

REGULATING GUNS IN AMERICA

AN EVALUATION AND COMPARATIVE ANALYSIS OF FEDERAL, STATE AND SELECTED LOCAL GUN LAWS

February 2008

Executive Summary

With nearly 100,000 victims each year,¹ gun violence is a danger that threatens residents of every state and every municipality in this country. In response to that danger, public officials and advocates across the United States are working hard to craft reasonable public policies to minimize the deaths and injuries caused by guns in their communities.

Regulating Guns in America is a study of federal, state and selected local gun laws across the United States. It demonstrates – in twenty-six policy areas – that federal regulation of firearms is limited. Although most Americans favor stronger gun laws, the history of the gun violence prevention movement shows that federal reform, even under the most favorable political conditions, is difficult to achieve.

In the absence of comprehensive federal regulation, it is up to state and local governments to adopt policies to prevent gun violence. Strong state and local measures can address the concerns of specific communities and regions, improve community health and safety, fill gaps in federal policy, and act as a catalyst for the broader reforms our country needs.

Regulating Guns in America is a publication of Legal Community Against Violence (LCAV), a national public interest law center dedicated to preventing gun violence. Founded in 1993 in the aftermath of the assault weapon massacre at 101 California Street in San Francisco, LCAV is the country's only organization devoted exclusively to providing legal assistance in support of gun violence prevention. LCAV serves governmental entities and nonprofit organizations nationwide, focusing on policy reform at the state and local levels. We conduct legal research, analyze existing and emerging policy strategies, review proposed legislation, generate model regulations and develop legal and analytical materials to help governmental entities and nonprofit organizations achieve their policy goals. Our website, www.lcav.org, is the most comprehensive resource for information on U.S. firearms laws in either print or electronic form.

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; National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS) Nonfatal Injury Reports 2005*, at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>.

The Executive Summary highlights only some of the most interesting and valuable aspects of the report. It is not intended to summarize every detail and nuance contained within. Readers are urged to refer to the full report for a thorough analysis of the laws and policies discussed in the Executive Summary.

Regulating Guns in America reviews guns laws in six general policy areas: (1) Classes of Weapons; (2) Sales and Transfers; (3) Gun Dealers and Other Sellers; (4) Gun Ownership; (5) Consumer and Child Safety; and (6) Crime Detection. The Executive Summary discusses the following topics in each policy area:²

- *Section Overview*: The Executive Summary identifies and briefly explains the specific issues covered in each policy area.
- *Federal Law Summary*: For each policy area, the Executive Summary describes existing federal law and highlights some of the significant gaps in federal law.
- *State Law Summary*: *Regulating Guns in America* analyzes the laws of all 50 states and the District of Columbia, comparing and contrasting the regulatory approaches in those states in each policy area. The Executive Summary synthesizes that discussion and discusses some of the most significant policies.
- *Local Law Summary*: The report examines local laws in 10 major U.S. cities: Boston, Massachusetts; Chicago, Illinois; Cleveland, Ohio; Columbus, Ohio; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. The Executive Summary briefly highlights their firearms laws. These cities are located in states that presently provide local jurisdictions broad authority to regulate firearms.³
- *Conclusions*: The Executive Summary identifies opportunities for state and local governments to close gaps in federal law.

The report also includes, for each gun policy topic, a list of features that characterize comprehensive regulation. These lists are themselves a distillation of the state and local regulatory approaches detailed in each section, and therefore do not lend themselves to further summary here. Readers are referred to each section for these features.

Regulating Guns in America is based on legal research conducted through December 2007. Although the report discusses the law in many areas of firearms regulation, it does not offer, and is not intended to constitute, legal advice. LCAV encourages public

² Appendix A to this report, a “Snapshot of Federal, State and Selected Local Gun Laws,” contains a further summary, in chart form, of existing law in each policy area.

³ California, Connecticut, Hawaii, Illinois, Massachusetts, Nebraska, New Jersey and New York permit broad local regulation of firearms. For a number of years, the National Rifle Association (NRA) and the gun lobby have waged a sustained campaign to persuade states to enact broad preemption laws. Thus, in most states, local governments have limited authority to regulate firearms. For example, 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, and the Cleveland and Columbus ordinances cited in this report have not been repealed. Specific questions about whether a particular type of local regulation may be preempted in any given state involve a complex inquiry and analysis of existing case law. Information on state laws governing local authority to regulate firearms is contained in the section of this report titled “The Legal Background.”

officials and advocates to obtain expert counsel when considering a particular law or provision, and is available to provide legal and technical assistance to governmental entities and nonprofit organizations interested in law and policy reform at the state and local levels.

Classes of Weapons

Section Overview: This section of the report reviews laws regulating and/or banning certain classes of weapons and accessories. Specifically, the section covers the following topics: (1) Assault Weapons; (2) Large Capacity Ammunition Magazines; (3) Fifty Caliber Rifles; (4) Banning Handguns; (5) Non-Powder Guns; and (6) Ammunition Regulation.

