

## **GUN OWNERSHIP**

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## Licensing of Gun Owners or Purchasers

### Background

Licensing laws require an individual to obtain a license or permit authorizing the individual to purchase and/or possess a firearm. Although licensing laws vary, those that are the most comprehensive require all gun owners – not just owners of handguns or prospective firearm purchasers – to obtain a license. That license will only be issued after the applicant has provided proof of residency and fingerprints, and passed written and performance-based tests showing that the applicant knows how to safely load, fire and store a gun, and has knowledge of relevant firearms laws.

Once an applicant has passed these tests, as well as a thorough background check, he or she is issued a card with a number, photograph and other identifying information, including the licensee's address and date of birth. The license must be displayed and its authenticity verified by a firearms dealer prior to the purchase of a firearm. In addition, the license must be renewed after a specified time period.

Licensing laws have the following goals: (1) to reduce the number of unintentional shootings by ensuring that gun owners know how to safely use and store firearms; (2) to increase compliance with existing firearms laws by requiring gun owners to demonstrate knowledge of those laws; and (3) to decrease illegal gun sales and possession by ensuring that all licensees are eligible to possess firearms under federal and state law.

Licensing laws are most effective when combined with laws requiring registration of firearms.<sup>1</sup> A 2001 study analyzing the firearm tracing data of crime guns recovered in 25 U.S. cities revealed that states with some form of both registration and licensing systems have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place.<sup>2</sup> This suggests that licensing and registration laws may make it more difficult for criminals, juveniles and other prohibited purchasers to obtain guns.

Public opinion polls show that Americans strongly support licensing laws. A nationwide poll conducted in May of 2001 found that 85% of respondents – including 73% of gun owners – favored laws requiring handgun purchasers to obtain a permit before buying a handgun.<sup>3</sup> That poll also found that 70% of the respondents mistakenly believed that a

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<sup>1</sup> Conceptually, licensing is directed to the owner or purchaser of the firearm, while registration is directed to the weapon itself. As shown in this analysis, some jurisdictions incorporate elements of registration in their licensing laws, and vice versa. Hawaii is the only state that has a combined licensing and registration system. Detailed information on laws requiring registration of firearms is contained in the section on Registration of Firearms.

<sup>2</sup> Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 *Inj. Prevention* 184, 188-89 (2001). The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

<sup>3</sup> Press Release, The Educational Fund to Stop Gun Violence, *New Poll Finds American Voters Overwhelmingly Support Handgun Licensing and Registration, Criminal Background Checks* (June 12, 2001), at <http://www.commondreams.org/news2001/0612-05.htm>.

system of licensing and registration already exists.<sup>4</sup> Another poll, conducted by the Opinion Research Corporation International in June of 2001, found that 82% of the respondents supported laws requiring the licensing and registration of handguns.<sup>5</sup>

### Summary of Federal Law

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

## **SUMMARY OF STATE LAWS GOVERNING LICENSING OF GUN OWNERS OR PURCHASERS<sup>6</sup>**

In general, licensing laws fall into two broad categories. Some jurisdictions mandate that prospective firearm purchasers obtain a permit or license prior to purchase. These laws are sometimes known as “permit to purchase” licensing schemes. The permit to purchase typically has a limited duration (though some jurisdictions employ permits to purchase with a long duration) and may apply to the purchase of a limited number of firearms. Other jurisdictions require a license to own a firearm. Unlike a permit to purchase, a license to own or possess a firearm generally has a longer duration and entitles the holder to possess firearms so long as the license remains valid. Some jurisdictions employ both permits to purchase and licenses to possess, depending on the type of firearm. Other jurisdictions require one license for both purchase and possession. State licensing laws vary significantly. This summary is intended to highlight the most pertinent features of those laws.

Four states require licenses for all firearm purchasers or owners, while seven states license all handgun purchasers or owners.

### **States that Require a License or Permit for Purchasers or Owners of All Firearms**

<b>Hawaii</b>	<b>Haw. Rev. Stat. Ann. §§ 134-2, 134-13</b>
<b>Illinois</b>	<b>430 Ill. Comp. Stat. 65/1 – 65/15a</b>
<b>Massachusetts<sup>7</sup></b>	<b>Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E, 131P</b>
<b>New Jersey</b>	<b>N.J. Stat. Ann. § 2C:58-3</b>

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<sup>4</sup> *Id.*

<sup>5</sup> Lois Hess, Editorial, *Bush Undermining Gun Control Laws*, Balt. Sun, July 31, 2001, at 11A, available at <http://www.commondreams.org/views01/0731-03.htm>.

<sup>6</sup> This summary does not include a description of states issuing permits to carry concealed weapons, nor does it include a discussion of state background check requirements. These topics are addressed in the sections on Carrying Concealed Weapons and Background Checks.

<sup>7</sup> Massachusetts requires licenses for the purchase of handguns, rifles and shotguns, and for ammunition feeding devices for those firearms.

### States that Require a License or Permit for Handguns Only<sup>8</sup>

<b>California</b>	<b>Cal. Penal Code §§ 12071(b)(8), 12800 – 12808</b>
<b>Connecticut</b>	<b>Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36i</b>
<b>Iowa</b>	<b>Iowa Code §§ 724.15 – 724.20</b>
<b>Michigan</b>	<b>Mich. Comp. Laws §§ 28.422, 28.422a</b>
<b>New York</b>	<b>N.Y. Penal Law §§ 400.00 – 400.01</b>
<b>North Carolina</b>	<b>N.C. Gen. Stat. §§ 14-402 – 14-404</b>
<b>Rhode Island</b>	<b>R. I. Gen. Laws §§ 11-47-35 – 11-47-35.1</b>

### States that Allow the Purchase of Only a Single Handgun with Each License or Permit

Hawaii  
Massachusetts  
Michigan  
New Jersey  
New York  
North Carolina

### States that Require Firearm Safety Training or a Safety Exam Prior to Issuance of a License or Permit

California (handguns only)  
Connecticut (handguns only)  
Hawaii (handguns only)  
Massachusetts  
Michigan (handguns only)  
Rhode Island (handguns only)

### Duration of License or Permit to Purchase

California – 5 years<sup>9</sup>  
Hawaii – 10 days (handguns); 1 year (long guns)  
Iowa – 1 year  
Massachusetts – 10 days (permits to purchase handguns)  
Michigan – 10 days  
New Jersey – 90 days (handgun permits)<sup>10</sup>  
North Carolina – 5 years

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<sup>8</sup> In addition, the state of Nebraska issues handgun certificates, although handgun purchasers outside Omaha who purchase from licensed dealers may choose to submit to an instant background check at the time of purchase, in lieu of obtaining a handgun certificate. Neb. Rev. Stat. Ann. §§ 69-2404, 69-2409. Purchasers from private sellers must obtain a handgun certificate. *Id.* Handgun certificates are valid for 3 years. Neb. Rev. Stat. Ann. § 69-2407.

<sup>9</sup> In California, universal background checks help to ensure that prohibited persons would not be permitted to purchase firearms, notwithstanding the long duration of the Handgun Safety Certificate (HSC). To address the problem posed by handgun owners who could fall into a prohibited category while the HSC remains valid, the state maintains a Prohibited Armed Persons File, an on-line database that allows the California Department of Justice to cross-reference information on persons who own or possess a handgun (on or after January 1, 1991) against a list of individuals who have become ineligible to own or possess firearms. Cal. Penal Code § 12010(a). This information may be shared with a limited group of public and private entities and individuals, including law enforcement, for the purpose of determining if persons are armed yet prohibited from possessing firearms. Cal. Penal Code § 12010(b).

<sup>10</sup> New Jersey's permit may be extended for an additional 90 days upon a showing of good cause.

### Duration of License or Permit to Purchase and Possess

Connecticut – 5 years

Illinois – 5 years

Massachusetts – 6 years

New Jersey – so long as holder remains eligible (firearm purchaser identification cards)

New York – valid until revoked (except in New York City and certain counties (see below))

Rhode Island – unspecified

### License or Permit Fee

California – \$15-25

Connecticut – \$35

Hawaii – actual cost charged by FBI for fingerprint check, for first permit only

Illinois – \$5

Iowa – no cost

Massachusetts – \$100

Michigan – no cost

New Jersey – \$2 (handgun permit); \$5 (firearm purchaser identification card)

New York – \$3-10 (determined by each county)

North Carolina – \$5

Rhode Island – no cost

### Description of State Laws Governing Licensing of Gun Owners or Purchasers

1. *States Requiring Licenses for Purchasers or Owners of All Firearms:* The following states require licenses to possess and/or permits to purchase for all firearms. Hawaii and New Jersey require permits to purchase all firearms. Illinois requires a license to purchase and possess all firearms. Massachusetts requires a license to possess all firearms and a permit to purchase handguns. Each state's licensing scheme has unique elements, which are described below.

*Hawaii – Permit to Purchase:* In Hawaii, anyone wishing to acquire a firearm must obtain a permit from the county chief of police.<sup>11</sup> As part of the application process, applicants undergo a background check and must sign a waiver allowing access to mental health records. Permits may not issue until at least 14 days have passed after the date of application, and all permits must be issued or denied before the 20<sup>th</sup> day from the date of application. (Several exceptions exist to the 14-day waiting period, including transfers to law enforcement officers, persons licensed to carry a handgun, and sales to licensed dealers.) Permits may be revoked for good cause.

- **Duration:** Permits to acquire a handgun are valid for 10 days from the date of issue, and long gun permits are valid for one year from date of issue.
- **Single Purchase:** Handgun purchases are limited to one handgun per permit.

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<sup>11</sup> Hawaii also requires registration of all firearms. Registration requirements are outlined in the section on Registration of Firearms.

*New Jersey – Permit to Purchase:* In New Jersey, all handgun purchasers must obtain a permit to purchase a handgun. Purchasers of rifles or shotguns are required to obtain a Firearms Purchaser Identification Card (FPIC). Both require the applicant to undergo a background check and waive confidentiality relating to any institutional confinement for a mental or psychiatric condition. New Jersey law also provides that no handgun transfer permit may be issued where the transfer would not be in the interest of the public health, safety or welfare. In addition, the applicant must be of “good character and good repute in the community” where he or she lives. The FPIC or permit must be issued within 30 days of application, or 45 days if the applicant is a non-resident. A FPIC may be revoked by a superior court after a hearing with notice, upon a finding that the holder no longer qualifies for the FPIC.

- **Duration:** Handgun purchase permits in New Jersey are valid for 90 days, and may be extended for an additional 90 days for good cause. New Jersey FPICs are valid as long as the holder remains eligible to possess a firearm.
- **Single Purchase:** Handgun purchases are limited to one handgun per permit.

*Illinois – License to Purchase or Possess:* In Illinois, no person may acquire or possess any firearm or ammunition without a valid Firearm Owner’s Identification (FOID) card. Each applicant for a FOID card is required to complete an application and “submit evidence” to the Department of State Police (DSP) that she or he is not a prohibited purchaser. The DSP conducts an automated search of its criminal history record information files and those of the Federal Bureau of Investigation, including the National Instant Criminal Background Check System (NICS), and of the files of the Department of Human Services relating to mental health and developmental disabilities to obtain any felony conviction or patient hospitalization information which would disqualify a person from obtaining or require revocation of a currently valid FOID card.<sup>12</sup> The DSP has the authority to revoke a FOID card if the holder becomes a prohibited purchaser.

