

CRIME DETECTION

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Ballistic Identification

Background

All firearms leave unique markings on the bullets and shell casings they fire.¹ Ballistic identification (sometimes called ballistic “fingerprinting”) laws make it possible to link bullets and shell casings recovered at crime scenes to the firearm that fired them by requiring gun manufacturers to test-fire the firearms they produce. Images of the unique ballistic markings left on bullets and shell casings by each weapon are then stored in a database so that law enforcement can later determine whether a particular gun fired a particular bullet. Ballistic identification systems can identify the make, model, and serial number of the gun from which a bullet or cartridge case was fired without recovering the gun itself.²

In the mid-1990s, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) pioneered the concept of using automated ballistic imaging and comparison equipment to analyze crime gun evidence.³ ATF’s National Integrated Ballistic Information Network (NIBIN) currently provides Integrated Ballistic Identification System (IBIS) equipment to numerous state and local law enforcement agencies nationwide.⁴

IBIS equipment is used to compare images of bullets and shell casings found at crime scenes to ballistic images previously entered into the NIBIN database. When a “match” is found, firearms examiners are able to conclude that the same gun was used in both crimes. Recovered crime guns are also test-fired and their ballistic images entered into the system, allowing law enforcement to determine whether those guns were used in other crimes.

ATF has found that its automated ballistics imaging database “provides an invaluable opportunity to law enforcement. . . .”⁵ ATF has also concluded that “[n]umerous violent crimes involving firearms have been solved through use of the system, many of which would not have been solved without it.”⁶

For NIBIN to reach its fullest potential, however, it must overcome one fundamental limitation – it only contains ballistic fingerprints from guns recovered from crime scenes. A national ballistic fingerprinting law would improve significantly upon the existing system because it would require gun makers to test-fire and ballistically image all new guns. Law enforcement officials would then be able to directly link bullets and shell casings found at a crime scene to a particular gun, even if the gun itself had not been recovered.

¹ Robert M. Thompson et al., *Ballistic Imaging and Comparison of Crime Gun Evidence by the Bureau of Alcohol, Tobacco and Firearms* 4 (May 13, 2002).

² The Educational Fund to Stop Gun Violence, *Cracking the Case: The Crime-Solving Promise of Ballistic Identification* 2 (July 2004).

³ National Integrated Ballistic Information Network, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of Treasury, *The Missing Link: Ballistics Technology That Helps Solve Crimes* 6-7 (2001).

⁴ Thompson, *supra* note 1, at 4.

⁵ *Id.* at 26.

⁶ *Id.* at 2.

There is strong public support for such a law. In an October 2002 poll conducted for ABC News, 73% of the respondents favored ballistic fingerprinting.⁷

Ammunition serialization is another law enforcement tool that can assist in solving more gun-related crimes. A system implementing ammunition serialization or coding would require manufacturers to stamp a unique microscopic code or serial number on all bullets.⁸ At the time of purchase, the code or serial number would be recorded along with the purchaser's information by a licensed dealer. Later, when a cartridge casing is found at a crime scene, the spent cartridge could be quickly traced back to the purchaser. This aids law enforcement investigations into shooting crimes. Serialization of ammunition can also deter the use of guns in crimes and the sharing of ammunition. California considered adopting a serialization requirement in 2005, but withdrew the legislation pending further study.⁹

Summary of Federal Law

Federal law does not require ballistic identification.

SUMMARY OF STATE LAWS CONCERNING BALLISTIC IDENTIFICATION

In 2007 California passed legislation that requires handgun microstamping for every new semiautomatic handgun manufactured or sold in the state. Two states, Maryland and New York, have created statewide ballistics imaging databases for new handguns sold in those states. Connecticut operates a statewide firearms evidence databank that stores ballistic information on handguns recovered or used by police.

