ban assault weapons (CA, CT, MA, NJ, NY; HI & MD ban assault pistols); 3 states regulate assault weapons (MD, MN, VA); D.C. bans assault weapons indirectly	Boston, Chicago, Cleveland, Columbus, New York City
Large Capacity Ammunition Magazines	Expired 9/04	6 states ban large capacity ammunition magazines (CA, HI, MD, MA, NJ, NY)	Boston, Chicago, Columbus, Los Angeles, New York City
Fifty Caliber Rifles	No	California bans 50 caliber rifles; Connecticut bans one model of 50 caliber rifle; Maryland regulates one model of 50 caliber rifle	Los Angeles and San Francisco ban 50 caliber handguns; San Francisco bans 50 caliber cartridges
Banning Handguns	No	D.C. bans handguns; ¹ no state bans all handguns	Chicago ²
Non-Powder Guns	No ³	19 states regulate use or possession (CA, CO, CT, DE, FL, IL, MA, MI, MN, MS, NJ, NY, NC, ND, PA, RI, VA, WA, WI)	Chicago, Cleveland, New York City, Omaha
Ammunition Regulation	Limited ⁴	41 states and D.C. regulate ammunition (AL, AK, AZ, CA, CT, DE, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NV, NH, NJ, NY, NC, ND, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI)	Chicago, Los Angeles, New York City, Omaha, San Francisco

Snapshot of Federal, State and Selected Local* Gun Laws

February 2008

Policy Area	Federal Law?	Summary of State Laws	Summary of Local Laws
Sales and Transfers			
Prohibited Purchasers	Yes	49 states ⁵ and D.C.	Chicago, Cleveland, Columbus, Hartford, New York City, Omaha
Minimum Age to Purchase and Possess Firearms	Yes	37 states and D.C. stricter than federal law (AK, AZ, AR, CA, CT, DE, FL, HI, ID, IL, IN, IA, LA, ME, MD, MA, MI, MN, MS, MO, MT, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, TX, UT, VT, WA, WI)	Boston, Chicago, Cleveland, Columbus, New York City
Domestic Violence and Firearms	Yes	35 states and D.C. stricter than federal law (AK, AZ, CA, CO, CT, DE, FL, HI, IL, IN, IA, MD, MA, MI, MN, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SD, TN, TX, UT, VA, WA, WV, WI)	New York City, Omaha
Background Checks	Yes	49 states and D.C.	Cleveland, Columbus, New York City, Omaha
Mental Health Reporting	Limited ⁶	13 states authorize or require reporting to NICS (AL, CO, CT, FL, GA, IL, IA, KS, ME, MI, MO, VA, WA)	New York City
Waiting Periods	No	12 states and D.C. impose waiting periods on purchases of some or all firearms (CA, CT, FL, HI, IL, IA, MD, MN, NJ, RI, SD, WI)	Columbus
Restrictions on Multiple Purchases or Sales of Firearms	No	2 states limit handgun purchases to one per person per month (CA, VA); Maryland limits purchases of handguns and assault weapons to one per person per month	Los Angeles (one handgun per person per month); New York City (one handgun and one long gun per person per 90 days)

Snapshot of Federal, State and Selected Local* Gun Laws

February 2008

<i>Policy Area</i>	<i>Federal Law?</i>	<i>Summary of State Laws</i>	<i>Summary of Local Laws</i>
Gun Dealers and Other Sellers			
Dealer Regulations	Yes	28 states and D.C. license and/or regulate firearms dealers (AL, CA, CT, DE, FL, GA, HI, IN, ME, MD, MA, MI, MN, NE, NH, NJ, NY, NC, OH, OR, PA, RI, SC, TX, VA, WA, WV, WI)	Chicago, Cleveland, Columbus, Hartford, Los Angeles, New York City, Omaha, San Francisco
Private Sales	No	2 states and D.C. require universal background checks for all firearm transfers (CA, RI); 3 states require universal background checks for transfers of some firearms (MD, handguns and assault weapons; CT, PA, handguns); 5 states require background checks for all firearm transfers at gun shows (CO, CT, IL, NY, OR)	Chicago, Columbus, New York City, Omaha
Gun Shows	No	8 states regulate gun shows (CA, CO, CT, IL, MD, NY, OR, VA); see Private Sales section above re background check requirements at gun shows	Omaha regulates gun shows but does not require background checks on purchasers