- **Duration:** FOID cards are valid for five years from the date of issue. Effective June 1, 2008, FOID cards will be valid for ten years.<sup>13</sup>
- **No Limit on Number of Firearms Purchased:** Illinois does not impose any limit on the number of firearms that may be purchased by the holder of a FOID card.

*Massachusetts – License to Possess and Permit to Purchase:* In Massachusetts, all firearm possessors are required to obtain either a Firearm Identification (FID) card or

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<sup>12</sup> Illinois prohibits any person who has been a patient in a mental institution within the past five years from obtaining a FOID card. Upon request by the Department of State Police, the applicant must sign a release waiving any right to confidentiality and requesting the disclosure to the Department of State Police of limited mental health institution admission information. 430 Ill. Comp. Stat. 65/4.

<sup>13</sup> 430 Ill. Comp. Stat. 65/7. In Illinois and other states that do not require universal background checks, the long duration of firearm licenses undermines the benefits of the licensing scheme. For example, in Illinois, while a background check is required at the time of issuance of the FOID card, purchases of firearms from private sellers are not subject to background checks at the time of purchase (except purchases from private sellers at gun shows). As a result, if a licensee falls into a prohibited category while the license is still valid, he or she could continue to purchase firearms illegally from a private seller.

a Class A or B license to carry a firearm. FID card holders are permitted to purchase and possess rifles or shotguns, excluding large capacity weapons.<sup>14</sup> A Class A license allows the licensee to purchase and possess all types of lawful firearms; a Class B license is limited to “non-large capacity” handguns and any rifle or shotgun, but does not permit carrying concealed, loaded handguns in a public place.<sup>15</sup> All applicants must undergo a background check. The licensing authority has 40 days to approve or deny the application. A FID card or Class A or B license must be revoked or suspended if the holder becomes disqualified from obtaining the card or license.

To purchase a handgun in Massachusetts, a FID card holder must also obtain a permit to purchase. A permit to purchase is issued at the discretion of the licensing authority for a “proper purpose,” following a background check.

- **Duration:** FID cards and Class A and Class B licenses are valid for 6 years; permits to acquire handguns are valid for 10 days.
- **Single Purchase:** Handgun purchases are limited to one handgun per permit. However, there is no limit on the number of firearms that may be purchased with a Class A or Class B license.

2. *States Requiring Licenses or Permits for Handguns Only:* California, Connecticut, Iowa, Michigan, New York, North Carolina and Rhode Island all require licenses or permits for purchase or possession of handguns.<sup>16</sup>

*California:* California requires a Handgun Safety Certificate (“HSC”) prior to purchase of a handgun. The HSC is valid for 5 years.

*Connecticut:* Connecticut requires a permit to carry a handgun or a handgun eligibility certificate. Permits and certificates are valid for 5 years. Permits and certificates may be revoked in the event the holder becomes disqualified.<sup>17</sup>

*Iowa:* Iowa requires an annual permit to acquire pistols or revolvers. Permits may be revoked in the event the holder becomes disqualified.

*Michigan:* Michigan requires either a license to carry a concealed handgun or a handgun purchase license.<sup>18</sup> A handgun purchase license is valid for 10 days, and may be

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<sup>14</sup> Massachusetts defines “large capacity weapon” to include assault weapons, certain semi-automatic weapons, and certain large capacity rotating-cylinder firearms.

<sup>15</sup> A Class A license allows the licensee to purchase, rent, lease, borrow, possess and carry all types of lawful firearms, including both large and non-large capacity handguns, rifles, shotguns, and feeding devices and ammunition for these firearms. Mass. Gen. Laws ch. 140, § 131(a).

<sup>16</sup> State laws in Iowa, Michigan, New York and North Carolina explicitly require a background check prior to issuance of the requisite license or permit.

<sup>17</sup> Connecticut also issues temporary permits to carry handguns. These permits are valid for 60 days and may not be renewed. Conn. Gen. Stat. § 29-30(c).

<sup>18</sup> In addition to obtaining a license, persons acquiring handguns in Michigan are required to present the handgun to local law enforcement for a safety inspection. If the person is eligible to possess the weapon and it passes the inspection, a certificate of inspection is issued which includes identifying information about the owner and a description of the handgun. Copies of the certificate are kept by state and local law enforcement. Mich. Comp. Laws § 28.429.

used for the purchase of a single handgun. A license to carry a concealed handgun is valid for 4-5 years, depending on the date of issue.

*New York:* New York requires a license to purchase and possess a handgun.<sup>19</sup> Handgun licenses in New York are valid until revoked, except in New York City, where the duration is 3 years, and in Nassau, Suffolk and Westchester Counties, where the duration is 5 years. The license is valid for purchase of a single handgun.<sup>20</sup>

*North Carolina:* North Carolina requires either a permit to purchase a handgun or a concealed handgun permit. Both are valid for 5 years. The handgun purchase permit is valid for purchase of a single handgun.

*Rhode Island:* Rhode Island requires a pistol/revolver safety certificate issued by the state Department of Environmental Management. The duration is unspecified.

3. *States Requiring Safety Training or a Safety Exam Prior to Issuance of a License or Permit:*<sup>21</sup> Massachusetts requires safety training of all applicants for a Firearm Identification (FID) card, Class A or Class B license, or permit to purchase a handgun. Applicants must submit a basic firearms safety certificate issued following a course that includes instruction on: (1) the safe use, handling and storage of firearms; (2) methods for securing and childproofing firearms; (3) the applicable laws relating to the possession, transportation and storage of firearms; and (4) knowledge of operation, potential dangers and basic competency in the ownership and usage of firearms.

California, Connecticut, Hawaii, Michigan and Rhode Island require safety training or a safety exam prior to issuance of a handgun license or permit.

California requires anyone purchasing a handgun to obtain a Handgun Safety Certificate (HSC) prior to purchase. To obtain a HSC, the applicant must pass a written safety test. In addition, subject to limited exceptions, all handgun purchasers are required to perform a safe handling demonstration with the handgun being purchased in the presence of a certified instructor. California law specifies various safe handling tasks the prospective purchaser must perform based on the type of handgun to be purchased.

In Connecticut, applicants for a handgun eligibility certificate must successfully complete an approved course in the safety and use of handguns. Hawaii requires handgun permit applicants to complete an approved course that focuses on: (1) the safe use, handling and storage of firearms and firearms safety in the home; and (2) state firearms laws. Permit

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<sup>19</sup> In New York, in addition to passing a background check to verify that the applicant is not prohibited from possessing a firearm, no one may possess a handgun unless he or she is of “good moral character” and presents “no good cause” for denial of the license.

<sup>20</sup> Outside of New York City, licensees in New York may seek a license amendment to allow the purchase of more than one handgun per license.

<sup>21</sup> Although permits are not required in Maryland, the application process for purchase of a regulated firearm (handguns and assault weapons) includes a requirement that the applicant complete a firearms safety training course conducted by the Police Training Commission. This requirement applies only to the first purchase of a regulated firearm after January 1, 2002, and does not apply to handgun carry permit holders.

applicants in Michigan must pass a basic pistol safety review questionnaire. In Rhode Island, anyone wishing to purchase a handgun who does not have a concealed handgun license and is not a member of law enforcement must complete a basic two-hour handgun safety course.<sup>22</sup>

## SUMMARY OF SELECTED<sup>23</sup> LOCAL LAWS REQUIRING LICENSING OF GUN OWNERS OR PURCHASERS

### Local Laws Requiring Licensing of Gun Owners or Purchasers<sup>24</sup>

<b>Chicago</b>	<b>Chicago, Ill., Code §§ 4-144-060, 4-144-070</b>
<b>Cleveland</b>	<b>Cleveland, Ohio, Code §§ 674.02, 674.04</b>
<b>Columbus</b>	<b>Columbus, Ohio, Code §§ 545.06(a), 545.07, 545.08 545.09</b>
<b>Hartford</b>	<b>Hartford, Conn., Code § 21-59</b>
<b>New York City</b>	<b>New York, N.Y., Admin. Code §§ 10-303 <i>et seq.</i>, 10-131(a), (i); New York, N.Y., Rules tit. 38, §§ 3-09, 5-01, 5-22, 5-25</b>
<b>Omaha</b>	<b>Omaha, Neb., Code §§ 20-200, 20-251, 20-254</b>

*Chicago:* Chicago requires a local permit to purchase concealable firearms. Chicago only issues handgun permits in those limited cases where possession is not banned entirely.

*Cleveland:* Cleveland provides that no person shall receive, possess, have on or about his or her person or use any handgun unless the person has a local “handgun owner’s identification card.” The handgun owner’s identification card is valid from the date of issuance until three years after the birthday of the applicant that follows the date of issuance. The card holder is required to return the card to the Chief of Police if he or she becomes ineligible to possess it. Background checks are required for issuance of a handgun owner’s identification card.

Cleveland prohibits any person from using or attempting to use his or her handgun owner’s identification card to obtain a handgun for any person who does not have a valid

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<sup>22</sup> Rhode Island’s concealed handgun licensing process includes a requirement that the applicant pass a target shooting test. R.I. Gen. Laws § 11-47-15. Rhode Island does not require firing training or testing for other handgun licensees. Likewise, none of the other states listed above requires such training as part of its safety training or certification. Hawaii includes firing training as one of several options available to applicants to satisfy the firearms safety training requirement. Haw. Rev. Stat. Ann. § 134-2(g).

<sup>23</sup> 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.”

<sup>24</sup> Local provisions governing background checks and describing qualifications for obtaining a local license or permit are described in the sections on Background Checks and Prohibited Purchasers.

identification card. Similarly, no person shall knowingly permit his or her identification card to be used by another to purchase, own, possess, receive, have on or about the person or use any handgun or handgun ammunition.

*Columbus:* Columbus requires persons to obtain a “weapon transaction permit,” issued by local law enforcement, to purchase or possess any lawful weapon. Applicants are required to undergo a background check. Transaction permits are valid for 30 days and are good for only one firearm/weapon. Permits may be revoked if the holder becomes disqualified.

*Hartford:* Hartford requires handgun purchasers to complete an application to purchase a handgun before any transfer will be made. The application is submitted to the state Commissioner of Public Safety for processing, with a copy submitted to the Hartford Police Chief.

*New York City:* New York City requires a rifle or shotgun permit for the purchase and/or possession of rifles and shotguns. Permits are issued following a background check, and are valid for three years. Permits are renewed automatically unless the police commissioner has reason to believe the applicant’s status has changed since the previous application. Permits may be revoked and weapons seized upon evidence that the holder of the permit has become disqualified. Persons under 21 may carry, fire or use a rifle or shotgun (except an assault weapon) without being subject to the permit requirement if he or she is in the presence of, or under the direct supervision of, a permit holder; or engaged in a military drill, competition, or target practice at a firing range.

A rifle or shotgun permit is also required for possession of rifle or shotgun ammunition and a rifle or shotgun ammunition feeding device.

Permittees must report lost or stolen permits and rifles or shotguns to law enforcement within five calendar days of the loss.

