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by Superior Court of CA,  
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Reviewed By: R. Nguyen  
Case #19CV346360  
Envelope: 4446090**

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA  
DOWNTOWN COURTHOUSE**

G. MITCHELL KIRK; and CALIFORNIA  
RIFLE & PISTOL ASSOCIATION,  
INCORPORATED,

Plaintiffs and Petitioners,

vs.

CITY OF MORGAN HILL; MORGAN HILL  
CHIEF OF POLICE DAVID SWING, in his  
official capacity; MORGAN HILL CITY  
CLERK IRMA TORREZ, in her official  
capacity; and DOES 1-10,

Defendants and Respondents.

Case No: 19CV346360

**DECLARATION OF ANNA M. BARVIR IN  
SUPPORT OF PLAINTIFFS' OPPOSITION  
TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Date: July 2, 2020  
Time: 9:00 a.m.  
Judge: Judge Peter Kirwan  
Dept.: 19

[Filed concurrently with Opposition to  
Defendants' Motion for Summary Judgment;  
Response to Defendants' Separate Statement of  
Undisputed Facts and Additional Undisputed  
Material Facts; Request for Judicial Notice;  
Evidentiary Objections; and Proposed Order for  
Evidentiary Objections]

Action filed: April 15, 2019

**DECLARATION OF ANNA M. BARVIR**

I, Anna M. Barvir, hereby declare as follows:

1. I am an attorney licensed to practice before all courts in the state of California. The law firm where I am employed, Michel and Associates, P.C., is council of record for Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated, in the above-entitled matter. I make this declaration in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify hereto.

2. On April 15, 2019, Plaintiffs filed Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief and Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief. A true and correct copy of Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief and Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief is attached as **Exhibit X**.

3. On July 19, 2019, Defendants filed and electronically served Plaintiffs with Defendants' Verified Answer to Complaint for Declaratory Relief and Verified Petition for Writ of Mandate or Other Appropriate Relief. A true and correct copy of Defendants' Verified Answer to Complaint for Declaratory Relief and Verified Petition for Writ of Mandate or Other Appropriate Relief is attached as **Exhibit Y**.

4. On March 3, 2020, Defendant City of Morgan Hill served Plaintiffs with Defendant City of Morgan Hill Response to Plaintiff's Form Interrogatories, Set One. A true and correct copy of Defendant City of Morgan Hill Response to Plaintiff's Form Interrogatories, Set One is attached as **Exhibit Z**.

5. A true and correct copy of the Statement of Information (Form SI-100) filed with the California Secretary of State on May 11, 2018 for California Rifle & Pistol Association, Incorporated, available at <https://businesssearch.sos.ca.gov/> (by searching for "California Rifle & Pistol Association, Incorporated") (last visited Apr. 29, 2020) is attached as **Exhibit AA**.

6. On or about June 1, 2018, my office, on the behalf of Plaintiff CRPA, sent a letter to Morgan Hill City Attorney Donald Larkin opposing the City's proposed theft-reporting

1 ordinance on preemption grounds. A true and correct copy of the June 1, 2018 letter from Michel  
2 & Associates, P.C., attorney Tiffany D. Chevront to Morgan Hill City Attorney Donald Larkin is  
3 attached as **Exhibit BB**. Our office uses a shared electronic server which preserves all our  
4 documents, including correspondence. I retrieved the saved PDF of this correspondence from our  
5 server on or about Apr. 28, 2020.

6 7. On or about October 22, 2018, my office, on the behalf of Plaintiff CRPA, sent a  
7 letter to Morgan Hill City Attorney Donald Larkin again opposing the City's proposed theft-  
8 reporting ordinance on preemption grounds. A true and correct copy of the October 22, 2018 letter  
9 from Michel & Associates, P.C., attorney Tiffany D. Chevront to Morgan Hill City Attorney  
10 Donald Larkin is attached as **Exhibit CC**. Our office uses a shared electronic server which  
11 preserves all our documents, including correspondence. I retrieved the saved PDF of this  
12 correspondence from our server on or about Apr. 28, 2020.