The report addresses these categories of firearms and accessories because of the particular threat posed by each. **Assault weapons** are a class of semi-automatic firearms designed with military features to allow rapid and accurate spray firing. They are made to kill humans quickly and efficiently, and pose a particular threat to law enforcement officers. **Large capacity ammunition magazines** are of special concern because they significantly increase the lethality of the automatic and semi-automatic firearms that use them (including assault weapons). **Fifty caliber rifles** are military firearms capable of destroying or disabling military targets, such as armored vehicles, helicopters and stationary and taxiing airplanes. Fifty caliber rifles have been linked to terrorism, drug trafficking and other violent crime.

The section on **banning handguns** examines an approach used in some municipalities to address the proliferation of handguns by banning their possession and/or sale. Handguns are much more likely to be used to commit violent crimes than other firearms, making them a particular focus of regulatory efforts, up to and including total bans. **Non-powder guns** (e.g. BB, air or pellet guns) injure tens of thousands of people each year, most of them children. Non-powder guns are becoming more powerful and more accurate, and are often indistinguishable from firearms. **Ammunition regulation** is an area that has received little attention from policymakers. Policies to limit access by children, convicted felons and other dangerous persons can help reduce the threat of firearms.

Federal Law Summary: There are no federal laws banning assault weapons, large capacity ammunition magazines, fifty caliber rifles, handguns, or non-powder guns. (Restrictions on who may purchase or possess firearms are described below under the heading “Sales and Transfers.”)

Although assault weapons and large capacity ammunition magazines were banned at the federal level from 1994 to 2004, Congress allowed the law to expire in 2004 and failed to renew it. Therefore, assault weapons and large capacity ammunition magazines that were illegal from 1994 to 2004 are once again legal to possess and sell in the United States (unless banned under state or local law). Likewise, there is no federal law banning fifty caliber rifles.

There is no federal law banning handguns.⁴ There are no federal laws regulating the possession, sale or use of non-powder guns.⁵ Federal law governing ammunition transfers is limited to prohibiting sales to and purchases by certain categories of persons; however, there is no requirement that ammunition sellers conduct a background check to determine if a prospective purchaser falls into a prohibited category.⁶

State Law Summary:

Seven states ban assault weapons (*California, Connecticut, Massachusetts, New Jersey and New York; Hawaii and Maryland ban assault pistols*).

- The District of Columbia bans assault weapons indirectly, through other laws banning handguns and machine guns.
- Three states regulate assault weapons (*Maryland, Minnesota and Virginia*).

Six states ban large capacity ammunition magazines (*California, Hawaii, Maryland, Massachusetts, New Jersey and New York*). All of these states also ban assault weapons.

California is the only state that bans 50 caliber rifles.

- Connecticut bans one model of 50 caliber rifle, as part of its ban on assault weapons.
- Maryland includes one 50 caliber rifle model in the list of assault weapons defined as “regulated firearms,” which are subject to stricter state regulation.

The District of Columbia bans the possession, purchase, sale, manufacture and repair of handguns.⁷ No state bans all types of handguns.⁸

Nineteen states regulate the transfer, use or possession of non-powder guns.⁹

⁴ In some respects, handguns are subject to stricter regulation under federal law than long guns. For example, as outlined below, the minimum age for purchase and possession of handguns is higher than it is for long guns, certain unsafe handguns may not be imported into the U.S., and handguns are required to be sold with locking devices.

⁵ Unlike firearms and ammunition, non-powder guns do, however, fall within the authority of the Consumer Product Safety Commission.

⁶ Federal law also prohibits the manufacture, importation, sale and delivery of armor-piercing ammunition.

⁷ 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. On November 20, 2007, 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.

⁸ Although no state bans all handguns, a number of jurisdictions ban some types of handguns, including “ultracompact” handguns, junk guns, assault pistols and 50 caliber handguns.

⁹ California, Colorado, Connecticut, Delaware, Florida, Illinois, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, Virginia, Washington and Wisconsin regulate the use or possession of non-powder guns.

Twenty-three states and the District of Columbia regulate the sale, transfer, carrying or storage of ammunition, including:

- Four states (*Maryland, Massachusetts, Minnesota and Washington*) and the District of Columbia require a license for ammunition sellers or otherwise regulate the sale of ammunition
- Two states (*Illinois and Massachusetts*) and the District of Columbia require a license to purchase or possess ammunition
- Eleven states prohibit certain persons from purchasing or possessing ammunition (*Alaska, California, Delaware, Florida, Hawaii, Illinois, Michigan, Nevada, North Dakota, Tennessee and Texas*)
- Fifteen states and the District of Columbia impose a minimum age to purchase or possess ammunition¹⁰
- Two states regulate ammunition at gun shows (*California and Maine*)
- Two states restrict the locations where ammunition may be carried (*California and Minnesota*)
- Two states require safe storage of ammunition in the home (*Hawaii and Washington*)

In addition, thirty-one states and the District of Columbia regulate one or more types of unreasonably dangerous ammunition.¹¹

Local Law Summary:

Boston, Chicago, Cleveland, Columbus and New York City ban the sale and possession of assault weapons. Boston, Chicago, Columbus, Los Angeles and New York City ban large capacity ammunition magazines.

