



2003 CALIFORNIA REPORT:
RECENT DEVELOPMENTS IN FEDERAL, STATE
AND LOCAL GUN LAWS

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Gun Violence: The Epidemic Continues

Gun violence touches every segment of society. It increases the probability of deaths due to domestic violence, raises the likelihood of fatalities by those who intend to injure others or attempt suicide, and places children and young people at special risk.

According to the Centers for Disease Control and Prevention (CDC), 29,573 Americans died from firearm-related injuries in 2001 (the most recent year for which statistics are available).¹ In that year, guns claimed the lives of 6,600 high school-age teens and young adults (age 15-24) - an average of 18 deaths each day.² The CDC estimates that 58,841 individuals were treated in hospital emergency departments for non-fatal gunshot wounds in 2002.³

In California, 3,273 people died from firearm-related injuries in 2001 and 3,955 others were treated for non-fatal gunshot wounds.⁴ Guns are the second leading cause of injury-related deaths in California and nationwide, second only to motor vehicle accidents.⁵

While opinions differ regarding the root causes of gun violence, most Americans favor stronger gun laws. Yet, due to the immense power of the gun lobby, Congress has not enacted any significant gun legislation since the early 1990s, when it enacted the Brady Act (establishing a limited system of background checks for gun purchasers) and the federal assault weapon ban. In fact, as discussed below, Congress appears set to take action that will make Americans less – and not more – safe from gun violence.

Fortunately, the State of California has, in recent years (including 2003), adopted several important firearm-related laws, many of which were modeled after innovative local ordinances enacted by cities and counties in this state. In addition, California local governments continue their invaluable leadership role in the gun violence prevention movement.

¹ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics Reports, *Deaths: Final Data for 2001*, Vol. 52, No. 3 (September 18, 2003).

² *Id.*

³ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (WISQARS), *WISQARS Nonfatal Injury Reports*, <http://webapp.cdc.gov/sasweb/ncipc/nfirates2001.html>

⁴ California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), *Firearm Injuries in California* (2003)

⁵ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics Reports, *Deaths: Final Data for 2001*, Vol. 52, No. 3 (September 18, 2003).

Federal Update: A Cause for Concern

Gun Industry Immunity

The U.S. Senate is poised to vote on a bill to provide unprecedented legal protection to the gun industry. That bill, S. 659, would immunize gun manufacturers, distributors, trade associations and dealers from civil liability whenever a person is damaged as a result of the “criminal or unlawful misuse” of a gun, even if that criminal act or misuse is foreseeable because of industry negligence or recklessness.⁶

This sweeping legislation would preclude actions in state, as well as federal, court and, according to its terms, require the immediate dismissal of lawsuits already pending against the industry (unless they fell within the bill’s limited exceptions). S. 659 was introduced by Senator Larry Craig (R-Idaho), a former NRA board member, and now has 55 sponsors. The House of Representatives easily passed an identical bill last spring.

The State of California has experience with the devastating impact of laws immunizing the gun industry. In 2001, the California Supreme Court held that an immunity statute adopted in 1983 shielded an assault weapon manufacturer from a lawsuit brought by the victims of the 101 California Street massacre, even though the gun maker’s advertising boasted that the gun’s surface had “excellent resistance to fingerprints” and called attention to other features that would be of primary interest to criminals.⁷

In 2002, the California Legislature repealed the state’s immunity statute so that the gun industry would be held to the same legal standards as any other industry. The Legislature’s action would be nullified, however, by passage of the federal immunity bill now pending in Congress.

Passage of that legislation could also prevent many meritorious lawsuits from going forward, including that recently brought by the victims of the Washington, DC-area sniper attacks against Bull’s Eye Shooter Supply, the gun dealer that recklessly supplied the assault rifle used in the attacks. (The Bureau of Alcohol, Tobacco and Firearms traced the weapon to Bull’s Eye, but the dealer has no record of the sale. According to government audits, this was only one of hundreds of guns “missing” from the store’s inventory.)

Lawsuits against the gun industry are critical because they have begun to shed light on the industry’s irresponsible conduct. For example, in a July 2003 ruling in a public nuisance action brought against the industry by the NAACP, a federal judge in New York found that “careless practices and lack of appropriate precautions on the part of some retailers lead to the diversion of large numbers of handguns from the legal primary market into a substantial illegal secondary market.”⁸

⁶ Two new versions of the legislation – S. 1805 and S. 1806 - were introduced on October 31, 2003.

⁷ See *Merrill v. Navegar* (2001) 26 Cal. 4th 465.