States With Laws Concerning Ballistic Identification

California	Cal. Penal Code § 12126(b)(7)
Connecticut	Conn. Gen. Stat. § 29-7h
Maryland	Md. Code Ann., Pub. Safety § 5-131
New York	N.Y. Gen. Bus. Law § 396-ff

Description of State Laws Governing Ballistic Identification

1. *California:* With legislation passed in 2007, California became the first state to require the use of handgun microstamping, an innovative technology that enables law enforcement to match cartridge cases found at a crime scene to the gun's owner. On

⁷ In the poll conducted by TNS Intersearch for ABC News, 1,032 adults nationally were asked if they favored a law requiring every gun sold in the country to be test-fired so that authorities would have its ballistic fingerprint in case the firearm were ever used in a crime. Eighty-two percent of non-gun owners favored the law. Sixty-one percent of gun owners were in favor with 73% of the respondents overall favoring such legislation. ABC News Poll (October 16-20, 2002), at <http://pollingreport.com/guns2.htm>.

⁸ James P. Sweeney, *Lockyer Wants Handgun Ammo Branded*, San Diego Union-Tribune, Oct. 6, 2004, at A-1. See also Jeremiah Marquez, *Calif. AG Wants ID Codes on Handgun Ammo*, Associated Press Online, Oct. 8, 2004.

⁹ James P. Sweeney, *Lockyer Holsters Ammo-Coding Measure*, San Diego Union-Tribune, Aug. 24, 2005, at A-3.

October 13, 2007, Governor Arnold Schwarzenegger signed into law the Crime Gun Identification Act, which requires all new semiautomatic handguns manufactured or sold in California after January 1, 2010 to be etched with a microscopic array of characters that identify the make, model and serial number of the firearm. These characters would be transferred to each cartridge case when the handgun is fired, thereby enabling law enforcement to match a cartridge case found at a crime scene to the gun that fired it and, ultimately, through an existing database maintained by the California Department of Justice, to the gun's owner.

2. *Maryland:* Maryland requires manufacturers to test-fire all handguns shipped into the state after October 1, 2000, and provide a spent shell casing to the purchasing firearms dealer. Once the gun is sold, the dealer must forward the casing to the state police, who then enter its unique markings in a database for possible use in future criminal investigations.

3. *New York:* New York enacted legislation similar to Maryland's in August of 2000, which requires ballistic fingerprinting of all handguns shipped into the state after March 1, 2001.

4. *Connecticut:* Connecticut requires that the Division of Scientific Services ("Division") of the Connecticut Department of Public Safety establish a firearms evidence databank. The databank is a computer-based system that scans a "test fire" from a handgun and stores an image of the test fire in a manner suitable for retrieval and comparison to other test fires and to other evidence in a criminal investigation. All handguns recovered by the police through a criminal investigation, as found property, or for destruction must be submitted to the Division laboratory for collection of a test fire. Police departments are also required to submit test fires from all handguns issued to employees.

SUMMARY OF SELECTED¹⁰ LOCAL LAWS REQUIRING BALLISTIC IDENTIFICATION

LCAV has not identified any local laws requiring ballistic identification.

FEATURES OF COMPREHESIVE LAW REQUIRING BALLISTIC IDENTIFICATION

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

¹⁰ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "The Legal Background."

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.

- Manufacturers are required to provide ballistic identification for all new handguns manufactured or sold in the jurisdiction, and dealers are required to submit that information to state law enforcement when the gun is sold (*Maryland, New York*)
- A ballistics imaging database is established for new handguns sold in the jurisdiction (*Maryland, New York*)¹¹
- An alternative approach is to require that all new handguns manufactured or sold in the jurisdiction be microstamped with an array of microscopic characters that identify the make, model and serial number of the firearm, so that the markings will be recorded on the cartridge case when the gun is fired (*California*)¹²
- In jurisdictions that require registration of handguns, current handgun owners are required to deliver their weapons to a ballistic testing center for purposes of ballistic identification to secure or maintain the registration¹³
- For other weapons of particular concern to law enforcement, such as assault weapons and 50 caliber rifles, ballistic identification also may be required (*proposed in New York for grandfathered assault weapons*)

¹¹ A 2007 report by the International Association of Chiefs of Police (IACP) recommends that state and local governments should mandate that a ballistic fingerprint be recorded for every gun sold. International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 15 (Sept. 2007). IACP noted that recording the ballistic fingerprint of every gun sold could enhance public safety and curtail gun violence.

¹² This approach also requires the jurisdiction to establish and maintain a database of handgun owners, as in California. *See supra* at 175.

