

SALES AND TRANSFERS

Prohibited Purchasers.....	69
Minimum Age to Purchase and Possess Firearms	81
Domestic Violence and Firearms.....	88
Background Checks	105
Mental Health Reporting.....	115
Waiting Periods.....	134
Restrictions on Multiple Purchases or Sales of Firearms	139

Prohibited Purchasers

Background

Background checks are designed to identify persons who are ineligible to purchase firearms under federal or state law, and to prevent those persons from obtaining firearms. According to the U.S. Department of Justice, between February 29, 1994 and December 31, 2005, federal and state law enforcement officials performed 69.9 million background checks and prevented 1.36 million gun sales to convicted felons and other prohibited purchasers.¹

Summary of Federal Law

Federal law establishes the baseline regarding the types of persons who are ineligible to purchase firearms. The federal Gun Control Act of 1968, codified at 18 U.S.C. § 922, prohibits the sale of firearms to any person who:

- Is underage;²
- Has been convicted of, or is under indictment for, a crime punishable by imprisonment for more than one year;
- Is a fugitive from justice;
- Is an unlawful user of or addicted to a controlled substance;
- Has been adjudicated as a mental defective or committed to a mental institution;³
- Is an illegal alien;
- Has been dishonorably discharged from the military;
- Has renounced his or her U.S. citizenship;
- Is subject to a court order restraining him or her from harassing, stalking or threatening an intimate partner, his or her child or a child of a partner or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child;⁴ or

¹ Bureau of Justice Statistics, U.S. Department of Justice, *Bulletin: Background Checks for Firearm Transfers, 2005* 2 (Nov. 2006).

² Additional information on the federal minimum age to purchase and/or possess firearms is contained in the section on Minimum Age to Purchase and Possess Firearms.

³ Regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) define "[a]djudicated as a mental defective" to include persons who have been determined to be a danger to themselves or to others, or who lack the mental capacity to contract or manage their own affairs. 27 C.F.R. § 478.11. The regulations further define "[a]djudicated as a mental defective" to include those persons found insane by a court in a criminal case, those persons found incompetent to stand trial, and those persons found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. §§ 850a, 876b. *Id.* ATF regulations define "[c]ommitted to a mental institution" to mean involuntary commitment. 27 C.F.R. § 478.11.

In 2008 President Bush signed into law the NICS Improvement Amendments Act of 2007, which, *inter alia*, changes the standard for persons deemed to be "adjudicated as a mental defective" or "committed to a mental institution" by a federal agency or department. The Act also deems an adjudication as a mental defective or commitment to a mental institution "not to have occurred" if a state grants an application for relief pursuant to a state created relief from disabilities program. Pub. L. No. 110-180, § 105, 121 Stat. 2559 (2008). For more information on these changes and other provisions relating to persons prohibited from purchasing or possessing firearms as a result of mental illness, see section on Mental Health Reporting.

⁴ Persons subject to restraining orders are prohibited from possessing firearms provided that the order:

- Has been convicted of a misdemeanor offense of domestic violence.⁵

SUMMARY OF STATE LAWS GOVERNING PROHIBITED PURCHASERS

Only Vermont has no state law requiring background checks or setting forth any basis for denial of a firearm to a prospective purchaser or possessor.⁶ Other state laws identifying persons prohibited from purchasing and/or possessing firearms are listed below:

Alabama	Ala. Code § 13A-11-72
Alaska	Alaska Stat. § 11.61.200
Arizona	Ariz. Rev. Stat. §§ 13-3101(A)(6), 13-3111, 13-3113
Arkansas	Ark. Code Ann. §§ 5-73-103(a), 5-73-129
California	Cal. Penal Code §§ 12021, 12021.1, 12076, 12077; Cal. Welf. & Inst. Code §§ 8100, 8101, 8103, 8105
Colorado	Colo. Rev. Stat §§ 18-12-108, 18-12-108.5, 18-12-111, 24-33.5-424
Connecticut	Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36l, 29-37a, 53a-217, 53a-217c
Delaware	Del. Code Ann. tit. 11, §§ 1448, 1448A; tit. 24, §§ 901, 903
District of Columbia	D.C. Code Ann. §§ 7-2502.02 – 7-2502.03
Florida	Fla. Stat. Ann. §§ 790.065, 790.18, 790.23, 790.233, 790.235
Georgia	Ga. Code Ann. §§ 16-11-131(b), (b.1), 16-11-132, 16-11-171 – 16-11-172
Hawaii	Haw. Rev. Stat. Ann. §§ 134-2, 134-7
Idaho	Idaho Code Ann. §§ 18-3308, 18-3316
Illinois	430 Ill. Comp. Stat. 65/1 – 65/16-3
Indiana	Ind. Code Ann. §§ 34-26-5-9(c)(4), (f), 35-47-1-7, 35-47-2.5-1 – 35-47-2.5-12, 35-47-14-1 – 35-47-14-9
Iowa	Iowa Code §§ 724.15 – 724.23, 724.26
Kansas	Kan. Stat. Ann. §§ 21-4204, 21-4204a
Kentucky	Ky. Rev. Stat. Ann. §§ 527.040, 527.100
Louisiana	La. Rev. Stat. Ann. § 14:95.1
Maine	Me. Rev. Stat. Ann. tit. 15, § 393(1)

(1) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; and (2) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. 18 U.S.C. § 922(d)(8). For more information on the prohibition on purchase and possession of firearms by persons subject to a domestic violence protective order, see section on Domestic Violence and Firearms.

⁵ 18 U.S.C. § 922(b)(1), (d), (x)(1). Federal law does not prohibit persons with other misdemeanor convictions from purchasing firearms. Misdemeanor convictions have been found to be a risk factor for future criminal activity among handgun owners. Garen J. Wintemute et al., *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*, 280 JAMA 2083 (1998). For more information on the prohibition on purchase and possession of firearms by domestic violence misdemeanants, see section on Domestic Violence and Firearms.

⁶ Federal law requiring background checks for all dealer sales does apply in Vermont, however, as it does in all other states.

Maryland	Md. Code Ann., Pub. Safety §§ 5-101(g), 5-117 – 5-127, 5-133, 5-134
Massachusetts	Mass. Gen. Laws ch. 140, §§ 129B, 130, 131, 131E
Michigan	Mich. Comp. Laws §§ 28.422, 750.224f
Minnesota	Minn. Stat. §§ 624.713 – 624.7132, 624.719
Mississippi	Miss. Code Ann. §§ 41-30-3, 97-37-5, 97-37-13, 97-37-14
Missouri	Mo. Rev. Stat. § 571.060.1(2)
Montana	Mont. Code Ann. §§ 45-8-313, 45-8-344
Nebraska	Neb. Rev. Stat. Ann. §§ 28-1204.01, 28-1206, 69-2401 – 69-2421
Nevada	Nev. Rev. Stat. Ann. §§ 202.300, 202.310, 202.360, 202.362
New Hampshire	N.H. Rev. Stat. Ann. §§ 159:3, 159:7, 159:8-a, 159:12, 173-B:5
New Jersey	N.J. Stat. Ann. § 2C:58-3
New Mexico	N.M. Stat. Ann. § 30-7-16
New York	N.Y. Penal Law §§ 265.00, 265.01, 400.00
North Carolina	N.C. Gen. Stat. §§ 14-402 – 14-406, 14-415.1, 14-415.3, 14-269.8
North Dakota	N.D. Cent. Code § 62.1-02-01
Ohio	Ohio Rev. Code Ann. §§ 2923.13, 2923.211
Oklahoma	Okla. Stat. tit. 21, §§ 1273, 1283, 1289.10, 1289.12
Oregon	Or. Rev. Stat. §§ 166.412, 166.250(1)(c), 166.470
Pennsylvania	18 Pa. Cons. Stat. §§ 6105, 6110.1, 6111, 6111.1; 23 Pa. Cons. Stat. §§ 6107(b)(3), 6108(a)(7)
Rhode Island	R.I. Gen. Laws §§ 11-47-5 – 11-47-7, 11-47-30; 11-47-35.2; 8-8.1-3; 15-15-3
South Carolina	S.C. Code Ann. § 16-23-30
South Dakota	S.D. Codified Laws §§ 22-14-15, 22-14-15.1, 23-7-44, 23-7-46
Tennessee	Tenn. Code Ann. §§ 39-17-1303, 39-17-1316
Texas	Tex. Penal Code Ann. §§ 46.04, 46.06
Utah	Utah Code Ann. §§ 76-10-503, 76-10-509, 76-10-509.4
Virginia	Va. Code Ann. §§ 18.2-308.1:1 – 18.2-308.2:2, 18.2-308.4, 18.2-308.7
Washington	Wash. Rev. Code Ann. §§ 9.41.040, 9.41.170
West Virginia	W. Va. Code §§ 61-7-7, 61-7-8
Wisconsin	Wis. Stat. §§ 941.29, 948.60
Wyoming	Wyo. Stat. Ann. § 6-8-102

Description of State Laws Governing Prohibited Purchasers

The federal categories of prohibited purchasers are the prevailing minimum for all states. States may adopt laws prohibiting additional persons from purchasing and/or possessing firearms. Most states incorporate at least some classes of federally-prohibited purchasers into their state laws so that they may prosecute violators. In some cases states apply broader standards than federal law, or designate additional classes of prohibited persons. State provisions that go beyond federal law are described below:

1. *Felons and Misdemeanor Offenders:* All states except Vermont prohibit the transfer of firearms to convicted felons. Most state laws mirror federal law, and apply the standard definition of felony to bar persons convicted of crimes punishable by imprisonment for more than one year. Other states prohibit a broader category of offenders, which could include persons convicted of certain misdemeanors.

New Jersey, for example, prohibits firearm purchases by persons who have been convicted of a “crime,” defined as an offense punishable by imprisonment in excess of six months. New York includes specified felonies and “serious offenses” including child endangerment, certain kinds of disorderly conduct, and certain kinds of stalking.

California specifies certain felonies and misdemeanors relating to violence or unlawful use of firearms that disqualify persons from owning a firearm. In addition, California’s Department of Justice maintains a Prohibited Armed Persons File, an on-line database that tracks persons who are prohibited from owning or possessing a firearm. The database cross-references 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.⁷ This information can 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.⁸

Indiana includes convictions for resisting arrest and for any crime involving inability to handle a handgun safely as prohibitory offenses. In Illinois, felony or misdemeanor convictions within the previous five years for battery, assault, aggravated assault, or violation of an order of protection, in which a firearm was used or possessed, are disqualifying offenses.

Twenty-three states and the District of Columbia either specifically prohibit the transfer, purchase or possession of firearms to persons convicted of certain designated misdemeanors, or, as indicated above, define the disqualifying offenses to include some misdemeanors.⁹

State laws prohibiting firearm purchase or possession by persons with certain misdemeanor convictions

California	Minnesota
Connecticut (handguns only)	New Jersey
Delaware	New York
District of Columbia	North Dakota
Florida	Oregon
Hawaii	Pennsylvania
Illinois	South Dakota
Indiana (handguns only)	Tennessee
Iowa (handguns only)	Texas

(continued on next page)

⁷ Cal. Penal Code § 12010(a).

⁸ Cal. Penal Code § 12010(b).

⁹ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005 75* (Nov. 2006).

State laws prohibiting firearm purchase or possession by persons with certain misdemeanor convictions (*continued from previous page*)

Louisiana	Virginia (handguns only)
Maryland (“regulated firearms” ¹⁰ only)	Washington
Massachusetts	West Virginia

2. *Persons with Mental Illness:* Thirty-two states and the District of Columbia have laws that prohibit the purchase or possession of firearms by persons who are mentally ill. While most states use definitions of mental illness similar to the Brady Act¹¹ and its implementing regulations, several states have broadened the category of mentally ill persons who are prohibited from purchasing or possessing firearms.¹²

For example, under federal law persons who are voluntarily committed to a mental hospital are not prohibited from possessing firearms.¹³ Delaware, Illinois (within preceding 5 years), Massachusetts, Minnesota, North Carolina (handguns only), Utah and the District of Columbia (within preceding five years) have closed this gap by prohibiting firearm purchase or possession by persons who have been voluntarily or involuntarily committed to a mental hospital.

Several other states define more broadly than federal law those persons who are disqualified from possessing firearms due to mental illness. California law includes an extensive list of disqualifying factors relating to mental illness, including: communicating a serious threat of violence to a licensed psychotherapist and being under a court-ordered conservatorship because of a grave disability resulting from a mental disorder (in addition to being found not guilty of certain felonies by reason of insanity, or mentally incompetent to stand trial.)¹⁴

Hawaii prohibits possession by any person who is or has been diagnosed as having a significant behavioral, emotional, or mental disorder. Indiana includes a prohibition on persons with “documented evidence” of a “propensity for violent or emotionally unstable conduct.” Maryland law prohibits any person who is suffering from a mental disorder and has a history of violent behavior against others from possessing a firearm. Illinois bars persons who have been patients of a mental institution within the past 5 years, persons impaired by a mental condition “of such a nature that it poses a clear and present

¹⁰ “Regulated firearms” in Maryland are defined to include handguns and assault weapons.

¹¹ 18 U.S.C. § 922. *See also supra* note 3.

¹² Even under state laws defining mental illness more broadly than federal law, privacy concerns may limit the availability of mental health records to agencies conducting background checks. Additional information on the availability of mental health records for background checks is contained in the section on Mental Health Reporting.

¹³ 27 C.F.R. § 478.11.

¹⁴ A person who communicates to a licensed psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims is barred for six months from possessing a firearm. The prohibition applies only if the psychotherapist complies with a state law requiring him or her to notify local law enforcement of the threat. Cal. Welf. & Inst. Code §§ 8100, 8105. The person may, however, possess a firearm if a Superior Court finds that the person is likely to use a firearm in a safe and lawful manner. Cal. Welf. & Inst. Code § 8100.

danger to the applicant, any other person or persons or the community,” and persons who are mentally retarded, from obtaining a Firearm Owner’s Identification (FOID) card.¹⁵

States that prohibit persons with mental illness from purchasing or possessing firearms

Arizona	Minnesota
Arkansas	Nevada
California	New Jersey
Connecticut (handguns only)	New York
Delaware	North Carolina (handguns only)
District of Columbia	North Dakota
Florida	Ohio
Hawaii	Oklahoma
Illinois	Oregon
Indiana	Pennsylvania
Iowa (handguns only)	Rhode Island
Kansas	South Carolina (handguns only)
Maine	Utah
Maryland (“regulated firearms” only)	Virginia
Massachusetts	Washington
Michigan (handguns only)	West Virginia
	Wisconsin

3. *Persons Subject to a Domestic Violence Protective Order:* Twenty states bar persons who are subject to a domestic violence protective order from purchasing or possessing some or all firearms. Many states exceed federal law by including a broader category of victims who may apply for a domestic violence protective order prohibiting firearms. Other states also apply the prohibition to ex parte protective orders. Additional information on state laws governing access to firearms by domestic abusers is contained in the section on Domestic Violence and Firearms.

States that bar persons subject to a restraining order from purchasing or possessing firearms¹⁶

California	Michigan (handguns only)
Connecticut	New Hampshire
Delaware	New Jersey
Florida	New York (handguns only)
Hawaii	North Carolina

(continued on next page)

¹⁵ In Illinois, no person may acquire or possess any firearm or ammunition without a valid FOID card. Upon request by the Illinois Department of State Police (DSP), applicants must sign a release waiving any right to confidentiality and requesting disclosure to the DSP of “limited mental health institution admission information” from another state, the District of Columbia or a foreign country. No mental health treatment records may be requested. The information must be destroyed within one year of receipt. 430 Ill. Comp. Stat. 65/4(a)(3).

¹⁶ Other states authorize, but do not require, issuance of domestic violence protective orders that prohibit firearm purchase or possession. For more information on these and other state laws governing access to firearms by domestic abusers, see section on Domestic Violence and Firearms.

States that bar persons subject to a restraining order from purchasing or possessing firearms (continued from previous page)

Illinois	Pennsylvania ¹⁷
Indiana ¹⁸	Texas
Maine	Virginia
Maryland (“regulated firearms” only)	West Virginia
Massachusetts	Wisconsin

4. *Drug and Alcohol Abusers and Offenders*: Federal law prohibits persons who are unlawful users of or addicted to a controlled substance from purchasing or possessing firearms. Twenty-eight states and the District of Columbia also prohibit drug abusers, offenders, and/or persons under the influence of controlled substances from purchasing some or all firearms. Eighteen states and the District of Columbia prohibit persons who are alcohol abusers, offenders, and/or under the influence of alcohol, from purchasing or possessing firearms.

States that restrict access to firearms by drug abusers, offenders, and/or persons under the influence of controlled substances

Alabama (handguns only)	Nevada
Alaska	New Jersey
California	North Carolina (handguns only)
Delaware	Ohio
District of Columbia	Oklahoma
Florida	Pennsylvania
Hawaii	Rhode Island
Illinois	South Carolina (handguns only)
Indiana (handguns only)	South Dakota
Iowa (handguns only)	Tennessee
Kansas	Texas
Maryland (“regulated firearms”)	Utah
Massachusetts	Virginia (handguns only)
Minnesota	Washington
	West Virginia

¹⁷Pennsylvania allows victims of domestic violence to seek protective orders that require the person subject to the order to relinquish his or her firearms and prohibit the subject of the order from possessing firearms for the duration of the order. Such orders are issued at the discretion of the court. See 23 Pa. Cons. Stat. §§ 6107(b)(3), 6108(a)(7).

¹⁸ Indiana permits victims of domestic or family violence to seek protective orders for themselves or a child. Such orders may impose a prohibition on the possession of a firearm by the person subject to the order. See Ind. Code Ann. § 34-26-5-9(c)(4), (f).

States that restrict access to firearms by alcohol abusers, offenders, and/or persons under the influence of alcohol

Alabama (handguns only)	Mississippi
Alaska	New Jersey
Delaware (handguns only)	Ohio
District of Columbia	Oklahoma
Hawaii	Pennsylvania
Indiana (handguns only)	Rhode Island
Iowa (handguns only)	South Carolina (handguns only)
Maryland (“regulated firearms”)	Tennessee
Massachusetts	Texas
	West Virginia

5. *Minors:* All states but Wyoming restrict access to firearms by juveniles. Additional information on restrictions on the transfer of firearms to minors is contained in the section on Minimum Age to Purchase and Possess Firearms.

6. *Juvenile Offenders:* Federal law does not restrict purchases of firearms by persons with juvenile convictions. Twenty-seven states prohibit persons with certain juvenile convictions from purchasing or possessing firearms.

States prohibiting juvenile offenders from purchasing and/or possessing firearms

Alaska	Maine
Arizona	Maryland (“regulated firearms” only)
California	Massachusetts
Colorado	Minnesota
Connecticut	New Jersey
Delaware	Ohio
Florida	Oklahoma
Georgia	Oregon
Hawaii	Pennsylvania
Illinois	Utah
Indiana (handguns only)	Virginia
Iowa	Washington
Kansas	Wisconsin
Kentucky	

SUMMARY OF SELECTED¹⁹ LOCAL LAWS GOVERNING PROHIBITED PURCHASERS

Local Laws Governing Prohibited Purchasers

Chicago	Chicago, Ill., Code § 4-144-070
Cleveland	Cleveland, Ohio, Code § 674.04(d)
Columbus	Columbus, Ohio, Code § 545.08(a)(4), (5)
Hartford	Hartford, Conn., Code §§ 21-71, 21-72
New York City	New York, N.Y., Admin. Code § 10-303; New York, N.Y., Rules tit. 38, §§ 5-01, 5-02
Omaha	Omaha, Neb., Code §§ 20-200, 20-253(b)

Only those categories that differ from federal law are indicated below.

Chicago: In Chicago, the following categories of persons are ineligible to obtain a local permit to purchase concealable firearms:²⁰

- Persons who are addicted to narcotics;
- Persons who have been released from a mental institution or from the custody of the Illinois Youth Commission within the preceding five years; or
- Persons who are mentally retarded.

Cleveland: Cleveland ordinances specify various categories of persons ineligible to obtain a handgun owner's identification card, including:

- Persons prohibited under state law (Ohio Rev. Code Ann. § 2923.13) from knowingly acquiring, having, carrying, or using any firearm or dangerous ordinance;
- Persons convicted of illegal use or possession of narcotics;
- Persons having more than one conviction for being drunk and disorderly or driving a motor vehicle while intoxicated (if either occurs within one year before the date of application); or
- Persons having more than one misdemeanor conviction involving the use of force and violence, or the threat of the use of force and violence, against another within two years before the date of application.

Columbus: Columbus prohibits the issuance of a firearm purchaser "weapon transaction permit" to several categories of applicants, including:

¹⁹ 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."

²⁰ Note that Chicago only issues handgun permits in those limited cases where possession is not banned entirely. Additional information on Chicago's law banning handguns is contained in the section on Banning Handguns.

- Persons convicted of any “offense of violence” as defined under state law, or any felony offense, within the preceding ten years; or
- Persons under a disability pursuant to state law (including persons under indictment for or previously convicted of various crimes involving drug abuse, drug dependency or chronic alcoholism, or individuals who are or were previously under adjudication of mental incompetence, adjudicated a mental defective or committed to a mental institution) who have not been relieved from such disability as provided by state law.

Hartford: Hartford prohibits any person from possessing any handgun outside of the home or a place of business without a “permit to carry a pistol or revolver.” To obtain the permit, applicants must submit:

- A notarized application form;
- Proof of citizenship (e.g., a birth certificate or naturalization papers); and
- Three character references from persons (not family members, or city police officers or police department employees) who can testify to the applicant’s character and reputation in the community.

In addition, applicants must supply fingerprints that will be used by the FBI to conduct a background check to determine if the applicant falls into a prohibited category under federal law.