⁸ The court did not ultimately rule in favor of the NAACP, however, because it could not show that its members suffered harm different from other persons in New York: “Ironically, the demonstration that all

The federal immunity legislation could have prevented the NAACP suit, as well as an action by 12 California cities and counties against the gun industry. In August of 2003, those local governments entered into a groundbreaking settlement agreement with two major California gun dealers and three out-of-state wholesale distributors. Pursuant to the agreement, the distributors promised to reform their business practices to stem the flow of guns to criminals, e.g., to end sales to residential gun dealers and to those who sell firearms at gun shows. The gun dealers also agreed to a number of important reforms, including employee training to guard against sales to “straw purchasers” (individuals who buy guns on behalf of felons and other prohibited persons), and the implementation of a plan for securing firearms from theft.⁹

Litigation against the gun industry provides a strong incentive for the industry to act responsibly. The federal immunity legislation would remove that incentive and unfairly insulate the industry from the legal consequences of its actions. No other industry enjoys such special treatment.

The Assault Weapon Ban

Congress may provide manufacturers of assault weapons with additional special treatment if it fails to renew the federal assault weapon ban. That law will expire on September 13, 2004, unless reauthorized by Congress and President Bush.

Assault weapons are a class of semiautomatic firearms characterized by a high rate of fire and military features. Because assault weapons can accommodate large-capacity ammunition magazines (some capable of holding up to 100 bullets), they can be used to kill or injure a great number of people in a short period of time. Assault weapons have been used in several mass shooting incidents in this country, including the 1999 Columbine High School massacre in Colorado, the 1993 shooting at 101 California Street in San Francisco, the 1989 Stockton schoolyard murders and, most recently, the 2002 Washington D.C.-area sniper attacks.

Congress adopted the federal assault weapon ban on September 13, 1994. That law bans 19 named firearms and copies of those firearms, as well as semiautomatic rifles and pistols that can accept a detachable magazine and have two or more specified features.¹⁰ The 1994

New Yorkers would gain from this method of reducing a dangerous public nuisance prevents the NAACP from obtaining relief under New York law on the ground that it suffers a special kind of harm from irresponsible handgun marketing.” See *NAACP v. Acusport, Inc., et al.*, United States District Court, Eastern District of New York, 99 CV 3999(JBW), 99 CV 7037 (JBW), Memorandum, Order, and Judgment, Findings of Fact and Law (July 21, 2003).

⁹ The court confirmed the settlement agreements in October of 2003. The terms of the settlements with the firearms dealers were not identical, since the Northern California cities and counties filed suit against Traders Sports, located in San Leandro, and the Southern California cities and counties filed suit against Turners, a Los Angeles dealer.

¹⁰ The law also bans semiautomatic shotguns with at least two specified features. See 18 U.S.C. § 921(a)(30).

law also banned the transfer and possession of “large capacity ammunition feeding devices,” defined to include magazines manufactured after the enactment of the Act that are capable of holding more than 10 rounds of ammunition.

Unfortunately, passage of the federal assault weapon ban required numerous political compromises. In addition to the 10-year sunset provision, the 1994 Act failed to prohibit the continued transfer or possession of assault weapons or high-capacity ammunition magazines manufactured before the law’s effective date. Manufacturers took advantage of this loophole by boosting production of assault weapons and high-capacity magazines in the months leading up to the ban, creating a legal stockpile of these items. In addition, in the years since the ban went into effect, manufacturers have successfully circumvented the law by making minor modifications to the weapons they produce. As a result, assault weapons and high-capacity magazines continue to be readily available - and legal - nationwide, except where specifically banned by state or local law (e.g., in California).¹¹

Representatives John Conyers (D-MI) and Caroline McCarthy (D-NY) have introduced legislation in the House to extend and strengthen the federal assault weapon ban. That legislation, H.R. 2038, would follow the California approach by defining the term “assault weapon” to include any semiautomatic firearm that can accept a detachable magazine and has *one* specified feature. It also would prohibit the transfer of assault weapons except through a licensed dealer (pursuant to federal law, only licensed dealers are legally obligated to conduct background checks), and ban the importation of all high-capacity ammunition magazines. Senators Frank Lautenberg (D-NJ) and Jon Corzine (D-NJ) have introduced similar legislation, S. 1431, in the Senate.¹²

¹¹ California adopted the nation’s first state law banning assault weapons in 1989, in response to the Stockton schoolyard massacre. That law was strengthened in 1999, giving California the toughest assault weapon regulations in the country. A handful of other states currently regulate assault weapons, including Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, New York and Virginia. (Massachusetts and New York essentially restate federal law, however, and the Virginia statute is less restrictive than federal law.) The District of Columbia does not specifically ban assault weapons, but has banned the sale and possession of handguns, effectively banning “assault pistols.” In addition, the District imposes strict liability in tort against manufacturers, importers and dealers of assault weapons for all damages due to the discharge of assault weapons in the District.