Los Angeles and San Francisco ban 50 caliber handguns. San Francisco bans 50 caliber cartridges.

Chicago bans possession and sale of handguns.¹²

Chicago, Cleveland, New York City and Omaha regulate the transfer, use or possession of non-powder guns.

Chicago prohibits the sale and possession of most ammunition. Los Angeles, New York City, Omaha and San Francisco regulate the sale and/or possession of ammunition

¹⁰ Arizona, California, Delaware, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New York, Rhode Island, South Dakota, Vermont and the District of Columbia impose a minimum age for purchase or possession of ammunition.

¹¹ Alabama, California, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin and the District of Columbia regulate one or more types of unreasonably dangerous ammunition.

¹² In 2005, San Francisco voters approved an ordinance to prohibit, *inter alia*, the possession of handguns by San Francisco residents. In a recent decision an appellate court struck down the ordinance, finding it preempted by state law. *Fiscal v. City & County of San Francisco*, No. A115018, 2008 Cal. App. LEXIS 21 (Cal. Ct. App. Jan. 9, 2008). The City has indicated that it will appeal the decision.

Conclusions:

In the absence of federal law banning assault weapons, large capacity ammunition magazines, and 50 caliber rifles, some states and local communities have enacted legislation to fill the void. Other jurisdictions can look to these laws as potential strategies to limit the threat of these dangerous weapons. Although many states already regulate non-powder guns, jurisdictions may wish to consider stricter regulation of high caliber, large capacity non-powder guns, to better protect children. State and local laws have filled gaps left by the lack of federal regulation of ammunition. These and other laws can help limit the threat posed by firearms by limiting access to ammunition by dangerous individuals.

Sales and Transfers

Section Overview: In this section, *Regulating Guns in America* examines laws regulating the transfer of firearms. Specifically, the section addresses the following topics:

(1) Prohibited Purchasers; (2) Minimum Age to Purchase and Possess Firearms; (3) Domestic Violence and Firearms; (4) Background Checks; (5) Mental Health Reporting; (6) Waiting Periods; and (7) Restrictions on Multiple Purchases or Sales of Firearms.

Prohibited purchasers are categories of persons deemed ineligible to purchase firearms. Laws governing the **minimum age to purchase and possess firearms** limit access to firearms by persons who are underage. Laws aimed at **domestic violence and firearms** recognize the particular threat posed to victims of domestic violence, and seek to keep firearms out of the hands of abusers. **Background checks** are the mechanism used to identify persons who may not lawfully purchase or possess firearms. **Mental health reporting** laws seek to ensure that federal and state databases will include all relevant information for firearm purchaser background checks. **Waiting periods** prescribe a time period eligible purchasers must wait before taking possession of their firearms, and are designed to allow law enforcement sufficient time to complete a background check and to provide a “cooling off” period to help guard against impulsive acts of violence. **Restrictions on multiple purchases or sales of firearms** include laws prohibiting eligible purchasers from purchasing more than one firearm during a specified time period, and are designed to help limit illegal weapons trafficking.

Federal Law Summary: Federal law establishes the baseline of the categories of persons who are ineligible to purchase firearms. Among other prohibited categories, federal law prohibits the sale of firearms to persons who are convicted felons and to persons who have been adjudicated as mental defectives or involuntarily committed to a mental institution.

Federal law also prohibits persons who are underage from purchasing firearms. Federally licensed firearms dealers (FFLs) are prohibited from selling rifles or shotguns to persons under 18, and are prohibited from selling handguns to persons under 21. Unlicensed

sellers¹³ may not sell handguns to persons under 18. Federal law imposes no minimum age on the purchase of long guns from unlicensed sellers. Possession of handguns by persons under 18 is prohibited. There is no federal minimum age for possession of long guns.

In addition, federal law prohibits persons who have a history of domestic violence from purchasing firearms. The prohibition applies to persons with certain domestic violence misdemeanor convictions, and to persons who are subject to certain domestic violence restraining orders. The federal prohibition does not apply to all domestic abusers; for example, most dating partners fall outside these protections. Similarly, the federal prohibitions do not apply to persons subject to orders of protection issued without notice and a hearing (ex parte orders). Federal law is silent with respect to the removal of firearms that are already in the possession of a domestic abuser.

The Brady Handgun Violence Prevention Act (the Brady Act)¹⁴ requires FFLs to perform background checks on prospective firearm purchasers to ensure that the sale would not violate federal, state or local law. The Brady Act is implemented through the National Instant Criminal Background Check System (NICS).¹⁵ There are a number of gaps in federal law, including: (1) the Brady Act does not apply to sales by unlicensed sellers; (2) in cases where the background check may not be completed within three business days, the sale may proceed by default, which may result in firearms being transferred to ineligible persons; (3) FBI databases are incomplete, because the FBI does not have access to certain state records, including mental health records, domestic violence restraining orders, and outstanding felony warrants; and (4) persons holding some state-issued permits allowing purchase or possession of firearms are not required to undergo a background check at the time of purchase.

The NICS Improvement Amendments Act of 2007 encourages states to report mental health information to NICS; however, complete reporting of state records ultimately depends on state law and practice.

