

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/CPSC/PUB/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](#).