13 8. On or about October 30, 2018, my office, on the behalf of Plaintiff CRPA, sent a  
14 letter to Morgan Hill City Attorney Donald Larkin again opposing the City's recently adopted  
15 theft-reporting ordinance on preemption grounds and requesting that the City voluntarily repeal the  
16 law. A true and correct copy of the October 30, 2018 letter from Michel & Associates, P.C.,  
17 attorney Tiffany D. Chevront to Morgan Hill City Attorney Donald Larkin is attached as **Exhibit**  
18 **DD**. Our office uses a shared electronic server which preserves all our documents, including  
19 correspondence. I retrieved the saved PDF of this correspondence from our server on or about Apr.  
20 28, 2020.

21 9. On or about July 6, 2016, my office, on the behalf of Plaintiff CRPA, sent a letter to  
22 Palm Springs City Council opposing the city's proposed theft-reporting ordinance on preemption  
23 grounds. A true and correct copy of the July 6, 2016 letter from Michel & Associates, P.C.,  
24 attorney Matthew D. Cubeiro to the members of the Palm Springs City Council is attached as  
25 **Exhibit EE**. Our office uses a shared electronic server which preserves all our documents,  
26 including correspondence. I retrieved the saved PDF of this correspondence from our server on or  
27 about Apr. 29, 2020.

28 10. On or about September 6, 2016, my office, on the behalf of Plaintiff CRPA, sent a

1 letter to Palm Springs City Council opposing the city's proposed theft-reporting ordinance on  
2 preemption grounds. A true and correct copy of the September 6, 2016 letter from Michel &  
3 Associates, P.C., attorney Matthew D. Cubeiro to the members of the Palm Springs City Council is  
4 attached as **Exhibit FF**. Our office uses a shared electronic server which preserves all our  
5 documents, including correspondence. I retrieved the saved PDF of this correspondence from our  
6 server on or about Apr. 29, 2020.

7 11. On or about August 14, 2018, my office, on the behalf of Plaintiff CRPA, sent a  
8 letter to Palm Springs City Attorney Edward Kotkin opposing the city's recently adopted theft-  
9 reporting ordinance on preemption grounds. A true and correct copy of the August 14, 2018 letter  
10 from Michel & Associates, P.C., attorney Joshua Robert Dale to Palm Springs City Attorney  
11 Edward Kotkin is attached as **Exhibit GG**. Our office uses a shared electronic server which  
12 preserves all our documents, including correspondence. I retrieved the saved PDF of this  
13 correspondence from our server on or about Apr. 29, 2020.

14 12. On or about September 14, 2018, my office, on the behalf of Plaintiff CRPA, sent a  
15 follow-up letter to Palm Springs City Attorney Edward Kotkin opposing the city's recently  
16 adopted theft-reporting ordinance on preemption grounds. A true and correct copy of the  
17 September 14, 2018 letter from Michel & Associates, P.C., attorney Joshua Robert Dale to Palm  
18 Springs City Attorney Edward Kotkin, is attached as **Exhibit HH**. Our office uses a shared  
19 electronic server which preserves all our documents, including correspondence. I retrieved the  
20 saved PDF of this correspondence from our server on Apr. 29, 2020.

21 13. On or about October 10, 2018, my office, on the behalf of Plaintiff CRPA, once  
22 more sent a follow-up letter to Palm Springs City Attorney Edward Kotkin opposing the city's  
23 recently adopted theft-reporting ordinance on preemption grounds. A true and correct copy of the  
24 October 10, 2018 letter from Michel & Associates, P.C., attorney Joshua Robert Dale to Palm  
25 Springs City Attorney Edward Kotkin, is attached as **Exhibit II**. Our office uses a shared  
26 electronic server which preserves all our documents, including correspondence. I retrieved the  
27 saved PDF of this correspondence from our server on Apr. 29, 2020.