Federal law does not impose a waiting period, and does not restrict multiple sales or purchases of firearms.

State Law Summary: With the exception of Vermont, all states and the District of Columbia have laws governing prohibited purchasers and background checks. Federal categories of prohibited purchasers are the prevailing minimum for all states. As detailed in *Regulating Guns in America*, a number of states have gone beyond federal law, establishing broader standards or designating additional classes of prohibited purchasers.

¹³ “Unlicensed sellers” are persons who are not required to obtain a federal firearms dealer’s license. *See infra* p. x.

¹⁴ 18 U.S.C. § 921 *et seq.*

¹⁵ NICS checks are conducted by the FBI or by the state. (States may opt to serve as a Point of Contact (POC) and conduct their own NICS checks.) The FBI or POC conducts name-based searches of federal and state databases. FBI searches include three federal databases: (1) the National Crime Information Center (NCIC), which includes records regarding fugitives and persons subject to protective or restraining orders; (2) the Interstate Identification Index, which contains state criminal history records; and (3) the NICS Index, which contains records of other persons prohibited under federal law from receiving or possessing firearms.

The following represent examples of state laws that go beyond federal purchaser prohibitions:

- **Twenty-three states and the District of Columbia disqualify persons convicted of certain misdemeanor offenses from purchasing or possessing some or all firearms.**¹⁶ Federal law prohibits convicted felons from purchasing or possessing firearms, but is silent with respect to most misdemeanor convictions.¹⁷
- **Eighteen states and the District of Columbia restrict access to firearms by alcohol abusers.**¹⁸ Federal law prohibits persons who are unlawful users of or addicted to a controlled substance from purchasing firearms, but does not restrict firearm purchases by alcohol abusers.
- **Twenty-seven states prohibit juvenile offenders from purchasing firearms.**¹⁹ Federal law does not restrict purchases of firearms by persons with juvenile convictions.

Thirty-seven states and the District of Columbia impose a stricter minimum age than federal law for purchase and/or possession of firearms.²⁰ These include: laws imposing minimum age restrictions on all firearm purchases, whether from a licensed dealer or an unlicensed seller; laws imposing stricter minimum age requirements for possession of handguns; and laws imposing minimum age requirements for possession of long guns.

Thirty states go beyond federal prohibitions on purchase and possession of firearms with respect to persons who have a misdemeanor domestic violence conviction or are subject to a domestic violence protective order.²¹ Federal law prohibits purchase

¹⁶ California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia and the District of Columbia prohibit persons convicted of certain misdemeanors from purchasing some or all firearms.

¹⁷ Federal law does prohibit firearm purchases by persons with misdemeanor domestic violence convictions.

¹⁸ Alabama, Alaska, Delaware, Hawaii, Indiana, Iowa, Maryland, Massachusetts, Mississippi, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, West Virginia and the District of Columbia restrict access to some or all firearms by alcohol abusers.

¹⁹ Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Washington and Wisconsin prohibit persons with certain juvenile convictions from purchasing some or all firearms.

²⁰ Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington, Wisconsin and the District of Columbia impose stricter minimum age requirements than federal law for purchase and/or possession of firearms.

²¹ Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin exceed federal law governing purchase or possession of firearms by persons

and possession of firearms and ammunition by persons convicted of a misdemeanor crime of domestic violence, and by persons subject to certain orders of protection. However, federal law defines these terms narrowly. States have enacted laws to protect a broader class of domestic violence victims, and to apply to a larger category of domestic violence protective orders. **In addition, twenty-eight states authorize law enforcement to remove firearms at the scene of a domestic violence incident, and/or authorize removal of firearms and ammunition when a domestic violence protective order is issued.**²² Federal law is silent with respect to the ability of law enforcement to remove firearms from domestic abusers.

Thirteen states authorize or require the reporting of mental health information to the FBI's National Instant Criminal Background Check System (NICS), for purposes of identifying persons who are prohibited from purchasing firearms due to a history of mental illness.²³

- Two states require reporting of all relevant mental health records to NICS (*Connecticut and Illinois*).
- Six states require reporting of some mental health records to NICS (*Alabama, Colorado, Georgia, Iowa, Kansas, Maine*).
- Five states authorize reporting of mental health records to NICS (*Florida, Michigan, Missouri, Virginia and Washington*).

Fourteen states authorize or require reporting of mental health records for in-state transfers only.²⁴

Twelve states and the District of Columbia have adopted waiting periods for firearm purchases.²⁵

- Four states impose waiting periods for purchases of all firearms (*California, Hawaii, Illinois and Rhode Island*).
- Two states impose waiting periods for purchases of handguns and assault weapons (*Maryland and Minnesota*).
- Five states and the District of Columbia impose waiting periods on handgun purchases only (*Florida, Iowa, New Jersey, South Dakota, Wisconsin and the District of Columbia*).
- Connecticut imposes a waiting period on long gun purchases only.

with a misdemeanor domestic violence conviction or who are subject to a domestic violence protective order.

²² Alaska, Arizona, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, West Virginia and Wisconsin authorize law enforcement to remove firearms and ammunition from domestic abusers.

