

CONSUMER AND CHILD SAFETY

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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* 2 (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 Columbia¹⁴	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 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.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 Columbia⁹	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 Illeto 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.