28 14. On or about November 14, 2018, after receiving my office's preemption analysis,



1 the Palm Springs City Council voted to repeal its theft-reporting ordinance. A true and correct  
2 copy of Palm Springs City Council Staff Report Re: Introduction of an Ordinance Repealing Palm  
3 Springs Municipal Code Section 11.16.040 (Nov. 14, 2018), available at  
4 [https://destinyhosted.com/palmsdocs/2018/CC/20181114\\_131/1142\\_Item%203A%20OCR.pdf](https://destinyhosted.com/palmsdocs/2018/CC/20181114_131/1142_Item%203A%20OCR.pdf)  
5 (last visited Apr. 29, 2020) is attached as **Exhibit JJ**.

6 15. A true and correct copy of Corinne S. Kennedy, *Palm Springs Repeals Gun*  
7 *Ordinance Passed After Pulse Shooting, Will Look at Other Measures*, Palm Springs Desert Sun  
8 (Nov. 15, 2018), available at [https://www.desertsun.com/story/news/local/palm-springs/2018/](https://www.desertsun.com/story/news/local/palm-springs/2018/11/15/palm-springs-consider-additional-gun-control-measures/1973202002/)  
9 [11/15/palm-springs-consider-additional-gun-control-measures/1973202002/](https://www.desertsun.com/story/news/local/palm-springs/2018/11/15/palm-springs-consider-additional-gun-control-measures/1973202002/) (last visited Apr. 29,  
10 2020) is attached as **Exhibit KK**.

11 16. A true and correct copy of pages 1-67 and 129-132 of Morral et al., *The Science of*  
12 *Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the*  
13 *United States* (Rand Corp 2018), available at [https://www.rand.org/pubs/research\\_reports/](https://www.rand.org/pubs/research_reports/RR2088.html)  
14 [RR2088.html](https://www.rand.org/pubs/research_reports/RR2088.html) (last visited Apr. 29, 2020) is attached as **Exhibit LL**.

15 17. On or about April 30, 2020, I visited [http://morganhillca.iqm2.com/Citizens/](http://morganhillca.iqm2.com/Citizens/Calendar.aspx?From=1/1/2018&To=12/31/2018)  
16 [Calendar.aspx?From=1/1/2018&To=12/31/2018](http://morganhillca.iqm2.com/Citizens/Calendar.aspx?From=1/1/2018&To=12/31/2018), an official website of the City of Morgan Hill.  
17 From there, I accessed video coverage of the October 24, 2018 Morgan Hill City Council meeting  
18 and clicked on public regards regarding Item No. 4, including “Youth Gun Violence Report 2011.”  
19 A true and correct copy of that document, Association of Bay Area Governments, *A High Price to*  
20 *Pay: The Economic and Social Costs of Youth Gun Violence in San Mateo County* (Sept. 2011) is  
21 attached as **Exhibit MM**.

22 18. A true and correct copy of Legal Community Against Violence, *LCAV Model Law:*  
23 *Requiring the Reporting of Lost or Stolen Firearms (Local Governments in California)* (May  
24 2009), available at [https://s3.amazonaws.com/stateinnovation-uploads/uploads/asset/asset\\_](https://s3.amazonaws.com/stateinnovation-uploads/uploads/asset/asset_file/Model_Law_Requiring_Reporting_of_Lost_Stolen_Firearms.pdf)  
25 [file/Model\\_Law\\_Requiring\\_Reporting\\_of\\_Lost\\_Stolen\\_Firearms.pdf](https://s3.amazonaws.com/stateinnovation-uploads/uploads/asset/asset_file/Model_Law_Requiring_Reporting_of_Lost_Stolen_Firearms.pdf) (last visited Apr. 29, 2020) is  
26 attached as **Exhibit NN**.

27 19. A true and correct copy of International Association of Chiefs of Police, *Taking a*  
28 *Stand: Reducing Gun Violence in Our Communities* (2007), available at <https://www.theiacp.org>

1 /sites/default/files/all/a/ACF1875.pdf (last visited Apr. 29, 2020) is attached as **Exhibit OO**.