²³ Alabama, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Michigan, Missouri, Virginia and Washington authorize or require reporting of mental health information to NICS.

²⁴ Arkansas, California, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Utah and Wisconsin authorize or require reporting of mental health records for in-state firearm transfers only.

²⁵ California, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Jersey, Rhode Island, South Dakota, Wisconsin and the District of Columbia impose waiting periods.

Three states restrict multiple purchases of firearms (*California, Maryland and Virginia*).

- Maryland limits purchases of handguns and assault weapons to one per person per month.
- California limits purchases and sales of handguns to one per person per month.
- Virginia limits purchases of handguns to one per person per month.

Local Law Summary:

Chicago, Cleveland, Columbus, Hartford, New York City and Omaha prohibit certain categories of persons from purchasing firearms (going beyond federal law).

Boston, Chicago, Cleveland, Columbus and New York City impose stricter minimum age requirements than federal law.

New York City and Omaha restrict access to firearms by domestic abusers.

Cleveland, Columbus, New York City and Omaha have local laws requiring background checks for issuance of local firearms permits.

New York City requires its Department of Mental Hygiene to make records available in connection with applications for rifle or shotgun permits.

Columbus imposes a waiting period for issuance of a weapons transaction permit.

Los Angeles limits handgun purchases and sales to one per person per month. New York City limits purchases of handguns, and of rifles and shotguns, to one per person per ninety days.

Conclusions:

Federal laws governing prohibited purchasers, minimum age to purchase or possess firearms, and background checks contain a number of gaps that may be addressed by states or local governments, including policies to better restrict access to firearms by children, domestic abusers, persons with mental illness, and others. Waiting periods and restrictions on multiple sales and purchases of firearms are underused policies that jurisdictions may wish to consider.

Gun Dealers and Other Sellers

Section Overview: This portion of the report addresses laws regulating sellers of firearms, and contains the following sections: (1) Dealer Regulations; (2) Private Sales; and (3) Gun Shows.

Dealer regulations are laws that require firearms dealers to be licensed, and impose other requirements on their operations. **Private sales** are sales of firearms by persons other than federally licensed firearms dealers. **Gun shows** are events dedicated to the

display and sale of firearms and firearm-related accessories. Gun shows are of particular concern because they are a popular venue for private sales, and have been shown to be a major channel for illegal firearms trafficking.

Federal Law Summary: Federal law makes it unlawful for any person except a licensed dealer to engage in the business of dealing in firearms. Persons who make occasional sales or purchases as part of a personal collection or as a hobby, or who sell all or part of a personal collection, are defined as not being engaged in the business of dealing in firearms, and therefore need not be licensed under federal law.

Among other requirements, federally licensed firearms dealers (FFLs) are required to: (1) initiate background checks on prospective firearm purchasers; (2) maintain records of all gun sales; (3) report multiple handgun sales; (4) report the theft or loss of a firearm from the licensee's inventory; and (5) submit to a maximum of one inspection per year by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to ensure compliance with recordkeeping requirements.²⁶

Unlicensed sellers (at gun shows or elsewhere) are not subject to these requirements, and may sell firearms without conducting background checks or documenting the transaction in any way.

State Law Summary:

Twenty-eight states and the District of Columbia license and/or regulate firearms dealers. Some of the noteworthy types of regulation include:

- **Seventeen states and the District of Columbia license firearms dealers.**²⁷
- **Eleven states require dealers to report sales to state and/or local law enforcement** (*Alabama, California, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, New York, Oregon, Pennsylvania and Washington*).
- **Fifteen states require dealers to provide warnings to purchasers about the dangers of firearms.**²⁸
- **Five states require background checks of dealer employees** (*Connecticut, Delaware, New Jersey, Virginia and Washington*).
- **Nine states and the District of Columbia require dealers to use security measures on their premises** (*Alabama, California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, West Virginia and the District of Columbia*).

²⁶ For a discussion of the limitations of ATF's inspections, see Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* i (July 2004).

²⁷ Alabama, California, Connecticut, Delaware, Georgia, Hawaii, Indiana, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, Washington, Wisconsin and the District of Columbia license firearms dealers.

²⁸ California, Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Texas and Wisconsin require dealers to provide warnings to purchasers.

- **Three states require dealers to report the theft or loss of firearms to law enforcement** (*California, Massachusetts and New Jersey*).
- **Massachusetts bans residential dealers.**

Two states and the District of Columbia require universal background checks for all firearm purchases, whether from licensed or unlicensed sellers (*California, Rhode Island and the District of Columbia*). Other states require universal background checks on some firearm purchases:

- Maryland requires universal background checks for transfers of handguns and assault weapons from licensed or unlicensed sellers.
- Connecticut and Pennsylvania require universal background checks for all handgun purchasers.

Five states require background checks on all transfers at gun shows (*Colorado, Connecticut, Illinois, New York and Oregon*). These states, along with California, Maryland and Virginia, also impose other regulations on gun shows, including:

- California imposes safety and security requirements on gun shows.
- Maryland requires all gun show vendors of handguns and assault weapons to obtain a license.
- Five states impose recordkeeping requirements on gun show vendors and/or promoters (*Colorado, Illinois, New York, Oregon and Virginia*).