¹² Senators Dianne Feinstein (D-CA) and Charles Schumer (D-NY) have introduced legislation in the Senate to reauthorize the federal ban and prohibit the importation of large capacity ammunition magazines. For more information about assault weapons, go to www.firearmslawcenter.org/content/masterlist.asp#assaultweapons and www.underassault.org.

The Second Amendment

“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.”

Although the NRA and other gun rights activists repeatedly mount legal challenges to firearms laws on the basis of the Second Amendment, **not one** of those challenges has succeeded since the U.S. Supreme Court ruled, in 1939, that the “obvious purpose” of the Amendment was to “assure the continuation and render possible the effectiveness” of the state militia. *U.S. v. Miller*, 307 U.S. 174 (1939).

The Ninth Circuit Court of Appeals issued two recent decisions rejecting Second Amendment challenges to California firearms laws. In *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), the court held that the state’s assault weapon ban did not violate the Second Amendment because the Amendment “protects the people’s right to maintain an effective state militia, and does not establish an individual right to own or possess a firearm for personal or other use.”¹³ In *Nordyke v. King*, 319 F.3d 1185 (9th Cir. 2003), the Ninth Circuit rejected a Second Amendment challenge to an Alameda County ordinance banning the possession of firearms and ammunition on county-owned property.

Despite these judicial victories, the gun lobby continues to argue that the Second Amendment precludes common sense laws to regulate the sale and possession of firearms. Former U.S. Supreme Court Chief Justice Warren Burger once characterized the NRA’s interpretation of the Second Amendment as “one of the greatest pieces of fraud, I repeat the word *fraud*, on the American public by special interest groups that I have ever seen in my lifetime.”¹⁴

California: A Good Year for Gun Violence Prevention

Although gun safety measures are being threatened at the federal level, they continue to receive priority in the State of California, widely viewed as the state with the strongest gun laws in the country.¹⁵ Governor Davis signed several important firearm-related bills in 2003, including the following:

- SB 489 (Scott): Unintentional shootings often occur because it can be difficult for many people to determine whether a gun is loaded. SB 489 addresses this problem by requiring new models of semiautomatic handguns, beginning January 1, 2006, to have either a magazine safety disconnect (preventing the weapon from being fired once the ammunition magazine has been removed) or a load indicator (clearly

¹³ A petition for writ of certiorari is currently pending before the U.S. Supreme Court.

¹⁴ Additional information about the Second Amendment can be found on our web site at www.firearmslawcenter.org/content/federallawsummary.asp#secondamendment.

¹⁵ For a summary of California gun laws, go to www.firearmslawcenter.org/content/california.asp.

indicating when the firearm is loaded). Beginning January 1, 2007, all newly designed semiautomatic handguns must include both safety features.

SB 489 is precedent setting because federal law does not regulate guns from a consumer safety standpoint. In fact, the Consumer Product Safety Act explicitly exempts firearms and ammunition from federal health and safety regulations.¹⁶ Accordingly, it is up to state and local governments to protect the public from unsafe firearms.

- SB 824 (Scott): State and federal law prohibit the possession of firearms by several categories of persons, including convicted felons. However, no law currently requires firearms dealers to conduct employee background checks to ensure that their employees are not in a prohibited class. SB 824 permits (but does not require) dealers to conduct employee background checks. It also preserves the ability of local governments to have more stringent dealer employee background check requirements.

SB 824 also requires dealers in less populated counties to store their firearms in the same manner as dealers in larger counties (licensing authorities in smaller communities previously had discretion to require dealers to comply with statutes relating to firearm storage).¹⁷ In addition, SB 824 permits local governments to impose firearm storage requirements that are more stringent than those mandated by state law.

- AB 161 (Steinberg): State law requires gun buyers to pay a Dealer Record of Sale (DROS) fee to reimburse the California Department of Justice (DOJ) for the costs of background checks. AB 161 authorizes DOJ to use DROS fees for firearm-related regulatory and enforcement programs.¹⁸

¹⁶ See 15 U.S.C. §§ 2051 et seq., 2052(a)(1)(E).