2 20. A true and correct copy of U.S. Department of Justice, Office of Justice Programs,  
3 Crime Data Brief: Firearms Stolen During Household Burglaries and Other Property Crimes,  
4 2005-2010, available at <https://www.bjs.gov/content/pub/pdf/fshbopc0510.pdf> (last visited Apr.  
5 29, 2020) is attached as **Exhibit PP**.

6 21. A true and correct copy of Legal Community Against Violence, Model Laws for a  
7 Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales (Sept. 2011),  
8 available at [https://lawcenter.giffords.org/wp-content/uploads/2012/05/Model\\_Laws\\_  
9 for\\_a\\_Safer\\_America.pdf](https://lawcenter.giffords.org/wp-content/uploads/2012/05/Model_Laws_for_a_Safer_America.pdf) (last visited Apr. 29, 2020) is attached as **Exhibit QQ**.

10 22. A true and correct copy of Legal Community Against Violence, 2009 California  
11 Report: Recent Developments in Federal, State and Local Gun Laws (June 12, 2009), available at  
12 [https://lawcenter.giffords.org/wp-content/uploads/2012/05/2009\\_California\\_Report.pdf](https://lawcenter.giffords.org/wp-content/uploads/2012/05/2009_California_Report.pdf) (last  
13 visited Apr. 30, 2020) is attached as **Exhibit RR**.

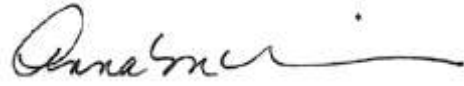
14 23. A true and correct copy of pages 1 and 84-89 of Ballot Pamphlet, General Election  
15 (Nov. 8, 2016) analysis of Prop. 63, available at [https://vig.cdn.sos.ca.gov/2016/general/en/pdf/  
16 complete-vig.pdf](https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf) (last visited Apr. 30, 2020) is attached as **Exhibit SS**.

17 24. A true and correct copy of Center for Civil Design, Final report on  
18 Recommendations for Voter Guides in California (Oct. 10, 2014), available at  
19 [https://civicdesign.org/wp-content/uploads/2014/05/FOCE-how-voters-get-information-final-14-  
20 1015.pdf](https://civicdesign.org/wp-content/uploads/2014/05/FOCE-how-voters-get-information-final-14-1015.pdf) (last visited June 5, 2020) is attached as **Exhibit TT**.

21 25. A true and correct copy of LA County (Calabasas) 2016 General Election Sample  
22 Ballot <<http://www.cityofcalabasas.com/elections/2016-specialelection/sample-ballot-220.pdf>>  
23 (last visited June 5, 2020) is attached as **Exhibit UU**.

24 26. A true and correct copy of San Luis Obispo County 2016 General Election Sample  
25 Ballot <[https://www.slocounty.ca.gov/Departments/Clerk-Recorder/Forms-Documents/Elections-  
26 and-Voting/Past-Elections/General-Elections/2016-11-08-Presidential-General/Sample-  
27 Ballot/Sample-Ballot-Ballot-Type-1-2016-11-08.aspx](https://www.slocounty.ca.gov/Departments/Clerk-Recorder/Forms-Documents/Elections-and-Voting/Past-Elections/General-Elections/2016-11-08-Presidential-General/Sample-Ballot/Sample-Ballot-Ballot-Type-1-2016-11-08.aspx)> (last visited June 5, 2020) is attached as  
28 **Exhibit VV**.

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed on June 11, 2020, at Stanton, California.