Local Law Summary:

Chicago, Cleveland, Columbus, Hartford, Los Angeles, New York City, Omaha and San Francisco license and regulate handgun or firearms dealers.

Chicago, Columbus, New York City and Omaha regulate private sales.

Omaha regulates gun shows (but does not require background checks on purchasers at gun shows).

Conclusions:

Some states and local communities have addressed gaps in federal oversight of gun dealers with comprehensive dealer licensing laws. In addition, the private sale loophole which allows unlicensed sellers to transfer firearms without conducting background checks or keeping any records of their sales, is an area that could be addressed through state and local policy reform. In addition to requiring universal background checks, jurisdictions may wish to consider other gun show regulations to improve security and recordkeeping.

Gun Ownership

Section Overview: In this section, *Regulating Guns in America* summarizes laws governing licensing and permitting of firearm owners, and laws requiring registration of firearms, covering the following: (1) Licensing of Gun Owners or Purchasers;

(2) Registration of Firearms; (3) Reporting Lost or Stolen Firearms; and (4) Carrying Concealed Weapons.

Licensing of gun owners or purchasers refers to laws that require an individual to obtain a license or permit authorizing the individual to purchase and/or possess a firearm. Laws requiring **registration of firearms** typically require gun owners to record the ownership of their firearms with a designated law enforcement agency. Laws requiring **reporting lost or stolen firearms** by gun owners help deter gun trafficking and make owners more accountable for their weapons. **Carrying concealed weapons (CCW)** laws determine the circumstances, if any, under which a person is permitted to carry a concealed weapon in public.

Federal Law Summary: Federal law does not require licensing of gun owners or purchasers.

Federal registration of firearms is limited to machine guns owned prior to 1986, when Congress banned the possession and transfer of machine guns, and to certain transfers of short-barreled rifles and shotguns specifically approved by the Attorney General. Federal law prohibits the use of the National Instant Criminal Background Check System (NICS) to create any system of registration of firearms or firearm owners.

Federal law does not require gun owners to report lost or stolen firearms; it does require licensed firearms dealers to report loss or theft of firearms.

Federal law allows certain law enforcement officers, including certain retired law enforcement officers, to carry concealed firearms.

State Law Summary:

Four states require licenses for all firearm purchasers or owners (*Hawaii, Illinois, Massachusetts and New Jersey*).

Seven states license all handgun owners or purchasers (*California, Connecticut, Iowa, Michigan, New York, North Carolina and Rhode Island*).

- Six states allow purchase of only a single handgun with each license or permit (*Hawaii, Massachusetts, Michigan, New Jersey, New York and North Carolina*).
- Six states require firearm safety training or a safety exam as a condition of issuance of a license or permit (*California, Connecticut, Hawaii, Massachusetts, Michigan and Rhode Island*).

Only Hawaii and the District of Columbia require registration of all firearms. In addition:

- California requires registration of pre-ban assault weapons and 50 caliber rifles.
- Four states require registration of pre-ban assault weapons (*Connecticut, Hawaii, Maryland and New Jersey*).

- Louisiana requires registration of certain other firearms (including machine guns and short-barreled shotguns and rifles).²⁹

Seven states prohibit any registry of firearms (*Delaware, Florida, Georgia, Idaho, Rhode Island, South Dakota and Vermont*). Two states prohibit a registry of long guns (*California and Pennsylvania*).

Seven states and the District of Columbia require firearm owners to report the loss or theft of their firearms to law enforcement (*Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island and the District of Columbia*).

Two states prohibit carrying concealed weapons (*Illinois and Wisconsin*). Forty-eight states and the District of Columbia allow carrying concealed weapons.

- Twelve states and the District of Columbia are “may issue” states, in which the issuing official has discretion to grant or deny the permit based on statutory criteria (*Alabama, California, Connecticut, Delaware, Hawaii, Iowa, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Wyoming and the District of Columbia*).
- Among “may issue” states, eleven states and the District of Columbia require applicants to demonstrate good cause and/or be of good character in order to be eligible for a permit (*Alabama, California, Connecticut, Delaware, Hawaii, Iowa, Maryland, Massachusetts, New Jersey, New York, Rhode Island and the District of Columbia*).
- Thirty-four states are “shall issue” states, in which law enforcement officials are required to issue a permit to anyone who meets certain minimal statutory criteria.³⁰
- Eighteen states require applicants to demonstrate knowledge of firearm use and/or safety.³¹

Local Law Summary:

Chicago, Cleveland, Columbus, Hartford, New York City and Omaha require local licenses for owners and/or purchasers of some or all firearms.

Chicago, Cleveland, New York City and Omaha require registration of some or all firearms.

²⁹ While not requiring registration *per se*, Michigan requires handgun owners to pass a safety inspection; copies of certificates of inspection (which include information identifying the owner and the weapon) are kept by state and local law enforcement.

³⁰ Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington and West Virginia are “shall issue” states. Only two states (Alaska and Vermont) allow concealed carry with no permit.