¹³ Additional information on registration of firearms is contained in the section on Registration of Firearms.

Retention of Firearm Sales and Background Check Records

Background

Records of background checks of prospective firearms purchasers and records of completed firearms sales are critical tools for law enforcement. These records are most useful to law enforcement when they are collected in a central database and retained indefinitely.

Federally licensed firearm dealers (FFLs) are required to conduct background checks on prospective firearms purchasers to ensure that the firearm transfer would not violate federal or state law.¹ Although background check records do not identify the firearm to be purchased, they can help law enforcement deter fraud and detect dealers who might be providing false information about a prohibited person. Corrupt dealers may attempt to hide transfers to prohibited persons by falsifying information to the National Instant Criminal Background Check System (NICS), such as listing the prohibited buyer on the sales record but submitting to NICS the name of a person with a clean record.² By accessing the background check records, law enforcement can verify that a dealer's transaction records match the information submitted to NICS.³

Sales records, completed after a background check is approved, include information about the firearm(s) being purchased, as well as the purchaser.⁴ Sales records are an indispensable tool for tracing the ownership of firearms recovered in crimes.⁵ Without a central repository of firearm sales records, gun tracing is a slow, cumbersome process.⁶

¹ Additional information on background checks is contained in the section on Background Checks. Some states also require private sellers to conduct background checks on prospective purchasers. Additional information on private sales is contained in the section on Private Sales.

² Office of the Inspector General, U.S. Department of Justice, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives, Evaluation & Inspection Report I-2004-005 x-xi* (July 2004), at <http://www.usdoj.gov/oig/reports/ATF/e0405/final.pdf> [hereinafter *Evaluation & Inspection Report*].

³ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 13 (Nov. 2006) [hereinafter *Survey of State Procedures*], at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>.

⁴ FFLs record sales information on a federal Firearms Transaction Record (ATF Form 4473), which includes identification of the prospective purchaser and, if the transaction is approved, the firearm(s) to be purchased. Additional information on ATF Form 4473 is contained in the section on Background Checks.

⁵ A system of firearm registration by owners also provides law enforcement with firearm ownership information that may be used to trace crime guns. Additional information on registration is contained in the section on Registration of Firearms.

⁶ The National Tracing Center (NTC) of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) tracks the purchase histories of crime guns recovered by federal, state, local and international law enforcement agencies. In requesting a crime gun trace, a law enforcement agency provides ATF with information on the make, model and serial number of the firearm, and the circumstances of its recovery. Using that information, ATF contacts the manufacturer of the firearm to determine which FFL purchased the gun. ATF then must contact the FFL to obtain information on the original retail purchaser of the firearm. In 2003, the NTC was able to identify the initial retail purchaser of a crime gun 50 to 60% of the time. *Evaluation & Inspection Report, supra* note 2, at 8-9. After learning the identity of the initial retail

Crime gun tracing also allows law enforcement to discover potential firearms trafficking and unlawful business practices by firearms dealers.⁷ A number of states collect and retain firearms sales information reported by firearms dealers. Collecting sales information from dealers falls short of a complete repository, however, because it does not include transfers made by private sellers, except in jurisdictions that require private sellers to conduct transfers through licensed dealers.⁸

Summary of Federal Law

Background Check Records: Until 2004, information on approved NICS background checks was retained by NICS for ninety days.⁹ This information helped ATF deter fraud and detect dealers who might be providing false information about a prohibited person, by inspecting a dealer's records within the ninety-day period and verifying that the records matched the information earlier submitted to NICS.¹⁰ If discrepancies were found, ATF could conduct a further investigation of the dealer to determine whether the dealer submitted false information to NICS.¹¹ In a recent review of trafficking investigations, ATF determined that corrupt dealers are a significant source of trafficked firearms.¹²

As of July 2004, approved purchaser information is no longer kept for ninety days but is instead destroyed within twenty-four hours of the official NICS response to the dealer.¹³ As a result, ATF inspectors are no longer able to compare the information on file with the dealer to the information the dealer submitted to NICS. The Department of Justice Inspector General noted that the shortened retention time makes it much easier for corrupt firearm dealers to avoid detection.¹⁴ Federal law also specifically prohibits using NICS to create any system of registration of firearms or firearm owners.¹⁵

purchaser, agents must then contact him or her to begin the process of manually tracing each subsequent owner.

