



## 2010 State Legislation Overview

September 22, 2010

LCAV identified 555 relevant firearms-related bills for tracking in 2010. This total includes only those bills that were introduced or acted on in 2010. With the exception of Arkansas, relevant firearms legislation was introduced or acted on in every state that held a regular legislative session in 2010.<sup>1</sup> There was a nearly even split between the number of bills that would have strengthened, versus those that would have weakened, the regulation of firearms. The states that introduced or acted on the most bills were New York (55), Massachusetts (39), Missouri (33), Illinois (30), Tennessee (30), Virginia (30), New Jersey (27), and California (22). In most of these states, the bills were evenly divided between those that would have strengthened and those that would have weakened the law. The exceptions were in Massachusetts and New York, where most of the bills would have had a strengthening effect, and in Missouri, Tennessee and Virginia, where most of the bills would have weakened the law.

### State Legislation Strengthening Gun Violence Prevention in 2010

1. *Domestic Violence & Firearms:* Numerous bills addressing domestic violence and firearms were introduced in 2010. In Iowa<sup>2</sup> and Michigan,<sup>3</sup> bills were enacted that restrict gun possession and facilitate the surrender of firearms by domestic abusers. A new Oklahoma law<sup>4</sup> requires that a court consider (among other things) whether a perpetrator arrested for domestic violence has access to, or a history of using, deadly weapons before determining the conditions of his or her release.
2. *Mental Health & Firearms:* Following another trend in state laws, Idaho<sup>5</sup> and Wisconsin<sup>6</sup> adopted laws requiring that mental health records be sent to the National Instant Criminal Background Check System (NICS). The Idaho law requires that records be sent to NICS electronically. The Wisconsin law requires state courts, when making certain mental health-related dispositions, to determine whether the disposition renders a defendant prohibited under federal law from possessing a firearm and, if so, to order him or her not to possess firearms and to order seizure of his or her firearms.

A California bill awaiting the governor's signature would require electronic reporting of mental health designations to the California Department of Justice (reporting is currently required, but not electronically).<sup>7</sup>

3. *Banning Open Carry:* In response to the rise of the "open carry movement," California proposed a ban on the open carrying of unloaded handguns in any public place or on any

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<sup>1</sup> Montana, Nevada, North Dakota and Texas did not have a regular legislative session in 2010.

<sup>2</sup> Iowa Code §§ 236.4(2), 236.5(1)(b), 664A.3(6), 724.26.

<sup>3</sup> Mich. Comp. Laws § 600.2950a.

<sup>4</sup> Okla. Stat. tit. 22, § 1105(b).

<sup>5</sup> Idaho Code § 67-3003(i).

<sup>6</sup> Wis. Stat. §§ 51.20(13)(cv), 51.45(13)(i), 54.10(3)(f), 55.12(10), 175.35(1)(at), 175.35(2g)(d), 941.29, 968.20(1r).

<sup>7</sup> A.B. 302, 2010 Leg., Reg. Sess. (Cal. 2010).

public street.<sup>8</sup> Current California law prohibits the open possession of loaded handguns, but does not prohibit the open carrying of unloaded handguns, even if the individual is also carrying ammunition on his or her person.<sup>9</sup> The bill passed the Assembly and Senate, but did not receive a required concurrence vote in the Assembly before the legislative session ended.

4. *Record Retention*: A California bill<sup>10</sup> that would have stopped the destruction of long gun purchase records passed the Assembly but failed in the Senate.
5. *Guns in National Parks*: In response to the federal law permitting the possession of loaded firearms in national parks and wildlife refuges,<sup>11</sup> Maine adopted a statute prohibiting the use or possession of a firearm in Acadia National Park.<sup>12</sup> This provision is subject to various exceptions, including possession of a gun in a person's residential dwelling within park lands, or pursuant to a state permit to carry a concealed firearm.<sup>13</sup>
6. *Handgun Microstamping*: This year, legislation that would have required handgun microstamping was pending in Illinois,<sup>14</sup> New Jersey<sup>15</sup> and New York.<sup>16</sup> The New York bill was defeated; no vote has been taken on the Illinois or New Jersey bills.
7. *Multiple Sales*: No vote was taken on a Massachusetts bill<sup>17</sup> that would have allowed only one firearm to be purchased by any one person per 30-day period.

### **State Legislation Weakening Gun Violence Prevention in 2010**

1. *CCW Laws*: The most significant gun lobby victory in 2010 occurred in Arizona, which became the third state (joining Vermont and Alaska) to allow the carrying of concealed weapons without a permit.<sup>18</sup> Iowa also weakened its CCW permitting scheme by removing law enforcement discretion from the permit issuance process.<sup>19</sup> Utah removed the requirement that CCW permit applicants demonstrate good character.<sup>20</sup>

Other new CCW laws expand the locations in which concealed weapons may be carried. Georgia,<sup>21</sup> Louisiana,<sup>22</sup> Mississippi,<sup>23</sup> New Mexico,<sup>24</sup> Tennessee<sup>25</sup> and Virginia<sup>26</sup>

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<sup>8</sup> A.B. 1934, 2010 Leg., Reg. Sess. (Cal. 2010).

<sup>9</sup> Cal. Penal Code § 12031(a)(1), (g).

<sup>10</sup> A.B. 1810, 2010 Leg., Reg. Sess. (Cal. 2010).