³¹ California, Connecticut, Delaware, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, Texas and Utah require applicants to demonstrate knowledge of firearm use and/or safety.

Chicago, Cleveland, Columbus, Hartford, Los Angeles, New York City and San Francisco require firearm owners to report the theft or loss of a firearm to law enforcement.

Chicago, Cleveland, Columbus, Hartford, New York City and Omaha generally do not allow carrying concealed weapons, but Hartford, New York City and Omaha have permitting schemes that would allow some concealed carry.

Conclusions:

Licensing and registration are policies that are underused at the state and local levels. With no federal licensing and only limited federal registration of firearms, these fields lend themselves to creative state and/or local policy approaches. Generally considered to be most effective when used in concert, jurisdictions may wish to consider policy options that combine licensing with registration of firearms. Laws requiring firearm owners to report theft or loss of a weapon help deter gun trafficking, assist law enforcement in tracing guns more effectively, and protect gun owners who are victims of theft. In jurisdictions that allow carrying concealed weapons, strict permitting policies can help mitigate, but not eliminate, the risks of permissive CCW laws to public health and safety.

Consumer and Child Safety

Section Overview: This portion of the report focuses on laws addressed at making firearms safer, especially for children. Specific topics covered are: (1) Design Safety Standards for Handguns: Regulating Junk Guns/Saturday Night Specials; (2) Locking Devices; (3) Personalized Firearms; and (4) Child Access Prevention.

Design safety standards are targeted at low-quality handguns composed of inferior metals and lacking in basic safety features. These handguns, also referred to as “**junk guns/Saturday Night Specials**,” are cheap, easily concealed, and more likely to misfire or malfunction than other firearms. **Locking devices** describe a wide range of disabling devices designed to keep unauthorized users from gaining access to guns, and to reduce the risk of unintentional death and injury. **Personalized firearms**, also known as “smart guns,” are firearms that can be fired only by authorized users. **Child access prevention** laws impose criminal liability on adults who negligently leave firearms accessible to children, or otherwise allow children access to firearms.

Federal Law Summary: Federal law prohibits the importation of junk guns through a ban on importation of firearms not suited for “sporting purposes.” The federal Consumer Product Safety Act, which imposes health and safety standards on consumer products, exempts firearms and ammunition from its requirements. 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.

It is 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.³² The requirement does not apply to private sellers, and there is no requirement that the transferee use the device. There are no federal standards for locking devices.

There are no federal laws requiring personalized firearms, and no federal child access prevention laws.

State Law Summary:

Eight states regulate junk guns through handgun design and safety standards (*California, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New York and South Carolina*). Of these:

- Three states require drop testing and firing testing (*California, Massachusetts and New York*).
- Six states impose a melting point test (*Hawaii, Illinois, Massachusetts, Minnesota, New York and South Carolina*).
- Three states require specific handgun safety features, such as safeties to prevent accidental firing, chamber load indicators, and/or magazine disconnect mechanisms (*California, Massachusetts and New York*).
- Three states use a list of approved handguns that may be sold in the state (*California, Maryland and Massachusetts*).

Eleven states and the District of Columbia require locking devices on some or all firearms (*California, Connecticut, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and the District of Columbia*).

- California requires locking devices on all firearms manufactured, sold or transferred in the state. Massachusetts requires any handgun or assault weapon sold in the state to have an approved safety device.
- Two states require that all licensed dealers provide a locking device with all firearms prior to transfer (*Michigan and New York*).
- Six states require dealers to provide locks with the sale of some or all handguns (*Connecticut, Illinois, Maryland, New Jersey, Pennsylvania (handguns and certain rifles and shotguns) and Rhode Island*).
- Massachusetts and the District of Columbia require that all firearms be stored with a lock in place.
- Four states set standards for locking devices or maintain a roster of approved locking devices that may be sold in the state (*California, Maryland, Massachusetts and New York*).

Two states require monitoring of personalized handgun technology (*Maryland and New Jersey*).

- When determined to be available for retail sale, New Jersey will require that personalized handgun technology be incorporated in all handguns transported, sold or possessed in the state.

³² This provision was enacted in 2005 as part of the Protection of Lawful Commerce in Arms Act. 18 U.S.C. § 922 (z).

Twenty-seven states and the District of Columbia have child access prevention laws.³³

- The broadest laws impose criminal liability on persons who negligently store firearms whenever a child could or does gain access to the firearm, regardless of whether the child uses the firearm (*Hawaii, Maryland, Massachusetts, Minnesota, New Jersey, and Texas*).

Local Law Summary:

Chicago, Cleveland, Los Angeles and New York City require locking devices on some or all firearms. Chicago and Cleveland have local child access prevention laws.

Conclusions:

Federal law does not prohibit unsafe domestically produced firearms from entering the market. The 2005 law requiring locking devices is limited to licensed sellers, and does not require that the gun owner actually use the device. These gaps can be addressed at the state or local levels, through safety standards for handguns, safe storage requirements for all firearms, personalized handgun technology and stronger child access prevention laws.