⁷ *Id.* at 8-9.

⁸ Detailed information on laws governing private sellers is contained in the section on Private Sales.

⁹ *Evaluation & Inspection Report, supra* note 2, at x.

¹⁰ *Id.* at 51-54.

¹¹ *Id.*

¹² Violence Policy Center et al., *Comments On Regulations Proposed by the Federal Bureau of Investigation, Department of Justice Regarding Changes to Regulations Implementing the National Instant Criminal Background Check System* 10 (Sept. 4, 2001).

¹³ The requirement that approved purchaser information be destroyed within twenty-four hours has been included in the appropriations bills funding the Department of Justice (which includes ATF and the FBI) every year since 2004. *See* Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 617, 118 Stat. 3 (2004); Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, § 615, 118 Stat. 2809, 2915 (2005); Science, State, Justice, Commerce, and Related Appropriations Act of 2006, Pub. L. No. 109-108, § 611, 119 Stat. 2290, 2336 (2005); Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5, 121 Stat. 8 (2007); Commerce, Justice, Science, and Related Agencies Appropriations Act, 2008, H.R. 3093, 100th Cong. § 511 (2007). Each of these acts contains additional provisions which restrict disclosure of data obtained by ATF via crime gun traces. In 2006, Congress failed to pass H.R. 5005, which would have codified and made permanent the restrictions on disclosure of crime gun trace data.

¹⁴ *Evaluation & Inspection Report, supra* note 2, at x-xi; 51-54.

¹⁵ 28 C.F.R. § 25.9(b)(3).

The FBI maintains indefinitely the records of prospective purchasers whose applications are denied.¹⁶

Sales Records: FFLs are required to maintain records of the acquisition and sale of firearms indefinitely.¹⁷ The dealer must record, “in bound form,” the purchase or other acquisition of a firearm not later than the close of the next business day following the purchase or acquisition.¹⁸ The dealer must similarly record the sale or other disposition of a firearm not later than seven days following the date of such transaction and retain Form 4473, the Firearms Transaction Record.¹⁹ When a firearms business is discontinued, these records are delivered to the successor or, if none exists, to the Attorney General.²⁰

With very limited exceptions, records of firearm sales are not maintained at the federal level. The National Firearms Act Branch of ATF does maintain a limited registry of machine guns, short-barreled shotguns or rifles, and silencers, known as the National Firearms Registration and Transfer Record.²¹

SUMMARY OF STATE LAWS CONCERNING RETENTION OF FIREARM SALES AND BACKGROUND CHECK RECORDS

State laws governing retention of firearm sales records fall into the following categories: (1) states that require sellers to retain sales records for a specified time period; and (2) states that retain records of firearms sales as reported by sellers to law enforcement.²² Application of these laws to licensed dealers and private sellers is explained below. Most state laws are silent with respect to the retention of background check records. However, nine states are required by statute to purge background check records after a short time period.

States that Require Sellers to Retain Firearm Sales Records

Alabama

Ala. Code § 40-12-143

California

Cal. Penal Code § 12076(b)(2)

Colorado

Colo. Rev. Stat. § 12-26-102

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¹⁶ *Survey of State Procedures*, supra note 3, at 17.

¹⁷ 18 U.S.C. § 923(g)(1)(A).

¹⁸ 27 C.F.R. § 478.125(e).

¹⁹ *Id.*; 27 C.F.R. § 478.124(b). If the sale is approved, NICS provides the dealer with a unique identification number. The dealer records this number and certain information about the firearm to be transferred, including the manufacturer, type, model, caliber or gauge and serial number, on Form 4473. *Id.*, 27 C.F.R. § 478.124(c). The dealer is required to retain Form 4473, regardless of whether the transaction is approved or denied or whether the firearm is actually transferred. 27 C.F.R. § 478.102.

²⁰ 18 U.S.C. § 923(g)(4).