<sup>11</sup> 16 U.S.C. § 1a-7b.

<sup>12</sup> Me. Rev. Stat. Ann., tit. 12, § 756.

<sup>13</sup> *Id.*

<sup>14</sup> S. 3425, 96th Gen. Assemb. (Ill. 2010).

<sup>15</sup> S. 1700, 214th Leg. (N.J. 2010).

<sup>16</sup> S. 6005-A, 2010 Leg., 232d Sess. (N.Y. 2010).

<sup>17</sup> H. 4102, 186<sup>th</sup> General Court, 2010 (Mass.).

<sup>18</sup> S.B. 1108, 49th Leg., 2d Reg. Sess. (Ariz. 2010). Note that a permit is still required to carry a concealed firearm into an establishment that serves alcohol. Ariz. Rev. Stat. Ann. § 4-229.

<sup>19</sup> S. 2379, 83rd Gen. Assemb., 2d Sess. (Iowa 2010).

<sup>20</sup> H.B. 214, 58th Leg., 2010 Gen. Sess. (Utah 2010).

<sup>21</sup> S.B. 308, 150th Gen. Assemb., 2009-2010 Reg. Sess. (Ga. 2010).

removed prohibitions against carrying firearms in sensitive locations such as parks, houses of worship, and establishments where alcohol is served.

2. *Firearms Freedom Acts*: So-called “Firearms Freedom Acts” declare that all guns and ammunition manufactured, transferred and possessed solely within a particular state fall outside of federal commercial regulation and thus are not subject to federal gun laws. The first states to adopt these laws were Montana<sup>27</sup> and Tennessee<sup>28</sup> in 2009. In 2010, Firearms Freedom Acts were enacted in Alaska,<sup>29</sup> Arizona,<sup>30</sup> Idaho,<sup>31</sup> South Dakota,<sup>32</sup> Utah<sup>33</sup> and Wyoming.<sup>34</sup> Such legislation was introduced, but not adopted, in at least 18 additional states in 2010.<sup>35</sup>

Despite the recent push for such Acts, these laws are likely unconstitutional.<sup>36</sup> On the effective date of the Montana statute, the Montana Shooting Sports Association and others filed an action in federal court seeking a ruling that the Act is constitutional. On August 31, 2010, a magistrate judge recommended that the United States’ motion to dismiss be granted.<sup>37</sup> The magistrate concluded that Congress alone has the power to regulate the intrastate manufacture, transfer and possession of firearms. The decision will now go to District Court Judge Donald Molloy.

3. *Guns in Parking Areas – Usurping Private Property Rights*: Legislation that limits private property rights by forcing businesses and employers to allow firearms in parked vehicles on their property continues to be a popular gun lobby bill. In 2010, Indiana adopted such a law.<sup>38</sup>

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<sup>22</sup> See H.B. 556, H.B. 1272 & S.B. 534, 2010 Reg. Sess. (La. 2010).

<sup>23</sup> S.B. 2862, 2010 Reg. Sess. (Miss. 2010).

<sup>24</sup> New Mexico Stat. Ann. § 30-7-3(4)(b).

<sup>25</sup> S.B. 3012, 106<sup>th</sup> Gen. Assemb., 2d Sess. (Tenn. 2010). The legislation also repeals the provision that was enacted last year allowing CCW permit holders to carry firearms in certain establishments that serve alcohol. The repeal and re-enactment was in response to a November 4<sup>th</sup> ruling by Chancellor Claudia Bonnyman holding that language distinguishing different types of establishments was unconstitutionally vague.

<sup>26</sup> H.B. 505, 2010 Gen. Assemb., Reg. Sess. (Va. 2010); S.B. 334, 2010 Gen. Assemb., Reg. Sess. (Va. 2010).

<sup>27</sup> Mont. Code Ann. § 30-20-101 *et seq.*

<sup>28</sup> Tenn. Code Ann. § 4-54-101 *et seq.*

<sup>29</sup> H.B. 186, 26th Leg., 2d Sess. (Alaska 2010).

<sup>30</sup> H.B. 2307, 49th Leg., 2d Reg. Sess. (Ariz. 2010).

<sup>31</sup> H.B. 589, 60th Leg., 2d Reg. Sess. (Idaho 2010).

<sup>32</sup> S.B. 89, 85th Leg. Sess. (S.D. 2010).

<sup>33</sup> S.B. 11, 2010 Gen. Sess. (Utah 2010).

<sup>34</sup> H.B. 95, 60th Leg. (Wyo. 2010).

<sup>35</sup> See Firearms Freedom Act, *State by State*, <http://firearmsfreedomact.com/state-by-state/> (last visited Aug. 9, 2010) (tracking Firearms Freedom Act legislation).

<sup>36</sup> Firearms Freedom Act, *The Firearms Freedom Act (FFA) is Sweeping the Nation*, <http://firearmsfreedomact.com/> (2010) (admitting that the Acts are “primarily a Tenth Amendment challenge to the powers of Congress under the ‘commerce clause,’ with firearms as the object – it is a state’s rights exercise.”).

<sup>37</sup> *Mont. Shooting Sports Ass’n v. Holder*, No. CV-09-147-M-DWM-JCL (D. Mont. Aug. 31, 2010)(magistrate findings and recommendation granting motion to dismiss).

<sup>38</sup> H.R. 1065, 116th Gen. Assemb., 2d Reg. Sess. (Ind. 2010).