For handguns, the city issues five basic types of licenses: (1) a “premises license” which allows possession of a handgun in a specific business or residence; (2) a “carry business license” which allows the holder to carry a concealed handgun; (3) a “limited carry business license” which allows the holder to carry a handgun to and from specific locations at specific times; (4) a “carry guard license/gun custodian license” which allows the holder to carry a handgun while engaged in work as a security guard or gun custodian; and (5) a “special license” which allows the holder of a state permit to carry a handgun while in New York City and/or while engaged in work as a security guard or gun custodian in New York City.

All handgun licenses require a background check. They are revocable at any time and authorize the holder to possess only the handgun(s) listed on the license. Licensees must immediately report to law enforcement any loss or theft of the handgun or the license or change in the licensee’s status that would affect eligibility for a license.

Prior to purchasing a handgun in New York City, a handgun licensee must obtain written permission from law enforcement. Such authorization is valid for only 30 calendar days

from the date of issuance. The licensee must have the handgun and required safety locking device inspected by law enforcement within 72 hours of purchase.<sup>25</sup> The weapon may not be used prior to the inspection.

New York City provides that a license to carry or possess a handgun in the city may be issued for no less than one nor more than three years at a fee of \$340. No person, other than a rifle and shotgun dealer, who is not authorized to possess a handgun in the city may possess handgun ammunition. A person may possess handgun ammunition only in a caliber corresponding to a handgun he or she is licensed to possess.

*Omaha:*<sup>26</sup> Omaha prohibits any person from selling or renting a concealable firearm to any person who has not obtained a written permit from the chief of police.<sup>27</sup>

### **FEATURES OF COMPREHENSIVE LAW LICENSING GUN OWNERS OR PURCHASERS<sup>28</sup>**

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.

- License is required for possession of any firearm, and must be shown prior to purchase of any firearm (*Illinois, Massachusetts, Columbus, New York City*)
- License conditions include:
  - Thorough background check (*Hawaii, Illinois, Massachusetts, New Jersey, Columbus, New York City; Connecticut, Iowa, Michigan, New York, North Carolina and Cleveland also require background checks, but only for handgun licenses*)
  - Safety training (*Massachusetts; Connecticut, Hawaii and Rhode Island also require safety training, but only for handgun licenses*)
  - Hands-on testing, including firing testing, to demonstrate safe use of firearms

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<sup>25</sup> Additional information on New York City's requirements for handgun locking devices is contained in the section on Locking Devices.

<sup>26</sup> Note that Omaha's licensing ordinance predates the state law requiring purchasers of handguns from private sellers to obtain a handgun certificate. Neb. Rev. Stat. Ann. § 69-2409. *See also supra* note 8.

<sup>27</sup> Omaha's licensing system is a hybrid of licensing and registration. The concealable firearm permit is issued following approval of an application for registration of a concealable firearm. Additional information about Omaha's registration requirements is contained in the section on Registration of Firearms.

<sup>28</sup> The most comprehensive system of regulating the purchase, possession and ownership of firearms combines licensing of gun owners with registration of all firearms. Additional information on registration of firearms, including the features of comprehensive registration laws, is contained in the section on Registration of Firearms.

- Written testing to demonstrate knowledge of applicable firearm laws (*California and Michigan require testing on firearms laws, but only for handgun licenses*)
- License has finite duration (*Hawaii, Illinois, Massachusetts; California, Connecticut, Iowa, Michigan, New Jersey and North Carolina also have licenses of finite duration, but only for handguns*)
- Renewal process includes background check and testing as described above (*Massachusetts*)
- Licensee is required to report theft or loss of license and firearms (*New York City*)
- License is subject to revocation in cases where licensee becomes a prohibited purchaser (*Hawaii, Illinois, Massachusetts, New Jersey, Columbus; Connecticut, Iowa and Cleveland also provide for revocation under these circumstances, but only for handgun licenses*), or fails to comply with applicable federal, state and local firearms laws
- Fee for license is set at a level sufficient to cover administrative costs associated with licensing system
- Additional requirements are imposed for handgun permit to purchase:
  - Short duration applies to handgun permit to purchase (*Hawaii – 10 days, Massachusetts – 10 days, Michigan – 10 days, New Jersey – 90 days, Columbus – 30 days, New York City – 30 days*)
  - Permit to purchase is limited to one handgun per permit (*Hawaii, Massachusetts, Michigan, New Jersey, New York, North Carolina, Columbus, Hartford*)

## Registration of Firearms

### Background

Although registration laws vary, they typically require gun owners to record the ownership of their firearms with a designated law enforcement agency. The ownership record should include a full description of the firearm and identifying information about the registrant. In addition, the firearm should be re-registered whenever title to the firearm is transferred, and law enforcement should be notified whenever the weapon is lost or stolen.<sup>1</sup>

A comprehensive registration law would require gun owners to renew their registration annually or explain why they should no longer be legally responsible for the weapon. During the renewal process, owners would undergo an additional background check to ensure that they have not fallen into a class prohibited from owning firearms.

Registration laws provide a cornerstone of responsible gun policy because they: (1) furnish law enforcement with essential information about firearm ownership, facilitating fast and reliable tracing of crime guns; and (2) reduce illegal firearm sales by creating accountability for gun owners.

Studies note that “the increased information generated by a registration system could speed the tracing of firearms used in crime and could aid police in identifying the type(s) of firearms to which an individual may have access. . . . Registration would in effect function as a super tracing system, offering clear benefits to law enforcement.”<sup>2</sup>

Registration laws are most effective when combined with laws requiring licensing of firearm owners and purchasers.<sup>3</sup> A 2001 study analyzing the firearm tracing data of crime guns recovered in 25 U.S. cities revealed that states with some form of both registration and licensing have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place.<sup>4</sup> This suggests that licensing and registration laws may make it more difficult for

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<sup>1</sup> Sales reporting laws, unlike registration laws, require the seller of a firearm to report the sale to state or local law enforcement, thus placing the duty of compliance on the seller and not on the firearm owner. In addition, sales reporting occurs only at the time of purchase and not at regular intervals thereafter. Additional information on sales reporting requirements and retention of sales records is contained in the sections on Dealer Regulations and Retention of Firearm Sales and Background Check Records.

<sup>2</sup> Violence Policy Center, *Handgun Licensing and Registration: What It Can and Cannot Do, Section Two: Licensing and Registration* (Sept. 2000), at <http://www.vpc.org/studies/lnrtwo.htm>.

<sup>3</sup> Conceptually, licensing is directed to the owner or purchaser of the firearm, while registration is directed to the weapon itself. As shown in this analysis, some jurisdictions incorporate elements of licensing in their registration laws, and vice versa. Hawaii is the only state that has a combined licensing and registration system. Detailed information on laws requiring licensing of firearm owners and purchasers is contained in the section on Licensing of Gun Owners or Purchasers.

<sup>4</sup> Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 *Inj. Prevention* 184, 188-89 (2001). The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

criminals, juveniles and other prohibited purchasers to obtain guns, and help ensure that firearm owners remain eligible to possess their weapons.

Opinion polls show that the American public overwhelmingly supports handgun registration. A May 2001 poll found that 83% of respondents, including 72% of gun owners, favored registration of all newly-purchased handguns.<sup>5</sup>

### Summary of Federal Law

There is no comprehensive national system of gun registration. In fact, 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.<sup>6</sup>

A limited system of federal firearms registration was created by the National Firearms Act, 26 U.S.C. § 5801 *et seq.* The National Firearms Act was enacted in 1934 to impose an excise tax and registration requirements on a narrow category of firearms, including machine guns, short-barreled shotguns or rifles, and silencers.<sup>7</sup>

In 1986, Congress banned the transfer and possession of machine guns not already in lawful circulation.<sup>8</sup> Machine guns that were lawfully owned prior to the ban's effective date may continue to be owned and transferred provided they are registered in accordance with requirements of the National Firearms Act.<sup>9</sup> It is also unlawful for a licensed dealer to sell a short-barreled rifle or shotgun to any person, except as specifically authorized by the Attorney General consistent with public safety and necessity.<sup>10</sup>

With its provisions effectively limited to pre-ban machine guns and transfers of short-barreled rifles and shotguns that are specifically authorized by the Attorney General, the registration system created by the National Firearms Act falls far short of a comprehensive registration system.

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<sup>5</sup> Press Release, The Educational Fund to Stop Gun Violence, *New Poll Finds American Voters Overwhelmingly Support Handgun Licensing and Registration, Criminal Background Checks* (June 12, 2001), at <http://www.commondreams.org/news2001/0612-05.htm>.

<sup>6</sup> 28 C.F.R. § 25.9(b)(3).

<sup>7</sup> 26 U.S.C. § 5845(a). 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.

<sup>8</sup> 18 U.S.C. § 922(o). *See also* 18 U.S.C. § 922(b)(4). Transfers to or by, or possession by, federal, state or local government agencies are exempt.

<sup>9</sup> *Id.* The National Firearms Act requires each importer, manufacturer, or dealer in firearms covered by the Act to register annually with the Secretary of the Treasury. 26 U.S.C. § 5802. In addition, anyone wishing to manufacture, make, import, or transfer such weapons must first register them. 26 U.S.C. § 5841(b). The transferee of any of these weapons cannot take possession until the Secretary approves the transfer and registration of the weapon to the transferee. 26 U.S.C. § 5841(c). The National Firearms Act Branch of ATF maintains the registry, known as the National Firearms Registration and Transfer Record. Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Dep't of Justice, *Brochure of the National Firearms Act Branch*, at <http://www.atf.gov/pub/nfab/>. The registry includes: (1) an identification of the firearm; (2) the date of registration; and (3) the identification and address of the person entitled to possess the firearm. 26 U.S.C. § 5841(a). *See also* 27 C.F.R. §§ 479.101, 479.105.

<sup>10</sup> 18 U.S.C. § 922(b)(4).

## SUMMARY OF STATE LAWS CONCERNING REGISTRATION OF FIREARMS

Seven states and the District of Columbia require registration of some or all firearms. Conversely, nine states have statutes prohibiting them from maintaining a registry of firearms.

### States that Require Registration of All Firearms

District of Columbia	D. C. Code Ann. §§ 7-2502.01, 7-2502.02, 7-2502.03(b), 7-2502.06(a), 7-2502.07, 7-2502.08
Hawaii	Haw. Rev. Stat. Ann. §§ 134-3(a), (b), 134-4

### States that Require Registration of Pre-Ban Assault Weapons or 50 Caliber Rifles

California	Cal. Penal Code §§ 12276, 12276.1, 12276.5, 12280, 12285(a) (assault weapons and 50 caliber rifles)
Connecticut	Conn. Gen. Stat. § 53-202d(a) (assault weapons)
Hawaii	Haw. Rev. Stat. Ann. §§ 134-3(a), (b), 134-4 (assault weapons)
Maryland	Md. Code Ann., Crim. Law § 4-303 (assault weapons)
New Jersey	N.J. Stat. Ann. §§ 2C:39-5f, 2C:58-12 (assault weapons)

### Other State Registration Laws

Louisiana	La. Rev. Stat. Ann. §§ 40:1781, 40:1783
Michigan	Mich. Comp. Laws § 28.429

### States that Prohibit Registries of Firearms

California	Cal. Penal Code § 11106(b) (long guns only)
Delaware	Del. Code Ann. tit 11, § 1448A(d)(1), (3)
Florida	Fla. Stat. Ann. § 790.335(2), (3)
Georgia	Ga. Code Ann. § 16-11-129(a)
Idaho	Idaho Const., art. 1, § 11
Pennsylvania	18 Pa. Cons. Stat. § 6111.4 (long guns only)
Rhode Island	R.I. Gen. Laws § 11-47-41
South Dakota	S.D. Codified Laws § 23-7-8.6
Vermont	Vt. Stat. Ann. tit. 20, § 8(b)(3)(B)

### Description of State Laws Concerning Gun Registration

1. *States That Require Registration of All Firearms:* Only Hawaii and the District of Columbia require the registration of all firearms.