²¹ Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice, *Brochure of the National Firearms Act Branch*, at <http://www.atf.gov/pub/nfab> (Feb. 23, 2006). Machine guns were banned in 1986, and it is unlawful to possess or transfer a machine gun unless it was lawfully owned prior to May 19, 1986. 18 U.S.C. § 922(o). The Act also includes, in a category defined as “any other weapon,” certain smooth-bore handguns. 26 U.S.C. § 5845(a), (e). The vast majority of handguns are excluded.

²² This summary does not discuss retention of records generated pursuant to state registration of firearms or state permit or license requirements. Detailed information on these topics is contained in the sections on Registration of Firearms and Licensing of Gun Owners or Purchasers.

States that Require Sellers to Retain Firearm Sales Records

(continued from previous page)

Connecticut	Conn. Gen. Stat. §§ 29-31, 29-33(e), 29-37a(b)
Delaware	Del. Code Ann. tit. 24, § 904
District of Columbia	D.C. Code Ann. § 7-2504.04(a)(3)
Georgia	Ga. Code Ann. § 43-16-10.1
Illinois	430 Ill. Comp. Stat. 65/3(b)
Maine	Me. Rev. Stat. Ann. tit. 15, § 455
Maryland	Md. Code Regs. 29.03.01.09(D)
Massachusetts	Mass. Gen. Laws ch. 140, § 123
Michigan	Mich. Comp. Laws §§ 28.422a(2), 750.232
Mississippi	Miss. Code Ann. § 97-37-11
New Jersey	N.J. Stat. Ann. § 2C:58-2b
New York	N.Y. Penal Law § 400.00(12)
North Carolina	N.C. Gen. Stat. § 14-406
Oregon	Or. Rev. Stat. §§ 166.412(2)(f), 166.434
Pennsylvania	18 Pa. Cons. Stat. §§ 6111(b)(1), 6111(b)(1.1), 6111(b)(1.4), 6111(c), 6113(a)(5), 6113(d), 37 Pa. Code § 33.111
Rhode Island	R.I. Gen. Laws §§ 11-47-35(a)(2), 11-47-35.2(b)
Tennessee	Tenn. Code Ann. § 39-17-1316(c)
Vermont	Vt. Stat. Ann. tit. 13, § 4006
Washington	Wash. Rev. Code Ann. § 9.41.110(9)

States that Require Sellers to Retain Records of All Firearm Sales

<i>State</i>	<i>Length of Retention</i>
California	3 years
Connecticut	5 years ²³
District of Columbia	unspecified
Georgia	5 years
Illinois	10 years
Maine	unspecified
Massachusetts	unspecified
Michigan	unspecified
Oregon	5 years
Pennsylvania	20 years
Rhode Island	6 years
Tennessee	unspecified ²⁴

²³ Under Conn. Gen. Stat. § 29-31, dealers are required to keep sales records for pistols and revolvers for six years.

²⁴ Tennessee requires the seller to keep the thumbprint form accompanying the transaction record for one year.

States that Require Sellers to Retain Handgun Sales Records

<i>State</i>	<i>Length of Retention</i>
Alabama	permanent
Colorado	unspecified
Delaware	unspecified
Mississippi	unspecified
New Jersey	unspecified
North Carolina	unspecified
Vermont	6 years
Washington	6 years

States that Require Sellers to Retain Records of Other Firearm Sales

<i>State</i>	<i>Length of Retention</i>
Maryland (“regulated firearms”) ²⁵	3 years
New York (handguns, assault weapons, and rifles and shotguns of certain dimensions)	unspecified
Pennsylvania (handguns and Certain rifles and shotguns)	20 years

States That Retain Seller-Reported Sales Information

Alabama	Ala. Code § 13A-11-79
California ²⁶	Cal. Penal Code §§ 11105, 11106(c)
Connecticut	Conn. Gen. Stat. §§ 29-33(e), 29-37a(b)
Maryland	Md. Code Ann., Pub. Safety §§ 5-101(p), 5-123(d), 5-124(e)
Massachusetts	Mass. Gen. Laws. ch. 140, §§ 123, 128A, 128B
Michigan	Mich. Comp. Laws § 28.422a(2)
New Jersey	N.J. Stat. Ann. § 2C:58-2e
New York	N.Y. Penal Law §§ 265.00(3), 400.00(12)
Pennsylvania	18 Pa. Cons. Stat. §§ 6111(b)(1), 6111(b)(1.4)
Washington	Wash. Rev. Code Ann. §§ 9.41.110(9), 9.41.129

States that Retain Seller-Reported Information on All Firearm Sales

Connecticut
Massachusetts

States that Retain Seller-Reported Information on Handgun Sales

Alabama
California
Michigan
New Jersey
Washington

²⁵ Maryland defines “regulated firearms” to include handguns and assault weapons.

