

## 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.<sup>1</sup> Moreover, 15,000 persons in the United States are treated each year in hospital emergency rooms for unintentional gunshot wounds.<sup>2</sup> Children and young adults are frequent victims of such accidents.<sup>3</sup> A 1991 study found that 8% of accidental shooting deaths resulted from shots fired by children under the age of six.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> At least two studies have found that the risk of suicide increases in homes where guns are kept loaded and/or unlocked.<sup>8</sup>

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%).<sup>9</sup> A recent study found that the practices of keeping

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<sup>1</sup> 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](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html).

<sup>2</sup> Karen E. Gotsch et al., *CDC Surveillance Summary No. SS-2, Surveillance for Fatal and Nonfatal Firearm-Related Injuries – United States 1993-1998* 2 (Apr. 13, 2001), at <http://www.cdc.gov/mmwr/pdf/ss/ss5002.pdf>.

<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> 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>.

<sup>5</sup> Mark A. Schuster et al., *Firearm Storage Patterns in U.S. Homes with Children*, 90 *Am. J. Pub. Health* 588, 590 (Apr. 2000).

<sup>6</sup> 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>.

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> *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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

There are no federal standards for locking devices.<sup>13</sup>

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<sup>10</sup> David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (2005).

<sup>11</sup> 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.

<sup>12</sup> 18 U.S.C. § 922(z)(3).

<sup>13</sup> 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

<a href="#">California</a>	Cal. Penal Code §§ 12087.6, 12088 – 12088.9, 12126; Cal. Code Regs. tit. 11, §§ 4093 - 4095
<a href="#">Connecticut</a>	Conn. Gen. Stat. §§ 29-33(d), 29-37b
<a href="#">District of Columbia</a> <sup>14</sup>	D.C. Code Ann. § 7-2507.02
<a href="#">Illinois</a>	720 Ill. Comp. Stat. 5/24-9.5
<a href="#">Maryland</a>	Md. Code Ann., Pub. Safety § 5-132
<a href="#">Massachusetts</a>	Mass. Gen. Laws ch. 140, §§ 131K, 131L(a); 940 Mass. Code Regs. 16.05 – 16.07
<a href="#">Michigan</a>	Mich. Comp. Laws § 28.435
<a href="#">New Jersey</a>	N.J. Stat. Ann. § 2C:58-2a(5)(d), (e)
<a href="#">New York</a>	N.Y. Gen. Bus. Law § 396-ee; N.Y. Comp. Codes R. & Regs. tit. 9, § 471.2
<a href="#">Ohio</a>	Ohio Rev. Code Ann. § 2923.25
<a href="#">Pennsylvania</a>	18 Pa. Cons. Stat. § 6142
<a href="#">Rhode Island</a>	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 Dealers<sup>15</sup>

Michigan  
New York

<sup>14</sup> 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.

<sup>15</sup> 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,<sup>16</sup> 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.<sup>17</sup>

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

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<sup>16</sup> 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.

<sup>17</sup> 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.<sup>18</sup>

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

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<sup>18</sup> 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.”<sup>19</sup>

## **SUMMARY OF SELECTED<sup>20</sup> LOCAL LAWS GOVERNING LOCKING DEVICES**

### **Local Laws Governing Locking Devices**

<b>Chicago</b>	<b>Chicago, Ill., Code §§ 8-20-140(c), 4-144-062</b>
<b>Cleveland</b>	<b>Cleveland, Ohio, Code § 627A.03</b>
<b>Los Angeles</b>	<b>Los Angeles, Cal., Code ch. X, art. 3, div. 9, § 103.314(o)</b>
<b>New York City</b>	<b>New York, N.Y., Admin. Code §§ 10-311, 10-312(a)</b>

*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.<sup>21</sup>

*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.<sup>22</sup>

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<sup>19</sup> 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.

<sup>20</sup> 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.”](#)

<sup>21</sup> 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.”

<sup>22</sup> 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.”<sup>23</sup> 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*)

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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.

<sup>23</sup> 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.”