¹⁷ Penal Code § 12071(b)(14) states that any time a firearms dealer is not open for business, the dealer must store firearms using one of three methods, e.g., by storing the firearms in a locked fireproof safe or vault on the premises.

¹⁸ Other firearm-related bills signed into law in 2003 include the following:

- SB 238 (Perata), requiring gun dealers to record the date a gun buyer takes possession of a firearm and, among other things, repealing an exemption in the state assault weapon ban for retired police officers;
- AB 319 (Frommer), prohibiting juveniles convicted of illegally possessing a concealed or loaded gun, or keeping a loaded gun in a car, from possessing firearms until age 30; and
- SB 226 (Cedillo), prohibiting persons who are subject to a restraining order for elder or dependent adult abuse from purchasing or possessing a firearm.

Local Governments: At the Forefront of Gun Policy Reform

California cities and counties lead the state and nation in gun violence prevention. Since the mid-1990s, local governments in California have adopted over 300 innovative firearm ordinances. Significantly, this local regulatory activity has provided a catalyst for several new state laws. In 1999, for example, the California Legislature adopted laws to: 1) prohibit the manufacture and sale of “junk guns;” 2) require firearms dealers to equip all firearms with child-safety locks; 3) prohibit the sale of high-capacity ammunition magazines; and 4) limit handgun purchases to one per person per month. Each of these laws was modeled after local ordinances adopted since 1995.

California cities and counties continue to adopt cutting-edge ordinances to fill gaps in state and federal law, including those to:

- Prohibit firearms dealers from operating in residential neighborhoods and near other “sensitive” areas, e.g., schools, playgrounds and places of worship;
- Require firearms dealers to obtain liability insurance to ensure that persons injured by the dealer’s negligence are adequately compensated;
- Require firearms dealers to conduct employee background checks to screen out employees who are prohibited from possessing firearms;
- Prohibit the sale or possession of firearms on publicly owned property (this type of ordinance has had the effect of ending gun shows at some public facilities, such as county fairgrounds);
- Require the reporting of lost or stolen firearms to help law enforcement determine the accuracy of a gun owner’s claim that a crime gun was lost or stolen;
- Regulate ammunition sales; and
- Prohibit the sale of 50 caliber sniper rifles (highly destructive, long range military-style weapons that are currently subject to less regulation than handguns).¹⁹

Local governments also continue their strong track record in court. In April of 2002, the California Supreme Court issued two landmark decisions reaffirming the rights of local governments to adopt laws to reduce gun violence. In the first case, *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal. 4th 853, the court rejected a preemption challenge to a Los Angeles County ordinance prohibiting the sale of firearms and ammunition on county-owned property. In the second case, *Nordyke v. King* (2002) 27 Cal. 4th 875, the court rejected a similar challenge to an Alameda County ordinance prohibiting the *possession* of firearms and ammunition on county-owned property. LCAV coordinated the filing of *amicus curiae* (“friend of the court”) briefs by local governments and violence prevention organizations in support of the counties in both cases.

¹⁹ For more information about the types of ordinances currently in effect in California cities and counties, see the California Local Ordinance Summary page of our web site at www.firearmslawcenter.org/content/callocalord.asp.

In February 2003, Los Angeles County settled remaining federal claims in the *Great Western* case, keeping the county's sales ban intact. As a condition of that settlement, Great Western agreed not to hold any further gun shows at the County Fairgrounds. In the *Nordyke* case, the Ninth Circuit rejected the plaintiffs' remaining First Amendment and (belatedly added) Second Amendment claims, mentioned above.

Elected officials, government attorneys and activists should be commended for their groundbreaking work at the local level.

How We Can Help

LCAV and the Center are available to provide free legal assistance to California community leaders working to advance gun violence prevention. Specifically, we:

- Conduct legal research and analysis;
- Assist in the drafting of firearms laws;
- Arrange for *pro bono* litigation assistance when a local government is sued following the adoption of a violence prevention ordinance; and
- Maintain a library of gun ordinances enacted statewide and pleadings filed in ordinance-related litigation.

We welcome the opportunity to work with you to make Californians safer from gun violence.

About Legal Community Against Violence and the Firearms Law Center

LCAV is the only organization exclusively dedicated to providing legal support services to those seeking regulatory solutions to gun violence. Our project, the Firearms Law Center, is a leading resource for information on federal, state and local regulation of firearms. The Center provides free legal assistance to activists and public officials working to advance gun violence prevention, and focuses on measures that can be implemented at the state and local levels. The Center's web site, www.firearmslawcenter.org, is the most comprehensive site for information on firearms regulation in the U.S.

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