²⁶ Although California dealers report all sales to state law enforcement, only records of handgun sales are retained. Cal. Penal Code § 11106(c).

States that Retain Dealer-Reported Information on Other Firearm Sales

Maryland (“regulated firearms”)

New York (handguns, assault weapons, and short-barreled rifles and shotguns)

Pennsylvania (handguns and certain rifles and shotguns)

States that are Required by Statute to Purge Background Check Records

Delaware

Del. Code Ann. tit 11, § 1448A(d)

Florida

Fla. Stat. Ann. § 790.065(4)(a)

Nebraska

Neb. Rev. Stat. Ann. § 69-2412

New Hampshire

N.H. Rev. Stat. Ann. § 159-D:2

Rhode Island

R.I. Gen. Laws §§ 11-47-35(a)(2), 11-47-35.2(b)

Tennessee

Tenn. Code Ann. § 39-17-1316(j)

Utah

Utah Code Ann. § 76-10-526(8)

Virginia

Va. Code Ann. § 18.2-308.2:2(B)(3)

Wisconsin

**Wis. Admin. Code Jus 10.10(2)(c), §
Wis. Stat. § 175.35(2k)(ar)**

Description of State Laws Governing Retention of Firearm Sales and Background Check Records

1. *States that Require Sellers to Retain Firearm Sales Records:* Twenty-one states and the District of Columbia require sellers to maintain sales records reflecting the identity of the purchaser and the firearm purchased.

a. *States that Require Sellers to Retain Sales Records of All Firearms*

- *Licensed Dealers:* California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Michigan, Oregon, Pennsylvania, Rhode Island, Tennessee and the District of Columbia require licensed dealers to maintain records of sales of all firearms. Maine, Massachusetts, Michigan, Tennessee and the District of Columbia do not specify the period of retention. Retention periods in the other states range from three to twenty years.
- *Private Sellers:* Private sellers in Illinois and Rhode Island are also required to maintain records of sales of all firearms. In California and the District of Columbia, all firearm transfers must be conducted through licensed dealers, thereby ensuring that the recordkeeping requirements on licensed dealers will include records of private sales.²⁷

²⁷ In addition, Alaska and Washington require pawnbrokers and second-hand dealers to maintain written records of all firearms transactions. Records in Washington must be kept for three years; the retention period in Alaska is unspecified. Alaska Stat. § 08.76.010; Wash. Rev. Code Ann. § 19.60.020. Mississippi also requires pawnbrokers to maintain records of sales of pistols for an unspecified retention period. Miss. Code Ann. § 97-37-11.

- b. *States that Require Sellers to Retain Records of Handgun Sales Only*
- *Licensed Dealers:* Alabama, Colorado, Delaware, Mississippi, New Jersey, North Carolina, Vermont and Washington require licensed dealers to maintain records of handgun sales only. The retention period is typically six years. Delaware, Mississippi, New Jersey and North Carolina do not specify the period of retention.
 - *Private Sellers:* Connecticut requires private sellers to maintain handgun sales records.

c. *States that Require Sellers to Retain Records of Other Firearm Sales:* Maryland requires dealers to maintain copies of the application for transfer of a regulated firearm (defined as handguns and assault weapons) for three years. New York requires dealers to maintain copies of transaction reports for handguns, assault weapons, and rifles and shotguns of certain dimensions. The time of retention is unspecified. In Pennsylvania, all transfers of handguns and rifles and shotguns with specified dimensions must be conducted through licensed dealers, thereby ensuring that the recordkeeping requirements on licensed dealers will include records of private sales of these firearms.