New York City: New York City requires a rifle or shotgun permit for the purchase and/or possession of rifles and shotguns. To obtain a rifle or shotgun permit, the city police commissioner must determine that the applicant:

- Is 21 years of age or older;
- Is of good moral character;
- Has not been convicted of a felony, violation of the city assault weapon ban, or other specified offenses; and
- Presents no good cause for denial of the license.

The applicant must also provide information regarding his or her mental health and not be the subject of any of the specified court orders, including a domestic violence restraining order.

New York 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.

To receive any of the five types of handgun licenses, an applicant must:

- Be 21 years of age or older;

- Be of good moral character;
- Have no prior conviction for felonies, serious offenses or misdemeanor crime of domestic violence;
- Disclose information regarding mental illness and domestic violence restraining orders;
- Have no prior revocation or suspension of a firearms license;
- Have no condition that would hinder the safe possession of a handgun; and
- Reside or maintain a principal place of business in the city.

In addition, a license will not be issued if good cause exists for denial.²¹

Omaha: Omaha prohibits any person from selling or renting a concealable firearm to any person who has not obtained a written permit from law enforcement. Persons ineligible to obtain a concealable firearm permit include:

- Persons who are subject to an active protection order;
- Persons who have provided false information on the registration request;
- Persons with a conviction (which has not been pardoned or set aside under state or federal law) for any felony, carrying a concealed weapon or being a minor in possession of a concealable firearm, or (within the previous five years) assault, child abuse, or a violation of any provision of the Omaha municipal weapons code;
- Persons with a record of a mental disorder which would show the applicant to be a danger to self or to others; and
- Persons who are not citizens of the United States.

FEATURES OF COMPREHENSIVE LAW GOVERNING PROHIBITED PURCHASERS

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.

- At a minimum, categories for prohibited purchasers are as extensive as federal law to allow state or local prosecution of violators
- Persons with convictions for violent and other serious misdemeanors are prohibited from purchasing firearms (*23 states, Cleveland (handguns only), Columbus, New York City, Omaha*)
- Persons with mental illness are prohibited from purchasing firearms, including persons voluntarily committed to a mental hospital (*Delaware, Illinois, Massachusetts, Minnesota, North Carolina (handguns only), Utah, District of*

²¹ Additional requirements apply depending on the type of license.

- Columbia, Chicago*) and persons with serious mental conditions (*California, Hawaii, Illinois, Maryland*)
- Prohibition on persons subject to a restraining order extends beyond orders involving intimate partners or children of partners (*19 states, Omaha*)²²
 - Persons who are alcohol abusers and/or offenders are prohibited from purchasing firearms (*18 states, District of Columbia, Cleveland, Columbus*)
 - Persons with certain juvenile convictions are prohibited from purchasing firearms (*27 states*)
 - Persons under 21 are prohibited from purchasing handguns from licensed or unlicensed sellers (*California, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, Ohio, Rhode Island, South Carolina, District of Columbia, Boston*)²³
 - Persons under 18 are prohibited from purchasing long guns from licensed or unlicensed sellers (*19 states*)²⁴
 - A database of prohibited purchasers is maintained and regularly updated, to enable law enforcement to identify gun owners who may fall into a prohibited category (*California*)

²² Additional information about laws governing prohibitions on firearm purchase and possession by domestic abusers is contained in the section on Domestic Violence and Firearms.

²³ Note that California, Delaware and Maryland prohibit handgun sales to persons under 21.

²⁴ Additional information about laws governing minimum age to purchase and possess firearms is contained in the section on Minimum Age to Purchaser and Possess Firearms.

Minimum Age to Purchase and Possess Firearms

Background

Laws imposing minimum age requirements for the possession and purchase of firearms are intended to decrease children's access to firearms and, correspondingly, to decrease the number of suicides, homicides, and unintentional shootings among children.

Every day in the U.S., guns cause the deaths of 20 children and young people under the age of 25.¹ In 2005, 3,027 young people age 19 and under died from gunshot wounds.² Of these deaths, 1,972 were homicides; 822 were suicides; and 173 were the result of unintentional shootings.³ Firearms were used in 46% of suicide deaths among persons under 25 in 2005.⁴

Summary of Federal Law

Federal law prohibits firearms dealers from selling or delivering a shotgun or rifle, or ammunition for a shotgun or rifle, to any person the dealer knows or has reasonable cause to believe is under the age of 18.⁵ Federal law provides no age limitations with respect to the sale of a long gun or long gun ammunition by an unlicensed person.

Dealers are prohibited from selling or delivering firearms other than shotguns or rifles (e.g., handguns) or ammunition for those firearms to any person the dealer knows or has reasonable cause to believe is under the age of 21.⁶ Unlicensed persons may not sell, deliver or otherwise transfer a handgun or handgun ammunition to any person the transferor knows or has reasonable cause to believe is under the age of 18.⁷ Exceptions are provided for temporary transfers made for specified activities, including employment, ranching, farming, target practice and hunting.⁸

Federal law prohibits, with certain exceptions, the possession of a handgun or handgun ammunition by any person under the age of 18.⁹

Federal law provides no minimum age for the possession of long guns or long gun ammunition.

¹ National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS) Injury Mortality Reports, 1999-2005*, at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ 18 U.S.C. § 922(b)(1), (c)(1).

⁶ *Id.*

⁷ 18 U.S.C. § 922(x)(1), (5).

⁸ 18 U.S.C. § 922(x)(3).

⁹ 18 U.S.C. § 922(x)(2), (5).

SUMMARY OF STATE LAWS GOVERNING MINIMUM AGE TO PURCHASE AND POSSESS FIREARMS

Several states and the District of Columbia impose minimum age requirements that extend beyond those contained in federal law. Those states generally fall into three categories:

- States imposing a minimum age for all firearm purchases, from licensed or unlicensed sellers;
- States imposing age requirements for possession of handguns that are stricter than federal law; and
- States imposing a minimum age for possession of long guns.

States Imposing Minimum Age for All Firearm Purchases (from Licensed or Unlicensed Sellers)¹⁰

<i>State</i>	<i>Age (Handguns)</i>	<i>Age (Long guns)</i>	<i>Citation</i>
Alaska	18	18	Alaska Stat. § 11.61.210(a)(6)
Arizona	18	18	Ariz. Rev. Stat. § 13-3109
Arkansas	18	18	Ark. Code Ann. §§ 5-73-101(9), 5-73-109
California	21	18	Cal. Penal Code § 12072(a)(3)(A)
Delaware	21	18	Del. Code Ann. tit. 11, § 1445, tit. 24, § 903
District of Columbia	21	21	D.C. Code Ann. §§ 7-2502.03, 7-2507.06(1), 22-4507
Florida	18	18	Fla. Stat. Ann. §§ 790.17(2), 790.18
Hawaii	21	21	Haw. Rev. Stat. Ann. § 134-2(d)
Idaho	18	18	Idaho Code Ann. § 18-3302A
Illinois	21	21	430 Ill. Comp. Stat. 65/3(a), 65/4(a)(2)(i)
Iowa	21	18	Iowa Code § 724.22
Louisiana	18	18	La. Rev. Stat. Ann. § 14:91
Maine	18	16	Me. Rev. Stat. Ann. tit. 17-A, §§ 554-A, 554-B
Maryland	21 ¹¹	18	Md. Code Ann., Pub. Safety § 5-134
Massachusetts	21	18 ¹²	Mass. Gen. Laws ch. 140, § 130
Mississippi	18	18 ¹³	Miss. Code Ann. § 97-37-13
Missouri	18	18	Mo. Rev. Stat. § 571.060 ¹⁴

(continued on next page)

¹⁰ Note that some states appear to violate federal law, where the state's minimum age for purchases from licensed dealers is below the federal minimums of 18 for long guns and 21 for handguns.

¹¹ Maryland's minimum age requirement under the "handguns" column applies to "regulated firearms," which are defined as handguns and assault weapons.

¹² Massachusetts' minimum age for the purchase of large capacity rifles and shotguns is 21 and older.

¹³ Mississippi prohibits any person from selling deadly weapons to persons under 18. Deadly weapons include any rifle with a barrel of less than 16 inches in length, or any shotgun with a barrel of less than 18 inches in length. Miss. Code Ann. § 97-37-1.

¹⁴ Missouri's statute prohibits "recklessly" selling firearms to persons under 18 without parental consent.

States Imposing Minimum Age for All Firearm Purchases (from Licensed or Unlicensed Sellers)

(continued from previous page)

<i>State</i>	<i>Age (Handguns)</i>	<i>Age (Long guns)</i>	<i>Citation</i>
Nevada	18	---	Nev. Rev. Stat. Ann. § 202.310
New Jersey	21	18	N.J. Stat. Ann. § 2C:58-6.1
North Dakota	18	--	N.D. Cent. Code § 62.1-03-02
Ohio	21	18	Ohio Rev. Code Ann. § 2923.21
Oklahoma	18	18	Okla. Stat. tit. 21, § 1273
Oregon	18	18	Or. Rev. Stat. §§ 166.250(1)(c)(A), 166.470
Pennsylvania	18	18	18 Pa. Cons. Stat. § 6110.1(c)(d)
Rhode Island	21	18	R.I. Gen. Laws §§ 11-47-30, 11-47-35(a)
South Carolina	21	---	S.C. Code Ann. § 16-23-30
Texas	18	18	Tex. Penal Code Ann. § 46.06(a)(2)
Vermont	16	16	Vt. Stat. Ann. tit. 13, § 4007
Wisconsin	18	18	Wis. Stat. § 948.60(2)(b)

States Imposing Stricter Minimum Age Requirements than Federal Law for

Possession of Handguns

<i>State</i>	<i>Age</i>	<i>Citation</i>
Connecticut	21	Conn. Gen. Stat. § 29-36f
District of Columbia	21	D.C. Code Ann. § 7-2502.03(a)(1)
Hawaii	21	Haw. Rev. Stat § 134-2(d)
Illinois	21	430 Ill. Comp. Stat. 65/4(a)(2)(i); 720 Ill. Comp. Stat. 5/24-3.1
Iowa	21	Iowa Code § 724.22
Maryland ¹⁵	21	Md. Code Ann., Pub. Safety § 5-133(d)
Massachusetts	21	Mass. Gen. Laws ch. 140, § 131
New Jersey	21	N.J. Stat. Ann. § 2C:58-6.1
New Mexico	19	N.M. Stat. Ann. § 30-7-2.2
New York	21	N.Y. Penal Law § 400.00(1)(a)
South Carolina	21	S.C. Code Ann. § 16-23-30(B)

States Imposing Minimum Age Requirements for Possession of Long Guns

<i>State</i>	<i>Age</i>	<i>Citation</i>
Alaska	16	Alaska Stat. § 11.61.220(a)(3)
District of Columbia	21	D.C. Code Ann. § 7-2502.03(a)(1)
Florida	18	Fla. Stat. Ann. § 790.22(3)

(continued on next page)

¹⁵ Maryland's minimum age requirement applies to "regulated firearms," which are defined as handguns and assault weapons.

States Imposing Minimum Age Requirements for Possession of Long Guns

(continued from previous page)

<i>State</i>	<i>Age</i>	<i>Citation</i>
Hawaii	18	Haw. Rev. Stat. Ann. §§ 134-2(d), 134-4(a), 134-5
Idaho	18	Idaho Code Ann. §§ 18-3302E, 18-3302F
Illinois	21	430 Ill. Comp. Stat. 65/2(a)(1); 430 Ill. Comp. Stat. 65/4(a)(2)(i)
Indiana	18	Ind. Code Ann. § 35-47-10-5
Iowa	18	Iowa Code § 724.22
Michigan	18	Mich. Comp. Laws § 750.234f
Minnesota	16 ¹⁶	Minn. Stat. § 97B.021(a)
Montana	14	Mont. Code Ann. § 45-8-344
Nevada	18	Nev. Rev. Stat. Ann. § 202.300.1
New Jersey	18	N.J. Stat. Ann. § 2C:58-6.1
New York	16	N.Y. Penal Law §§ 265.05, 400.00(1)(a)
Oklahoma	18	Okla. Stat. tit. 21, § 1273
Oregon	18	Or. Rev. Stat. § 166.250
Pennsylvania ¹⁷	18	18 Pa. Cons. Stat. § 6110.1(a)
Rhode Island	18	R.I. Gen. Laws § 11-47-33
Utah	18	Utah Code Ann. § 76-10-509
Washington	18	Wash. Rev. Code Ann. § 9A.41.040(2)(a)(iii)
Wisconsin	18	Wis. Stat. § 948.60(2)(a)

Description of State Laws Governing Minimum Age to Purchase and Possess Firearms

1. *States Imposing Minimum Age Requirements for All Firearm Purchases:*

Although federal law prohibits licensed dealers from selling long guns to persons under 18, there is no federal regulation of the sale of long guns by unlicensed dealers to minors. Similarly, while federal law prohibits handgun sales by licensed dealers to persons under 21, unlicensed dealers are prohibited only from selling handguns to persons under 18. Many states have imposed a minimum age for the purchase of all firearms, regardless of whether they are purchased from a licensed firearms dealer.

2. *States with Stricter Minimum Age Requirements for Possession of Handguns than Federal Law:* Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, New Mexico, New York, South Carolina and the District of Columbia impose minimum age requirements for the possession of handguns which are stricter than the federal minimum of 18. Connecticut, Hawaii, Illinois, Iowa, Massachusetts, New Jersey,

¹⁶ Minnesota allows possession of long guns by persons who are 14 or 15 and have a firearms safety certificate. Minn. Stat. § 97B.021(b)(4).

¹⁷ Pennsylvania's possession prohibition refers to handguns and to rifles and shotguns of a specified length. It does not encompass all long guns.

New York, South Carolina and the District of Columbia¹⁸ allow handgun possession only by persons 21 or older; New Mexico requires persons to be at least 19 in order to possess a handgun. Maryland provides that persons must be at least 21 to possess “regulated firearms,” defined as handguns and assault weapons.

3. *States Imposing Minimum Age Requirements for Possession of Long Guns:* While federal law prohibits federally licensed firearms dealers from selling a long gun to anyone under 18, there is no federal minimum age for possession of a long gun. Some states have closed this gap, and impose a minimum age at which persons can possess any firearms (including long guns). Montana limits long gun possession to children 14 and over. Alaska, Minnesota and New York limit possession of long guns to persons age 16 and over. Florida, Hawaii, Idaho, Indiana, Iowa, Michigan, Nevada, New Jersey, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Washington, and Wisconsin limit possession of long guns to persons 18 or over. Many of these laws contain exceptions which allow younger children to possess long guns where the minor’s parent or guardian is present, or when the minor is engaged in hunting or target shooting. In Illinois, persons must obtain a FOID card in order to lawfully purchase or possess a long gun. Persons must be 21 or older to be eligible to obtain a FOID card, or have written consent of a parent or guardian. Likewise, in the District of Columbia, no one under the age of 21 may obtain a registration certificate, which prevents such individuals from lawfully possessing a firearm. Maryland limits possession of “regulated firearms” (handguns and assault weapons) to persons 21 or older.

¹⁸ While possession of handguns is prohibited in most circumstances in the District of Columbia, the law provides that even where lawful, handgun possession is limited to persons age 21 or older. 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.

SUMMARY OF SELECTED¹⁹ LOCAL LAWS GOVERNING MINIMUM AGE TO PURCHASE AND POSSESS FIREARMS

Local Laws Governing Minimum Age to Purchase and Possess Firearms

Boston	1993 Mass. Acts 491
Chicago	Chicago, Ill., Code § 8-16-090
Cleveland	Cleveland, Ohio, Code § 627.08
Columbus	Columbus, Ohio, Code § 545.08(a)(3)
New York City	New York, N.Y., Charter §§ 462-464

Boston: With some exceptions, Boston prohibits transfer of a handgun or short-barreled rifle or shotgun to a person under 21 years of age. In addition, no person under the age of 21 may possess, transfer or purchase a handgun or short-barreled rifle or shotgun.

Chicago: Chicago prohibits any person from selling, loaning, or furnishing to any minor²⁰ any gun, pistol or other firearm. Minors may be permitted, with the consent of their parents or guardians, to use firearms on the premises of a licensed shooting gallery or gun club. Chicago also prohibits any person from selling, loaning, or furnishing to any minor any toy gun, pistol or other firearm.

Cleveland: In Cleveland minors²¹ are prohibited from purchasing, owning, possessing, receiving, having on or about their person or using any firearm.

Columbus: Columbus requires that a person be at least 18 years of age to receive a permit for the purchase of a rifle or shotgun. A person purchasing a handgun must be age 21 or older to receive a permit.

New York City: In New York City, with some exceptions, no person under the age of 21 may be granted a permit or license to purchase, possess or carry a firearm. Persons under the age of 21 who held a permit or license to purchase or possess a firearm when this provision went into effect in 2001 were allowed to retain the permit or license. It is unlawful to transfer a firearm to any person under the age of 21 unless he or she has a valid permit or license or is otherwise exempted by law.

¹⁹ 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."

²⁰ "Minor" is undefined in this Chicago ordinance.

²¹ Cleveland does not define "minor." Under Ohio law, "minors" are generally defined to be persons age 18 or older. Ohio Rev. Code Ann. § 3109.01.

FEATURES OF COMPREHENSIVE LAW ESTABLISHING MINIMUM AGE TO PURCHASE AND POSSESS 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.

- Minimum age of 21 is imposed for all handgun sales, from licensed or unlicensed sellers (*California, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, Ohio, Rhode Island, South Carolina, District of Columbia, Boston, New York City*)
- Minimum age of 18 is imposed for all long gun sales, from licensed or unlicensed sellers (*19 states and the District of Columbia*)
- Minimum age of 21 is imposed for possession of handguns (*Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, New York, South Carolina, District of Columbia, Boston, New York City*)
- Minimum age of 18 is imposed for possession of long guns (*15 states*)
- Younger teens are allowed to possess long guns only under direct adult supervision

Domestic Violence and Firearms

Background

Firearms pose a particular threat to victims of domestic violence. Nationally, firearms were used to kill more than two-thirds of spouse and ex-spouse homicide victims between 1990 and 2005.¹ Studies reveal that the presence of firearms significantly increases the lethality of domestic violence incidents. According to one study, domestic violence assaults involving a firearm are 23 times more likely to result in death than those involving other weapons or bodily force.² Another study found that abused women are five times more likely to be killed by their abuser if the abuser owns a firearm.³

The impact of firearms in domestic violence situations is not limited to homicides. A recent survey of female domestic violence shelter residents in California found that more than one third (36.7%) reported having been threatened or harmed with a firearm.⁴ Over 79% of the respondents with firearms at home said the firearms made them feel less safe. In nearly two thirds (64.5%) of the households that contained a firearm, the intimate partner had used the firearm against the victim, usually threatening to shoot or kill her.⁵

Laws that prohibit the purchase of a firearm by a person subject to a domestic violence restraining order are associated with a reduction in the number of intimate partner homicides.⁶ However, as discussed below, there are a number of other policies that may also reduce the risks associated with the acquisition or possession of firearms by domestic abusers.⁷

Summary of Federal Law

Federal law prohibits purchase and possession of firearms and ammunition by persons who have been convicted in any court of a “misdemeanor crime of domestic violence” and/or who are subject to certain domestic violence protective orders.⁸

Federal law defines a “misdemeanor crime of domestic violence” as an offense that is a federal, state or tribal law misdemeanor and has the use or attempted use of physical

¹ Bureau of Justice Statistics, U.S. Dep’t of Justice, *Homicide Trends in the U.S.: Intimate Homicide* (July 2007), at <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>.

² Linda E. Saltzman, et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 JAMA, 3043-3047 (1992).

³ Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (July 2003).

⁴ Susan B. Sorenson et al., *Weapons in the Lives of Battered Women*, 94 Am. J. Pub. Health 1412, 1413 (2004).

⁵ *Id.* at 1414.

⁶ Elizabeth R. Vigdor et al., *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 Evaluation Rev. 313, 332 (June 2006).

⁷ For more information about the role firearms play in domestic violence incidents, see Violence Policy Center, *When Men Murder Women*, (1998) at <http://www.vpc.org/studies/dvreal.htm>.

⁸ 18 U.S.C. § 922(g)(8), (9).

force or threatened use of a deadly weapon as an element.⁹ In addition, the offender must:

- be a current or former spouse, parent, or guardian of the victim;
- share a child in common with the victim;
- be a current or former cohabitant with the victim as a spouse, parent or guardian; or
- be similarly situated to a spouse, parent or guardian of the victim.¹⁰

The federal law prohibiting subjects of protective orders from purchasing or possessing firearms and ammunition applies only if the protective order was issued after notice to the abuser and a hearing, and only if the order protects an “intimate partner” of the abuser or a child of the abuser or intimate partner.¹¹ An “intimate partner” includes a current or former spouse, a parent of a child in common with the abuser, or an individual with whom the abuser does or has cohabitated.¹²

These federal prohibitions have significant limitations. First, domestic violence affects persons in relationships that fall outside the protections of federal law. For example, dating partners are not within the federal prohibitions unless the partners are/were cohabitating as spouses and/or have a child in common. The risk of domestic violence being committed by a dating partner is well-documented. Between 1990 and 2005, individuals killed by current dating partners made up almost half of all spouse and current dating partner homicides.¹³ In a recent study of applicants for domestic violence restraining orders in Los Angeles, the most common relationship between the victim and abuser was a dating relationship, and applications for protective orders were more likely to mention firearms when the parties had not lived together and were not married.¹⁴ Many states have addressed this gap in federal law by enacting laws that expand the relationships subject to firearm purchaser prohibitions for domestic abusers.

Moreover, effective enforcement of the federal prohibitions on firearm possession by domestic abusers depends largely on state and local law enforcement. Background checks at the point of transfer can prevent the purchase of firearms by domestic abusers, but cannot facilitate the removal of firearms that are already in possession of an abuser.¹⁵

⁹ 18 U.S.C. § 921(a)(33).