Hawaii requires registration of all firearms with the county police chief within five days of acquisition. The registration must include: (1) the name of the manufacturer and importer; (2) the model, type of action, caliber or gauge, and serial number of the firearm; and (3) the source from which the firearm was obtained, including the name and address of the previous registrant. In addition, every person who brings a firearm into Hawaii must register the firearm within three days of the arrival of either the

person or the firearm, whichever arrives later.<sup>11</sup> Hawaii does not require renewal of the registration. (Hawaii also has a licensing scheme, requiring that all firearm purchasers obtain a permit prior to acquisition.<sup>12</sup>)

The District of Columbia's registration law serves as a ban on most classes of firearms within the District. While the District requires a registration certificate for every gun that is possessed, controlled or purchased in the District, most classes of firearms may not be registered. Sawed-off shotguns, machine guns (which include certain semiautomatic assault weapons), short-barreled rifles, and handguns<sup>13</sup> not registered to the current owner before September 24, 1976, may not be registered.<sup>14</sup>

The District of Columbia requires that an application for registration be made before taking possession of a firearm or, in some circumstances, immediately after a firearm is brought into the District. In addition to providing identifying information about the applicant and the firearm, applicants are also required to provide detailed information concerning: (1) whether and, if so, the reasons for any denial of a firearms license; (2) the applicant's role in any mishap involving a firearm, including the date, place, time, circumstances, and the names of the persons injured or killed; (3) the intended use of the firearm; and (4) where the firearm generally will be kept. Applicants undergo a background check conducted by the Chief of Police.<sup>15</sup>

Registered owners are required to notify the Chief of Police of the loss, theft, or destruction of the registration certificate or of a registered firearm. Certificate holders must also notify the Chief of the sale, transfer, or other disposition of the firearm at least 48 hours before delivery, and must return the registration certificate for any firearm which has been lost, stolen, destroyed, or otherwise disposed of or transferred.<sup>16</sup> The District does not require renewal of the registration.

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<sup>11</sup> Hawaii's registration statute also provides that all registration data that identify the registrant's name or address shall be confidential, except for use by law enforcement.

<sup>12</sup> Hawaii's permitting laws are described in the section on Licensing of Gun Owners or Purchasers.

<sup>13</sup> In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

<sup>14</sup> Although the code does not directly identify the types of firearms that *may* be registered, at least one court has stated that long guns may be registered in the District of Columbia. See *Kuhn v. Cissel*, 409 A.2d 182, 186 (D.C. 1979).

<sup>15</sup> Note that these features of the District of Columbia's registration law are comparable to some states' licensing requirements. Additional information about state and local licensing laws is contained in the section on Licensing of Gun Owners or Purchasers.

<sup>16</sup> Law enforcement personnel, members of the military, licensed dealers and non-residents participating in lawful firearm-related recreational activities are exempt from the registration requirements.

2. *States that Require Registration of Pre-Ban Assault Weapons or 50 Caliber Rifles:* Five states (California, Connecticut, Hawaii, Maryland and New Jersey) have banned assault weapons,<sup>17</sup> but allow continued possession of such weapons if they were lawfully owned on a specified date and are registered. In California (the only state that currently bans the possession of 50 caliber rifles) any person who lawfully possessed a 50 caliber rifle before January 1, 2005, must have registered it no later than April 30, 2006 in order to retain possession of the firearm.<sup>18</sup>

3. *Other State Registration Laws:* Louisiana requires the registration of certain firearms, including short-barreled shotguns and rifles, shotguns or rifles modified to have an overall length of less than 26 inches, concealable firearms with obliterated serial numbers, machine guns and mufflers or silencers for any firearm.

While Michigan does not require registration *per se*, it does require persons acquiring handguns to present the handgun to local law enforcement for a safety inspection. If the person presenting the handgun is eligible to possess it, a certificate of inspection will be issued reflecting his or her name, age, address, description and signature, as well as a full description of the handgun. Copies of the certificate are kept by state and local law enforcement, thereby creating a record of all legally acquired handguns possessed in the state and their owners.<sup>19</sup>

4. *States That Prohibit Registration of Some or All Firearms:* Seven states are explicitly prohibited by law from maintaining a registry of any firearms. Delaware, Florida,<sup>20</sup> Georgia, Idaho, Rhode Island, South Dakota and Vermont prohibit keeping any registry of privately owned firearms. California and Pennsylvania<sup>21</sup> prohibit any registry of long guns. California, Delaware, Florida and Rhode Island have exceptions for records required for a criminal prosecution and/or investigation.

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<sup>17</sup> Hawaii and Maryland ban assault pistols.

<sup>18</sup> Additional information on assault weapons and 50 caliber rifles is contained in the sections on Assault Weapons and Fifty Caliber Rifles, respectively.

<sup>19</sup> Michigan also requires handgun owners and purchasers to obtain either a license to carry a handgun or a handgun purchase license. Additional information about Michigan's licensing laws is contained in the section on Licensing of Gun Owners or Purchasers.

<sup>20</sup> Florida's prohibition does not apply to records relating to licenses to carry concealed firearms.

<sup>21</sup> Although Pennsylvania's statute appears to prohibit the state from maintaining a registry of any firearms, the Pennsylvania Supreme Court ruled in *Allegheny County Sportsmen's League v. Rendell*, 860 A.2d 10 (Pa. 2004), that the statute did not prohibit Pennsylvania's database of handgun sales.

## SUMMARY OF SELECTED<sup>22</sup> LOCAL LAWS CONCERNING GUN REGISTRATION

### Local Gun Registration Laws

<b>Chicago</b>	<b>Chicago, Ill., Code §§ 8-20-040 – 8-20-150, 8-20-200</b>
<b>Cleveland</b>	<b>Cleveland, Ohio, Code §§ 674.02, 674.05</b>
<b>New York City</b>	<b>New York, N.Y., Admin. Code §§ 10-303, 10-304, 10-305(m)</b>
<b>Omaha</b>	<b>Omaha, Neb., Code §§ 20-251, 20-253 – 254</b>

*Chicago:* Chicago has a comprehensive system of firearm registration.<sup>23</sup> All firearms in the city must be registered before the transferee takes possession of the firearm. No registration certificate may be issued to any person unless such person:

- Possesses a valid Illinois Firearm Owner's Identification (FOID) card;
- Has not been convicted of a crime of violence (defined as any felony committed while armed with a weapon);
- Has not been convicted within the preceding five years of aggravated assault or any violation of any law relating to the use, possession or sale of any narcotic or dangerous drug;
- Has vision better than or equal to that required to obtain an Illinois driver's license; and
- Is not otherwise ineligible to possess a firearm under any federal, state or local law.

Applicants for registration are required to submit a sworn application to the Superintendent of Police. Applications for registration must include the following information:

- Name, social security number, residential and business address of the applicant;
- Age, sex and citizenship of the applicant;
- Manufacturer, caliber or gauge, model, type and serial number of the firearm to be registered;
- Source from which the firearm was obtained;

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<sup>22</sup> 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."

<sup>23</sup> Note that assault weapons, sawed-off shotguns, machine guns and short-barreled rifles may not be registered. Chicago, Ill., Code § 8-20-050. Handguns may not be registered unless they were validly registered prior to March 30, 1982, and have a trigger lock and load indicator device. *Id.* Thus, the effect of the registration provisions is to ban certain classes of weapons, similar to the District of Columbia registration law described above. Unlike the District of Columbia law, however, Chicago has an independent provision banning assault weapons (Chicago, Ill., Code §§ 8-24-025, 8-24-026).

- Evidence that the applicant meets the criteria described above; and
- Two recent photographs of the applicant.

The applicant may also be required to submit to fingerprinting if necessary to establish his or her identity. Upon receipt of an application for registration, the Superintendent of Police must investigate the information contained in the application to determine whether the application and firearm meet the requirements for registration.

Registrants are responsible for reporting the sale or transfer of a firearm 48 hours prior to delivery, and a firearm's theft or loss immediately upon discovery. Registration certificates must be renewed annually, and applications for renewal are subject to all the requirements of registration. Failure to comply with the renewal requirement causes the firearm to become unregistrable.

*Cleveland:* Cleveland prohibits any person from receiving, possessing, having on or about the person, or using any handgun unless the person has a registration card for each handgun. Cleveland also prohibits any person from delivering, transferring or furnishing any handgun to any person unless the transferee exhibits at the time of transfer a registration card for each handgun.

When satisfied that the applicant holds a valid identification card and is not prohibited from possessing the handgun, the Chief of Police issues a registration card to the applicant no sooner than three days and no more than sixty days after the date of application. Registration cards are serially numbered according to a system devised by the Chief of Police. The cards bear date of issue, the name of the Chief of Police, the applicant's name, home address, identification card number, the signature of the applicant, and the name, type, caliber, and serial number of the handgun. A copy of each application and registration card is retained permanently by the Chief of Police, but is deemed not to be a public record and may not be disclosed to unauthorized persons.

Any person who sells or otherwise transfers possession of a registered handgun must, within five days of the date of transfer of possession of the handgun, surrender the registration card for the handgun to the Chief of Police.

There is no requirement for renewal of the registration.

*New York City:* New York City requires every person in possession of a rifle or shotgun to have a certificate of registration for the weapon. The certificate must be exhibited to law enforcement upon demand when the weapon is carried. A transferee with a valid permit to purchase and possess a rifle or shotgun will be issued a rifle or shotgun registration certificate by the dealer at the time of transfer, or by the police commissioner if the seller is not a licensed dealer. There is no requirement for renewal of the registration.

New York City residents acquiring a rifle or shotgun outside the city are required to apply for a registration certificate within 72 hours after bringing the weapon into the city.

*Omaha:* Omaha prohibits any person from owning, possessing, or maintaining control over any concealable firearm that has not been registered with the Chief of Police.

A concealable firearm will not be registered to any person who:

- Is the subject of an active protection order;
- Has provided false information on the registration request;
- Has a conviction (which has not been pardoned or set aside under state or federal law) for: (a) any felony; (b) carrying a concealed weapon or being a minor in possession of a concealable firearm; or (c) within the previous five years, assault, child abuse, or violation of any provision of the Omaha municipal weapons code;
- Has been convicted of any charge of domestic violence, including stalking or harassment;
- Has a record of mental disorder which would show the applicant to be a danger to self or to others;
- Is a fugitive from justice;
- Has been dishonorably discharged from the U.S. Armed Forces;
- Is a user of, or addicted to, unlawful controlled substances;
- Is not a citizen of the United States; or
- Is under age 21.