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5 Anna M. Barvir  
6 Declarant  
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16	Exhibit NN	Legal Community Against Violence, <i>LCAV Model Law: Requiring the Reporting of Lost or Stolen Firearms</i> (Local Governments in California) (May 2009), available at <a href="https://s3.amazonaws.com/stateinnovation-uploads/uploads/asset/asset_file/Model_Law_Requiring_Reporting_of_Lost_Stolen_Firearms.pdf">https://s3.amazonaws.com/stateinnovation-uploads/uploads/asset/asset_file/Model_Law_Requiring_Reporting_of_Lost_Stolen_Firearms.pdf</a> (last visited Apr. 29, 2020)	199
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23	Exhibit PP	U.S. Department of Justice, Office of Justice Programs, <i>Crime Data Brief: Firearms Stolen During Household Burglaries and Other Property Crimes, 2005-2010</i> , available at <a href="https://www.bjs.gov/content/pub/pdf/fshbopc0510.pdf">https://www.bjs.gov/content/pub/pdf/fshbopc0510.pdf</a> (last visited Apr. 29, 2020)	253
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26	Exhibit QQ	Legal Community Against Violence, <i>Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales</i> (Sept. 2011), available at <a href="https://lawcenter.giffords.org/wp-">https://lawcenter.giffords.org/wp-</a>	269
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content/uploads/2012/05/Model\_Laws\_  
for\_a\_Safer\_America.pdf (last visited Apr. 29, 2020)

Exhibit RR	Legal Community Against Violence, 2009 California Report: Recent Developments in Federal, State and Local Gun Laws (June 12, 2009), available at <a href="https://lawcenter.giffords.org/wp-content/uploads/2012/05/2009_California_Report.pdf">https://lawcenter.giffords.org/wp-content/uploads/2012/05/2009_California_Report.pdf</a> (last visited Apr. 30, 2020)	358
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# **EXHIBIT X**

1 C. D. Michel – SBN 144258  
2 Anna M. Barvir – SBN 268728  
3 Tiffany D. Chevront– SBN 317144  
4 **MICHEL & ASSOCIATES, P.C.**  
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10 Attorneys for Plaintiffs/Petitioners  
11 G. Mitchell Kirk and California Rifle  
12 & Pistol Association, Incorporated

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

DOWNTOWN COURTHOUSE

12 G. MITCHELL KIRK; and CALIFORNIA  
13 RIFLE & PISTOL ASSOCIATION,  
14 INCORPORATED,

Plaintiffs and Petitioners,

15 vs.

16 CITY OF MORGAN HILL; MORGAN  
17 HILL CHIEF OF POLICE DAVID SWING,  
18 in his official capacity; MORGAN HILL  
19 CITY CLERK IRMA TORREZ, in her  
20 official capacity; and DOES 1-10,

Defendants and Respondents.

CASE NO. 19CV346360

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF; VERIFIED  
PETITION FOR WRIT OF MANDATE  
AND/OR PROHIBITION OR OTHER  
APPROPRIATE RELIEF**



## INTRODUCTION

### I. NATURE OF THE CASE

1. On October 24, 2018, Defendant and Respondent CITY OF MORGAN HILL (the “City”) adopted Ordinance No. 2289 (the “Ordinance”) to amend, inter alia, section 9.04.030 of the Morgan Hill Municipal Code.

2. The intended effect of the Ordinance was to impose upon victims of firearm theft a mandatory requirement that they report such theft to law enforcement. Under the new law, victims of firearm theft in the City—whether residents or visitors—must now report to the City’s Police Department that a firearm has been stolen within 48 hours of the theft or within 48 hours after the victim reasonably becomes aware of the theft.

3. As amended by the Ordinance, the new language of Morgan Hill Municipal Code 9.04.030 reads as follows:

Duty to report theft or loss of firearms. Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Morgan Hill Police Department within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the city of Morgan Hill; or (2) the theft or loss of the firearm occurs in the city of Morgan Hill.

The language of the Ordinance, as now codified at Municipal Code 9.04.030, is the subject of this lawsuit.<sup>1</sup>

4. California voters enacted Proposition 63 (“Prop 63”) on November 8, 2016. Prop

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<sup>1</sup> Municipal Code 9.04.030’s language mirrors language of theft reporting ordinances recently adopted by other California cities. (See, e.g., Palm Springs Municipal Code 11.16.040 [Ordinance 1899, § 1, adopted 2016] [nearly identical to Morgan Hill Municipal Code 9.04.030].) On information and belief, the Giffords Law Center to Prevent Gun Violence drafted the language of the Ordinance now codified at Morgan Hill Municipal Code 9.04.030 as well as other cities’ similarly worded theft-reporting laws, and then lobbied those cities to adopt the lobbyist-drafted language as a local ordinance notwithstanding the clear preemption of local theft-reporting laws by Prop 63 or the attendant legal liability adopting a preempted ordinance would bring to those cities.