¹⁰ *Id.* Also note that a conviction requires that the offender was represented by counsel or waived the right to counsel and was tried by a jury or waived the right to a jury, if the offense entitled the offender to a jury trial.

¹¹ 18 U.S.C. § 922(g)(8).

¹² 18 U.S.C. § 921(a)(32). The order must also contain a finding that the person presents a credible threat to the victim and must restrain him or her from certain specified conduct. 18 U.S.C. § 922(g)(8). Most state laws require these elements for the issuance of a protective order.

¹³ *Homicide Trends in the U.S.*, *supra* note 1.

¹⁴ Katherine A. Vittes et al., *Are Temporary Restraining Orders More Likely to be Issued When Application Mention Firearms?*, 30 *Evaluation Rev.* 266, 271, 275 (2006).

¹⁵ In addition, background checks conducted by federally licensed firearms dealers at the time of transfer of a firearm rely on state and local authorities collecting and submitting to state and federal databases complete records on misdemeanor convictions and protective orders. For a discussion of the lack of participation by some states in entering domestic violence protective order information into the National

State laws requiring removal of firearms directly from abusers can help ensure that abusers will not have continued access to firearms to threaten or harm their victims.

SUMMARY OF STATE LAWS REGARDING DOMESTIC VIOLENCE AND FIREARMS¹⁶

State Laws that Exceed Federal Law in Prohibiting Domestic Violence Misdemeanants From Purchasing or Possessing Firearms and/or Ammunition

Arizona	Ariz. Rev. Stat. §§ 13-3101(A)(6), 13-3102(A)(4), 13-3601
California	Cal. Penal Code §§ 136.2(a)(7)(B), (d), (e)
Colorado	Colo. Rev. Stat. §§ 18-1-1001(3)(c), 18-12-108(6)(c)(I)
Delaware	Del. Code Ann. tit. 10, § 901(12); tit. 11, § 1448(a)(7), (9)(d)
Illinois	430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8(l), (m); 720 Ill. Comp. Stat. 5/12-3.2; 725 Ill. Comp. Stat. 5/112A-3
Iowa	Iowa Code §§ 236.2, 708.1, 708.2A, 708.11, 724.15(1)
Minnesota	Minn. Stat. §§ 518B.01, 609.749, subd. 8, 609.2242, 624.713, subd. 1(i)
Montana	Mont. Code Ann. § 45-5-206
New Jersey	N.J. Stat. Ann. §§ 2C:25-19(a), (d), 2C:25-26(a), 2C:39-7(b)(1), 2C:58-3(c)(1)
New York	N.Y. Crim. Proc. Law §§ 530.12(1), 530.14(1)(b)
Texas	Tex. Fam. Code Ann. § 71.001 <i>et seq.</i>; Tex. Penal Code Ann. § 46.04(b); Texas Code Crim. Proc. Ann. art. 17.292
Virginia	Va. Code Ann. §§ 16.1-279.1, 18.2-308.1:4
Washington	Wash. Rev. Code Ann. §§ 9.41.010(17), 9.41.040(2)(i), 10.99.020(3)
West Virginia	W. Va. Code § 61-7-7(a)(8)

Crime Information Center database *see, e.g.*, Julissa Jose, *Disarming Domestic Violence Abusers* 3 (2003) at <http://www.endabuse.org/programs/publicpolicy/files/BradyReport.pdf>.

¹⁶ This section lists only state laws that exceed federal law governing prohibitions on firearm purchase and possession by domestic abusers.

State Laws that Exceed Federal Law in Prohibiting Subjects of Certain Domestic Violence Protective Orders From Purchasing or Possessing Firearms and/or Ammunition

Alaska	Alaska Stat. §§ 18.66.100(c)(6), 18.66.990(5)
Arizona	Ariz. Rev. Stat. §§ 13-3601, 13-3602(G)(4), 13-3624(D)(4)
California	Cal. Penal Code §§ 136.2, 12021(g), 12316(b); Cal. Fam. Code §§ 6211, 6218, 6320-6322, 6389; Cal. Civ. Proc. Code § 527.6(k)
Connecticut	Conn. Gen. Stat. §§ 29-36f(b), 46b-15, 46b-38a, 53a-217, 53a-217c
Delaware	Del. Code Ann. tit. 10, §§ 1041(2), 1043(e), 1045(a)(8); tit. 11, § 1448(a)(6)
Florida	Fla. Stat. Ann. §§ 741.28(3), 741.30(1)(e), (6)(g), 741.31(4)(b)(1), 790.233(1)
Hawaii	Haw. Rev. Stat. §§ 134-7(f), 586-1, 586-3
Illinois	430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8(j); 725 Ill. Comp. Stat. 5/112A-3(3), 5/112A-14(b)(14.5); 750 Ill. Comp. Stat. 60/201(b), 60/214(b)(14.5)
Indiana	Ind. Code Ann. §§ 31-9-2-42, 31-9-2-44.5, 34-26-5-2, 34-26-5-9(c)(4), (f)
Maryland	Md. Code Ann., Fam. Law §§ 4-501, 4-506; Pub. Safety § 5-133(b)(8)
Massachusetts	Mass. Gen. Laws ch. 140, §§ 129B(1)(viii), 129C, 131(d)(vi); ch. 209A
Michigan	Mich. Comp. Laws §§ 28.422(3)(a)(iii), 600.2950(1)(e), (12)
Montana	Mont. Code Ann. §§ 40-15-102, 40-15-201, 45-5-206
Nevada	2007 Nev. Stat. 318, § 2; Nev. Rev. Stat. §§ 33.018, 33.020
New Hampshire	N.H. Rev. Stat. Ann. §§ 173-B:1, 173-B:4, 173-B:5
New Jersey	N.J. Stat. Ann. §§ 2C:25-19(d), 2C:25-28(f), (j), 2C:25-29(b), 2C:39-7(b)(3), 2C:58-3(c)(6)
New York	N.Y. Fam. Ct. Act §§ 822, 828(3), 842-a; N.Y. Penal Code § 400.00
North Carolina	N.C. Gen. Stat. § 50B-1, 50B-3(11), 50B-3.1
North Dakota	N.D. Cent. Code §§ 14-07.1-01, 14-07.1-02, 14-07.1-03
Pennsylvania	18 Pa. Cons. Stat. § 6105; 23 Pa. Cons. Stat. §§ 6102, 6107(b)(3), 6108(a)(7)
Rhode Island	R.I. Gen. Laws §§ 15-15-1, 15-15-3
Texas	Tex. Penal Code Ann. §§ 46.04; Tex. Fam. Code Ann. §§ 71.001 <i>et seq.</i> , 85.022(b)(6), (d)

(continued on next page)

State Laws that Exceed Federal Law in Prohibiting Subjects of Certain Domestic Violence Protective Orders From Purchasing or Possessing Firearms and/or Ammunition *(continued from previous page)*

Utah	Utah Code Ann. §§ 30-6-1(2)(c)(f), 30-6-4.2(2)(d), 30-6-4.3(2)
Virginia	Va. Code Ann. §§ 16.1-228, 16.1-253.1, 16.1-253.4, 18.2-308.1:4, 18.2-308.2:2
Washington	Wash. Rev. Code Ann. §§ 9.41.800, 10.99.040, 26.50.010, 26.50.070
West Virginia	W. Va. Code §§ 48-27-204, 48-27-305, 48-27-403(a), 48-27-502(b), 61-7-7(a)(7)
Wisconsin	Wis. Stat. §§ 813.12(1)(am), (b), (c), 941.29(1)(f), (g), (2)(d), (e)

State Laws Authorizing Law Enforcement to Remove Firearms and/or Ammunition at the Scene of a Domestic Violence Incident

Alaska	Alaska Stat. § 18.65.515(b)
Arizona	Ariz. Rev. Stat. § 13-3601
California	Cal. Penal Code §§ 12021.3, 12028.5(b)
Connecticut	Conn. Gen. Stat. § 46b-38b
Hawaii	Haw. Rev. Stat. §§ 134-7.5, 709-906
Illinois	725 Ill. Comp. Stat. 5/112A-30, 750 Ill. Comp. Stat. 60/304(2)
Indiana	Ind. Code Ann. § 35-33-1-1.5
Maryland	Md. Code Ann., Fam. Law § 4-511
Montana	Mont. Code Ann. § 46-6-603
Nebraska	Neb. Rev. Stat. § 29-440
New Hampshire	N.H. Rev. Stat. Ann. § 173-B:10
New Jersey	N.J. Stat. Ann. § 2C:25-21(d)
Ohio	Ohio Rev. Code Ann. §§ 2935.03(B)(3)(h), 2981.12(A)(2)
Oklahoma	Okla. Stat. tit. 22, § 60.8
Pennsylvania	18 Pa. Cons. Stat. § 2711
Tennessee	Tenn. Code Ann. §§ 36-3-620, 39-17-1317
Utah	Utah Code Ann. § 77-36-2.1(1)(b)
West Virginia	W. Va. Code § 48-27-1002

State Laws Requiring or Authorizing Removal or Surrender of Firearms and/or Ammunition When a Protective Order Is Issued¹⁷

Alaska	Alaska Stat. § 18.66.100(c)(7)
Arizona	Ariz. Rev. Stat. § 13-3602(G)(4)
California	Cal. Penal Code §§ 136.2, 12021(g)(3); Cal. Fam. Code § 6389(c)(1); Cal. Civ. Proc. Code §§ 527.6(k), 527.9
Delaware	Del. Code Ann. tit. 10, §§ 1043(e), 1045(a)(8)
Florida	Fla. Stat. Ann. § 741.31(4)(a)(8)
Hawaii	Haw. Rev. Stat. § 134-7(f)
Illinois	725 Ill. Comp. Stat. 5/112A-14(b)(14.5), 750 Ill. Comp. Stat. 60/214(b)(14.5)
Indiana	Ind. Code Ann. §§ 34-26-5-2, 34-26-5-9(c)(4), (f)
Maryland	Md. Code Ann., Fam. Law §§ 4-501, 4-506(d)(12)
Massachusetts	Mass. Gen. Laws ch. 209A, §§ 3B, 3C
Nevada	2007 Nev. Stat. 318, § 2-3, 5; Nev. Rev. Stat. § 33.020
New Hampshire	N.H. Rev. Stat. Ann. §§ 173-B:4, 173-B:5
New Jersey	N.J. Stat. Ann. §§ 2C:25-28(j), 2C:25- 29(b)(16)
New York	N.Y. Crim. Proc. Law §§ 530.11, 530.12, 530.14; N.Y. Fam. Ct. Act §§ 822, 828(3), 842-a
North Carolina	N.C. Gen. Stat. § 50B-3.1
North Dakota	N.D. Cent. Code §§ 14-07.1-02, 14-07.1-13
Pennsylvania	23 Pa. Cons. Stat. §§ 6107, 6108 – 6108.3
Rhode Island	R.I. Gen. Laws § 15-15-3
South Dakota	S.D. Codified Laws § 25-10-24
Wisconsin	Wis. Stat. § 813.12(4m)

Description of State Laws Regarding Domestic Violence and Firearms

1. *State Laws Prohibiting Domestic Violence Misdemeanants from Purchasing or Possessing Firearms and/or Ammunition¹⁸*

Federal law prohibits purchase and possession of firearms and ammunition by persons convicted of a “misdemeanor crime of domestic violence,” but federal law defines that term narrowly. Many states go beyond federal law and prohibit purchase or possession

¹⁷ This list only includes statutes related to domestic violence protective orders. States may authorize judges to order the removal of firearms in other situations. *See, e.g.*, Colo. Rev. Stat. § 18-12-110 (allowing a judge to order the forfeiture of firearms used in a criminal episode for which the defendant has been convicted).

¹⁸ Note that federal law does not require background checks on ammunition purchasers. For more information on laws governing the transfer of ammunition, see section on Ammunition Regulation.

of firearms and/or ammunition by persons with misdemeanor convictions involving a broader class of victims.¹⁹

a. Firearms: Ten states (Arizona, Delaware, Illinois,²⁰ Iowa, Minnesota,²¹ Montana, New Jersey, Texas,²² Washington,²³ and West Virginia) prohibit firearm purchase or possession by persons convicted of misdemeanor domestic violence offenses that go beyond federal law.

- *Dating Partners:* Illinois, Minnesota, New Jersey, Texas, and Washington prohibit purchase or possession of a firearm by anyone found guilty of a domestic violence misdemeanor against a former or current dating partner or someone with whom the offender has had a romantic relationship.²⁴

- *Cohabitants:* Illinois, Minnesota, New Jersey, Texas, Washington and West Virginia prohibit purchase or possession of a firearm by anyone found guilty of a domestic violence misdemeanor against any present or former household member or cohabitant, regardless of their relationship to the offender. In addition, Delaware prohibits purchase or possession of a firearm by anyone found guilty of a misdemeanor against someone who resided with the offender at the time of the offense, but does not prohibit firearm purchase or possession by a misdemeanant who no longer resided with the victim at the time of the offense.²⁵ Iowa also prohibits anyone convicted of domestic abuse against a person who has been a household member within the past year or who was a household member at the time of the abuse from obtaining a permit to acquire a handgun.

¹⁹ In addition, some states, such as California and Hawaii, prohibit firearm purchase or possession by other violent misdemeanants, without regard to the victim's relationship to the offender. California, Connecticut, Minnesota, New Jersey, New York, Pennsylvania, Tennessee and the District of Columbia prohibit purchase or possession of a firearm by anyone with a misdemeanor conviction for stalking. Iowa prohibits anyone convicted of stalking from obtaining a permit to acquire a handgun. Additional information on state laws prohibiting firearm purchase or possession by persons with misdemeanor convictions is contained in the section entitled "Prohibited Purchasers."

²⁰ Illinois' prohibition applies to persons convicted of "domestic battery" committed on or after January 1, 1998.

²¹ Minnesota prohibits possession of a handgun by anyone convicted of an assault against a family or household member for three years following the conviction. Possession of other firearms is prohibited for at least three years as determined by the sentencing court if a firearm was used during the commission of the assault.

²² Texas prohibits firearm possession by domestic violence misdemeanants for five years following release from confinement or community supervision.

²³ Washington prohibits firearm possession by individuals who have committed certain domestic violence misdemeanors on or after July 1, 1993.

²⁴ In addition, in Montana, a court may prohibit an offender convicted of an assault of a dating partner from possessing or using the firearm used in the assault.

²⁵ Delaware only prohibits firearm purchase or possession by domestic violence misdemeanants for five years following conviction.

- *Family Members:* Arizona,²⁶ Delaware, Illinois, Minnesota, Texas and Washington prohibit purchase or possession of a firearm by anyone found guilty of a violent misdemeanor against specified family members, regardless of whether they reside with the offender.²⁷

b. Ammunition: Delaware and Illinois prohibit anyone convicted of a misdemeanor crime of domestic violence (as described above) from purchasing or possessing ammunition (in addition to firearms).

c. Persons Charged with a Domestic Violence Misdemeanor: Six states (California, Colorado, New Jersey, New York,²⁸ Texas, and Virginia) authorize courts to prohibit defendants from purchasing or possessing firearms in cases where the defendant is charged with (but not yet convicted of) a domestic violence misdemeanor.

2. *State Laws Prohibiting Subjects of Certain Domestic Violence Protective Orders From Purchasing or Possessing Firearms and/or Ammunition*

The federal law prohibiting subjects of protective orders from purchasing or possessing firearms and ammunition applies only if the protective order was issued after notice to the abuser and a hearing, and only if the order protects an “intimate partner” of the abuser, as federal law defines the term. Many states go beyond federal law by giving judges discretion to order injunctive relief in protective orders issued without notice to the abuser or a hearing (known as “ex parte” orders). In addition, some states exceed federal law by including a broader category of victims who may apply for a domestic violence protective order prohibiting firearms and/or ammunition.

a. Ex Parte Protective Orders: Seventeen states (Arizona, California, Delaware, Hawaii, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin) prohibit firearm purchase or possession by persons subject to ex parte domestic violence protective orders, or authorize judges to prohibit firearm purchase or possession in ex parte protective orders.

Six states (California, Massachusetts, Texas, Virginia, West Virginia, and Wisconsin) prohibit firearm purchase or possession by any person subject to any ex parte domestic violence protective order. Six additional states (Hawaii,²⁹ New York,³⁰ North Carolina,³¹

²⁶ Arizona’s prohibition on possession of firearms by domestic violence misdemeanants only applies while the person is on probation or parole, or under community supervision, work furlough, home arrest or other release in connection with the crime.

²⁷ In addition, Montana authorizes courts to prohibit an offender convicted of an assault of a family member from possessing or using the firearm used in the assault.

²⁸ New York’s law applies to handguns only.

²⁹ Hawaii requires an ex parte domestic violence protective order to prohibit the abuser from possessing a firearm if the statement that forms the basis for the order shows that the abuser owns, possesses or intends to obtain a firearm and the firearm may be used to threaten, injure or abuse any person.

³⁰ New York requires an ex parte domestic violence protective order to prohibit the possession of handguns if the abuser has been convicted of a violent felony or stalking or has willfully failed to obey a prior order

Pennsylvania,³² Utah,³³ and Washington³⁴) prohibit access to firearms by persons subject to ex parte domestic violence protective orders in certain circumstances.³⁵

Five states (Arizona, Delaware, Michigan, New Hampshire, and New Jersey)³⁶ give judges discretion to prohibit firearm purchase or possession when issuing ex parte domestic violence protective orders.³⁷

b. *Individuals Who May Seek a Protective Order:*³⁸ Many states exceed federal law by including a broader category of victims who may apply for a domestic violence protective order prohibiting firearms.

- *Dating Partners:* The following eighteen states exceed federal law by allowing victims to seek a domestic violence protective order prohibiting purchase or possession of firearms against a former or current dating partner or anyone with whom

of protection and the failure involved the infliction of serious physical injury, the use or threatened use of deadly weapons, or a violent felony. New York also allows an ex parte domestic violence protective order to prohibit handgun possession if there is a substantial risk that the abuser may use or threaten to use a firearm unlawfully against the victim.

³¹ North Carolina requires an ex parte domestic violence protective order to prohibit the purchase or possession of firearms and ammunition if the abuser: has used or threatened to use a deadly weapon against, has threatened to seriously injure or kill, or has seriously injured the aggrieved party or child; or has threatened to commit suicide.

³² Pennsylvania prohibits the acquisition or possession of firearms by the subject of an ex parte domestic violence protective order if the petition demonstrates prior abuse involving a weapon or an immediate and present danger of abuse.

³³ Utah allows a court to issue an ex parte domestic violence protective order prohibiting firearm purchase or possession upon a finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the victim.

³⁴ Washington requires a court issuing an ex parte domestic violence protective order to prohibit the abuser from obtaining or possessing firearms if the abuser has used, displayed, or threatened to use a dangerous weapon in a felony.

³⁵ In addition, North Dakota allows a court issuing an ex parte domestic violence protective order to require the respondent to "surrender for safekeeping" any firearm in his or her possession so long as the court has probable cause to believe the respondent is likely to use, display, or threaten to use the firearm in further acts of violence.

³⁶ In addition, Montana allows the issuance of an ex parte domestic violence protective order if the court finds that harm may result if an order is not issued within 20 days, and allows an ex parte domestic violence protective order to prohibit the abuser from possessing or using the firearm that has already been used in the domestic violence incident.

³⁷ Many states authorize judges issuing protective orders to grant any appropriate injunctive relief, but do not specify whether a firearm prohibition is permissible. See D.C. Code Ann. § 16-1005; Haw Rev. Stat. Ann. §§ 586-5(b), 586-5.5(b); Iowa Code §§ 236.2(2), 236.2(4)(a), 236.4(2), 236.5; Ky. Rev. Stat. Ann. §§ 403.740(1)(f), 403.750(1)(h); La. Rev. Stat. Ann. §§ 46:2135, 46:2136; Me. Rev. Stat. Ann. tit. 15, § 321; Minn. Stat. § 518B.01, subds. 2(b), 6(a)(12), 7; Miss. Code Ann. § 93-21-15; Mo. Rev. Stat. §§ 455.045, 455.050; Neb. Rev. Stat. Ann. §§ 42-903, 42-924, 42-925; N.M. Stat. Ann. §§ 40-13-2(D), 40-13-5(7); N.C. Gen. Stat. § 50B-2; Ohio Rev. Code Ann. §§ 2919.26(C), 3113.31(A)(3), (C), (E)(1)(h); S.D. Codified Laws §§ 22-19A-11, 25-10-5; Tex. Fam. Code Ann. § 83.001; Vt. Stat. Ann. tit. 15, § 1103; Va. Code Ann. §§ 16.1-253.1, 16.1-279.1; Wash. Rev. Code Ann. §§ 26.50.060(1)(f), 26.50.130; Wyo. Stat. Ann. § 35-21-105.

³⁸ State laws may also prohibit firearm purchase or possession by persons subject to anti-stalking protective orders that do not depend on the relationship between the offender and the victim. These laws are not discussed here.

they have had a romantic relationship: Alaska,³⁹ California, Connecticut, Delaware, Hawaii, Illinois,⁴⁰ Indiana, Massachusetts, Michigan, Montana,⁴¹ Nevada, New Jersey, North Carolina,⁴² Rhode Island,⁴³ Texas, Washington, West Virginia, and Wisconsin. In addition, North Dakota allows an application for a protective order to be brought by any person “if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order.”⁴⁴

- *Cohabitants:* Twenty states allow individuals to seek a domestic violence protective order prohibiting purchase or possession of firearms against any person who is presently or has in the past resided with the victim: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.⁴⁵

- *Family Members:* The following twenty-three states allow individuals to seek a domestic violence protective order prohibiting purchase or possession of firearms against any family member, even if the abuser has never resided with the victim: Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Maryland,⁴⁶ Massachusetts, Montana, Nevada, New Hampshire, New York, North Dakota, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

c. *Ammunition:* Of the states listed above, seven (California, Delaware, Hawaii, Illinois, Indiana, Massachusetts and New Hampshire) also prohibit subjects of domestic violence protective orders from purchasing or possessing ammunition.