Qualified applicants receive a permit from the Chief of Police.<sup>24</sup>

A corporation may register a concealable firearm in its corporate name, but may only allow persons to possess or control the firearm if the person:

- Is a part-time or full-time employee;
- Is acting within the scope of his or her employment; and
- Possesses a current identification card authorizing the cardholder to carry concealed weapons.<sup>25</sup>

There is no requirement for renewal of the registration.

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<sup>24</sup> It is unlawful for any person in Omaha to sell or rent a concealable firearm to any person who has not obtained a written permit from the Chief of Police, as described above. Therefore, Omaha's registration system functions as a hybrid of licensing and registration. Additional information about Omaha's licensing requirements is contained in the section on Licensing of Gun Owners or Purchasers.

<sup>25</sup> The requirements for obtaining an identification card authorizing the carrying of concealed weapons in Omaha include completion of a firearms safety training program. Additional information about the requirements for obtaining a concealed firearm identification card is contained in the section on Carrying Concealed Weapons.

## FEATURES OF COMPREHENSIVE FIREARM REGISTRATION LAW<sup>26</sup>

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.

- Registration is required for all firearms prior to taking possession, or, in the case of firearms already owned or brought into the jurisdiction, immediately after the firearm is brought into the jurisdiction or the effective date of the law (*District of Columbia, Chicago; Hawaii requires registration within 5 days of acquisition of firearm*)
- Registration includes: name, address and other identifying information about the owner of the firearm; names of manufacturer and importer; model, type of action, caliber or gauge, and serial number of firearm; and name and address of source from which firearm was obtained (*Hawaii, District of Columbia, Chicago*)
- Registered owners are required to renew registration annually, including submitting to a background check (*Chicago*)
- Registered owners are required to report any loss, theft or transfer of the registered firearm to law enforcement within a short time of the event (*District of Columbia, Chicago*), and to turn in their registration card or certificate upon loss, theft or transfer (*District of Columbia, Cleveland (handguns only)*)
- Registered owners are required to store all firearms safely and securely
- Additional restrictions may include limitations on where registered firearms may be possessed and to whom they may be transferred (particularly relevant for certain classes of firearms (e.g. assault weapons, 50 caliber rifles))

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<sup>26</sup> The most comprehensive system of regulating the purchase, possession and ownership of firearms combines licensing of gun owners with registration of all firearms. Additional information on licensing of firearm owners is contained in the section on Licensing of Gun Owners or Purchasers.

## Reporting Lost or Stolen Firearms

### Background

Laws that require firearm owners to report lost or stolen firearms serve several public safety functions. These laws help deter gun trafficking and discourage straw purchasing, as well as assist lawful gun owners by facilitating the recovery of their lost or stolen property.

Laws requiring the reporting of lost or stolen guns deter gun trafficking (the diversion of firearms from the legal to illegal market) by providing to law enforcement indicators of trafficking and straw purchasing.<sup>1</sup> When a gun is found at a crime scene and traced by law enforcement back to the original purchaser, that gun owner may falsely claim that the gun was lost or stolen to hide their involvement in trafficking or straw purchasing. Reporting laws put law enforcement on notice of such suspicious patterns of behavior by persons who repeatedly fail to file reports yet claim that their guns were lost or stolen after they are recovered from a crime scene. In addition, reporting laws put law enforcement on notice of persons who repeatedly report their guns lost or stolen, another indicator that the person may be trafficking firearms or engaging in straw purchasing.

Reporting laws make gun owners more accountable for their weapons, and protect gun owners by preventing unwarranted criminal accusations against owners who suffer thefts or losses. The requirement also protects law-abiding gun owners by making it easier for law enforcement to locate a lost or stolen firearm and return it to its owner. Timely reporting of gun thefts or losses enables police to trace guns more effectively, and makes the successful prosecution of users of stolen guns more likely.

Stolen guns also supply the market for crime guns. A 2002 Americans for Gun Safety (AGS)<sup>2</sup> study found that between January 1993 and August 2002 nearly 1.7 million firearms were reported stolen.<sup>3</sup> Of those stolen guns, over one million remained missing.<sup>4</sup> The actual number of gun thefts likely is much larger than reported. Survey research indicates that at least 500,000 firearms are stolen annually from residences.<sup>5</sup> The number of guns stolen likely is much higher than the number reported stolen.<sup>6</sup>

Many stolen guns are used to commit other crimes. A U.S. Department of the Treasury study revealed that nearly a quarter of ATF gun trafficking investigations involved stolen firearms and were associated with over 11,000 trafficked firearms – including 10%

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<sup>1</sup> A “straw purchaser” is a person who buys firearms on behalf of a convicted felon, juvenile or other prohibited purchaser.

<sup>2</sup> Americans for Gun Safety is no longer an independent organization, but is now an initiative within Third Way, which describes itself as a “non-profit, non-partisan strategy center for progressives.”

<sup>3</sup> Americans for Gun Safety, *Stolen Firearms: Arming the Enemy* 6, 8 (Dec. 2002). This equates to 16.8 stolen firearms for every 1,000 U.S. households.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> Bureau of Alcohol, Tobacco & Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* xi, 41 (June 2000), at [http://www.atf.gov/pub/fire-explo\\_pub/pdf/followingthegun\\_internet.pdf](http://www.atf.gov/pub/fire-explo_pub/pdf/followingthegun_internet.pdf).

<sup>6</sup> Bureau of Justice Statistics Selected Findings, U.S. Department of Justice, *Firearms, Crime, and Criminal Justice: Guns Used in Crime* 3 (July 1995), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/guic.pdf>.

percent of the investigations which involved guns stolen from residences.<sup>7</sup> A 1997 U.S. Department of Justice survey found that 8.4% of state prison inmates who used or possessed a firearm during the offense for which they were incarcerated obtained the gun from the illegal market.<sup>8</sup>

### Summary of Federal Law

Federal law does not require individual gun owners or other lawful possessors of firearms to report the loss or theft of a firearm to law enforcement.

Federal law requires that licensed firearms dealers report the loss or theft of any firearm from the dealer's inventory to the U.S. Attorney General or local law enforcement within 48 hours of discovering the loss or theft.<sup>9</sup>

## **SUMMARY OF STATE LAWS GOVERNING REPORTING OF LOST OR STOLEN FIREARMS**

Seven states and the District of Columbia require firearm owners to report the loss or theft of their firearms to law enforcement. Four other states have adopted loss or theft reporting provisions for specific circumstances, but the reporting is not mandatory.

### Mandatory Loss/Theft Reporting

<b>Connecticut</b>	<b>Conn. Gen. Stat. § 53-202g</b>
<b>District of Columbia</b>	<b>D.C. Code Ann. §§ 7-2502.08(1)(A), 7-2502.09(4)</b>
<b>Massachusetts</b>	<b>Mass. Gen. Laws ch. 140, § 129C</b>
<b>Michigan</b>	<b>Mich. Comp. Laws § 28.430</b>
<b>New Jersey</b>	<b>N.J. Stat. Ann. § 2C:58-19 (adopted January 2008)</b>
<b>New York</b>	<b>N.Y. Penal Law § 400.10</b>
<b>Ohio</b>	<b>Ohio Rev. Code Ann. § 2923.20(A)(5), (B)</b>
<b>Rhode Island</b>	<b>R.I. Gen. Laws § 11-47-48.1</b>

### Other Loss/Theft Reporting Laws

<b>California</b>	<b>Cal. Penal Code § 12072(a)(9)(B)(xi)</b>
<b>Maryland</b>	<b>Md. Code Ann., Pub. Safety § 5-128(a)(8)</b>
<b>New Jersey</b>	<b>N.J. Stat. Ann. § 2C:58-12(g)</b>
<b>Virginia</b>	<b>Va. Code Ann. § 18.2-308.2:2(P)(2)(f)</b>

### Description of State Laws Governing Reporting of Lost or Stolen Firearms:

1. *States that Require Loss/Theft Reporting:* In New York and Rhode Island, owners must report the loss or theft of any firearm to local law enforcement within 24 hours of discovery. Local law enforcement in New York then reports the information to the state

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<sup>7</sup> *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, supra note 5, at 11, 41.

<sup>8</sup> Bureau of Justice Statistics Special Report, U.S. Department of Justice, *Firearm Use by Offenders: Survey of Inmates in State and Federal Correctional Facilities* 6 (Nov. 2001), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fuo.pdf>.

<sup>9</sup> 18 U.S.C. § 923(g)(6).

police. New Jersey requires owners to report the loss or theft of any firearm to local law enforcement where the loss or theft occurred (or to the Superintendent of State Police if the locality has no police force) within 36 hours of discovery. Connecticut's reporting requirement applies to any firearm<sup>10</sup> or assault weapon, requiring owners to report the loss or theft to local law enforcement within 72 hours of discovery. Local law enforcement in Connecticut reports the information to the state police.

In Massachusetts, firearm owners are required to report the loss or theft of any firearm to the state police and the local licensing authority; no time period is specified for reporting. Penalties for a violation of the Massachusetts law include suspension or permanent revocation of the owners' firearm identification card or license to carry firearms.

The District of Columbia's law applies to any registered firearm,<sup>11</sup> and applies "immediately" upon discovery of the loss or theft. Registration certificates are revoked if the owner fails to report any registered firearm that is lost or stolen.

Ohio law requires that an owner report to law enforcement "forthwith" the loss or theft of any firearm "in the person's possession or under the person's control."

Michigan's law applies only to thefts of firearms, which must be reported within five days of discovery to a "police agency having jurisdiction over that theft."<sup>12</sup>

2. *Other Loss/Theft Reporting Laws:* In California and Virginia, persons who report the theft or loss of a handgun may claim an exception to the state's prohibition on the purchase of more than one handgun in any 30-day period. Maryland law is similar, but applies to handguns and assault weapons. In both states, any person whose gun is irretrievably lost or stolen within the 30-day period and who deems it essential that the gun be replaced immediately may apply to purchase another firearm within the period, provided he or she reports the loss or theft to law enforcement, obtains a copy of the official police report, and provides that report to a firearms dealer prior to purchasing the replacement.

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<sup>10</sup> Connecticut law defines "firearm" to include any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. Conn. Gen. Stat. § 53a-3(19).

<sup>11</sup> The District of Columbia's registration law serves as a ban on most classes of firearms within the District. Sawed-off shotguns, machine guns (including certain semiautomatic assault weapons), short-barreled rifles, and handguns not registered to the current owner before September 24, 1976, may not be registered. Although the statute does not directly identify the types of firearms that *may* be registered, at least one court has stated that long guns may be registered in the District of Columbia. *See Kuhn v. Cissel*, 409 A.2d 182, 186 (D.C. 1979). Note that in 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

<sup>12</sup> Mich. Comp. Laws § 28.430(1).

In New Jersey, if a registered assault weapon is used in the commission of a crime, the registered owner of that weapon is civilly liable for any damages resulting from that crime. This liability will not apply if the assault weapon was stolen and the registered owner reported the theft to law enforcement within 24 hours of his or her knowledge of the theft.