2. *States that Retain Firearm Sales Information Reported by Sellers to Law Enforcement:* Ten states require sellers to report firearm sales information identifying the purchaser and firearm purchased to law enforcement. These state statutes do not specify the length of time law enforcement must retain the records.

a. *States that Retain Seller-Reported Information on All Firearm Sales*

- *Licensed Dealers:* Two states – Connecticut and Massachusetts – maintain records submitted by dealers of all firearm transactions.²⁸
- *Private Sellers:* Massachusetts retains sales records for all firearms reported by private sellers.

b. *States that Retain Seller-Reported Information on Handgun Sales Only:*

- *Licensed Dealers:* Alabama, California, Michigan,²⁹ New Jersey and Washington retain records of all handgun sales reported to state law enforcement by licensed dealers.
- *Private Sellers:* Connecticut retains handgun sales records reported by private sellers. In California, all firearm transfers must be conducted through licensed dealers, thereby ensuring that sales reporting requirements will include private sales. California retains reports of handgun sales.

²⁸ In addition, Oregon statutes provide that the state *may* retain records of firearm transactions reported by dealers for up to five years. Or. Rev. Stat. §§ 166.412, 166.434.

²⁹ In Michigan, sales that must be reported are those to concealed weapons license holders.

- c. *States that Retain Seller-Reported Information on Other Firearms Sales*
- *Licensed Dealers:* Maryland retains records of transfers of “regulated firearms,” which are defined as handguns and assault weapons. In New York, every licensed firearms dealer must keep a record of handgun, short-barreled rifle and shotgun, and assault weapon sales, copies of which are delivered to and retained by the New York State Police. Pennsylvania maintains records of handgun sales and sales of rifles and shotguns with specified dimensions.³⁰
 - *Private Sellers:* Maryland and Pennsylvania also retain records of private transfers of the specified firearms.

3. *States that are Required by Statute to Purge Background Check Records:* Nine states (Delaware, Florida, Nebraska, New Hampshire, Rhode Island, Tennessee,³¹ Utah, Virginia³² and Wisconsin) specify short time limits after which firearm background check records must be purged, ranging from twenty-four hours to sixty days after the application is approved.³³

SUMMARY OF SELECTED³⁴ LOCAL LAWS CONCERNING RETENTION OF FIREARM SALES AND BACKGROUND CHECK RECORDS

LCAV has not identified any local laws governing retention of background check records. The following local laws address retention of firearm sales records.

Local Laws Concerning Retention of Firearm Sales Records

Chicago	Chicago, Ill., Code §§ 4-144-040, 4-144-050
Cleveland	Cleveland, Ohio, Code § 674.09
Columbus	Columbus, Ohio, Code § 545.04(c)
Hartford	Hartford, Conn., Code §§ 21-58, 21-60

³⁰ In Oregon, dealers buying or accepting in trade used firearms are required to record the name of the person selling or trading the firearm, and the make, model and manufacturer’s identification number of the firearm, and submit a copy of the record to local law enforcement. Or. Rev. Stat. § 166.427.

³¹ Tennessee also provides that dealers “may” destroy the firearms transaction thumbprint form one year after its completion. Tenn. Code Ann. § 39-17-1316(c)(6).

³² The Virginia State Police must retain background check records for approved purchasers of multiple handgun transactions for 12 months. Va. Code Ann. § 18.2-308.2:2(B)(3). Dealers in Virginia are required to retain for two years the original consent form completed by applicants prior to the background check. Va. Code Ann. § 54.1-4201.

³³ The majority of states retain records of transfers that are denied. *Survey of State Procedures, supra* note 3, at 79.

³⁴ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

New York City

New York, N.Y., Admin. Code §§ 10-131(i)(13), 10-302(n), 10-306(e); New York, N.Y., Rules, tit. 38, §§ 1-05(b), 4-06

Omaha

Omaha, Neb., Code §§ 19-362, 19-363

Chicago: Chicago requires firearms dealers to maintain registers of all firearms and ammunition sold, loaned, rented or given away, including the names of the purchasers and descriptions of the firearms and ammunition. Chicago also requires daily sales reporting by dealers to the Superintendent of Police. In Chicago, all firearm transfers, including those by private sellers, must be conducted through licensed dealers, thereby subjecting all transfers to the recordkeeping and reporting requirements.³⁵

Cleveland: In Cleveland, every handgun dealer must record the purchase and sale of handguns. The records of any sale must be given to the Chief of Police within 24 hours of the sale. The Chief of Police keeps permanent records of handgun sales.