³⁹ Alaska allows a domestic violence protective order prohibiting possession or use of firearms only if the court finds the abuser was in actual possession of or used a weapon during the commission of domestic violence.

⁴⁰ Illinois allows anyone to seek a protective order prohibiting purchase or possession of firearms only if the abuser has threatened or is likely to use firearms illegally against the victim.

⁴¹ Montana allows a domestic violence protective order prohibiting possession only of a firearm already used in an assault, and only if the victim is in danger of harm if the court does not issue an order immediately.

⁴² North Carolina allows only current or former dating partners of the opposite sex to seek a domestic violence protective order.

⁴³ Rhode Island allows an application for a protective order by a dating partner only if the relationship was within the past one year and “at least one of the persons is a minor.”

⁴⁴ N.D. Cent. Code § 14-07.1-02. North Dakota allows a court issuing a domestic violence protective order to require the respondent to “surrender for safekeeping” any firearm in his or her possession so long as the court has probable cause to believe the respondent is likely to use, display, or threaten to use the firearm in further acts of violence.

⁴⁵ In addition, Maryland allows a “cohabitant” to seek a domestic violence protective order prohibiting possession of “regulated firearms” (handguns and assault weapons). However, “cohabitant” is defined as only a person who has had a sexual relationship with the abuser. Md. Code Ann., Fam. Law § 4-501.

⁴⁶ Maryland prohibits the subject of a domestic violence protective order from possessing “regulated firearms” only. “Regulated firearms” are defined as handguns and assault weapons.

3. *State Laws Providing Statutory Authority for Law Enforcement to Remove Firearms and/or Ammunition at the Scene of a Domestic Violence Incident*⁴⁷

a. *States Requiring or Authorizing the Removal of Firearms:* Twelve states require, rather than simply authorize, law enforcement to remove at least some firearms at the scene of a domestic violence incident: California, Illinois, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, and West Virginia. Six states (Alaska, Arizona, Connecticut, Hawaii, Indiana, and Maryland) authorize, but do not require, law enforcement to remove firearms at the scene of a domestic violence incident.⁴⁸

b. *Firearms Subject to Removal:* The most comprehensive approach requires law enforcement to remove all firearms in the abuser's possession, ownership or control. Only New Hampshire allows law enforcement this broad authority, requiring removal of all firearms in the abuser's control, ownership, or possession at the time of a domestic violence incident. Other states allow the removal of only certain firearms, or allow the removal of firearms only if certain conditions are met.

- *Firearms in the Abuser's Possession:* In New Hampshire, law enforcement must remove all firearms and ammunition in an abuser's control, ownership, or possession whenever law enforcement determines that a domestic violence crime has occurred. Connecticut authorizes, but does not require, the removal of all firearms in the possession of the suspect at the location where domestic violence is alleged to have been committed. In Alaska, law enforcement may remove all firearms owned, used, possessed, or within the control of the abuser if any deadly weapon was possessed during or used in the domestic violence incident and law enforcement determines it is necessary to protect the victim, the victim's family, the officer, or the public.

- *Firearms Used in the Incident:* Ten states (Hawaii, Illinois, Montana, Nebraska, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, and West Virginia) authorize or require the removal of firearms used in the domestic violence incident. In six of those states (Illinois, Montana, Ohio, Pennsylvania, Tennessee and Utah), law enforcement must seize these firearms. Three states (Nebraska, Oklahoma, and West Virginia) require law enforcement to remove these firearms only if the abuser is simultaneously arrested. In Hawaii, law enforcement is authorized, but not required, to remove firearms used in the domestic violence incident.

- *Firearms "Observed at the Scene" or "in Plain View":* Three states (Indiana, Maryland and New Jersey) authorize or require removal of firearms "observed at the scene" of a domestic violence incident. In Maryland, law enforcement may remove

⁴⁷ The following analysis draws from the research conducted by Shannon Frattaroli and Jon S. Vernick for their article *Separating Batterers and Guns: A Review and Analysis of Gun Removal Laws in 50 States*, 30 Evaluation Rev. 296 (June 2006).

⁴⁸ Some states authorize law enforcement to take any appropriate action at the scene of a domestic violence incident, but do not specify the removal of firearms. See, e.g., Ky. Rev. Stat. § 403.785; R.I. Gen. Laws § 15-15-5.

all firearms observed by law enforcement at the scene if the officer has probable cause to believe a crime of domestic violence has occurred. In New Jersey law enforcement must remove firearms observed at the scene if law enforcement has probable cause to believe domestic violence has occurred and these firearms expose the victim to danger. In Indiana, law enforcement is authorized, but not required, to remove firearms observed at the scene if they expose the victim to danger or there is reasonable belief that they were used in the domestic violence incident.

Another eight states (Alaska, Arizona, California, Connecticut, Hawaii, Nebraska, Tennessee and West Virginia) authorize or require removal of firearms “in plain view” at a domestic violence scene. In Connecticut, law enforcement may remove any firearms in plain view (in addition to any firearms in the abuser’s possession at the scene) whenever law enforcement determines that a domestic violence crime has occurred. Alaska, Arizona and Hawaii authorize law enforcement to remove any firearms in plain view at the scene if law enforcement believes these firearms expose someone to danger. California requires removal of firearms under this circumstance. In Nebraska, Tennessee and West Virginia, law enforcement may remove firearms in plain view only if the abuser is arrested and it is necessary to protect the victim, the officer or the public.

- *Firearms Found in a Consensual Search:* Seven states (Arizona, California, Hawaii, Nebraska, New Jersey, Tennessee and West Virginia) authorize or require removal of firearms found pursuant to a consensual search. In Arizona, law enforcement may remove firearms found pursuant to a consensual search if law enforcement believes these firearms would expose the victim or other household member to danger. In California, law enforcement must remove firearms found pursuant to a consensual or other lawful search if law enforcement believes these firearms expose someone to danger. In Hawaii, law enforcement may remove any firearms found during a search to which the abuser has consented, if necessary to protect the officer or any family or household member. In New Jersey, law enforcement is required to seize firearms found in a consensual search if law enforcement believes the firearms expose the victim to danger. In Nebraska, Tennessee and West Virginia, law enforcement may remove firearms found in a consensual search, if the abuser is simultaneously arrested and it is necessary to protect the victim, the officer or the public.

c. States Authorizing the Removal of Ammunition: Four states (Hawaii, Indiana, Nebraska, and New Hampshire) authorize law enforcement to remove firearm ammunition from the scene of a domestic violence incident, subject to the conditions noted above.

d. Duration of the Removal: State laws vary with respect to the duration of the removal of firearms from domestic abusers. Of the states that specify a duration,⁴⁹ Ohio law is the strictest, requiring firearms seized at the scene of a domestic violence incident to be given (permanently) to law enforcement, sold at public auction, or destroyed.

⁴⁹ New Hampshire, Pennsylvania, Utah, and West Virginia do not address the issue when firearms removed from a domestic violence scene must be returned.

Six states (Alaska, Illinois, Indiana, Maryland, Montana and Tennessee) direct that firearms be held so long as they are needed for evidence or until the proceedings against the abuser are concluded. Tennessee requires that a firearm used or threatened to be used to commit domestic violence be sold, destroyed, or used for legitimate law enforcement purposes after completion of legal proceedings involving the weapon; other firearms must be returned to the abuser upon disposition of the case.⁵⁰ In Alaska and Illinois, the firearm must be returned when no longer needed as evidence; in Indiana and Maryland, the firearm must be returned at the conclusion of the proceeding against the abuser. Montana prohibits return of the firearm until acquittal or the return is ordered by the court. Similarly, Nebraska law states that the disposition of firearms seized at a domestic violence scene must be determined by court order.

Six states (Arizona, California, Connecticut, Hawaii, New Jersey and Oklahoma) specify that firearms be returned within a specified time period. Arizona requires firearms seized at a domestic violence scene be held by law enforcement for at least 72 hours, and up to 6 months if a court finds that return of the firearm may endanger the victim. California requires that a firearm seized at a domestic violence scene be held for at least 48 hours, but it must be returned no later than 5 business days after the abuser has petitioned the Department of Justice and demonstrated eligibility to possess the firearm. New Jersey gives the prosecutor 45 days in which to petition for title of a firearm seized at a domestic violence scene; Oklahoma gives the district attorney 10 days. Connecticut requires the firearm to be returned within 7 days after removal unless a court orders otherwise. Hawaii requires the firearm to be returned within 7 working days unless it is retained for use as evidence or the abuser is ineligible to possess it.

4. *State Laws Requiring or Authorizing Removal or Surrender of Firearms and/or Ammunition When a Protective Order Is Issued*⁵¹

To ensure that firearms are taken from the homes of abusers, some state laws authorize judges issuing protective orders to direct law enforcement to remove firearms from the abuser, or to require the abuser to surrender his firearms.

a. States Requiring or Authorizing Removal of Firearms and/or Ammunition by Law Enforcement from Abusers Subject to a Protective Order: Three states (Hawaii, Massachusetts and New Jersey) authorize or require removal of firearms and/or ammunition by law enforcement officers from abusers subject to domestic violence protective orders, including ex parte protective orders.

⁵⁰ Tennessee also allows law enforcement to petition the court for permission to dispose of a firearm used or threatened to be used to commit domestic violence that is not needed as evidence in an official proceeding.

⁵¹ Some states also authorize issuance of protective orders that require the abuser to surrender his or her firearms license or to direct law enforcement to remove a firearms license from the abuser. For example, New Jersey authorizes a judge issuing a protective order to direct law enforcement to search for and seize any firearms purchaser identification card or permit to purchase a handgun issued to the abuser. North Carolina requires a judge issuing a domestic violence protective order to direct the abuser to surrender all permits to purchase firearms and permits to carry concealed firearms if certain conditions exist.

In Massachusetts, when law enforcement serves a domestic violence protective order, law enforcement must immediately take possession of all firearms and ammunition in the abuser's possession, or under his or her ownership or control. In Hawaii, upon service of a domestic violence restraining order, the police officer may take custody of any firearms and ammunition in plain sight, discovered pursuant to a consensual search, or surrendered by the person. If the police officer is unable to locate firearms or ammunition registered to that person or known to the person granted protection by the court, the police officer must apply to the court for a search warrant for the purpose of seizing firearms and ammunition.

New Jersey authorizes a judge issuing a domestic violence protective order to order law enforcement to search for and seize any firearm in the abuser's possession.

b. States Requiring or Authorizing the Court to Order the Abuser to Surrender Firearms and/or Ammunition:

- *States Requiring Surrender of Firearms:* Seven states require certain domestic violence protective orders to include provisions requiring the abuser to surrender certain firearms: California, Illinois, Massachusetts, New Hampshire, New York, North Carolina, and Wisconsin.

California, New Hampshire, and Wisconsin require domestic violence protective orders to include provisions directing the abuser to surrender all firearms in his or her possession, regardless of the circumstances leading to the order. California's law also applies to ex parte orders. In New Hampshire, a provision for the surrender of firearms is authorized in ex parte orders but required in domestic violence protective orders issued with notice and a hearing. Wisconsin's law does not apply to ex parte orders.

In Hawaii, Illinois, Massachusetts, New York and North Carolina, domestic violence protective orders must direct the abuser to surrender firearms if certain conditions are met. In Hawaii, if a protective order (including an ex parte order) contains a prohibition on possession of firearms, the abuser must relinquish possession and control of any firearm owned by that person.⁵² Illinois requires a court issuing a domestic violence protective order after notice and a hearing to direct the abuser to surrender any firearms in his or her possession if the abuser has threatened or is likely to use firearms.⁵³

In Massachusetts, a domestic violence protective order (including an ex parte order) must require the abuser to surrender all firearms and ammunition in his or her possession if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In New

⁵² Hawaii requires an ex parte domestic violence protective order to prohibit the possession of firearms, and requires the abuser to surrender firearms if the statement that forms the basis for the order shows that the abuser owns, possesses or intends to obtain a firearm and the firearm may be used to threaten, injure or abuse any person.

⁵³ In Illinois, if the subject of a domestic violence protective order fails to surrender his or her firearms as ordered, the court must issue a warrant for seizure of any firearms in his or her possession.

York, a domestic violence protective order must require the surrender of firearms if the conduct which resulted in the order involved the infliction of serious physical injury, the use or threatened use of a dangerous weapon, or behavior constituting a violent felony.⁵⁴ In addition, the judge has discretion to require the surrender of firearms in a protective order (including an ex parte order) if the court finds a substantial risk that the abuser may use or threaten to use a firearm unlawfully against a person protected by the order. In North Carolina, a domestic violence protective order (including an ex parte order) must require the abuser to surrender all firearms and ammunition in his or her possession if the abuser threatened to use a deadly weapon or to seriously injure or kill the aggrieved party or the parties' minor child, to commit suicide, or has inflicted serious injuries upon the aggrieved party or the parties' minor child.

- *States Authorizing Surrender of Firearms:* Twelve states⁵⁵ authorize (but do not require) courts to issue protective orders that direct the abuser to surrender all firearms in his or her possession: Alaska,⁵⁶ Arizona,⁵⁷ Delaware, Florida⁵⁸, Indiana, Maryland, Nevada, North Dakota,⁵⁹ Pennsylvania,⁶⁰ Rhode Island and South Dakota.

Seven states also authorize firearm surrender provisions in certain ex parte domestic violence protective orders: Arizona, Delaware, Florida, New Hampshire, North Dakota, Pennsylvania, and South Dakota.

- *States Specifying To Whom the Abuser Must Surrender Firearms:* Ten states direct persons subject to protective orders to surrender their firearms to law enforcement: Arizona, Delaware, Illinois, Indiana, Maryland, Massachusetts, New Hampshire, North Carolina, North Dakota, and South Dakota.

Two states (California and Hawaii) require the abuser either to surrender his or her firearms to law enforcement, or to sell those firearms to a licensed gun dealer.

⁵⁴ New York requires an ex parte domestic violence protective order to require the surrender of firearms if the abuser has been convicted of a violent felony or stalking or has willfully failed to obey a prior order of protection and the failure involved the infliction of serious physical injury, the use of deadly weapons, or a violent felony.

⁵⁵ Other states grant judges discretion to include any appropriate injunctive relief in protective orders, but do not specifically mention the surrender or removal of firearms. *See supra* note 37.

⁵⁶ Alaska authorizes a protective order issued after notice and a hearing that requires the abuser to surrender firearms only if a firearm was used or threatened in a domestic violence incident.

⁵⁷ Arizona authorizes a protective order requiring the surrender of firearms only if the abuser is a credible threat to the physical safety of the plaintiff or other specifically designated persons. If a protective order prohibits the abuser from possessing firearms, it must also include a surrender requirement.

⁵⁸ Florida considers it a violation of a protective order to refuse to surrender firearms if ordered to do so.

⁵⁹ In North Dakota, a domestic violence protective order may require the abuser to surrender firearms in his or her possession only if the court has probable cause to believe the abuser is likely to threaten to use the firearm in further acts of violence.

⁶⁰ In Pennsylvania, a domestic violence protective order may require the abuser to relinquish all firearms and ammunition if the order was issued after notice and a hearing, or if the petition demonstrates prior abuse involving a weapon or an immediate and present danger of abuse.

In Nevada, the abuser must surrender his or her firearms to law enforcement or another person designated by the court, or may sell those firearms to a licensed dealer.

In New York, the abuser must surrender his or her firearms to an authority identified by the court, who must then notify the court of the surrender when it occurs.

Three states (Pennsylvania, Rhode Island and Wisconsin) permit the abuser to surrender his firearms to other designated third parties. In Pennsylvania, the abuser must surrender his or her firearms to law enforcement, to a licensed dealer, or to a third party; the latter two must sign an affidavit promising not to return the firearms to the abuser. In Rhode Island, the abuser may surrender his or her firearms to law enforcement, a licensed dealer, or to any individual not legally prohibited from possessing firearms who is not related to or dating the abuser. In Wisconsin, the abuser must surrender his or her firearms to law enforcement or a person designated by the abuser and approved by the court.

- *States Authorizing Surrender of Ammunition:* Six states (Hawaii, Indiana, Massachusetts, New Hampshire, North Carolina and Pennsylvania) authorize judges to issue protective orders that require the abuser to surrender ammunition as well as firearms.

SUMMARY OF SELECTED⁶¹ LOCAL LAWS REGARDING DOMESTIC VIOLENCE AND FIREARMS

Local Laws Regarding Domestic Violence and Firearms⁶²

New York City

**New York, N.Y., Rules tit. 38-A, § 5-02(b), (c);
New York, N.Y., Admin. Code § 10-303**

Omaha

Omaha, Neb., Code § 20-253

New York City: In New York City, no person with a prior conviction for a misdemeanor crime of domestic violence, as defined by federal law, may be granted a premises license allowing him or her to possess a handgun at a residence or business location, or a permit for the possession or purchase of rifles or shotguns. In addition, an applicant for a premises license must disclose whether he or she has ever been the subject or recipient of an order of protection.

⁶¹ 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."

⁶² In addition, Columbus, Ohio prohibits issuance of a weapons transaction permit to anyone convicted of an "offense of violence" as defined by state law, without reference to the relationship between the offender and the victim. Columbus, Ohio, Code § 545.08(4).

Omaha: Omaha prohibits anyone convicted of any charge of domestic violence or anyone subject to an active protective order from registering a concealable firearm.

FEATURES OF COMPREHENSIVE LAW REGARDING DOMESTIC VIOLENCE AND 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.

- In addition to persons prohibited by federal law, persons convicted of a violent misdemeanor against a former or current dating partner, cohabitant, or family member are prohibited from purchasing or possessing firearms (*Illinois, Minnesota, New Jersey, Texas, Washington*)
- Courts are authorized to prohibit persons charged with a domestic violence misdemeanor from purchasing or possessing firearms (*California, Colorado, New Jersey, New York, Texas, Virginia*)
- Persons convicted of a domestic violence misdemeanor are prohibited from purchasing or possessing ammunition (*Delaware, Illinois*)
- In addition to persons prohibited by federal law, former or current dating partners, cohabitants, or family members who are subject to a domestic violence protective order are prohibited from purchasing or possessing firearms (*Connecticut, California, Hawaii, Massachusetts, Nevada, Texas, West Virginia, Wisconsin*)
- Persons subject to a domestic violence protective order issued without notice or a hearing are prohibited from purchasing or possessing firearms (*California, Massachusetts, Texas, Virginia, West Virginia, Wisconsin*)
- Persons subject to a domestic violence protective order are prohibited from purchasing or possessing ammunition (*California, Delaware, Florida, Hawaii, Illinois, Indiana, Massachusetts, New Hampshire*)
- All domestic violence protective orders require law enforcement to seize all firearms and ammunition in the abuser's possession, or under his or her ownership or control (*Massachusetts*)
- Law enforcement responding to a domestic violence incident are required to remove all firearms and ammunition in the abuser's possession, or under his or her ownership or control (*New Hampshire*)
- Firearms seized at the scene of a domestic violence incident must be permanently given to law enforcement, sold at public auction, or destroyed (*Ohio*)

Background Checks

Background

At the federal level, background checks are conducted pursuant to the Brady Handgun Violence Prevention Act (the “Brady Act”), 18 U.S.C. § 921 *et seq.*, which is described in detail below. Background checks are designed to identify persons who are ineligible to purchase firearms under federal, state or local law, and prevent those persons from obtaining firearms.¹

Summary of Federal Law

The Brady Act requires federally licensed firearms dealers (FFLs) to perform background checks on prospective firearms purchasers to ensure that the firearm transfer would not violate federal, state or local law.² Since 1998, the Brady Act has been implemented through the National Instant Criminal Background Check System (NICS).³ NICS is used for purchasers of handguns and long guns, and for persons who redeem a pawned firearm.⁴ The Brady Act does not apply to unlicensed sellers.

States have the option of serving as a state Point of Contact (POC) and conducting their own NICS checks, or having those checks performed by the FBI.⁵ FBI checks are provided at no charge; state law determines the cost of background checks performed by POCs.⁶ FFLs initiate a NICS check by contacting the FBI or state POC (typically by telephone or computer) after the prospective purchaser has provided a government-issued photo I.D. and completed a federal Firearms Transaction Record (also known as Form 4473).⁷ The FBI or POC must then conduct a name-based search of federal and state databases. FBI searches include three federal databases:

- The National Crime Information Center (NCIC), which includes records regarding wanted persons (fugitives) and persons subject to protective/restraining orders;
- The Interstate Identification Index, which contains state criminal history records; and

¹ Categories of persons who are prohibited from possessing firearms under federal and state law are detailed in the section on Prohibited Purchasers.

² 18 U.S.C. § 922(s).

³ As originally adopted, the Brady Act included interim as well as permanent provisions. The Act’s interim provisions, implemented on February 28, 1994, applied to handgun sales only. On November 30, 1998, the permanent provisions of the Brady Act went into effect, establishing the NICS system and extending the Act’s application to purchasers of long guns and persons who redeem a pawned firearm.

⁴ 18 U.S.C. § 922(t).

⁵ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Transfers, 2005 3-4* (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/abstract/ssprfs05.htm>.

⁶ *Id.* at 3.