Crime Detection

Section Overview: Crime detection is a multi-faceted topic, and this report focuses on two areas of particular relevance to firearms: (1) Ballistic Identification; and (2) Retention of Firearm Sales and Background Check Records.

Ballistic identification refers to the process through which bullets and shell casings recovered at crime scenes are linked to the firearms that fired them. Traditional ballistic identification laws require manufacturers to test-fire the firearms they produce. Images of the unique ballistic markings left on bullets and shell casings by each weapon are stored in a database so that law enforcement can later determine whether a particular gun fired a particular bullet.

Retention of firearm sales and background check records is critical to law enforcement. Background check records help deter fraud and detect dealers who might be providing false information about a prohibited purchaser. Sales records, which include information about the purchaser and the firearm being purchased, are an indispensable tool for tracing the ownership of firearms recovered in crimes.

Federal Law Summary: Federal law does not require ballistic identification.³⁴

³³ California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Virginia, Wisconsin and the District of Columbia have child access prevention laws.

Background check records of approved purchasers must be destroyed within 24 hours of the official response to the dealer from the National Instant Criminal Background Check System (NICS). The FBI maintains indefinitely the records of prospective purchasers whose applications are denied.

Federally licensed firearms dealers (FFLs) are required to retain sales records indefinitely. FFLs are not required to report sales information to law enforcement, and, with limited exceptions, the federal government does not maintain records of firearm sales.³⁵

State Law Summary: In 2007, California became the first state in the nation to require the use of handgun microstamping for every new semiautomatic handgun manufactured or sold in the state. Microstamping technology enables law enforcement to match cartridge cases found at a crime scene to the gun's owner. **Three states have created statewide ballistic imaging databases** (*Connecticut, Maryland and New York*).

- In Maryland and New York, manufacturers are required to test-fire all handguns manufactured or sold in the state and provide a spent shell casing to the dealer. Once the gun is sold, the dealer forwards the casing to the state police along with information about the purchaser, to be entered into a database for possible use in future criminal investigations.
- Connecticut's firearms evidence databank includes ballistic images from all handguns recovered by or issued to law enforcement.

Twenty-one states and the District of Columbia require sellers to retain firearm sales records.³⁶ Of these states:

- Eleven states and the District of Columbia require licensed dealers to maintain records of all firearm sales (*California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Michigan, Oregon, Pennsylvania, Rhode Island, Tennessee and the District of Columbia*). Private sellers in Illinois and Rhode Island are also required to maintain records of all firearm sales.³⁷
- Eight states require dealers to maintain records of handgun sales only (*Alabama, Colorado, Delaware, Mississippi, New Jersey, North Carolina, Vermont and Washington*). Connecticut requires private sellers to maintain handgun sales records.
- Three states (*Maryland, New York and Pennsylvania*) require sellers to maintain records of sales of other firearms. Maryland requires dealers to retain records of

³⁴ ATF's National Integrated Ballistic Information Network (NIBIN) is a ballistic identification database. However, it contains only ballistic identification of guns recovered from crime scenes.

³⁵ The National Firearms Act Branch of ATF maintains a limited registry of machine guns, short-barreled rifles and shotguns, and silencers, known as the National Firearms Registration and Transfer Record.

³⁶ Alabama, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington and the District of Columbia require sellers to retain sales records.

³⁷ 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.

handgun and assault weapon transfers. New York requires dealers to retain transfer records for handguns, assault weapons and certain rifles and shotguns. In Pennsylvania, all transfers of handguns and certain rifles and shotguns must be conducted through licensed dealers, thereby ensuring that the recordkeeping requirements on licensed dealers will include records of private sales of these weapons.

Ten states retain firearm sales information reported by sellers to law enforcement (*Alabama, California, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania and Washington*). These include:

- Two states maintain records submitted by dealers of all firearm transactions (*Connecticut and Massachusetts*). Massachusetts also retains sales records for all firearms reported by private sellers.
- Five states retain records of all handgun sales reported by licensed dealers (*Alabama, California, Michigan, New Jersey and Washington*). California³⁸ and Connecticut retain handgun sales records reported by private sellers.
- Maryland retains records of transfers by dealers and private sellers of “regulated firearms,” defined to include handguns and assault weapons.
- New York retains records reported by dealers of sales of handguns, short-barreled rifles and shotguns, and assault weapons.
- Pennsylvania maintains records of handgun sales and sales of rifles and shotguns of specified dimensions reported by dealers and private sellers.

Nine states are required to purge background check records (*Delaware, Florida, Nebraska, New Hampshire, Rhode Island, Tennessee, Utah, Virginia and Wisconsin*).

Local Law Summary:

Chicago, Cleveland, Columbus, Hartford, New York City and Omaha have local laws governing retention and/or reporting of firearms sales records.

Conclusions:

Ballistic identification is a valuable law enforcement tool that states may wish to consider expanding. In addition, states and local communities can close gaps in federal law by requiring dealers to report sales information to law enforcement. Policies requiring law enforcement to retain those records, and to retain background check records, will help facilitate criminal investigations.

³⁸ In California, all firearm transfers must be conducted through licensed dealers, thereby ensuring that sales reporting requirements include private sales. California retains reports of handgun sales only.