63 was an omnibus gun-control initiative that included, among other things, a mandatory reporting requirement for all victims of firearm theft within the state. Prop 63 created Penal Code section 25250, which requires victims of firearm theft within the state to report to a local law enforcement agency that a firearm has been stolen within *five days* of the theft or within five days after the victim reasonably becomes aware of the theft.

5. By passing Prop 63 and enacting section 25250, voters caused state law to occupy the whole of the field of firearm-theft-reporting, such that a local ordinance that purports to prescribe reporting requirements for firearm theft, like the Ordinance, is preempted.

6. Moreover, Penal Code section 25250 contains a less onerous requirement for firearm victims to report theft, such that the Ordinance criminalizes conduct that the voters of the state have deemed to be permissible—waiting up to five days instead of 48 hours—to report a firearm theft to law enforcement. Thus, the Ordinance and its codification directly conflict with section 25250.

7. California Rifle & Pistol Association, Incorporated notified the City in writing that section 25250 preempted the Ordinance and requested that the City voluntarily repeal the Ordinance. The City, however, ignored the guidance and refused to repeal the Ordinance.

8. Because those preempted portions of the Ordinance continue to remain in effect, and because there is a danger that firearm-theft victims who reside in or who are victimized in the City may be subject to prosecution for conduct that Penal Code section 25250 deems lawful, Plaintiffs-Petitioners seek judicial relief declaring the Ordinance, codified at Municipal Code 9.04.030, to be void as preempted by state law.

9. Plaintiffs-Petitioners further seek to enjoin Defendants-Respondents<sup>2</sup> from training their law enforcement officers on the enforcement of the Ordinance. They further request a writ of mandate or of prohibition or both directing the City Clerk to strike Municipal Code 9.04.030 from the Morgan Hill Municipal Code.

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<sup>2</sup> In matters combining a complaint for declaratory relief and a writ petition, the parties are uniformly referred to as “plaintiff” and “defendant.” (See Code Civ. Proc., §§ 308 & 1063.)

1 **II. DECLARATORY AND WRIT RELIEF IS NECESSARY**

2 10. Declaratory and writ relief is warranted because: (1) an actual controversy has  
3 arisen and now exists between Plaintiffs and Defendants over the validity of the Ordinance; and  
4 (2) there is no adequate remedy in the ordinary course of law.

5 11. The Ordinance, codified at Municipal Code 9.04.030, took effect on October 24,  
6 2018, and has since its enactment been in full force and effect. On information and belief,  
7 Plaintiffs allege that Defendants have, since the law took effect, enforced and currently are  
8 enforcing 9.04.030.

9 12. Thus, victims of firearm theft risk unlawful enforcement and prosecution for  
10 engaging in conduct that California voters deemed lawful. A judicial declaration is necessary and  
11 appropriate at this time so that Plaintiffs may ascertain their rights and duties without first  
12 subjecting themselves to criminal liability by violating the Ordinance. Moreover, Defendants'  
13 ongoing enforcement of an invalid law constitutes a waste of taxpayer funds and an undue burden  
14 on Plaintiffs.

15 **PARTIES**

16 **I. PLAINTIFFS**

17 13. Plaintiff G. MITCHELL KIRK is a resident of Morgan Hill, California, and a  
18 firearm owner. In the event Mr. Kirk is a victim of firearm theft, he is subject to the requirements  
19 of the Ordinance. If he reports such theft to the City's police department within 120 hours after the  
20 theft occurred or he reasonably discovered it to have occurred, he would be subject to prosecution  
21 under the Ordinance, even though his conduct would conform with Penal Code section 25250. Mr.  
22 Kirk has, within the past year, paid sales taxes and property taxes while a resident of the City, with  
23 portions of the proceeds of those taxes transferred to the City for funding general law enforcement  
24 activities of its police department, including training its officers on the enforcement of the  
25 Ordinance.