⁷ 27 C.F.R. § 478.124. The prospective purchaser completes a portion of Form 4473 by providing identifying information, including name, sex, home address, date and place of birth, etc., and signing and dating the form. The FFL is required to verify the identity of the prospective purchaser. *Id.*

- The NICS Index, which contains records of other persons prohibited under federal law from receiving or possessing firearms.⁸

A state POC search includes the three federal databases, and may include the state's independent criminal history database and mental health records.⁹

Once the initial search is complete, the FBI or POC notifies the FFL that the sale: (1) may proceed; (2) may not proceed; or (3) is delayed pending further investigation. If the transaction may proceed, NICS provides the dealer with a unique identification number which the FFL must record on Form 4473.¹⁰ The NICS check is valid for a single transaction for up to 30 calendar days from the date NICS was initially contacted.¹¹

If the FFL has not been notified within three business days that the sale would violate federal or state laws, the sale may proceed by default.¹²

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.¹³ Permits issued after November 30, 1998 qualify as exempt only if the approval process included a NICS check.¹⁴ 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.

Although the Brady Act provides an essential mechanism for keeping guns away from convicted felons and other prohibited purchasers, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), FBI and other federal agencies have made several recommendations to strengthen the law. Those recommendations include the following:

- **Close the private sale loophole** – The Brady Act applies only to sales by FFLs. Accordingly, persons who purchase firearms from private sellers –

⁸ Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, *National Instant Criminal Background Check System (NICS) Operations 2005 2* (Jan. 2006), at http://www.fbi.gov/hq/cjisd/nics/ops_report2005/ops_report2005.pdf.

⁹ *Survey of State Procedures Related to Firearm Transfers, 2005*, *supra* note 5, at 3-4.

¹⁰ 27 C.F.R. § 478.102(a). After recording the unique identification number provided by NICS, the dealer records certain information about the firearm to be transferred, including the manufacturer, type, model, caliber or gauge and serial number. 27 C.F.R. § 478.124(c)(4). The dealer is required to retain Form 4473, regardless of whether the transaction is approved or denied or whether the firearm is actually transferred. 27 C.F.R. § 478.102.

¹¹ 27 C.F.R. § 478.102(c). The 30-day period covers only a single transaction as reflected on Form 4473. The transaction may, however, involve the transfer of multiple firearms.

¹² 18 U.S.C. § 922(t)(1).

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

¹⁴ 27 C.F.R. § 478.102(d).

estimated to be 40 percent of all gun purchasers – are not required to undergo background checks.¹⁵

- **Extend the three-day limit for background checks** – Under the Brady Act, if the FFL has not been notified within three business days that the sale would violate federal or state laws, the sale may proceed by default.¹⁶ This default provision, known as a “default proceed,” allowed 3,849 prohibited purchasers to buy guns during the first year of operation (November 30, 1998 through November 30, 1999) of NICS.¹⁷ Moreover, between November 1998 and December 31, 2005, ATF received 26,600 referrals from the FBI requesting further review, evaluation and possible retrieval of firearms that had been sold to ineligible persons by default.¹⁸ As a result, the FBI has recommended extending the maximum time allowed for conducting background checks to allow more research time to complete background checks and to reduce the number of prohibited purchasers who are able to purchase firearms by default.¹⁹
- **Improve access to state records** – At the end of 2003, only three out of four criminal history records were accessible through the NICS system.²⁰ According to the FBI, state background checks are more thorough than those performed by the FBI because the states can access their independent criminal history database in addition to the databases maintained by NICS. State databases typically include information that is unavailable to the FBI, including outstanding felony warrants, mental health records, domestic violence restraining orders and final disposition records (those showing whether an arrest resulted in an acquittal or a conviction). Accordingly, the FBI is encouraging states to provide more complete records to the NICS system.²¹

¹⁵ See Educational Fund to Stop Gun Violence, *Closing Illegal Gun Markets: Extending Criminal Background Checks to All Gun Sales* (May 2002). Additional information about private transfers is contained in the section on Private Sales.

¹⁶ 18 U.S.C. § 922(t)(1). See also *Survey of State Procedures Related to Firearm Transfers, 2005*, *supra* note 5, at 3-4.

¹⁷ Criminal Justice Information Services Division of the Federal Bureau of Investigation, U.S. Department of Justice, *National Instant Criminal Background Check System (NICS) Operations Report (November 30, 1998-December 31, 1999)* 11 (March 2000). In fact, the FBI has found that a purchaser whose NICS check takes longer than 24 hours to complete is 20 times more likely to be a prohibited purchaser than other applicants. *Id.* at 6.

¹⁸ *NICS Operations 2005*, *supra* note 8, at 12.

¹⁹ U.S. General Accounting Office, *Gun Control: Implementation of the National Instant Criminal Background Check System* 13 (Feb. 2000), at <http://firwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPAddress=162.140.64.21&filename=g100064.pdf&directory=/diskb/wais/data/gao>. FBI investigations of prohibited purchasers who were allowed to buy firearms by default typically take 25 days to complete. *Id.*

²⁰ Bureau of Justice Statistics, U.S. Department of Justice, *National Criminal History Improvement Program: Improving Criminal History Records for Background Checks, 2005* 3 (July 2006) at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ichrbc05.pdf>. The percentage of criminal records that are accessible for NICS checks varies by state. See U.S. General Accounting Office, *Gun Control: Options for Improving the National Instant Criminal Background Check System* 12-14 (Apr. 2000), at <http://www.gao.gov/archive/2000/gg00056.pdf>.

²¹ *Gun Control: Implementation of the National Instant Criminal Background Check System*, *supra* note 19, at 12-13.

- **Increase access to mental health records** – Although federal law prohibits the purchase of a firearm by any person who has been adjudicated as a mental defective or involuntarily committed to a mental institution, many states do not collect information about persons who fit this criteria or provide law enforcement access to this information. There are many Americans who have been involuntarily committed to mental institutions and are barred by federal law from possessing firearms, but, as of November 30, 1999, the FBI had received from all states a total of only 41 records of mentally ill persons.²² Although the number of mental health records provided to NICS has increased – in 2007 there were approximately 400,000²³ – mental illness remains significantly underreported. As a result of the FBI’s lack of information about mentally ill persons, a FBI background check is unlikely to find that a person is ineligible to possess a firearm due to mental illness. Because of these reporting deficiencies, mentally ill persons in this country are easily able to buy guns in violation of federal law.²⁴

NICS Improvement Amendments Act of 2007: In January 2008, President Bush signed into law the NICS Improvement Amendments Act of 2007, which, among other things, provides financial incentives for states to provide to NICS information relevant to whether a person is prohibited from purchasing or possessing firearms.²⁵ Under the Act, states are eligible to receive a waiver of the 10% matching requirement for National Criminal History Improvement Grants²⁶ if they provide at least 90% of relevant records concerning persons who are prohibited from purchasing or possessing a firearm within specified deadlines.²⁷ The Act also authorizes the Attorney General to make grants to the states for use in establishing and upgrading the states’ ability to report information to NICS and to perform background checks pursuant to the Brady Act.²⁸

²² *Gun Control: Options for Improving the National Instant Criminal Background Check System*, *supra* note 20, at 8.

²³ Michael B. Mukasey, *Prepared Remarks of Attorney General Michael B. Mukasey at the National Association of Attorneys General Winter Meeting*, Park City, Utah (Nov. 29, 2007), at http://www.usdoj.gov/ag/speeches/2007/ag_speech_071129.html.

²⁴ For more information on access to records of persons with mental illness for firearm purchaser background checks, see section on Mental Health Reporting.

²⁵ Pub. L. No. 110-180, §§ 102, 104, 121 Stat. 2559 (2008).

²⁶ *See generally* 42 U.S.C. § 14601.

²⁷ Pub. L. No. 110-180, § 102, 121 Stat. 2559 (2008).

²⁸ *Id.*, § 103(a), (b). In order to be eligible for these grants, a state must implement a “relief from disabilities” program meeting the Act’s requirements, and allowing a person who has been adjudicated as a mental defective or committed to a mental institution to apply to the state for relief from the federal prohibition on purchase and possession of firearms and ammunition. *Id.*, § 105(a)(1). For more information on the Act’s application to records of persons with mental illness, see section on Mental Health Reporting.

SUMMARY OF STATE LAWS GOVERNING BACKGROUND CHECKS

Only Vermont has no state law governing background checks.²⁹ State laws describing important differences in the background check process are described below.

Alabama	Ala. Code § 13A-11-72
Alaska	Alaska Stat. § 11.61.200
Arizona	Ariz. Rev. Stat. §§ 13-3101(A)(6), 13-3111, 13-3113
Arkansas	Ark. Code Ann. § 5-73-103(a), 5-73-129
California	Cal. Penal Code §§ 12021, 12021.1, 12076, 12077; Cal. Welf. & Inst. Code §§ 8100, 8101, 8103, 8105
Colorado	Colo. Rev. Stat. §§ 13-5-142, 13-9-123, 18-12-108, 18-12-108.5, 24-33.5-424
Connecticut	Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36l, 29-37a, 53a-217, 53a-217c
Delaware	Del. Code Ann. tit. 11, §§ 1448, 1448A; tit. 24, §§ 901, 903
District of Columbia	D.C. Code Ann. §§ 7-2502.01 – 7-2502.10
Florida	Fla. Stat. Ann. §§ 790.065, 790.18, 790.23, 790.233, 790.235
Georgia	Ga. Code Ann. §§ 16-11-131(b), (b.1), 16-11-132, 16-11-171 – 16-11-172
Hawaii	Haw. Rev. Stat. Ann. §§ 134-2, 134-7
Idaho	Idaho Code Ann. § 18-3316
Illinois	430 Ill. Comp. Stat. 65/1 – 65/16-3
Indiana	Ind. Code Ann. §§ 35-47-1-7, 35-47-2.5-1 – 35-47-2.5-12
Iowa	Iowa Code §§ 724.15 – 724.23, 724.26
Kansas	Kan. Stat. Ann. §§ 21-4204, 21-4204a
Kentucky	Ky. Rev. Stat. Ann. §§ 527.040, 527.100
Louisiana	La. Rev. Stat. Ann. § 14:95.1
Maine	Me. Rev. Stat. Ann. tit. 15, § 393(1)
Maryland	Md. Code Ann., Pub. Safety §§ 5-101(g), 5-117 – 5-127, 5-133, 5-134
Massachusetts	Mass. Gen. Laws ch. 140, §§ 129B, 130, 131, 131E
Michigan	Mich. Comp. Laws §§ 28.422 – 28.422b, 750.224f
Minnesota	Minn. Stat. §§ 624.713 – 624.7132, 624.719
Mississippi	Miss. Code Ann. § 97-37-5, 97-37-13, 97-37-14
Missouri	Mo. Rev. Stat. §§ 571.060, 571.070, 571.080
Montana	Mont. Code Ann. § 45-8-313
Nebraska	Neb. Rev. Stat. Ann. §§ 28-1204.01, 28-1206, 69-2401 – 69-2421
Nevada	Nev. Rev. Stat. Ann. §§ 202.300, 202.310, 202.360, 202.362
New Hampshire	N.H. Rev. Stat. Ann. §§ 159-D:1, 159:3, 159:7, 159:8-a, 159:12, 173-B:5

²⁹ Federal law requiring background checks for all dealer sales does apply in Vermont, however, as it does in all other states.

New Jersey	N.J. Stat. Ann. § 2C:58-3
New Mexico	N.M. Stat. Ann. § 30-7-16
New York	N.Y. Penal Law §§ 265.00, 265.01, 400.00
North Carolina	N.C. Gen. Stat. §§ 14-402 – 14-406, 14-415.1, 14-415.3, 14-269.8
North Dakota	N.D. Cent. Code § 62.1-02-01
Ohio	Ohio Rev. Code Ann. §§ 2923.13, 2923.211
Oklahoma	Okla. Stat. tit. 21, §§ 1273, 1283, 1289.10, 1289.12
Oregon	Or. Rev. Stat. §§ 166.412, 166.250(1)(c), 166.414, 166.470
Pennsylvania	18 Pa. Cons. Stat. §§ 6105, 6110.1, 6111, 6111.1
Rhode Island	R.I. Gen. Laws §§ 11-47-5 – 11-47-7, 11-47-30, 11-47-33, 11-47-35 – 11-47-35.3, 8-8.1-3; 15-15-3
South Carolina	S.C. Code Ann. §§ 16-23-30
South Dakota	S.D. Codified Laws §§ 22-14-15, 22-14-15.1, 23-7-44, 23-7-46
Tennessee	Tenn. Code Ann. §§ 39-17-1303, 39-17-1307, 39-17-1316, 39-17-1319, 39-17-1321
Texas	Tex. Penal Code Ann. § 46.04, 46.06
Utah	Utah Code Ann. §§ 76-10-503, 76-10-509, 76-10-509.4
Virginia	Va. Code Ann. §§ 18.2-308.1:1 – 18.2-308.2:2, 18.2-308.4, 18.2-308.7
Washington	Wash. Rev. Code Ann. §§ 9.41.040, 9.41.090, 9.41.170
West Virginia	W. Va. Code § 61-7-7, 61-7-8
Wisconsin	Wis. Stat. §§ 175.35, 941.29, 948.60
Wyoming	Wyo. Stat. Ann. § 6-8-102

Description of State Laws Governing Background Checks

1. *State Points of Contact:* According to the FBI, state background checks are more thorough than those performed by the FBI because states can access their independent criminal history databases in addition to databases maintained by NICS.³⁰ Thirteen states serve as POC states for all firearm transfers.³¹ Eight states use a state or local POC for handgun background checks only, using the FBI for background checks on long gun transfers.³² The remaining twenty-nine states and the District of Columbia process all background checks through the FBI.³³

³⁰ *Gun Control: Implementation of the National Instant Criminal Background Check System*, *supra* note 19, at 12-13. See also *NICS Operations 2005*, *supra* note 8, at 5.

³¹ Criminal Justice Information Systems of the Federal Bureau of Investigation, U.S. Department of Justice, *NICS Program Summary* (July 2006), at <http://www.fbi.gov/hq/cjisd/nics.htm>.

³² *Id.*

³³ *Id.*

POC States for All Firearms

California
Colorado
Connecticut
Florida
Hawaii
Illinois
Nevada
New Jersey
Oregon
Pennsylvania
Tennessee
Utah
Virginia

POC States for Handguns Only

Iowa
Maryland (“regulated firearms”)³⁴
Michigan
Nebraska
New Hampshire
North Carolina
Washington
Wisconsin

2. *States that Issue Permits that Qualify the Holder for an Exemption from a NICS Check:* Pursuant to 18 U.S.C. § 922(t)(3), twenty-one states issue permits or licenses that exempt the holder from a background check.³⁵

States that Issue Permits or Licenses that Qualify the Holder for an Exemption from a NICS Check

Alaska (concealed weapons permits)
Arizona (concealed weapons permits)
Arkansas (concealed weapons permits issued on or after 4/1/99)
California (“entertainment firearms permits” only)
Georgia (concealed weapons permits)
Hawaii (permits to acquire and licenses to carry)
Idaho (concealed weapons permits)
Iowa (permits to acquire a handgun and concealed weapons permits)
Kentucky (concealed weapons permits issued on or after 7/12/06)
Michigan (licenses to purchase a pistol and concealed pistol licenses issued on or after 11/22/05)
Mississippi (concealed weapons permits, but not security guard permits)
Montana (concealed weapons permits)
Nebraska (handgun purchase certificates)
Nevada (concealed weapons permits)
New York (licenses to carry and possess handguns)
North Carolina (permits to purchase a handgun and concealed handgun permits)
North Dakota (concealed weapons permits issued on or after 12/1/99)
South Carolina (concealed weapons permits)

(continued on next page)

³⁴ Maryland defines “regulated firearms” as handguns and assault weapons.

³⁵ Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice, *Permanent Brady Permit Chart* (June 28, 2007), at http://www.atf.gov/firearms/bradylaw/permit_chart.htm (last visited Dec 4, 2007). The FBI determines whether a state’s permitting process exempts purchasers from background checks, based on the statutory criteria set forth in 18 U.S.C. § 922(t)(3) and 27 C.F.R. § 478.102(d).

States that Issue Permits or Licenses that Qualify the Holder for an Exemption from a NICS Check *(continued from previous page)*

Texas (concealed weapons permits)

Utah (concealed weapons permits)

Wyoming (concealed weapons permits)

3. *State Laws Addressing the Problem of “Default Proceeds:”*³⁶ Several states have taken measures to extend the time allowed for completion of a background check, so that firearms cannot be transferred by default when a background check cannot be completed within three days.

In California, all firearm transfers are subject to a 10-day waiting period.³⁷ If the background check information received is incomplete, preventing the background check from being approved or denied within the 10-day period, the California Department of Justice (DOJ) may notify the dealer of that fact.³⁸ The DOJ interprets this provision to allow (but not require) DOJ to notify the dealer to delay the transfer until the background check can be completed.

In Colorado, the state can deny a prospective purchaser’s application if the background check cannot be completed within the 3-day default period.³⁹

In New Jersey, retail firearms dealers may not deliver a handgun to any person unless the person possesses a valid permit to purchase a handgun and at least seven days have elapsed since the date of application for the permit. The time period to obtain the permit itself can be as long as 30 days (45 days for non-residents)⁴⁰ while the permit application is processed.

Washington allows five days to complete a background check on prospective handgun purchasers. However, if records indicate that a prospective purchaser has an arrest for a potentially disqualifying offense, a hold may be placed on the transaction for up to 30 days, pending receipt of information on the disposition of the arrest. After 30 days, if the

³⁶ LCAV has not undertaken a comprehensive survey of state approaches to “default proceeds.” The states noted provide examples of ways to address this issue.

³⁷ Cal. Penal Code §§ 12071(b)(3)(A), 12072(c)(1).

³⁸ Cal. Penal Code § 12076(d)(4), (5).

³⁹ Colorado provides that an application must be denied in cases in which there has been no final disposition or the final disposition is not noted in the NICS or state databases, where the applicant: (1) has been arrested for or charged with a crime that would prohibit him or her from purchasing, receiving, or possessing a firearm under state or federal law; or (2) is the subject of an indictment, an information, or a felony complaint alleging that the prospective transferee has committed a crime punishable by imprisonment for a term exceeding one year as defined in 18 U.S.C. § 921(a)(20). This provision has a sunset clause and will be automatically repealed July 1, 2010, unless renewed. Colo. Rev. Stat. § 24-33.5-424(3)(b).

⁴⁰ N.J. Stat. Ann. §§ 2C:58-2a(5)(a), 2C:58-3. Note that FFLs may not sell handguns to out-of-state residents. Additional information on transfer restrictions imposed on FFLs is contained in the section on Dealer Regulations.

disposition still cannot be verified, the hold may be extended by a judicial order on a showing of good cause.⁴¹

In Wisconsin, if the background check indicates a felony charge without a recorded disposition, the state's 48-hour waiting period for handgun purchases is extended to the end of the third complete working day commencing after the day on which the finding is made. The Department of Justice must notify the firearms dealer of the extension as soon as practicable. During the extended period, the Department of Justice is required to make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable.⁴²

4. *Mental Health Reporting:* Although persons who have been adjudicated as mental defectives or involuntarily committed to mental institutions are prohibited by federal law from possessing firearms, the current status of the FBI databases makes it difficult to prevent such a person from obtaining firearms if the person undergoes only an FBI background check. As discussed above, that is because a great deal of information about mentally ill people is not reported to the FBI and the FBI does not currently have access to mental health records that are maintained by the states. A detailed discussion of state laws governing mental health reporting is contained in the section on Mental Health Reporting.

SUMMARY OF SELECTED⁴³ LOCAL LAWS GOVERNING BACKGROUND CHECKS

Local Laws Governing Background Checks

Cleveland	Cleveland, Ohio, Code §§ 674.04, 674.05
Columbus	Columbus, Ohio, Code §§ 545.06(a), 545.07
New York City	New York, N.Y., Admin. Code § 10-303, New York, N.Y., Rules tit. 38, §§ 5-01 - 5-07
Omaha	Omaha, Neb., Code § 20-253(b)

Cleveland: In Cleveland, background checks are required for issuance of handgun owner's identification cards and handgun registration cards.

⁴¹ Wash. Rev. Code Ann. § 9.41.090(3), (4).

⁴² Wis. Stat. §§ 175.35(2)(d), 175.35(2g)(c)4.c.

⁴³ 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."

Columbus: Firearms purchasers in Columbus are required to have a “weapon transaction permit” to purchase or possess any lawful weapon. The permit application process requires a background check on the applicant.

New York City: New York City requires a rifle or shotgun permit for the purchase and/or possession of rifles and shotguns. New York City also requires handgun licenses, which are granted for particular uses. A background check is required prior to issuance of rifle/shotgun permits and handgun licenses.

Omaha: Omaha requires handgun owners to register their firearms. A background check is required during the handgun registration process.

FEATURES OF COMPREHENSIVE BACKGROUND CHECK LAW

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

- Universal background checks are required on all firearm purchasers (*California, Rhode Island, District of Columbia, Chicago; Maryland requires universal background checks but only for purchases of handguns and assault weapons; Connecticut and Pennsylvania require universal background checks only for purchases of handguns*)⁴⁴
- State acts as a Point of Contact for all firearm transfers, and background checks include search of state’s independent criminal history and mental health records
- Transfer of any firearm is prohibited until the background check process has been completed (*Colorado, Washington*)
- Background check process includes search of a state’s mental health records (*15 states*)⁴⁵
- Mental health information is reported to federal and state databases of prohibited purchasers (*14 states*)⁴⁶
- Criminal history information and orders of protection are reported to federal and state databases of prohibited purchasers
- Fee for background check is set at least at a level sufficient to cover administrative costs associated with background check system

⁴⁴ Additional information on jurisdictions requiring universal background checks is contained in the section on Private Sales.

⁴⁵ Additional information on access to mental health records for firearm purchaser background checks is contained in the section on Mental Health Reporting.

⁴⁶ See *supra* note 45.

Mental Health Reporting

Background

Federal law prohibits the sale of firearms and ammunition to certain individuals with a history of mental illness, and requires licensed dealers (but not unlicensed sellers) to request a background check prior to transfer of a firearm to screen out prohibited purchasers.¹ However, federal law does not require states to make mental health information available to the federal or state agencies that perform background checks,² and many states fail to report to the FBI's National Instant Criminal Background Check System (NICS) all relevant mental health information necessary for a background check to identify persons who are prohibited from purchasing firearms.