## SUMMARY OF SELECTED<sup>13</sup> LOCAL LAWS REQUIRING REPORTING OF LOST OR STOLEN FIREARMS

### Local Laws Requiring Loss/Theft Reporting

<b>Chicago</b>	<b>Chicago, Ill., Code §§ 8-20-140(a)(1), (b), 8-20-120(d)</b>
<b>Cleveland</b>	<b>Cleveland, Ohio, Code § 627.06(a)(4)</b>
<b>Columbus</b>	<b>Columbus, Ohio, Code § 2323.20(A)(4)</b>
<b>Hartford</b>	<b>Hartford, Conn., Code §§ 21-61 – 21-63</b>
<b>Los Angeles</b>	<b>Los Angeles, Cal., Code ch. V, art. 5, § 55.12</b>
<b>New York City</b>	<b>New York, N.Y., Rules tit. 38, §§ 3-09, 5-30</b>
<b>San Francisco</b>	<b>San Francisco, Cal., Police Code art. 9, § 616</b>

*Chicago:* Chicago requires registered owners of firearms to report the loss, theft or destruction of a registration certificate or registered firearm immediately upon discovery of the loss, theft or destruction. A firearm registrant must immediately return his or her copy of the registration certificate for any firearm which is lost, stolen or destroyed. The registration certificate will be revoked if the registrant fails to report the loss, theft or destruction of a registered firearm.

*Cleveland:* Cleveland requires any person with a firearm “in such person’s possession or under his or her control” to report “forthwith” the loss or theft of the firearm. Knowing failure to report imposes criminal liability.

*Columbus:* Columbus prohibits any person from knowingly failing to report “forthwith” the loss or theft of any firearm in the “person’s possession or under his or her control.”

*Hartford:* Any lawful firearm owner in Hartford must report the loss or theft of a firearm “from premises in the city or from their person” within 72 hours of becoming aware of the loss or theft. In the event a lost or stolen firearm is determined to have been used to aid or abet the commission of a felony and the Hartford Police determine that the owner of the firearm failed to report its loss or theft as required by ordinance, the City of

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<sup>13</sup> 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.”

Hartford, on a showing of good cause, may sue the owner to recover the costs to the city of police services and other expenses associated with the investigation and prosecution of the felony.

*Los Angeles:* Owners or possessors of firearms in Los Angeles must report the theft or loss of the firearm within 48 hours of becoming aware of the theft or loss, whenever: 1) the person resides in Los Angeles; or 2) the theft or loss of the firearm occurs in Los Angeles. In addition, any person who has experienced the theft or loss of a firearm within the five years prior to the effective date of the ordinance – December 3, 2006 – without the firearm having been recovered during that period, and who meets the general reporting requirements in the ordinance, was required to report the theft or loss within 60 days of the effective date of the ordinance.

*New York City:* In New York City, any person with a rifle or shotgun permit must report all lost or stolen permit documents and rifles or shotguns to the precinct where the person resides or where the loss or theft was discovered. A handgun licensee must immediately report an “incident” – which includes the loss or theft of a handgun or license – to the city License Division’s Incident Section for handguns and to the precinct where the loss or theft occurred.

*San Francisco:* Any firearm owner or possessor in San Francisco must report the theft or loss of his or her firearm within 48 hours of becoming aware of the loss or theft, if: 1) the owner resides in San Francisco; or 2) the theft or loss of the firearm occurs in San Francisco.

## **FEATURES OF COMPREHENSIVE LAW REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS**

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Firearm owners are required to report the loss or theft of any firearm as soon as possible after discovery, either immediately or within 24 hours of discovery (*Ohio, District of Columbia, Chicago, Cleveland, Columbus, New York City – immediately; New York, Rhode Island – within 24 hours*)
- Require owners of firearms lost or stolen (and not recovered) within a designated time period prior to the adoption of the law to report to law enforcement within a reasonable period (*Los Angeles – applies to losses/thefts within 5 years prior to effective date of ordinance, owners must report within 60 days*)
- Reporting requirements should apply to all firearm types (*Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island, District of*

*Columbia, Chicago, Cleveland, Columbus, Hartford, Los Angeles, New York City, San Francisco)*

- Lost and stolen firearms are reported to local and state law enforcement (*Connecticut, Massachusetts, New York*)
- Firearm owners are subject to civil liability for failure to report a lost or stolen firearm that is later used in crime (*New Jersey -- assault weapons only, Hartford*)
- Reporting of lost or stolen firearms is a condition of any license or registration required by the jurisdiction, and license/registration is subject to revocation for failure to report (*District of Columbia, Massachusetts, Chicago*)

## Carrying Concealed Weapons

### Background

Carrying concealed weapons (CCW) laws determine the circumstances, if any, under which a person is permitted to carry a concealed firearm in public. Illinois and Wisconsin are the only states that do not permit carrying concealed firearms. Most states allow carrying of concealed weapons after issuance of a permit, and the recent trend is toward more permissive laws.<sup>1</sup>

Several studies have analyzed the impact of permissive CCW laws. The Violence Policy Center examined a CCW law adopted in Texas in 1995 to overturn the state's 125-year ban on concealed weapons.<sup>2</sup> The study found that between January 1, 1996 and August 31, 2001, Texas concealed handgun license holders were arrested for 5,314 crimes, including murder, rape, kidnapping and theft.<sup>3</sup> The investigation discovered that some license holders had been arrested for more than two crimes per day, and for more than four drunk driving offenses per week. From 1996 to 2000, license holders were arrested for weapons-related crimes at a rate 81% higher than that of the state's general population age 21 and older.<sup>4</sup>

On October 3, 2000, the Los Angeles Times published the results of a yearlong investigation of the Texas law. That investigation found that since the law took effect, more than 400 criminals – including rapists and armed robbers – had been issued CCW permits. The investigation also found that thousands of the 215,000 permit holders in Texas had been arrested for criminal behavior or found to be mentally unstable.<sup>5</sup> The investigation specifically noted that the “largest category of problem licensees involve[d] those who committed crimes after getting their state” permits.<sup>6</sup>

In an investigation of Florida's concealed weapons system, the South Florida Sun-Sentinel found that those licensed to carry guns in the first half of 2006 included more than 1,400 individuals who had pleaded guilty or no contest to felonies, 216 individuals with outstanding warrants, 128 people with active domestic violence injunctions against them, and six registered sex offenders.<sup>7</sup>

The number of defensive gun uses is dwarfed by the frequency of crimes committed with guns. According to the Federal Bureau of Investigation Uniform Crime Reports, the number of crime victims who successfully use firearms to defend themselves is very

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<sup>1</sup> Note that the gun lobby has made it a priority in recent years to increase the number of “shall issue” states.

<sup>2</sup> Violence Policy Center, *License to Kill IV: More Guns, More Crime* (June 2002), at <http://www.vpc.org/graphics/ltk4.pdf>.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> William C. Rempel & Richard A. Serrano, *Felons Get Concealed Gun Licenses Under Bush's 'Tough' Gun Law*, L.A. Times, Oct. 3, 2000, at A1.

<sup>6</sup> *Id.*

<sup>7</sup> Megan O'Matz, *In Florida, It's Easy to Get a License to Carry a Gun*, South Florida Sun-Sentinel, Jan. 28, 2007, at 1A.

small. Of the 30,694 Americans who died by gunfire in 2005, only 147 were shot in justifiable homicides by private citizens with firearms.<sup>8</sup>

### Summary of Federal Law

Federal law provides that certain law enforcement officers may carry concealed firearms. Any “qualified law enforcement officer” with proper agency-issued identification may carry a concealed firearm.<sup>9</sup> The term “qualified law enforcement officer” is defined as any employee of a governmental agency who:

- Is authorized to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;
- Is authorized by the agency to carry a firearm;
- Is not the subject of any disciplinary action by the agency;
- Meets the standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- Is not prohibited by federal law from receiving a firearm.<sup>10</sup>

Under federal law, any “qualified retired law enforcement officer” with proper identification also may carry a concealed firearm.<sup>11</sup> The term “qualified retired law enforcement officer” is defined as an individual who:

- Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

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<sup>8</sup> National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *WISQARS Injury Mortality Reports, 1999-2005* (2008), at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html); Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States, 2006* Expanded Homicide Data Table 14, at [http://www.fbi.gov/ucr/cius2006/offenses/expanded\\_information/data/shrtable\\_14.html](http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_14.html). A “justifiable homicide” is defined by the FBI as the killing of a felon, during the commission of a felony, by a private citizen.

The effect of permissive CCW laws remains controversial, however. Gun rights advocates claim that “shall issue” CCW laws are associated with a significant reduction in violent crime. *See, e.g.,* John Lott, Jr. & David Mustard, *Crime, Deterrence and Right-to-Carry Concealed Handguns*, 26 J. Legal Stud. 1 (1997). Recent analyses have criticized the methodology and conclusions of these studies. *See, e.g.,* Daniel Webster & Jens Ludwig, *Myths about Defensive Gun Use and Permissive Gun Carry Laws*, Berkeley Media Studies Group (2000); and John J. Donohue, *The Impact of Concealed-Carry Laws*, in *Evaluating Gun Policy: Effects on Crime and Violence* (Jens Ludwig & Philip J. Cook eds., 2003). A 2003 study concluded that there is no statistical evidence that shall-issue concealed weapons laws reduce crime. Ian Ayres & John J. Donohue III, *Shooting Down the More Guns, Less Crime Hypothesis*, Center for the Study of Law and Society Jurisprudence and Social Policy Program, Papers Presented in the Center for the Study of Law and Society Bag Lunch Speaker Series (University of California, Berkeley), Paper 5, 101, 146, 156 (Apr. 2003), at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1026&context=csls>. Rather, the study found that the adoption of shall-issue laws generally will increase crime. *Id.*

<sup>9</sup> 18 U.S.C. § 926B.

<sup>10</sup> 18 U.S.C. § 926B(c).

<sup>11</sup> 18 U.S.C. § 926C.

- Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
- Either:
  - Before retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or
  - Retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
- Has a nonforfeitable right to benefits under the retirement plan of the agency;
- During the most recent 12-month period, has met, at the expense of the individual, the state's standards for training and qualification for active law enforcement officers to carry firearms;
- Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- Is not prohibited by federal law from receiving a firearm.<sup>12</sup>

Both statutes supersede state and local laws regarding CCWs for law enforcement except in certain circumstances. States are not precluded from allowing private persons or entities to prohibit or restrict the possession of concealed firearms on their property by current or retired law enforcement. States also are not precluded from prohibiting or restricting the possession of firearms by current or retired law enforcement on any state or local government property, installations, buildings, bases or parks.

A person holding a state-issued permit allowing the person to acquire or possess firearms (e.g., a concealed weapons permit) is not required to undergo a background check if the permit was issued: (1) within the previous five years in the state in which the transfer is to take place; and (2) after an authorized government official has conducted a background investigation to verify that possession of a firearm would not be unlawful.<sup>13</sup> Permits issued after November 30, 1998 qualify as exempt only if the approval process included a NICS check.<sup>14</sup> This exemption could allow some prohibited persons to acquire firearms, in cases where a state permit holder falls into a prohibited category after issuance of the state permit. Under the federal exemption, no background check is required and the seller would have no way to learn that the prospective purchaser is prohibited from possessing firearms.