26 14. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED  
27 ("CRPA") is a nonprofit membership organization incorporated under the laws of California with  
28 headquarters in Fullerton, California. Among its other activities, CRPA works to preserve and

1 expand constitutional and statutory rights of gun ownership, including the right to self-defense and  
2 the right to keep and bear arms. CRPA accomplishes this through their many educational  
3 offerings, publications, member engagement events, support of legislation, and legislative  
4 initiatives. CRPA has tens of thousands of members and supporters, many of whom reside in  
5 Morgan Hill or the surrounding county, conduct business in Morgan Hill, visit or travel through  
6 Morgan Hill, or are otherwise subject to the Morgan Hill Municipal Code. Their members are  
7 firearm retailers, sportsmen, hunters, junior and youth competitors, Olympians, police officers,  
8 professionals, and loving parents and grandparents. CRPA represents all its members both in their  
9 general interest as citizens and in their particular interest in the right to lawfully own and possess  
10 firearms.

## 11 **II. DEFENDANTS**

12 15. Defendant CITY OF MORGAN HILL is a municipal corporation formed under the  
13 laws of California. The City is the entity that enacted, and is beneficially interested in, the  
14 Ordinance.

15 16. Defendant DAVID SWING is the Chief of Police of the Morgan Hill Police  
16 Department. He is sued in his official capacity. He is charged with enforcing the Ordinance, as  
17 codified in the Morgan Hill Municipal Code.

18 17. Defendant IRMA TORREZ is the City Clerk of Morgan Hill. She is sued in her  
19 official capacity. She is charged with recording, keeping, and printing the ordinances of the City,  
20 including the Ordinance referenced in this Complaint. She is charged with recording and printing  
21 the codification of such ordinances within the Municipal Code for the City.

22 18. Plaintiff is unaware and genuinely ignorant of the true identities of DOES 1  
23 through 10. Doe Defendants are fictitiously named. The true names and capacities, whether an  
24 individual, corporation, heirs, assigns, successor in interest, or otherwise, of the Doe Defendants,  
25 are unknown to Plaintiff at the time of filing of this complaint and petition. Plaintiff will amend  
26 this complaint and petition to show the true names and capacities of these Doe Defendants when  
27 the same have been ascertained. Plaintiff is informed, and believes, and on that basis alleges, that  
28 at all times herein mentioned, Defendants fictitiously designated, and each of them, were the

1 agents, servants, employees, representatives, and/or other persons or entities acting or purporting  
2 to act on Defendants' behalf or over whom Defendants exercise management and control, and  
3 were at all times herein mentioned within the course and scope of such agency and/or  
4 employment. Plaintiff is informed and believes, and on that basis alleges, that each of the  
5 Defendants named as DOES 1 through 10 were in some manner acting unlawfully or otherwise  
6 responsible for the events and happenings hereinafter alleged.

### 7 **JURISDICTION AND VENUE**

8 19. This Court has jurisdiction under sections 525, 526, 1060 and 1085 of the  
9 California Code of Civil Procedure. Plaintiffs lack under section 1086 a "plain, speedy, and  
10 adequate remedy, in the ordinary course of law."

11 20. Because this action is brought against the city of Morgan Hill and its public  
12 officers, Plaintiffs properly bring this action in the county of Santa Clara. (Code Civ. Proc., §§  
13 393, subd. (b), & 394, subd.(a).) Further, at least one Plaintiff resides in the city of Morgan Hill  
14 and the county of Santa Clara.

### 15 **FIRST CAUSE OF ACTION**

### 16 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

### 17 **(By All Plaintiffs Against All Defendants)**

18 21. Plaintiffs reallege Paragraphs 1 through 20 and incorporate them as to this cause of  
19 action as though fully set forth herein.

20 22. An actual controversy has arisen and now exists between Plaintiffs and Defendants  
21 relative to their respective rights and duties under the Ordinance, as codified in Morgan Hill  
22 Municipal Code 9.04.030. Plaintiffs contend that the Ordinance is invalid and unenforceable  
23 because it is preempted by state law. On information and belief, Defendants dispute this  
24 contention and contend the Ordinance is valid, continue to print the Ordinance as codified in the  
25 Municipal Code, and continue to enforce the Ordinance, and train their officers to enforce the  
26 Ordinance.