Between November 1999 and November 2007, the number of disqualifying mental health records in the NICS Mental Defective File increased from about 90,000 to about 400,000.³ However, the U.S. General Accounting Office has estimated that there should be at least 2.7 million such records in the database.⁴ Hence, the total number of records currently reported to NICS is still a small fraction of the number of persons prohibited from purchasing firearms due to a history of mental illness. In 2005, of the total number of prospective purchasers who were denied following an FBI background check, only 0.5% were denied for mental health reasons.⁵

When mental health information is submitted to NICS, it can be effective at preventing firearm transfers by licensed dealers to the mentally ill. During the first three years after Virginia began submitting certain mental health information to NICS, Virginia's disqualifying mental health records resulted in 438 denials of firearm purchases.⁶

However, even states that report mental health information to NICS may fail to report *all* disqualifying mental health records due to loopholes in state law. As a result of the

¹ 18 U.S.C. § 922(d)(4), (t). Sales by unlicensed sellers are not subject to background checks under federal law. For additional information on sales by unlicensed sellers, see the section on Private Sales.

² See 28 C.F.R. § 25.4; Legal Community Against Violence, *Lessons From Virginia Tech: Recommendations for State Law Changes to Close Loopholes in Background Check Systems* 4 n.16 (May 2007), at http://www.lcav.org/pdf/memo_re_state_loopholes.pdf.

³ U.S. General Accounting Office, *Gun Control: Options for Improving the National Instant Criminal Background Check System* 7-8 (Apr. 2000), at <http://www.gao.gov/archive/2000/gg00056.pdf>; Michael B. Mukasey, *Prepared Remarks of Attorney General Michael B. Mukasey at the National Association of Attorneys General Winter Meeting*, Park City, Utah (Nov. 29, 2007), at http://www.usdoj.gov/ag/speeches/2007/ag_speech_071129.html. 200,000 records were submitted by California in October 2007. *Id.*

⁴ *Gun Control*, *supra* note 3, at 59.

⁵ U.S. Department of Justice, *Background Checks for Firearm Transfers, 2005*, Bureau of Justice Statistics Bulletin 5 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/bcft05.pdf>.

⁶ Rachel L. Brand, Assistant Attorney General for Legal Policy, U.S. Department of Justice, *Lethal Loopholes: Deficiencies in State and Federal Gun Purchase Laws*, Statement before the House Committee on Oversight and Government Reform, Subcommittee on Domestic Policy, U.S. House of Representatives 12 (May 10, 2007), at <http://www.usdoj.gov/olp/pdf/guns07a.pdf>.

underreporting of mental health information by some states, mentally ill individuals have been able to obtain firearms even though they are prohibited by law from doing so.

The most tragic incident involving such a loophole occurred in April 2007, when Virginia Polytechnic Institute and State University (Virginia Tech) student Seung-Hui Cho shot and killed 32 people and injured 17 others before committing suicide on the Virginia Tech campus in Blacksburg, Virginia.⁷ Cho was, in fact, prohibited from purchasing a firearm under federal law because of a history of mental illness.⁸ However, Cho was able to purchase firearms through two licensed dealers after two background checks. While Virginia law at that time required that some mental health information be submitted to NICS, it did not require reporting of orders adjudicating persons to be a danger to themselves or others if they were only directed to outpatient, as opposed to inpatient, mental health treatment.⁹ In response to the shooting, a panel convened by Virginia Governor Timothy Kaine issued a report recommending that all states report to NICS *all* information necessary to conduct federal background checks for firearm transfers.¹⁰

Similarly, soon after the shooting, Secretary of the Department of Health and Human Services Michael Leavitt, Secretary of the Department of Education Margaret Spellings, and then-Attorney General Alberto Gonzales issued a report finding that state laws and practices do not uniformly ensure that information regarding persons restricted from possessing firearms is appropriately captured and available to NICS, and recommending that states submit all relevant disqualifying information to NICS.¹¹ The National Association of Attorneys General also issued a report making the same recommendation.¹²

In an ABC News poll conducted after the Virginia Tech shooting, 83% of respondents answered that states should be required to report mentally ill people to a federal database, in order to prevent them from buying guns.¹³

The FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) also are encouraging states to provide more mental health records to NICS.¹⁴ Nevertheless, as of April 30, 2007, the FBI identified only 23 states as having submitted mental health

⁷ *Mass Shootings at Virginia Tech, April 16, 2007, Report of the Review Panel Presented to Governor Timothy M. Kaine* 5 (Aug. 2007), at <http://www.governor.virginia.gov/TempContent/techPanelReport.cfm>.

⁸ A Virginia special justice declared Mr. Cho to be “an imminent danger” to himself as a result of mental illness on December 14, 2005, and directed Mr. Cho to seek outpatient treatment. *Id.* at 48, 71.

⁹ *Id.* at 71-73.

¹⁰ *Id.* at 76.

¹¹ *Report to the President on Issues Raised by the Virginia Tech Tragedy* 10-11 (June 13, 2007), at <http://www.hhs.gov/vtreport.pdf>.

¹² National Association of Attorneys General Task Force on School and Campus Safety, *Report and Recommendations* (Sept. 2007), at <http://www.naag.org/assets/files/pdf/2007.TaskForceOnSchoolAndCampusSafety.pdf>.

¹³ ABC News Poll, *VA Tech, Guns, and Mental Illness* (Apr. 22, 2007), at <http://abcnews.go.com/images/US/1037a1VaTechGuns.pdf>.

¹⁴ Brand, *supra* note 6, at 10-11.

records to the FBI for inclusion in NICS.¹⁵ Thirteen of the 23 had submitted less than 50 records.¹⁶ Some had submitted only one record.¹⁷ A few more states began reporting mental health records to NICS soon after the Virginia Tech shooting. Nevertheless, according to Attorney General Michael Mukasey, as of November 2007, only 32 states had submitted mental health records to the FBI for inclusion in NICS.¹⁸

States that do not submit mental health records to NICS may nevertheless require a check of their own mental health records prior to a firearm transfer.¹⁹ However, a person attempting to purchase a firearm in one state may have a disqualifying mental health history in another state. For example, of the 438 denials of firearm purchases by persons with mental health histories in Virginia in the three years after Virginia began submitting its mental health records to NICS, 378 were attempts to purchase firearms in states other than Virginia.²⁰ Thus, a search of in-state mental health records ensures that a person disqualified on mental health grounds will not be allowed to purchase a firearm in the state where the mental health record exists, but does not prevent such a person from purchasing a firearm in another state.

Summary of Federal Law

The Gun Control Act of 1968 prohibits any person from selling or otherwise transferring a firearm or ammunition to any person who has been “adjudicated as a mental defective” or “committed to any mental institution.”²¹ According to federal regulations, a person has been “adjudicated as a mental defective” if a court, board, commission or other lawful authority has determined that he or she, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself, herself, or others, or (2) lacks the mental capacity to contract or manage his or her own affairs.²² The term “adjudicated as a mental defective” explicitly includes a finding of not guilty by reason of insanity or incompetence to stand trial.²³

Federal regulations define a person as “committed to a mental institution” if a court, board, commission, or other lawful authority has formally committed him or her to a mental institution.²⁴ The term is defined to include involuntary commitments, but does not include persons who are admitted to a mental institution voluntarily or for observation.²⁵

¹⁵ These states are: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, New Hampshire, New York, North Carolina, Ohio, South Carolina, Tennessee, Utah, Virginia, Washington and Wyoming. Brand, *supra* note 6, at 11-12.

¹⁶ *Id.* at 11.

¹⁷ *Id.*

¹⁸ Mukasey, *supra* note 3.

¹⁹ *See infra* p. 127.

²⁰ Brand, *supra* note 6, at 12.

²¹ 18 U.S.C. § 922(d)(4). Such persons are prohibited from possessing firearms. 18 U.S.C. § 922(g)(4).

²² 27 C.F.R. § 478.11.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* The term includes commitments for mental defectiveness, mental illness, and other reasons, such as drug use. *Id.*

The Brady Handgun Violence Prevention Act (the “Brady Act”) requires licensed dealers to request a background check prior to transfer of a firearm.²⁶ Background checks are performed through a search of the NICS system.²⁷ The NICS system includes three federal databases; two of these - the Interstate Identification Index and the NICS Index - contain information used to determine whether a person is disqualified from possessing firearms on the basis of mental health.

The Interstate Identification Index (III) includes mental health information that states have reported to the FBI as part of their criminal history records, such as findings of not guilty by reason of insanity or incompetence to stand trial. The NICS Index includes two files into which federal agencies and the states can enter information about individuals who have a disqualifying mental health history – the Mental Defective File and the Denied Persons File.²⁸ The Denied Persons File includes the names of individuals who are prohibited from purchasing a firearm but does not identify the reason they are prohibited.²⁹ Hence, states may avoid transferring private mental health information by identifying persons to NICS as prohibited purchasers without indicating that they are denied due to a mental health history.³⁰

Federal law does not require states to submit mental health information to NICS; participation is strictly voluntary.³¹ However, effective background checks on prospective firearm purchasers depend on having complete, accurate information in the NICS database. Therefore, to fully capture all records that would disqualify someone under federal law from purchasing or possessing firearms due to mental illness, state law should require that states report to NICS whenever a court, board, or other lawful authority:

- Determines that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself, herself, or

²⁶ 18 U.S.C. § 922(t).

²⁷ *Id.* In most states, dealers request background checks by contacting the FBI, which performs these background checks by searching NICS. Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 3-4 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>. Only 13 states – called Point of Contact states – require dealers to contact a state agency, which searches NICS and other in-state databases for information regarding the prospective purchaser. *Id.* For more information, see the section on Background Checks.

²⁸ Brand, *supra* note 6, at 10.

²⁹ *Id.*

³⁰ *Id.*

³¹ See 28 C.F.R. § 25.4.; Brand, *supra* note 6, at 5. There is considerable uncertainty regarding whether a federal statute requiring states to disclose mental health records to the FBI would violate the Tenth Amendment. In *Printz v. U.S.*, 521 U.S. 898 (1997), a 5-4 decision, the Supreme Court struck down the interim provisions of the Brady Act obligating local law enforcement officers to conduct background checks on prospective handgun purchasers. The Court held that Congress cannot compel state officials to enact or enforce a federal regulatory program. See also Legal Community Against Violence, *Lessons From Virginia Tech: Recommendations for State Law Changes to Close Loopholes in Background Check Systems* 4 n.16 (May 2007), at http://www.lcav.org/pdf/memo_re_state_loopholes.pdf.

others (even if that person is not involuntarily committed to a mental institution as a result);

- Determines that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease lacks the mental capacity to contract or manage his or her own affairs (depending on state law, this may include a finding that a person is “incapacitated” or disabled by mental illness, or it may result in the appointment of a guardian or conservator);
- Finds a person not guilty by reason of insanity, mental disease or defect, or lack of mental responsibility in a criminal case;
- Finds a person guilty but insane in a criminal case;
- Finds a person incompetent to stand trial; or
- Formally commits a person involuntarily to a mental institution or asylum for mental defectiveness, mental illness, and other reasons, such as drug use.³²

Federal and state privacy laws are frequently cited as reasons why states do not provide complete mental health records to the FBI.³³ However, the federal Health Insurance and Portability and Accountability Act of 1996 (HIPAA) and implementing regulations restrict disclosure of protected health information only by health care plans, providers, and clearinghouses.³⁴ In addition, HIPAA and its regulations permit any disclosure made:

- When authorized by the patient;
- When required by law, including state law;
- For a law enforcement purpose in response to a relevant and specific request from a law enforcement official; or
- To prevent or lessen a serious and imminent threat to the health and safety of a person or the public.³⁵

In addition, federal regulations include requirements to ensure the privacy and security of mental health records that have been submitted to NICS. Access to data stored in NICS is tightly controlled, and safeguards protect against unauthorized disclosures.³⁶

NICS Improvement Amendments Act of 2007: In January 2008, President Bush signed into law the NICS Improvement Amendments Act of 2007, which, among other things,

³² 27 C.F.R. § 478.11. Note that state laws may prohibit additional categories of persons from purchasing or possessing firearms on the basis of mental illness. Detailed information on these laws is contained in the section on Prohibited Purchasers.

³³ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Records Included in Presale Background Checks: Mental Health Records, Domestic Violence Misdemeanor Records, and Restraining Orders, 2003* (Aug. 2004); Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 8 (Nov. 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>.

³⁴ 45 C.F.R. § 164.104.

³⁵ 45 C.F.R. §§ 164.508, 164.512(a), (f), (j). State privacy laws are similar. See *Mass Shootings at Virginia Tech*, *supra* note 7, at 65. LCAV has not conducted an independent survey of all 50 states’ privacy laws with respect to mental health records.

³⁶ 28 C.F.R. § 25.1, *et seq.*

provides financial incentives for states to provide to NICS information relevant to whether a person is prohibited from possessing firearms, including the names and other relevant identifying information of persons adjudicated as a mental defective or those committed to mental institutions.³⁷

The Act also changes the standard for persons deemed to be “adjudicated as a mental defective” or “committed to a mental institution” by a federal agency or department. Such adjudications or commitments by federal agencies and departments are “deemed not to have occurred” for purposes of the federal prohibition against purchase or possession of firearms if:

- The adjudication or commitment has been “set aside or expunged;”
 - The person has been “fully released or discharged from all mandatory treatment, supervision, or monitoring;”
 - A court, board, commission, or other lawful authority has found the person no longer suffers from the mental health condition that was the basis of the adjudication or commitment;
 - The person has been found to be rehabilitated “through any procedure available under law;”
 - The adjudication or commitment was based solely on a medical finding of disability without a hearing before a court, board, commission, or other lawful authority, and the person has not otherwise been adjudicated a mental defective;
- or
- The person has been granted “relief” under a “relief from disabilities” program established by the federal agency or department in accordance with the Act’s requirements.³⁸

Under the Act, states are eligible to receive a waiver of the 10% matching requirement for National Criminal History Improvement Grants³⁹ if they certify to the Attorney General at least once every two-year period that they have provided at least 90% of relevant records concerning persons who are prohibited from purchasing or possessing a firearm.⁴⁰ The Act also authorizes the Attorney General to make grants to the states for use in establishing and upgrading the states’ ability to report information, including mental health information, to NICS and to perform background checks pursuant to the Brady Act.⁴¹

³⁷ Pub. L. No. 110-180, §§ 102, 104, 121 Stat. 2559 (2008).

³⁸ *Id.*, §§ 101(c)(1)(A), (1)(B), (1)(C), (2)(B). Under prior law the prohibition on persons “adjudicated as a mental defective” or “committed to a mental institution” was permanent.

³⁹ *See generally* 42 U.S.C. § 14601. National Criminal History Improvement Grants are grants made by the federal government to states for programs to upgrade their criminal history record information systems. The federal grant may not exceed 90% of the costs of the program incurred by a state. *Id.*, § 14601(d).

⁴⁰ *Id.*, § 102. The Act also authorizes the Attorney General to withhold a certain percentage of the funding the state would receive under the Omnibus Crime Control and Safe Streets Act of 1968 for states that fail to submit a certain percentage of their relevant records. *Id.* § 104.

⁴¹ *Id.*, § 103(a), (b).

However, in order to be eligible for the grants authorized by the Act, a state must implement a “relief from disabilities” program that meets the Act’s requirements.⁴² More specifically, the state program must:

- Allow a person who has been adjudicated a mental defective or committed to a mental institution to apply to the state for “relief” from the federal prohibition on purchase and possession of firearms and ammunition;⁴³
- Provide that a state court, board, commission, or other lawful authority shall grant a person this “relief” (thereby making the person once again eligible to purchase and possess firearms), “pursuant to State law” and in accordance with due process;⁴⁴
- Provide that a state court, board, commission, or other lawful authority will grant the relief if the circumstances regarding the adjudication or commitment, and the person's record and reputation, are “such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest”;⁴⁵ and
- Permit a person whose application for relief is denied to file a petition with the appropriate state court for judicial review of the denial.⁴⁶

The Act provides that when an application for relief is granted under a state program, the adjudication or commitment that formerly rendered the person prohibited from purchasing or possessing firearms is then “deemed not to have occurred” for purposes of federal law.⁴⁷

In addition, the Act requires the Attorney General to establish regulations and protocols for protecting the privacy of mental health information provided by states to NICS.⁴⁸ The Attorney General must work with states, local law enforcement, and the mental health community to establish these regulations and protocols, and must meet with any mental health group seeking to express its views concerning them.⁴⁹

⁴² *Id.*, § 103(c)

⁴³ *Id.*, § 105(a)(1).

⁴⁴ *Id.*, § 105(a)(2).

⁴⁵ *Id.*

⁴⁶ *Id.*, § 105(a)(3).

⁴⁷ *Id.*, § 105(b).

⁴⁸ *Id.*, § 102(d).

⁴⁹ LCAV publicly has expressed concerns about the NICS Improvement Amendments Act of 2007, including: (1) the Act changes the standard by which mental health records are required to be submitted to NICS by federal agencies, which will result in far fewer records being submitted; and (2) the Act requires that federal agencies, and states that participate in the grant program, create relief from disability programs to restore the rights of some prohibited purchasers with mental health histories. Overall, the bill creates new loopholes that may allow dangerous individuals to gain access to firearms. *See Legal Community Against Violence, House of Representative Passes “NICS Improvement Act of 2007” with Troubling Amendments (June 15, 2007) at: http://www.lcav.org/pdf/HR_2640.pdf.*

**SUMMARY OF STATE LAWS GOVERNING THE REPORTING OF MENTAL
HEALTH INFORMATION⁵⁰**

States that Authorize or Require Reporting of Mental Health Records to NICS

Alabama	Ala. Code § 22-52-10.8
Colorado	Colo. Rev. Stat. §§ 13-5-142, 13-9-123, 15-14-102, 18-4-412(4), 19-1-304
Connecticut	Conn. Gen. Stat. §§ 17a-500(b), 29-36f(b)(8), 29-36l, 29-38b
Florida	Fla. Stat. Ann. § 790.065
Georgia	Ga. Code Ann. §§ 16-11-172(b), 35-3-34(e); Ga. Comp. R & Regs. 140-2-.17(6)
Illinois	430 Ill. Comp. Stat. 65/3.1, 65/4(3), 65/8.1; 740 Ill. Comp. Stat. 110/12(b)
Iowa	Iowa Code §§ 690.4, 692.17, 724.17
Kansas	Kan. Stat. Ann. §§ 59-2946, 75-7c25
Maine	Me. Exec. Order No. 02 FY 08/09 (July 3, 2007)
Michigan	Mich. Comp. Laws §§ 28.422, 28.243, 330.1464a, 700.5107, 769.16a – 769.16b; Mich. Admin. Code r. 28.5306
Missouri	Mo. Rev. Stat. §§ 43.503(6), 43.543, 552.030(7), 610.120(1), 630.140
Virginia	Va. Code Ann. §§ 19.2-389, 19.2-390, 37.2-819, 37.2-1014; Va. Exec. Order No. 50 (April 30, 2007)
Washington	Wash. Rev. Code Ann. §§ 9.41.040, 9.41.090, 9.41.094, 9.41.097, 9.41.170, 10.97.030(4), 10.97.045, 43.43.745(3); 71.05.390(17), 71.34.340

States that Authorize or Require Reporting of Mental Health Records for In-State Transfers Only

Arkansas	Ark. Code Ann. §§ 5-2-310(b), 5-2-314, 20-47-214, 20-47-215, 2007 Ark. Acts 463, 2007 Ark. S.B. 184 (March 23, 2007)
California	Cal. Welf. & Inst. Code §§ 8100, 8103 – 8105; Cal. Penal Code § 12076
Delaware	Del. Code Ann. tit. 11, §§ 1448A(a), 8509; tit. 16, §§ 5001, 5161

(continued on next page)

⁵⁰ Many states report findings of not guilty by reason of insanity or incompetence to stand trial as part of their criminal history information to the Interstate Identification Index (III). The Bureau of Justice Statistics has determined that mental health information appears in the criminal histories of the following 24 states: Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Iowa, Maine, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, Oklahoma, South Dakota, Tennessee, Utah, Vermont, Virginia, and Washington. Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Procedures Related to Firearm Sales, 2005* 84 (Nov. 2006) at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ssprfs05.pdf>. In some cases these states have no statute or formal regulation requiring this reporting. As a result, it is not clear that the records submitted are complete.