## SUMMARY OF STATE CCW LAWS

### **Concealed Carry Prohibited**

**Illinois**  
**Wisconsin<sup>15</sup>**

**720 Ill. Comp. Stat. 5/24-1(a)(10), 5/24-1(a)(4)**  
**Wis. Stat. § 941.23**

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<sup>12</sup> 18 U.S.C. § 926C(c).

<sup>13</sup> 18 U.S.C. § 922(t)(3); 27 C.F.R. § 478.102(d).

<sup>14</sup> 27 C.F.R. § 478.102(d).

<sup>15</sup> The Wisconsin Supreme Court has held that the state constitutional right to “keep and bear arms” for personal security under Art. I, § 25 of the Wisconsin Constitution, when exercised within an individual’s own home or place of business, and supported by a factual determination that the individual had no unlawful purpose behind

## **Concealed Carry Allowed**

Most states allow the carrying of concealed weapons by persons who obtain a permit. States that issue CCW permits are generally categorized as either “shall issue” or “may issue” states. In “shall issue” states, law enforcement officials are required to issue a permit to anyone who meets certain minimal statutory requirements (e.g., that the person is not a convicted felon or mentally incompetent). Once a permit has been issued, the permit holder is allowed to carry a loaded, concealed firearm in public places, although a number of states prohibit concealed weapons in government buildings and other specified locations. “May issue” states give discretion to the issuing official to grant or deny the permit, based on various statutory factors. Only two states allow the carrying of concealed weapons without a permit.

### **“Shall Issue” States**

<b>Arizona</b>	<b>Ariz. Rev. Stat. §§ 13-3112, 13-3102</b>
<b>Arkansas</b>	<b>Ark. Code Ann. §§ 5-73-119, 5-73-120, 5-73-122, 5-73-301 – 5-73-319, 5-73-401 – 5-73-402</b>
<b>Colorado</b>	<b>Colo. Rev. Stat. §§ 18-12-201 – 18-12-216</b>
<b>Florida</b>	<b>Fla. Stat. Ann. §§ 790.01, 790.015, 790.06, 790.0601</b>
<b>Georgia</b>	<b>Ga. Code Ann. § 16-11-126 – 16-11-130</b>
<b>Idaho</b>	<b>Idaho Code Ann. §§ 18-3302, 18-3302C, 18-3302D</b>
<b>Indiana<sup>16</sup></b>	<b>Ind. Code Ann. §§ 35-47-2-1 – 35-47-2-6, 35-47-6-1, 35-47-6-1.3, 35-47-9-1, 35-47-9-2</b>
<b>Kansas</b>	<b>Kan. Stat. Ann. §§ 12-4516, 21-4201, 21-4619, 75-7c01 – 75-7c18</b>
<b>Kentucky</b>	<b>Ky. Rev. Stat. Ann. §§ 237.110, 527.020</b>
<b>Louisiana</b>	<b>La. Rev. Stat. Ann. §§ 40:1379.1, 40:1379.3, 40:1379.3.1</b>
<b>Maine</b>	<b>Me. Rev. Stat. Ann. tit. 25, §§ 2001-A – 2006</b>
<b>Michigan</b>	<b>Mich. Comp. Laws §§ 28.421a – 28.429c</b>
<b>Minnesota<sup>17</sup></b>	<b>Minn. Stat. § 624.714</b>
<b>Mississippi</b>	<b>Miss. Code Ann. §§ 45-9-101, 97-37-17</b>
<b>Missouri</b>	<b>Mo. Rev. Stat. §§ 571.101 – 571.121</b>
<b>Montana</b>	<b>Mont. Code Ann. §§ 45-8-321 – 45-8-329</b>

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concealing the firearm, provides a defense to a violation of Wis. Stat. § 941.23. *State v. Hamdan*, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785.

<sup>16</sup> Indiana issues lifetime licenses to carry a handgun. The lifetime license carries no additional requirements (other than a higher fee). Ind. Code Ann. §§ 35-47-2-3, 35-47-2-4.

<sup>17</sup> In 2003, the Minnesota Legislature enacted this statute to transform Minnesota from a “may issue” state to a “shall issue” state. The statute was found to violate the Minnesota Constitution’s single subject requirement, *Unity Church of St. Paul v. Minnesota*, 694 N.W.2d 585 (Minn. Ct. App. 2005), and in 2005, the legislature re-enacted the “shall issue” law (with only technical amendments). On November 14, 2006, in a challenge brought by Edina Community Lutheran Church and others, a Hennepin County District Court found that the law violates federal and state constitutional provisions that protect religious freedom, and permanently enjoined the state from enforcing the provisions of the law that bar the plaintiffs from prohibiting firearms on religious property. *Edina Community Lutheran Church, et al. v. State of Minnesota*, No. 27-CV-06-11659 (Hennepin County, Minn., Nov. 14, 2006).

**“Shall Issue” States** *(continued from previous page)*

Nebraska	Neb. Rev. Stat. Ann. §§ 28-1202, 69-2427 – 2447
Nevada	Nev. Rev. Stat. Ann. §§ 202.3653 – 202.369
New Hampshire	N.H. Rev. Stat. Ann. §§ 159:6 – 159:6-f, 159:19
New Mexico	N.M. Stat. Ann. §§ 29-19-1 – 29-19-13, 30-7-2.4, 30-7-3, 30-7-13
North Carolina	N.C. Gen. Stat. §§ 14-415.10 – 14-415.24, 14-269.2, 14-269.3, 14-277.2
North Dakota	N.D. Cent. Code §§ 62.1-04-01 – 62.1-04-05, 62.1-02-04 – 62.1-02-05
Ohio	Ohio Rev. Code Ann. §§ 2923.11 – 2923.1213
Oklahoma	Okla. Stat. tit. 21, §§ 1277, 1290.1 – 1290.26
Oregon	Or. Rev. Stat. §§ 166.291 – 166.295, 166.370
Pennsylvania	18 Pa. Cons. Stat. §§ 6106, 6109, 912, 913; 55 Pa. Code §§ 3270.79, 3280.79, 3800.101, 6400.86
South Carolina	S.C. Code Ann. §§ 23-31-210 – 23-31-240, 16-23-20, 16-23-420, 16-23-430, 16-23-460, 16-23-465
South Dakota	S.D. Codified Laws §§ 23-7-7 – 23-7-8.6, 22-14-23, 13-32-7
Tennessee	Tenn. Code Ann. §§ 39-17-1351 – 39-17-1360, 39-17-1305, 39-17-1309
Texas <sup>18</sup>	Tex. Gov't Code Ann. §§ 411.171 – 411.208, Tex. Penal Code Ann. §§ 30.06, 46.15, 46.02, 46.03, 46.035
Utah	Utah Code Ann. §§ 53-5-701 – 53-5-710, 78-7-6, 76-8-311.1, 76-8-311.3, 76-10-529, 76-10-530
Virginia	Va. Code Ann. §§ 18.2-308 – 18.2-308.1:5, 18.2-283, 18.2-283.1, 18.2-287.01
Washington	Wash. Rev. Code Ann. §§ 9.41.070 – 9.41.075, 9.41.097, 9.41.280, 9.41.300, 9.41.800
West Virginia	W. Va. Code §§ 61-7-4 – 61-7-7, 61-7-11a, 61-7-14

**“May Issue” States**

Alabama	Ala. Code §§ 9-11-304, 13A-11-52, 13A-11-59, 13A-11-73 – 13A-11-75
California	Cal. Penal Code §§ 12050-12054, 12590
Connecticut	Conn. Gen. Stat. §§ 29-28 – 29-30, 29-32 – 29-32b, 29-35, 29-37
Delaware	Del. Code Ann. tit. 11, § 1441

*(continued on next page)*

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<sup>18</sup> An amendment to Texas’s CCW law, effective Sept. 1, 2007, allows residents to carry concealed firearms without a permit when they are traveling in a private vehicle, and on their person when traveling to and from their premises and their vehicle. Tex. Penal Code § 46.02. Firearms in vehicles must be hidden from plain view. *Id.*

**“May Issue” States** (continued from previous page)

<b>District of Columbia</b> <sup>19</sup>	<b>D.C. Code Ann. §§ 22-4502.01 – 22-4506</b>
<b>Hawaii</b>	<b>Haw. Rev. Stat. Ann. § 134-9</b>
<b>Iowa</b>	<b>Iowa Code §§ 724.4, 724.4B, 724.7 – 724.13</b>
<b>Maryland</b>	<b>Md. Code Ann., Pub. Safety §§ 5-301 – 5-314</b>
<b>Massachusetts</b>	<b>Mass. Gen. Laws ch. 140, §§ 131, 131C, 131P; ch. 269, § 10</b>
<b>New Jersey</b>	<b>N.J. Stat. Ann. §§ 2C:58-3, 2C:58-4, 2C:39-5</b>
<b>New York</b>	<b>N.Y. Penal Law §§ 400.00, 265.01, 265.20</b>
<b>Rhode Island</b>	<b>R.I. Gen. Laws §§ 11-47-8 – 11-47-18</b>
<b>Wyoming</b> <sup>20</sup>	<b>Wyo. Stat. Ann. § 6-8-104</b>

**No Permit Required**

<b>Alaska</b>	<b>Alaska Stat. § 11.61.220(a)</b>
<b>Vermont</b>	<b>Vt. Stat. Ann. tit. 13, §§ 4004, 4016</b>

**States that Require a Showing of Good Cause for Issuance of a Concealed Weapons Permit**

Alabama  
California  
Delaware  
District of Columbia  
Hawaii  
Iowa  
Maryland  
Massachusetts  
New Jersey  
New York  
Rhode Island

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<sup>19</sup> Note that 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, prohibiting the carrying of pistols without a license, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

<sup>20</sup> In *Mecikalski v. Office of Att’y Gen.*, 2 P.3d 1039, 1046-47 (Wyo. 2000), the Supreme Court of Wyoming held that a local sheriff and chief of police correctly denied plaintiff’s application for a concealed weapons permit pursuant to Wyo. Stat. Ann. § 6-8-104(g). The court found that section 6-8-104(g) and the legislative intent behind it give local law enforcement broad discretion to deny a permit when there are reasonable grounds, based in fact, to believe that the permit would endanger the community. *Mecikalski*, 2 P.3d at 1046-47.