Columbus: In Columbus, every firearms dealer must record any firearm transaction and provide the local division of police a report of all transactions in the preceding 24 hours.

Hartford: In Hartford, sellers of handguns must keep a record of all handguns transferred, and make the records available to law enforcement or the city clerk “at all reasonable times.” Transferors also must submit a record of the handgun transfer information to the Chief of Police no later than the last business day of the month in which the handgun was transferred.

New York City: Firearms dealers in New York City must maintain a record of every transaction involving a firearm. Such records are subject to inspection at all times by law enforcement.

Rifle and shotgun dealers must maintain a record book provided by the Rifle/Shotgun Section of the License Division of the New York City Police Department. The record book must contain a record of all rifles and shotguns purchased and transferred by the dealer.

Dealers in handguns and short-barreled rifles and shotguns also must maintain a record book detailing all transactions. When a handgun or short-barreled rifle or shotgun is received or transferred, the dealer must record the name, address, age, occupation and a description of the recipient or transferee’s authority to purchase, carry or possess the weapon. In addition, the make, caliber and serial number of each firearm transferred, the date and time of the transaction and the name of the dealer or employee effecting the transaction must be recorded. When a dealer transfers a handgun or short-barreled rifle or shotgun, he or she must also record the number of the transferee’s license to purchase, carry or possess the weapon, and the name of the police officer who issued it.

³⁵ Chicago, Ill., Code § 8-20-170.

The records of rifle and shotgun dealers as well as handgun and short-barreled rifle and shotgun dealers must be maintained on the premises permanently and surrendered to the police department when a dealer ceases to do business.

Handgun and short-barreled rifle and shotgun dealers also must complete and forward a “Pistol Index” card to the police department’s Stolen Property Inquiry Section within 72 hours of every transfer of a handgun or short-barreled rifle or shotgun to an authorized transferee. Dealers who acquire a second-hand pistol or short-barreled rifle or shotgun must forward a “Dealer’s Report on Second-Hand Guns” to the Stolen Property Inquiry Section within 72 hours of the acquisition of the weapon.

Each time handgun ammunition is transferred by a dealer in New York City, he or she must record the quantity, caliber and type of ammunition; the name and address of the transferee; the date and time of the transaction; the number of the license or permit exhibited or description of the proof that the transferee exhibited showing why he or she is exempt from the licensing requirement. For each rifle and shotgun ammunition transfer, the dealer must record the same information described above as well as the caliber, make, model and manufacturer’s name and serial number of the rifle or shotgun for which the purchaser is purchasing ammunition.

Omaha: All persons engaging in the business of a firearm dealer in Omaha are required to record the details of any purchase, sale, rental, pawn, pledge or trade of a firearm. Firearms dealers also must provide daily reports to the Chief of Police of all firearms purchased or otherwise received by the dealer.

FEATURES OF COMPREHENSIVE LAW GOVERNING RETENTION OF FIREARM SALES AND BACKGROUND CHECK RECORDS

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.

- Dealers are required to retain records of all firearms transfers (*California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Michigan, Oregon, Pennsylvania, Tennessee, District of Columbia, Chicago, New York City, Omaha*)
- Private sellers are subject to similar recordkeeping requirements as licensed dealers, either because all transfers are conducted through licensed dealers (*California, District of Columbia, Chicago; Pennsylvania requires transfers to be conducted through licensed dealers, but only for handguns*), or because the requirements separately are imposed on private sellers (*Illinois; Connecticut imposes recordkeeping requirement on private sellers, but only for handguns*)
- The retention period, if not indefinite, is for a lengthy period of time (*Pennsylvania – 20 years, Illinois – 10 years*)

- Dealers and private sellers are required to report information on all firearm transfers to state (*Massachusetts*) and local (*Chicago*) law enforcement
- Law enforcement is required to retain firearm transfer information indefinitely
- Law enforcement is required to retain background check records indefinitely