States that Authorize or Require Reporting of Mental Health Records for In-State Transfers Only (continued from previous page)

Hawaii	Haw. Rev. Stat. Ann. §§ 134-3.5, 334-2.5(c)(4); 334-60.2, 704-406, 704-411
Maryland	Md. Code Ann., Health-Gen. § 10-605; Md. Code Ann., Pub. Safety §§ 5-117, 5-118, 5-121; Md. Code Regs. 29.03.01.11(9), 29.03.01.26(5)
Massachusetts	Mass. Gen. Laws ch. 123, § 36; ch. 140, §§ 129B(2), 131(e)
Minnesota	Minn. Stat. §§ 245.041, 253B.09, 624.7131, 624.7132,
Nebraska	Neb. Rev. Stat. Ann. §§ 69-2409.01, 69-2402, 69-2410
New Jersey	N.J. Stat. Ann. § 2C:58-3; N.J. Admin. Code §§ 10:7-7.1, 13:54-1.4 – 13:54-1.6
New York	N.Y. Penal Law §§ 265.00 – 265.01, 400.00; N.Y. Crim. Proc. Law §§ 330.20, 730.60; N.Y. Correct. Law § 439; N.Y. Mental Hyg. Law § 9.11; N.Y. Comp. Codes R. & Regs. tit. 14, § 541.2
Oregon	Or. Rev. Stat. §§ 166.412, 166.432, 426.130
Pennsylvania	18 Pa. Cons. Stat. §§ 6109(i.1), 6111, 6111.1; 37 Pa. Code §§ 33.103(e), 33.120
Utah	Utah Code Ann. § 53-10-208.1
Wisconsin	Wis. Stat. § 51.20(13)(cv)(4)

States that Require a Transferee to Authorize Disclosure of Mental Health Records

Illinois	430 Ill. Comp. Stat. 65/4(3)
Hawaii	Haw. Rev. Stat. Ann. §§ 134-2(c), 134-3.5(2)
Maryland	Md. Code Regs. 29.03.01.03(A)(8)
Minnesota	Minn. Stat. § 624.7131
New Jersey	N.J. Stat. Ann. § 2C:58-3(e)
Washington	Wash. Rev. Code Ann. § 9.41.094

Description of State Laws Regarding Mental Health Reporting

1. *States that Authorize or Require Reporting of Mental Health Records to NICS:*
The following 13 states have statutes or formal regulations explicitly requiring or authorizing submission of at least some mental health records to the FBI for inclusion in NICS: Alabama, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Michigan, Missouri, Virginia, and Washington.⁵¹

⁵¹ This description reflects only state statutes and formal regulations explicitly authorizing or requiring the disclosure of mental health records to NICS and state agencies. State agencies may have informal policies or procedures that authorize or require additional reporting. In addition, states may have entered into informal agreements with the FBI regarding submission of records to NICS. Brand, *supra* note 5, at 12. Because they are likely to be unpublished, LCAV has not completed a survey of these informal policies, procedures, and agreements.

a. *States that Require Reporting of At Least Some Mental Health Records to NICS:* Eight states have statutes or regulations that make reporting of certain mental health information to NICS mandatory: Alabama, Colorado, Connecticut, Georgia, Illinois, Iowa, Kansas, and Maine.

- *States that require the reporting of all relevant mental health records to NICS:* Connecticut and Illinois both require state agencies to report to NICS all persons prohibited by federal law from purchasing or possessing a firearm due to mental illness.

Connecticut: In Connecticut, the Department of Public Safety is required to report to NICS' Denied Persons File the name, date of birth and physical description of any person "prohibited from possessing a firearm" pursuant to federal law. The Department of Public Safety, the Department of Mental Health and Addiction Services, and Judicial Department are required to enter into a memorandum of understanding with the FBI for the purpose of implementing NICS.

Illinois: In 2007 Illinois enacted a law requiring the Department of State Police (DSP) and the Department of Human Services, in accordance with state and federal law regarding confidentiality, to enter into a memorandum of understanding with the FBI for the purpose of implementing NICS.⁵² Effective June 1, 2008, the DSP must report the name, date of birth, and physical description of any person prohibited from possessing a firearm pursuant to Illinois or federal law to the NICS Denied Persons File. Court clerks, the Department of Human Services, and all public or private hospitals and mental health facilities are required to inform the DSP of any such individual.⁵³ The information disclosed is deemed privileged and confidential, and must be provided in such a way as to guarantee that no information is released beyond what is necessary to determine the eligibility of the person to possess a firearm.⁵⁴

- *States that require the reporting of some, but not all, mental health records to NICS:* Six states (Alabama, Colorado, Georgia, Iowa, Kansas, and Maine) require reporting of some, but not all, mentally ill persons prohibited by federal law from purchasing or possessing firearms to the NICS database.⁵⁵

Alabama: Alabama requires judges who enter final orders for involuntary commitment for inpatient treatment to the Department of Mental Health and Mental Retardation or a Veterans' Administration hospital, to forward such orders to the state's

⁵² 2007 Ill. Laws 564, S.B. 940, Public Act 95-564, § 5 (Aug. 31, 2007) (amending 430 Ill. Comp. Stat. 65/3.1).

⁵³ *Id.* § 10 (amending 740 Ill. Comp. Stat. 110/12); 2007 Ill. Laws 581, S.B. 1094, Public Act 95-581, § 5 (Aug. 31, 2007) (amending 430 Ill. Comp. Stat. 65/8.1).

⁵⁴ 740 Ill. Comp. Stat. 110/12(b).

⁵⁵ For the number of records submitted by each state to the Mental Defective File as of April 30, 2007, see Brand, *supra* note 6, at 11. Note that states can alternatively submit the names of persons disqualified from firearm purchase and possession to the Denied Persons File without identifying the reason they are disqualified. *Id.* at 10. It is not clear how many names of persons disqualified for mental health reasons the states have submitted to the Denied Persons File. *Id.*

Criminal Justice Information Center. This requirement applies only to commitment orders based on evidence that the person has a history of inappropriate use of firearms or poses a threat to use firearms inappropriately. The Criminal Justice Information Center must enter the information into the NICS Denied Persons File.

Colorado: In Colorado, court clerks are required to report periodically to NICS the name of each person determined by the court to be: incapacitated; committed to the custody of the Division of Alcohol and Drug Abuse in the Department of Human Services; ordered for involuntary certification for short-term treatment of mental illness; ordered for extended certification for treatment of mental illness; or ordered for long-term care and treatment for mental illness.

Georgia: In Georgia, court clerks are required to provide the Georgia Crime Information Center with information regarding all individuals adjudicated mentally incompetent to stand trial or not guilty by reason of insanity, or involuntarily hospitalized as an inpatient as a risk to self or others, or unable to care for himself or herself.⁵⁶ However, the Center is required to forward to NICS only information concerning persons involuntarily hospitalized; it is authorized to forward other information to NICS.

Iowa: In Iowa, the warden of the Iowa Medical and Classification Center must forward to the state Department of Public Safety and the FBI fingerprint records and photographs of persons committed to that institution.

Kansas: Kansas requires all district courts to forward all orders of involuntary commitment for care and treatment to the Kansas Bureau of Investigation for entry into “the appropriate state and federal databases.”

Maine: On July 3, 2007, the Governor John Baldacci of Maine issued an Executive Order requiring the Maine Department of Public Safety to work cooperatively with the Judicial Branch to collect the identities of individuals determined by a court to be not guilty by reason of insanity or not competent to stand trial in a criminal matter. The Department must then work with the FBI to transmit this information to NICS.⁵⁷

b. *States that Authorize Reporting of Mental Health Records to NICS:* The following five states authorize, but do not require, reporting of certain mentally ill individuals to NICS: Florida, Michigan, Missouri, Virginia and Washington. Only Florida authorizes the reporting of all relevant disqualifying mental health information.⁵⁸

Florida: Effective February 1, 2007, court clerks in Florida must submit to the Department of Law Enforcement for entry into an automated database the names of persons

⁵⁶ Georgia maintains records of involuntary hospitalizations only for five years.

⁵⁷ The Maine Executive Order also created a Task Force to evaluate the state record systems as they relate to the timely transmission to federal officials of final adjudication rulings concerning involuntary mental health commitments. Me. Exec. Order No. 02 FY 08/09 (July 3, 2007).

⁵⁸ Many states report fewer records to NICS than their laws allow. See Brand, *supra* note 6, at 11-12. For this reason, state laws that authorize but do not require the reporting of mental health records to NICS are less effective in terms of ensuring that complete information is reported to NICS.

who are prohibited from purchasing a firearm based on adjudications of mental defectiveness or commitments to mental institutions.⁵⁹ The Department is authorized to disclose the collected data to agencies of the federal government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer.⁶⁰

Michigan: In Michigan, upon entry of a court order directing that an individual be involuntarily hospitalized or involuntarily undergo a program of alternative treatment or a program of combined hospitalization and alternative treatment, the court must immediately order the Department of State Police to enter the court order into the Law Enforcement Information Network (LEIN). Findings of legal incapacity and not guilty by reason of insanity are treated in the same manner. The FBI has access to this information.⁶¹

Missouri: In 2007, Missouri enacted a law making available to the Missouri State Highway Patrol for reporting to NICS the records and files of any person detained because of a mental disorder who presents a likelihood of serious harm to himself or to others.⁶²

Virginia: In Virginia, the chief law enforcement officer of a county or city must ensure that any acquittal by reason of insanity is reported to the Department of State Police (DSP). In addition, court clerks are required to certify and forward a copy of all court orders requiring involuntary commitment of an individual, or containing a finding that an individual is “incapacitated,” to DSP.⁶³ DSP is then authorized to forward this information to the FBI for inclusion in the NICS database.⁶⁴ In response to the Virginia Tech tragedy, Virginia Governor Timothy Kaine issued an Executive Order on April 30, 2007 directing all executive branch employees and law enforcement to consider court-ordered outpatient treatment as involuntary admission to a mental health facility, and to report it to the State Police and NICS.⁶⁵

⁵⁹ Florida defines “adjudicated as a mental defective” or “committed to a mental institution” as those terms are defined under federal law.

⁶⁰ While Florida law allows the disclosure of all relevant mental health records to NICS, it is not clear to what extent these records have been submitted to NICS.

⁶¹ Mich. Admin. Code r. 28.5306 grants a federal criminal justice agency access to LEIN data under certain conditions.

⁶² 2007 Mo. S.B. 3 § A (approved by Governor July 13, 2007) (amending Mo. Rev. Stat. § 630.140).

⁶³ The definition of “incapacitated” under Virginia law is not as broad as the definition of “mental defective” under federal law. Virginia law defines “incapacitated person” as an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to: (i) meet the essential requirements for his or her health, care, safety, or therapeutic needs without the assistance or protection of a guardian; or (ii) manage property or financial affairs or provide for his or her support or for the support of his or her legal dependents without the assistance or protection of a conservator. Va. Code Ann. §§ 18.2-308.1:2, 37.2-1000. A person found to be a danger to himself, herself, or others is a “mental defective” under federal law, but is not necessarily “incapacitated” under Virginia law. See 27 C.F.R. § 478.11.

⁶⁴ A 2002 Virginia Attorney General Opinion determined that the Department of State Police is authorized to provide mental health information to the FBI so long as the information is kept confidential and used only to determine a person’s eligibility to possess, purchase or transfer a firearm. Va. Att’y Gen. Op. No. 01-062, 2002 Va. AG LEXIS 72 (April 4, 2002).

⁶⁵ Va. Exec. Order No. 50 (April 30, 2007).

Washington: In Washington, information and records regarding involuntary commitments in excess of 14 days may be disclosed only for specified purposes, including to law enforcement officers as necessary to enforce the prohibition against firearm possession.⁶⁶ In addition, an application to purchase a handgun constitutes a waiver of confidentiality and written request that the Department of Social and Health Services, Mental Health Institutions and Other Facilities release information relevant to the person's eligibility to purchase a handgun.

2. *States that Authorize or Require Reporting of Mental Health Records to an In-State Database Only:* Fourteen states (Arkansas, California, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Utah, and Wisconsin) collect some of their own state mental health records and check them prior to approving a firearm transfer, even though they have no statute or formal regulation authorizing submission of that information to NICS.⁶⁷ This ensures that a background check will identify mentally ill individuals whose records have been reported in the state where the mental health record exists, but will not prevent such a person from purchasing a firearm in another state. Nine states (California, Delaware, Hawaii, Massachusetts, New Jersey, Oregon, Pennsylvania, Utah, and Wisconsin) search in-state mental health records in connection with all firearm transfers; five states (Arkansas, Maryland, Minnesota, Nebraska and New York) search records only for transfers of certain firearms. None of these states authorize or require the collection of the records of all mentally ill persons prohibited by federal law from possessing firearms.

a. *States that Search In-State Mental Health Records For Transfers of All Types of Firearms:* Arkansas, California, Delaware, Hawaii, Massachusetts, New Jersey, Oregon, Pennsylvania, Utah, and Wisconsin collect some mental health information in a state database for use in connection with firearm transfers. In all of these states except Arkansas a state agency is required to search that database prior to transfers of all types of firearms.⁶⁸ None of these states explicitly authorize or require submission of this information to NICS.⁶⁹

⁶⁶ For an extensive discussion of Washington's laws regarding the reporting of mental health information for firearm transfers, see Rob McKenna, Attorney General of the State of Washington, *White Paper: Restricting Access to Firearms by Persons with Mental Health Commitments in Washington State* (Dec. 13, 2007), at [http://www.atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2007/White%20Paper%20FINAL%20\(Complete\)%20\(12-13-07\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2007/White%20Paper%20FINAL%20(Complete)%20(12-13-07).pdf).

⁶⁷ In addition, Ohio and Oklahoma gather mental health information, but state law requires them to utilize this information only when issuing concealed handgun permits. Ohio Rev. Code Ann. §§ 2923.129(B)(1), 5122.311; Ohio Admin. Code 109:5-3-01; Okla. Stat. tit. 21, § 1290.12(A)(11). Arizona, Kentucky, Louisiana and the District of Columbia report mental health information to a centralized database, but there is no indication in statutes or regulations for these jurisdictions that the database is used in connection with firearm transfers or sent to the FBI. Ariz. Rev. Stat. § 36-540(N); Ky. Rev. Stat. Ann. § 202B.200, 17.150; La. Rev. Stat. Ann. §§ 15:578, 15:590, 15:591; D.C. SCR-MH Rule 6.

⁶⁸ Arkansas law is ambiguous with respect to the circumstances under which its database of mental health records created for use in connection with firearm transfers is searched.

⁶⁹ In addition, in North Carolina, a report of the disposition of criminal charges must be made to the State Bureau of Investigation within 60 days. N.C. Gen. Stat. § 15A-1382. A "disposition" may be a finding of a defendant's incapacity to proceed, or a verdict of not guilty on the ground that the defendant was insane at the time of the commission of the offense charged. *Id.*, § 15A-1381. An applicant for a permit to purchase

Arkansas: In 2007, Arkansas enacted a law stating that its purpose is to require the submission of information to a confidential database that may only be used for firearm sales or transactions.⁷⁰ The law requires a court clerk to forward to the Arkansas Crime Information Center a copy of any order:

- Finding that a defendant lacks the capacity to understand the proceeding against him or her or to assist effectively in his or her own defense as a result of mental disease or defect;
- Committing a person acquitted of a crime by reason of a mental disease or defect, who continues to be affected by the mental disease or defect, to the custody of the director of the Department of Health and Human Services for an examination by a psychiatrist or a licensed psychologist;
- Detaining a person for treatment for 45 days after determining that a person is a danger to self or others; or
- Detaining a person beyond 45 days because he or she continues to be a danger to self or others.

These orders must be submitted to the Center as soon as they are filed with the court. The statute does not indicate whether these orders are searched prior to all in-state firearm transfers or whether the orders are reported to NICS.

California: In California, with certain limited exceptions, courts must immediately report to the state Department of Justice when they adjudicate someone to be a danger to others as a result of a mental disorder or mental illness, a mentally disordered sex offender, not guilty of a crime by reason of insanity, or mentally incompetent to stand trial. Mental health facilities must immediately report to the state Department of Justice whenever, as a result of a mental disorder or impairment by chronic alcoholism, any individual is taken into custody and determined to be a danger to him or herself or others or gravely disabled. Licensed psychotherapists also are required to report to local law enforcement the identity of a person who communicates a serious threat of physical violence against a reasonably identifiable victim or victims. The Department of Mental Health and mental health facilities must also make available to the Department of Justice all records pertinent to whether a person receiving inpatient treatment is a danger to self or others, even if that person consented to the treatment. These reports from mental health facilities, the Department of Mental Health, and psychotherapists may only be used to determine the person's eligibility to possess a firearm.

Delaware: Delaware requires every person in responsible charge of an institution to transmit to the State Bureau of Identification the names, dates of birth and social security numbers of all adults committed to that institution who have been declared to be not guilty by reason of mental illness or incompetent to stand trial for criminal offenses, or involuntarily committed as mentally ill. Delaware law requires any licensed dealer to

a handgun must sign a release authorizing the sheriff to access this information before issuing a permit to purchase a handgun. *Id.*, § 14-415.13. For additional information regarding the reporting of mental health information as part of criminal histories, see *supra* note 50.

⁷⁰ 2007 Ark. Acts 463, 2007 Ark. S.B. 184 (Mar, 23, 2007).

request an “involuntary commitment of an adult” record check from the State Bureau of Identification before any firearm is transferred.

Hawaii: In Hawaii, the Department of Health is required to keep a medical record of each person committed to the custody of the department or hospitalized because the person is dangerous and there is no less restrictive alternative available, because he or she lacks fitness to proceed in a criminal case, or because he or she has been acquitted on grounds of mental disorder or defect, is dangerous and is not a proper subject for conditional release. Individuals seeking to purchase a firearm must waive their rights to confidentiality with respect to certain mental health records and allow mental health providers to disclose this information.

New Jersey: Individuals in New Jersey seeking to purchase a firearm must obtain either a permit to purchase a handgun or a firearms purchaser identification card. Applicants for these permits and cards must sign a waiver of their rights to confidentiality of mental health records. A state regulation requires the “county adjuster” to search for any history of psychiatric admissions of these individuals within the county.

Massachusetts: In Massachusetts, a person must obtain a Class A or B license or a Firearm Identification Card before purchasing a firearm. The Colonel of State Police is charged with determining whether applicants are eligible for these licenses and cards. The Department of Mental Health is required keep records of all persons admitted to facilities under its supervision, and in searching for any disqualifying history of an applicant for a Class A or B license or a Firearm Identification Card, the Colonel must utilize the files maintained by the Department of Mental Health.

Oregon: Oregon requires courts to report all mentally ill individuals who appear reasonably likely to constitute a danger to themselves or others or the community at large to the sheriff of the county, who enters the information into the Law Enforcement Data System. In addition, the Department of Human Services must provide the Department of State Police with direct electronic access to information identifying these individuals, as well as other individuals committed to the Department of Human Services. All background checks include a search of the Law Enforcement Data System and the “Oregon mental health data system.”

Pennsylvania: Pennsylvania requires judges, mental health review officers, and county mental health and mental retardation administrators to notify the Pennsylvania State Police of the identity of any person adjudicated incompetent or involuntarily committed to a mental institution for inpatient care and treatment.

Utah: Utah requires magistrates and court clerks to report all orders of civil involuntary commitment and judgments of “guilty and mentally ill” and “not guilty by

reason of insanity” to the Criminal Investigations and Technical Services Division of the state Bureau of Criminal Identification, which maintains criminal records.⁷¹

Wisconsin: Wisconsin requires court clerks to report to the Wisconsin Department of Justice when a person is involuntarily committed and there is a substantial probability that the person may use a firearm to cause physical harm to him or herself or to endanger public safety.

b. States that Search In-State Mental Health Records For Some Firearm Transfers Only: Four states – Maryland, Minnesota, Nebraska and New York – collect some mental health records for purposes of conducting background checks in connection with certain in-state firearm transfers. None of these states authorize or require the collection of the records of all mentally ill persons prohibited by federal law from possessing firearms.

Maryland, Nebraska and New York require a search of mental health commitments prior to transfer of a handgun, but not other firearms. Minnesota requires a search of mental health commitments prior to transfers of handguns and assault weapons only.

Maryland: Maryland requires any facility that admits an individual with a mental disorder to submit a report to the State Department of Health and Mental Hygiene within 10 days after admission. Maryland’s privacy laws appear to prohibit the use of the Department’s records for use in background checks.⁷² As a result, the firearm application form used by the State Police requires handgun applicants to authorize release of their mental health records.⁷³

Minnesota: The Minnesota Commissioner of Human Services receives a copy of any commitment order through the state’s Supreme Court information system whenever a patient is committed to a state-operated facility for persons who are mentally ill, or to a treatment program or facility other than a state-operated program or facility. The Commissioner must provide commitment information to local law enforcement agencies by means of electronic data transfer through the Minnesota Crime Information System when individually requested for the sole purpose of facilitating a background check for purchasers of handguns or assault weapons. A person seeking to purchase a handgun or assault weapon must authorize the release of this information for this purpose.

⁷¹ Although Utah law prohibits a person from possession of firearms if he or she has been “adjudicated as mentally defective as provided in” the Brady Act, Utah law does not explicitly require courts to report these adjudications. Utah Code Ann. § 76-10-503(1)(b)(vii).

⁷² Md. Code Ann., Health-Gen. § 4-307 governs the privacy of mental health records, and makes no provision for release of information for the purpose of background checks for firearm transfers.

⁷³ Lisa Rein, *Md. Mental Records to be Checked in Gun Buys; State Requirement is Adopted After Va. Tech Shootings*, Wash. Post, Sept. 18, 2007, at B01. In addition, a court must notify the Criminal Justice Information System Central Repository of any commitment ordered upon a determination that a defendant is incompetent to stand trial, or a determination that a person is not criminally responsible because of a mental disorder or mental retardation. State law is unclear, however, as to whether this information affects firearm transfers. Md. Code Ann., Crim. Proc. §§ 3-106(h); 3-112(d).

Nebraska: The Nebraska Department of Health and Human Services maintains a database of all persons ordered committed by the various courts or mental health boards after a determination that the person is or will be dangerous to himself or herself or others by reason of mental illness or defect. Court clerks are required to furnish this information to the Department within 30 days of the order of commitment.⁷⁴ Any such information maintained or disclosed is confidential and may not be utilized for any purpose other than determining the person's eligibility to possess a handgun.

New York: In New York, local law enforcement may access the records of the Department of Mental Health to verify that an applicant for a license to purchase a handgun is not prohibited from possessing a handgun.⁷⁵ The Commissioner of Mental Health may require the director of a hospital that admits a mentally ill person to forward information about the person to the Department of Mental Health within 5 days. In addition, orders of commitment following a verdict or plea of not responsible "by reason of mental disease or defect" are directed either to the Commissioner of Mental Health or the Commissioner of Mental Retardation and Development Disabilities. A similar requirement applies when a local criminal court issues an order of commitment upon a finding that a defendant lacks fitness to proceed, and when a person in the custody of the department of corrections is committed to an institution for the mentally retarded.