Snapshot of Federal, State and Selected Local* Gun Laws

February 2008

Policy Area	Federal Law?	Summary of State Laws	Summary of Local Laws
Gun Ownership			
Licensing of Gun Owners or Purchasers	No	4 states require license or permit for purchasers or owners of all firearms (HI, IL, MA, NJ); 7 states require license or permit for handguns only (CA, CT, IA, MI, NY, NC, RI)	Chicago, Cleveland, Columbus, Hartford, New York City, Omaha
Registration of Firearms	Limited ⁷	Hawaii and D.C. require registration of all firearms; California requires registration of pre-ban assault weapons and 50 caliber rifles; 4 states require registration of pre-ban assault weapons (CT, HI, MD, NJ); Louisiana registers certain other firearms; 9 states prohibit registration of some or all firearms (CA, DE, FL, GA, ID, PA, RI, SD, VT)	Chicago, Cleveland, New York City, Omaha
Reporting Lost or Stolen Firearms	Federally licensed firearms dealers only	7 states and D.C. require firearm owners to report lost or stolen firearms (CT, MA, MI, NJ, NY, OH, RI)	Chicago, Cleveland, Columbus, Hartford, Los Angeles, New York City, San Francisco
Carrying Concealed Weapons	Yes	2 states do not allow carrying concealed weapons (IL, WI); 34 states are "shall issue" (AZ, AR, CO, FL, GA, ID, IN, KS, KY, LA, ME, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV); 12 states and D.C. are "may issue" (AL, CA, CT, DE, HI, IA, MD, MA, NJ, NY, RI, WY); 2 states do not require a permit to carry (AK, VT)	Chicago, Cleveland, Columbus, Hartford, New York City and Omaha generally do not allow carrying concealed weapons, but Hartford, New York City and Omaha have permitting processes that would allow some concealed carry

Snapshot of Federal, State and Selected Local* Gun Laws

February 2008

Policy Area	Federal Law?	Summary of State Laws	Summary of Local Laws
Consumer and Child Safety			
Design Safety Standards for Handguns	Imported firearms only	8 states (CA, HI, IL, MD, MA, MN, NY, SC)	None
Locking Devices	Yes	11 states and D.C. (CA, CT, IL, MD, MA, MI, NJ, NY, OH, PA, RI)	Chicago, Cleveland, Los Angeles, New York City
Personalized Firearms	No	2 states (MD, NJ)	None
Child Access Prevention	No	27 states and D.C. (CA, CO, CT, DE, FL, GA, HI, IL, IN, IA, KY, MD, MA, MN, MS, MO, NV, NH, NJ, NC, OK, RI, TN, TX, UT, VA, WI)	Chicago, Cleveland

Snapshot of Federal, State and Selected Local* Gun Laws

February 2008

Policy Area	Federal Law?	Summary of State Laws	Summary of Local Laws
Crime Detection			
Ballistic Identification	No	CA requires handgun microstamping; 3 states use ballistic imaging (CT, MD, NY)	None
Retention of Firearm Sales and Background Check Records	Federally licensed firearms dealers must retain sales records; National Instant Criminal Background Check System (NICS) records of approved purchasers must be destroyed within 24 hours of official NICS response to the dealer	21 states and D.C. require sellers to retain sales records (AL, CA, CO, CT, DE, GA, IL, ME, MD, MA, MI, MS, NJ, NY, NC, OR, PA, RI, TN, VT, WA); 10 states retain seller-reported sales information (AL, CA, CT, MD, MA, MI, NJ, NY, PA, WA); 9 states are required to purge background check records (DE, FL, NE, NH, RI, TN, UT, VA, WI)	Chicago, Cleveland, Columbus, Hartford, New York City, Omaha

* The summary of local laws is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending, and the Cleveland and Columbus ordinances cited in this report have not been repealed. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

¹ The U.S. Supreme Court will hear a case challenging the D.C. handgun ban in 2008. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007), cert. granted sub nom. *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007).

² In 2005, San Francisco voters approved an ordinance to prohibit, *inter alia*, the possession of handguns by San Francisco residents. A recent appellate decision struck down the ordinance, finding it preempted by state law. *Fiscal v. City & County of San Francisco*, No. A115018, 2008 Cal. App. LEXIS 21 (Cal. Ct. App. Jan. 9, 2008). The City has indicated that it will appeal the decision.

³ Non-powder guns, unlike firearms, fall within the regulatory authority of the Consumer Product Safety Commission.

⁴ Federal law governing ammunition transfers is limited to prohibiting sales to and purchases by certain categories of persons; however, there is no requirement that ammunition sellers conduct a background check to determine if a prospective purchaser falls into a prohibited category. Federal law also prohibits the manufacture, importation and sale of armor-piercing ammunition.

⁵ Only Vermont has no state law governing prohibited purchasers or requiring background checks.

⁶ Federal law encourages, but does not require, states to report mental health information to FBI databases for firearm purchaser background checks.

⁷ Federal registration of firearms is limited to machine guns owned prior to 1986 (Congress banned possession and transfer of machine guns in 1986), and to certain transfers of short-barreled rifles and shotguns specifically approved by the Attorney General. Federal law prohibits the use of the National Criminal Background Check System (NICS) to create any system of registration of firearms or firearm owners.

**Legal Community Against Violence
welcomes your interest and support**

**To request assistance, become a member,
or for more information,
please visit www.lcav.org
or call our office**

MAILING ADDRESS

**268 Bush Street, #555
San Francisco, CA 94104**

TEL (415) 433.2062

FAX (415) 433.3357

WEB www.lcav.org



A Publication of

Legal Community Against Violence

expertise, information & advocacy to end gun violence