States that Require Applicants for Concealed Weapons Permits to be of Good Character

Alabama  
California  
Connecticut  
Delaware  
District of Columbia  
Hawaii  
Massachusetts  
New Jersey  
New York  
Rhode Island

States that Require Applicants for Concealed Weapons Permits to Demonstrate Knowledge of Firearm Use and/or Safety

California	Missouri
Connecticut	Nebraska
Delaware	New Jersey
Hawaii	North Carolina
Iowa	Oregon
Kansas	Rhode Island
Kentucky	South Carolina
Massachusetts	Texas
Michigan	Utah

States that Limit the Locations Where Concealed Weapons May be Carried

Alabama	Maine	Ohio
Alaska	Maryland	Oklahoma
Arizona	Massachusetts	Pennsylvania
Arkansas	Michigan	South Carolina
California	Minnesota	South Dakota
Colorado	Mississippi	Tennessee
Connecticut	Missouri	Texas
District of Columbia	Montana	Utah
Florida	Nebraska	Vermont
Georgia	Nevada	Washington
Idaho	New Hampshire	West Virginia
Indiana	New Jersey	Wyoming
Iowa	New Mexico	
Kansas	New York	
Kentucky	North Carolina	
Louisiana	North Dakota	

Description of State Laws Governing the Carrying of Concealed Weapons

1. *Standards for Issuing Concealed Weapons Permits in “May Issue” States:*  
In “may issue” states, concealed weapons permits are issued at the discretion of the licensing authority. In Alabama, California, Connecticut, Hawaii, Iowa, Massachusetts, New Jersey, New York, Rhode Island, Wyoming and the District of Columbia, concealed

weapons permits are issued by local law enforcement agencies. Concealed weapons permits in Maryland are issued by the state police. (Massachusetts and New Jersey also authorize the state police to issue concealed weapons permits, in addition to local law enforcement.) In Delaware and New Jersey, court approval is required.

In addition to requiring applicants to pass a background check, concealed weapons laws in these states contain a variety of standards to guide licensing authorities in exercising their discretion:

a. *States Requiring a Showing of Good Cause for Issuance of a Permit:* Most “may issue” states require a showing of need by the applicant to carry a concealed firearm. Alabama, California, Delaware, Hawaii, Iowa, Maryland, Massachusetts, New Jersey, New York, Rhode Island and the District of Columbia require applicants for concealed weapons permits to demonstrate good cause or a justifiable need to carry a concealed weapon. Some states further delineate the circumstances that constitute good cause or justifiable need: Alabama, Massachusetts and Rhode Island require the applicant to show a “good reason” to fear injury to his or her person or property, or any other proper reason for carrying a concealed firearm. Delaware issues concealed weapons licenses only “for personal protection or the protection of the person’s property.” Hawaii grants licenses to carry concealed weapons “[i]n an exceptional case, when an applicant shows reason to fear injury to the applicant’s person or property.”

b. *States Requiring Applicants to be of Good Character:* Most “may issue” states also require the licensing authority to consider the character of the applicant. Alabama, Connecticut, Hawaii, Massachusetts, Rhode Island and the District of Columbia allow permits to be issued only to “suitable persons.” California, Delaware and New York require the licensing authority to find the applicant is of “good moral character.” New Jersey requires that three “reputable persons” who have known the applicant for at least three years certify that the applicant is of “good moral character and behavior.” Delaware also requires that the applicant include with his or her application a certificate signed by five “respectable citizens” of the county in which the applicant resides, stating that the applicant is of good moral character, has a reputation for peace and good order, and that possession of a concealed deadly weapon by the applicant is necessary for the protection of the applicant or the applicant’s property.

2. *States Requiring Applicants to Demonstrate Knowledge of Firearm Use and/or Safety:* Among “may issue” states, California, Connecticut, Delaware, Hawaii, Iowa, Massachusetts, New Jersey and Rhode Island require applicants to complete a firearm safety course, or otherwise demonstrate their qualification to use a firearm safely. Delaware’s firearm safety training requirement, which applies to the applicant’s initial license only, is particularly strong, specifying that the training course must include instruction regarding:

- Knowledge and safe handling of firearms and ammunition;
- Safe storage of firearms and ammunition and child safety;
- Safe firearms shooting fundamentals;

- Federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms;
- State laws pertaining to the use of deadly force for self defense; and
- Techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

Delaware also requires that the training include live fire shooting exercises on a range, including the expenditure of a minimum of 100 rounds of ammunition, and identification of ways to develop and maintain firearm shooting skills.

Rhode Island requires applicants to obtain a certification that they are qualified to use a handgun of a caliber equal to or larger than the one they seek to carry. The certification can be obtained by passing a firing test conducted by a range officer or pistol instructor.<sup>21</sup>

Among “shall issue” states, Kansas, Kentucky, Louisiana, Michigan, Missouri, Nebraska, North Carolina, Oregon, South Carolina, Texas and Utah require firearm safety training. Kansas, Kentucky, Michigan, North Carolina, South Carolina and Texas require live firing as part of the firearm training component of the law.

3. *States Limiting the Locations where Concealed Weapons May be Carried:* Most states that allow carrying concealed weapons impose some restrictions on the locations where they may be carried. The majority of states prohibit concealed weapons on school property, in prisons or jails, courthouses and other government buildings, and at locations where liquor is served. A smaller number of jurisdictions prohibit concealed weapons in a wide range of other locations, including places of worship (Arkansas, Georgia, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, Texas, Utah, Virginia and Wyoming); polling places (Arizona, Arkansas, Florida, Kansas, Louisiana, Mississippi, Missouri, Nebraska, South Carolina and Texas); sports arenas (Kansas, Michigan, Missouri, Nebraska and Oklahoma); hospitals and/or medical facilities (Michigan, Missouri, Nebraska, South Carolina and Texas); sites where gambling is permitted (Indiana, Missouri, North Dakota and Oklahoma); and mental health facilities (Kansas, Ohio, Pennsylvania and Washington).

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<sup>21</sup> In addition, Wyoming requires applicants to demonstrate familiarity with a firearm, through completion of certain safety or training courses, or by past experience using a firearm through participation in an organized handgun shooting competition or military service.

## SUMMARY OF SELECTED<sup>22</sup> LOCAL LAWS GOVERNING THE CARRYING OF CONCEALED WEAPONS

### Local Laws Governing the Carrying of Concealed Weapons<sup>23</sup>

<b>Chicago</b>	<b>Chicago, Ill., Code §§ 8-20-010, 8-24-020</b>
<b>Cleveland</b>	<b>Cleveland, Ohio, Code §§ 627.02(a) and (d), 627.10(a), 674.01 et seq.</b>
<b>Columbus</b>	<b>Columbus, Ohio, Code § 2323.12(A), (E)(3)</b>
<b>Hartford</b>	<b>Hartford, Conn., Code §§ 21-71, 21-72(d)</b>
<b>New York City</b>	<b>New York, N.Y., Admin. Code §§ 10-131(h)(1), (2); New York, N.Y., Rules tit. 38, § 5-01</b>
<b>Omaha</b>	<b>Omaha, Neb., Code §§ 20-192, 20-194, 20-195, 20-204 – 20-208, 19-392.2</b>

*Chicago:* Chicago prohibits carrying concealed weapons.

*Cleveland:* While Cleveland prohibits the knowing carrying of a concealed deadly weapon, this prohibition does not apply to firearms that are loaded, or for which the offender has ammunition “ready at hand.”<sup>24</sup> Cleveland also prohibits knowingly carrying, possessing, or having “ready at hand” any handgun or long gun at or about a public place.

Cleveland requires that any person receiving, possessing, having on or about the person or using any handgun must have an identification card and a registration card for the handgun.

*Columbus:* Like Cleveland, Columbus prohibits any person from knowingly carrying or having concealed on his or her person or concealed ready at hand any deadly weapon, but this prohibition does not apply to firearms that are loaded or for which the offender has ammunition ready at hand.<sup>25</sup>

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<sup>22</sup> 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.”

<sup>23</sup> Note that the Cleveland and Columbus ordinances predate the Ohio concealed carry law. Ohio Rev. Code Ann. §§ 2923.11 – 2923.1213. Likewise, the Omaha ordinance was in effect before Nebraska enacted its concealed carry law. Neb. Rev. Stat. Ann. §§ 28-1202, 69-2427 – 2447.

<sup>24</sup> Ohio state law prohibits the knowing carrying of a firearm concealed on the person or ready at hand without a permit. Enhanced penalties apply in cases where the firearm is loaded, or for which the offender has ammunition “ready at hand.”

<sup>25</sup> *Id.*

*Hartford:* Hartford prohibits any person from possessing a handgun without a local permit, except in his or her dwelling house or place of business. Permit applicants must complete a firing range safety and qualifications test.

*New York City:* New York City prohibits the carrying of a loaded rifle or shotgun in public within the city limits. Unloaded rifles or shotguns carried in public within the city limits must be completely enclosed or contained in a non-transparent carrying case. With limited exceptions, state-issued licenses to carry concealed weapons are not valid in New York City.<sup>26</sup> The city issues five basic types of handgun licenses: (1) a “premises license” which allows possession of a handgun in a specific business or residence; (2) a “carry business license” which allows the holder to carry a concealed handgun; (3) a “limited carry business license” which allows the holder to carry a handgun to and from specific locations at specific times; (4) a “carry guard license/gun custodian license” which allows the holder to carry a handgun while engaged in work as a security guard or gun custodian; and (5) a “special license” which allows the holder of a state permit to carry a handgun while in New York City and/or while engaged in work as a security guard or gun custodian in New York City.<sup>27</sup> Licenses to carry a handgun are issued for maximum terms of three years, for a fee of \$340.

*Omaha:* Omaha prohibits any person except law enforcement from “purposely or knowingly” carrying a concealed firearm. Omaha also prohibits any person from knowingly carrying or transporting a concealable firearm in a motor vehicle (with several exceptions).

Omaha has established a firearms safety training program and licensing scheme. If a person successfully completes the program, he or she will receive an “identification card” and be exempt from the concealable firearm prohibition. The identification card is valid for three years from the date of issue. Omaha prohibits any person under age 21 from possessing a concealable firearm.

Nonresidents who exhibit firearms at a firearms exhibition in Omaha may legally possess concealable firearms at the exhibition site, and while in direct route to or from the exhibition, without registering them with local law enforcement.

### COMMENT ON CCW LAWS

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.

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<sup>26</sup> N.Y. Penal Law § 400.00(6).

<sup>27</sup> With some exceptions, no person may knowingly possess a firearm at a place that he or she knows or should know is a school zone. New York, N.Y., Charter § 460.

LCAV believes that sound public policy requires a prohibition on carrying concealed weapons. However, the gun lobby has been successful in securing permissive CCW laws in all but two states, Illinois and Wisconsin. In states that permit carrying concealed weapons, LCAV notes that the following types of provisions would help to mitigate, but would not eliminate, the serious risks of permissive CCW laws to public health and safety:

- A license or permit to carry is required (*46 states and the District of Columbia*)<sup>28</sup>
- Law enforcement has discretion to issue permits based on strict guidelines (*12 states and the District of Columbia are “may issue” states; of these 13 jurisdictions, nine of them, Alabama, California, Delaware, Hawaii, Massachusetts, New Jersey, New York, Rhode Island and the District of Columbia, issue permits only for good cause to persons of good character*)
- In addition to background checks, applicants are required to have safety training and to pass written and hands-on tests demonstrating knowledge of firearm laws and safety
- Permits are of limited duration and may be renewed only upon satisfaction of all conditions and testing, including background checks
- Permits are subject to revocation in cases where holder becomes a prohibited purchaser or fails to comply with applicable federal, state and local firearms laws
- Restrictions are placed on the locations where carrying concealed weapons is allowed (*43 states and the District of Columbia*)

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<sup>28</sup> Additional information on features of comprehensive licensing laws is contained in the section on Licensing of Gun Owners or Purchasers.