3. *States that Require a Transferee to Authorize Disclosure of Mental Health Records:* State privacy laws may limit the disclosure and release of mental health records. As a result, five states (Hawaii, Illinois, Maryland, Minnesota, and New Jersey) require applicants for firearm licenses or persons seeking to purchase firearms to authorize disclosure of mental health information.⁷⁶ Hawaii, Illinois and New Jersey require persons applying for licenses to purchase firearms to agree to the disclosure of mental health records. In Minnesota persons applying for a permit to purchase a handgun or assault weapon are required to authorize the disclosure of mental health records.⁷⁷ Maryland requires a person purchasing a handgun from a licensed dealer to authorize disclosure of all such records.

⁷⁴ This information is not retained for persons who have been discharged from those commitments more than five years previously.

⁷⁵ Also, the director or physician in charge of a hospital or institution for mental illness may certify to law enforcement that certain persons are not suitable to possess a long gun. Whenever a person is so certified, a member of the police department to which such certification is made, or of the state police, must then seize any rifle or shotgun possessed by such person. N.Y. Penal Law §§ 265.00(16), 265.01.

⁷⁶ Under Washington law, an application to purchase a handgun is deemed a waiver of confidentiality with respect to mental health records.

⁷⁷ For more information on state licensing laws, see section on Licensing of Gun Owners or Purchasers.

SUMMARY OF SELECTED⁷⁸ LOCAL LAWS REGARDING MENTAL HEALTH REPORTING

Local Laws Regarding Mental Health Reporting

New York City

New York, N.Y., Admin. Code § 10-303

New York City requires the Department of Mental Hygiene to make its records available for inspection by an officer of the police department who is investigating an applicant for a permit to purchase and possess a rifle or shotgun.

FEATURES OF COMPREHENSIVE MENTAL HEALTH REPORTING LAW

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

- State law requires reporting to the FBI for inclusion in NICS all persons prohibited by federal law from purchasing or possessing a firearm due to mental illness, as determined by a court, public or private hospital, institution, or mental health facility (*Connecticut, Illinois*)
- Complete reporting by states to the FBI for inclusion in NICS of all persons prohibited by federal law from purchasing or possessing a firearm due to mental illness includes the following:
 - A determination that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself, herself, or others (even if that person is not involuntarily committed to a mental institution as an inpatient or outpatient as a result) (*Connecticut, Illinois, Virginia*);
 - A determination that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease lacks the mental capacity to contract or manage his or her own affairs (*Connecticut, Illinois*);

⁷⁸ 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."

- A finding that a person is not guilty by reason of insanity, mental disease or defect, or lack of mental responsibility in a criminal case (*Connecticut, Illinois, Maine*);
- A finding that a person is guilty but insane in a criminal case;
- A finding that a person is incompetent to stand trial (*Connecticut, Illinois, Maine*); and
- An order formally committing a person involuntarily to a mental institution or asylum for mental defectiveness, mental illness, or other reasons, such as drug use (*Colorado, Connecticut, Georgia, Illinois, Kansas*).
- Mental health records are reported to NICS immediately upon an adjudication or commitment that renders a person prohibited from purchasing or possessing a firearm (*Alabama, Illinois, Kansas*)
- In jurisdictions where use and disclosure of mental health information may violate privacy laws, all applications for firearm transfers include a waiver of confidentiality to permit release of mental health records for the limited purpose of determining eligibility to obtain a firearm (*Illinois, Hawaii, Maryland (handguns only), Minnesota (handguns and assault weapons), New Jersey*)

Waiting Periods

Background

Laws imposing waiting periods require that a specified number of days elapse between the time a firearm is purchased and it is physically transferred to the purchaser. The purpose of a waiting period is to: (1) give law enforcement officials sufficient time to perform a background check; and (2) provide a "cooling off" period to help guard against impulsive acts of violence.

Summary of Federal Law

There is no federal waiting period. Under the National Instant Criminal Background Check System (NICS), a dealer may transfer a firearm to a prospective purchaser as soon as he or she passes a background check.¹ If the FBI is unable to complete a background check within three business days, the dealer may complete the transfer by default.²

Federal law does not require private sellers to perform background checks on gun purchasers. Accordingly, persons purchasing firearms from private sellers may take immediate possession of their weapons, unless state or local law provides otherwise.³

SUMMARY OF STATE LAWS GOVERNING WAITING PERIODS

Twelve states and the District of Columbia currently have waiting periods that apply to the purchase of some or all firearms.

States Imposing Waiting Periods for Purchases of All Firearms

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
California	10 days	Cal. Penal Code §§ 12071(b)(3)(A), 12072(c)(1)
Hawaii	14 days	Haw. Rev. Stat. Ann. § 134-2(e)
Illinois	24 hours (long guns) 72 hours (handguns)	720 Ill. Comp. Stat. 5/24-3(A)(g)
Rhode Island	7 days	R.I. Gen. Laws §§ 11-47-35(a)(i), 11-47-35.1, 11-47-35.2

States Imposing Waiting Periods for Purchases of Handguns and Assault Weapons

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
Maryland	7 days	Md. Code Ann., Pub. Safety §§ 5-123, 5-124
Minnesota	7 days ⁴	Minn. Stat. § 624.7132, subd. 4, subd. 12

¹ 18 U.S.C. § 922(t)(1).

² *Id.* See section on Background Checks for more information on default proceeds.

³ Detailed information about private sales is contained in the section on Private Sales.

⁴ Minn. Stat. § 624.7132, subd. 4 is unclear with respect to the length of the waiting period, referring both to a "five business day waiting period" and a "seven day waiting period."

States Imposing Waiting Periods for Handguns Only

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
District of Columbia ⁵	48 hours	D.C. Code Ann. § 22-4508
Florida	3 days ⁶	Fla. Stat. Ann. § 790.0655(1); Fla. Const. art. I, § 8(b)
Iowa	3 days	Iowa Code § 724.20
New Jersey	7 days	N.J. Stat. Ann. §§ 2C:58-2a(5)(a), 2C:58-3f
South Dakota	48 hours	S.D. Codified Laws § 23-7-9
Wisconsin	48 hours	Wis. Stat. §§ 175.35(2)(d), 175.35(2g)(c)4.c

States Imposing Waiting Periods for Long Guns Only

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
Connecticut	2 weeks	Conn. Gen. Stat. § 29-37a

Description of State Laws Governing Waiting Periods

In addition to the District of Columbia, twelve states currently have laws requiring waiting periods: California, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Jersey, Rhode Island, South Dakota and Wisconsin.

1. *States Imposing a Waiting Period on All Firearm Purchases:* California and Rhode Island impose a statutory waiting period on all firearm purchases. Subject to limited exceptions, California requires a ten-day waiting period for all firearm purchases.⁷ Rhode Island imposes a seven-day waiting period for all purchases of firearms unless the purchaser is a concealed handgun license holder or a law enforcement officer. However, the seller must deliver the firearm to the purchaser if within seven

⁵ Note that the District of Columbia bans possession of handguns except in very limited circumstances. 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. Additional information on the District of Columbia's law prohibiting possession of handguns is contained in the section on Banning Handguns.

⁶ Florida's three-day waiting period excludes weekends and legal holidays.

⁷ In California, if the background check information received is incomplete, preventing the background check from being approved or denied within the ten-day period, the California Department of Justice (DOJ) may notify the dealer of that fact. Cal. Penal Code § 12076(d)(4), (5). The DOJ interprets this provision to allow (but not require) DOJ to notify the dealer to delay the transfer until the background check can be completed.

days he or she does not receive background check information that would disqualify the potential buyer from purchasing the firearm.

In Hawaii, all firearm purchases require issuance of a permit. No permit may be issued earlier than 14 calendar days after the date of the application, except for sales to state or federally licensed dealers, law enforcement officers, persons with a license to carry a handgun, or where a firearm is brought into the state and registered in accordance with the state's registration statute.⁸ All permits must be issued or the application denied before the twentieth day from the date of application. Permits issued for long guns can be used for subsequent purchases of long guns for one year from date of issuance.

In Illinois, it is unlawful for anyone to deliver a firearm prior to the expiration of the statutory waiting periods, which are 24 hours for long guns and 72 hours for handguns. The Department of State Police must approve the transfer or inform the dealer of the applicant's ineligibility within these waiting periods. The waiting periods begin to run at the time an application to purchase the firearm is made. "Application" is defined to mean "when a buyer and seller reach an agreement to purchase a firearm." Non-residents of Illinois who purchase long guns at gun shows are not subject to these waiting periods.

2. *States Imposing a Waiting Period on Purchases of Handguns and Assault Weapons:* Both Maryland and Minnesota impose seven-day waiting periods on purchases of handguns and assault weapons.

In Maryland, any person who transfers a "regulated firearm" (handguns and assault weapons) must wait seven days following the time a prospective purchaser completes an application to purchase the firearm and the application is forwarded to the Secretary of the Maryland State Police.

Minnesota imposes a seven-day waiting period on transfers of handguns and assault weapons from the day the dealer delivers a transfer report to the police chief or sheriff.⁹ The police chief or sheriff may waive part of the waiting period in writing if he or she finds that the transferee requires access to a handgun or assault weapon because of a threat to the life of the transferee or a member of the transferee's household. The waiting period does not apply to transfers by private sellers.

3. *States Imposing Waiting Periods on Purchases of Handguns Only:* Florida, Iowa, New Jersey, South Dakota, Wisconsin and the District of Columbia have waiting periods for handgun purchases only.¹⁰

⁸ Hawaii requires registration of all firearms. Firearms brought into the state must be registered within three days of arrival. Haw. Rev. Stat. Ann. § 134-3(a). Additional information on Hawaii's registration requirements is contained in the section on Registration of Firearms.

⁹ In Minnesota, with certain limited exceptions, if a person wishes to acquire a handgun or assault weapon from a federally licensed dealer, but does not have a transferee permit or a permit to carry, then the dealer must file a report with the police chief or sheriff, after which time the police chief or sheriff will conduct a background check of the prospective purchaser. Minn. Stat. § 624.7132.

¹⁰ In addition, dealers in Washington are prohibited from transferring a handgun to a purchaser until five business days have elapsed from the time of receipt of the application to purchase. Wash. Rev. Code Ann.

a. *48 hours:* South Dakota imposes a 48-hour waiting period for retail handgun sales. Wisconsin prohibits federally licensed firearms dealers from transferring any handgun to any person until 48 hours have elapsed from the time the dealer has been notified, via a background check confirmation number from the Wisconsin Department of Justice, that the transferee is an eligible purchaser.¹¹ In the District of Columbia, in the rare circumstances in which handgun possession is lawful, no seller may deliver a handgun to a prospective purchaser until 48 hours have elapsed from the time of the application.

b. *3 days:* Florida¹² imposes a mandatory three-day waiting period between the retail purchase and delivery of any handgun. In Iowa, no handgun may be transferred until the transferee obtains a permit to purchase the handgun, which becomes valid three days after the date of application.¹³

c. *7 days:* New Jersey prohibits retail firearms dealers from delivering a handgun to any person unless the person possesses a valid permit to purchase a handgun and at least seven days have elapsed since the date of application for the permit. The time period to obtain the permit itself can be as long as 30 days (45 days for non-residents)¹⁴ while the permit application is processed.

d. *Exceptions:* Florida, Iowa, South Dakota, and Washington exempt concealed weapons permit holders from the statutory waiting periods. Florida also exempts persons trading in another handgun. Most states exempt sales to law enforcement.

§ 9.41.090(1)(c). The waiting period can be up to 60 days for anyone without a valid Washington driver's license or state identification card, or for anyone who has been a resident for less than 90 consecutive days prior to the dealer's receipt of the application to purchase. *Id.* However, the waiting period does not apply to concealed handgun license holders, or in cases where the dealer is notified in writing by the local sheriff or chief of police in the jurisdiction where the purchaser resides that the purchaser is eligible to possess a handgun. Wash. Rev. Code Ann. § 9.41.090(1).

¹¹ In Wisconsin, if the background check indicates a felony charge without a recorded disposition, the 48-hour waiting period is extended to the end of the third complete working day commencing after the day on which the finding is made. The Department must notify the firearms dealer of the extension as soon as practicable. During the extended period, the Department is to make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable.

¹² Florida's constitution authorizes counties to enact three to five-day waiting periods in connection with the sale of any firearm occurring within the county. "Sale" is defined to include gun shows and other events open to the public outside of retail firearms establishments. Concealed weapons permit holders are not subject to such waiting periods when purchasing a firearm. Fla. Const. art. VIII, § 5(b). Fla. Stat. Ann. § 790.33(2) limits a county's authority to adopt a waiting period on handgun sales to three working days, subject to various exceptions.

¹³ After the permit is issued, the holder may purchase additional handguns without a waiting period for the duration of the license (one year).

¹⁴ Note that federally licensed dealers may not sell handguns to out-of-state residents. Additional information on transfer restrictions imposed on federally licensed firearms dealers is contained in the section on Dealer Regulations.

4. *States Imposing Waiting Periods on Purchases of Long Guns Only:* In Connecticut, it is unlawful for a person to sell a long gun at retail until two weeks have passed after the date the purchase application is completed and the transferor has received authorization to transfer the firearm to the purchaser. This waiting period does not apply to certain law enforcement officers and military personnel, holders of valid permits to carry handguns, holders of valid hunting licenses, or holders of valid eligibility certificates to possess handguns.

SUMMARY OF SELECTED¹⁵ LOCAL LAWS GOVERNING WAITING PERIODS

Local Laws Governing Waiting Periods

Columbus

Columbus, Ohio, Code § 545.06(b)

Columbus provides that no weapon transaction permit may be issued until at least seven days have elapsed from the date of the permit application.

FEATURES OF COMPREHENSIVE LAW GOVERNING WAITING PERIODS

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.

- Waiting period is established for all firearm purchases, of sufficient duration to allow a cooling-off period prior to the purchaser taking possession of the firearm (*California-10 days, Hawaii-14 days, Rhode Island-7 days, Columbus-7 days*)
- Transfer of firearms is prohibited until the background check process has been completed, regardless of whether the waiting period has elapsed (*Colorado*)¹⁶

¹⁵ 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."

¹⁶ Colorado has addressed the problem of "default proceeds" under federal law, which results when a firearm is transferred at the end of the waiting period, even if the background check has not been completed. Additional information about the problem of default proceeds and the approaches used in these jurisdictions is contained in the section on Background Checks.

Restrictions on Multiple Purchases or Sales of Firearms

Background

Laws restricting multiple purchases or sales of firearms are designed to reduce the number of guns entering the illegal market and to stem the flow of firearms between states. Interstate firearms trafficking flourishes, in part, because states regulate firearm sales differently and there is no federal limitation on the number of guns that an individual may purchase at any one time.¹ Jurisdictions with weaker firearms laws may attract gun traffickers who make multiple purchases and resell those guns in jurisdictions with stronger firearms laws.²

Efforts to limit multiple purchases or sales generally focus on handguns. Studies show that handguns sold in multiple sales to the same individual purchaser are frequently used in crime.³ “Multiple sales” are defined under federal law as the sale of two or more handguns by a federally licensed firearms dealer (FFL) to a non-FFL within five consecutive business days.⁴ ATF crime gun trace data revealed that 22% of all handguns recovered in crime in 1999 had been transferred to a purchaser involved in a multiple sale.⁵ Crime gun trace data from 2000 showed that 20% of all retail handguns recovered in crime were purchased as part of a multiple sale.⁶

One-gun-a-month laws prohibit the purchase of more than one handgun per person in any 30-day period. A study of Virginia’s one-gun-a-month law demonstrated that the law was effective in reducing the number of crime guns traced to Virginia dealers. Virginia initially adopted its law in 1993 after the state became recognized as a primary source of crime guns recovered in states in the northeastern U.S. After the law’s adoption, the odds of tracing a gun originally acquired in the Southeast to a Virginia gun dealer (as opposed to a dealer in a different southeastern state) dropped by 71% for guns recovered in New York, 72% for guns recovered in Massachusetts, and 66% for guns recovered in New Jersey, New York, Connecticut, Rhode Island and Massachusetts combined.⁷

¹ Douglas S. Weil & Rebecca C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, JAMA 1759, 1759-60 (1996).

² *Id.*

³ See, e.g., Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) National Report* 50 (July 2002); Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999) National Report* 40 (Nov. 2000).

⁴ 18 U.S.C. § 923(g)(3)(A).

⁵ *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999) National Report*, *supra* note 3, at 40.

⁶ *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) National Report*, *supra* note 3, at 50.

⁷ Douglas S. Weil & Rebecca Knox, *Evaluating the Impact of Virginia's One-Gun-A-Month Law*, The Center to Prevent Handgun Violence 1, 4-6 (Aug. 1995). As discussed below, in 2004 the Virginia legislature adopted measures backed by the National Rifle Association that significantly weakened the law by allowing concealed handgun permit holders and persons who purchase handguns through private sales to purchase more than one handgun per month. Va. Code Ann. § 18.2-308.2:2(P)(2).

Summary of Federal Law

Federal law does not limit the number of guns a person can buy in any given time period. Federal law does require FFLs to report multiple sales of handguns to ATF and other specified law enforcement agencies.⁸ The law enforcement agencies are not charged with any investigative duties regarding those sales, however. State and local law enforcement agencies are prohibited from disclosing reports of multiple sales (other than those involving prohibited purchasers) and must destroy such reports and related records within 20 days of receipt.⁹

SUMMARY OF STATE LAWS RESTRICTING MULTIPLE PURCHASES OR SALES OF FIREARMS

Three states, California, Maryland and Virginia, have enacted laws limiting firearm purchases or sales to one per month.¹⁰

States Restricting Multiple Purchases or Sales of Firearms

California	Cal. Penal Code §§ 12072(a)(9), (c)(6), 12071(b)(7)(F)
Maryland	Md. Code Ann., Pub. Safety § 5-128(a), (b)
Virginia	Va. Code Ann. § 18.2-308.2:2(P)

Description of State Laws Restricting Multiple Purchases or Sales of Firearms

1. *California:* California law prohibits any person from purchasing more than one handgun within any 30-day period. In addition, a licensed firearms dealer may not deliver a handgun to any person following notification from the California Department of Justice that the purchaser has applied to acquire a handgun within the preceding 30-day period. Finally, firearms dealers must conspicuously post in their licensed premises a warning, in block letters at least one inch in height, notifying purchasers of these restrictions.¹¹
2. *Maryland:* Maryland prohibits any person from purchasing more than one handgun or assault weapon within a 30-day period. Under limited circumstances, a person may be approved by the Secretary of the Maryland State Police to purchase multiple handguns or assault weapons in a 30-day period.
3. *Virginia:* It is generally unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period in Virginia. In 2004, exceptions were added for concealed weapon permit holders and any person purchasing a handgun in a private sale, thereby weakening the law significantly. Prospective purchasers who complete an “enhanced background check” and a special application to the Department of State Police, among other requirements, may also be permitted to make a multiple purchase. The applicant must list the number and type of handguns to be

⁸ 18 U.S.C. § 923(g)(3)(A).

⁹ 18 U.S.C. § 923(g)(3)(B).

¹⁰ South Carolina enacted a one-handgun-a-month law but repealed the provision in 2004, due in part to strong lobbying by the firearms industry and National Rifle Association.

¹¹ Because all firearm transfers must be conducted through licensed dealers in California, the restriction on multiple handgun sales necessarily also applies to private sellers.

purchased and the purpose for the purchase above the limit (including lawful business or personal use, as part of a collection, or as a bulk purchase from an estate sale). Applications must be signed under oath and require proof of residency and identity. Applicants satisfying these requirements are issued a nontransferable certificate, which is valid for seven days from the date of issue. The certificate must be surrendered to the dealer by the prospective purchaser prior to the transfer.

SUMMARY OF SELECTED¹² LOCAL LAWS RESTRICTING MULTIPLE PURCHASES OR SALES OF FIREARMS

Local Laws Restricting Multiple Purchases or Sales of Firearms

Los Angeles	Los Angeles, Cal., Code ch. V, art. 5, § 55.14
New York City	New York, N.Y. Admin. Code, § 10-302.1

Los Angeles: Los Angeles' ordinance provides that no person shall make application to a firearms dealer to purchase a handgun within 30 days of making a prior application for the purchase of a handgun within the State of California. It also prohibits firearms dealers from transferring the title of any handgun to any person whom the dealer knows has made application to purchase more than one handgun within the state within a 30-day period prior thereto.¹³

New York City: New York City limits sales of handguns, rifles and shotguns, prohibiting dealers from selling more than one handgun, rifle or shotgun to any one person as part of the same transaction. In addition, no dealer may sell a handgun, rifle or shotgun to a person if he or she knows or should know that the person has purchased a firearm within the prior 90 days. New York City also provides that no person may acquire more than one handgun in a 90-day period, and that no person may acquire more than one rifle or shotgun in a 90-day period.

¹² 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."

¹³ The Los Angeles ordinance was enacted in 1999. Later that year, the State of California adopted its one-handgun-a-month law, effective January 1, 2000.

FEATURES OF COMPREHENSIVE LAWS RESTRICTING MULTIPLE PURCHASES OR SALES OF 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.

- The restriction applies to both multiple purchases (*California, Maryland*) and sales (*California, New York City*) of specified classes of weapons
- The restriction on multiple sales applies to both licensed dealers and private sellers (*California*)
- The restriction applies to handguns (*California, Maryland*), and also may apply to other classes of weapons such as assault weapons and 50 caliber rifles, if they are not otherwise banned (*Maryland (assault weapons)*)
- The most frequently used approach is to restrict multiple purchases or sales to no more than one per person per month (*California, Maryland¹⁴*), but stricter limitations may be used (*New York City restricts sales of handguns, rifles and shotguns to no more than one per person every 90 days*)

¹⁴ Although Virginia also limits handgun purchases to one per month, recent amendments to the law weaken it significantly.