27 23. Plaintiffs desire a declaration on the validity of the Ordinance, as codified in  
28 Municipal Code 9.04.030. A judicial declaration is necessary and appropriate so that Plaintiffs

1 may ascertain their rights and duties without first subjecting themselves to criminal liability by  
2 violating the Ordinance.

3 24. To resolve this controversy, Plaintiffs request that, under Code of Civil Procedure  
4 section 1060, this Court declare that the Ordinance is preempted by state law because: (1) it  
5 duplicates state law that obligates victims of firearms theft to report such theft to a law  
6 enforcement agency; (2) it contradicts state law that sets for the maximum time period by which  
7 such theft must be reported; or (3) it enters into areas fully occupied by the state.

8 25. In addition, Plaintiffs seek an injunction under Code of Civil Procedure sections  
9 525 and 526. The City's wrongful conduct, unless enjoined by order of this Court, will continue to  
10 cause great and irreparable injury to Plaintiffs. For they will be forced to choose between  
11 complying with the reporting requirements of the Ordinance, or complying with the reporting  
12 requirements of Penal Code section 25250 in a manner which violates the Ordinance and causes  
13 Plaintiffs or their members to be subject to local prosecution.

14 26. Further, the City's wrongful conduct, unless enjoined by order of this Court, will  
15 continue to cause great and irreparable injury to Plaintiffs in that Plaintiffs who reside in the City  
16 and who have paid and will continue to pay property tax and sales tax to the City will have such  
17 tax revenue wasted on training and enforcement of a preempted and invalid local ordinance.

18 27. The City's wrongful conduct will be of a continuing nature for which Plaintiffs will  
19 have no adequate remedy at law because it is impossible to determine monetary damages caused  
20 by the City's wrongful conduct.

21 28. Accordingly, Plaintiffs seek a permanent injunction forbidding Defendants, their  
22 agents, employees, representatives, and all those acting in concert with them from enforcing the  
23 Ordinance, and further requiring Defendants to remove corresponding Municipal Code 9.04.030  
24 from the Morgan Hill Municipal Code.

25 **SECOND CAUSE OF ACTION**

26 **FOR A WRIT OF MANDATE AND/OR PROHIBITION**

27 **(By All Plaintiffs Against All Defendants)**

28 29. Plaintiffs reallege Paragraphs 1 through 28 and incorporate them as to this cause of

1 action as though fully set forth herein.

2 30. Based on the plain language and legislative history of Prop 63 and Penal Code  
3 section 25250, the Ordinance, as codified in the Morgan Hill Municipal Code, conflicts with and  
4 is preempted by state law.

5 31. Defendants thus have a clear, present, and ministerial duty *not* to enforce the  
6 Ordinance against Plaintiffs or anyone.

7 32. Plaintiffs are beneficially interested in this matter, as they are subject to  
8 Defendants' enforcement of the Ordinance.

9 33. Defendants' wrongful conduct in enforcing the unlawful Ordinance is of a  
10 continuing nature for which Plaintiffs have no plain, speedy, adequate remedy at law, and which  
11 has and will continue to result in irreparable harm, as set forth above in the general allegations and  
12 First Cause of Action.

13 34. The named individual plaintiffs, and the individuals and entities represented in this  
14 action, are irreparably injured by the mere enactment, existence, and ongoing enforcement of the  
15 invalid Ordinance, the continuing threat of criminal and civil penalties for each separate violation  
16 of the Ordinance, and in the following ways:

17 a. The Ordinance purports to regulate matters already fully occupied by state law. It  
18 also conflicts with state law and deprives Plaintiffs of their rights under these laws,  
19 prohibiting them from actions they wish to take as hereinafter alleged. Plaintiffs are also  
20 irreparably injured as taxpayers and citizens because the Ordinance results in invalid,  
21 improper, and unauthorized conduct of public officials and its administration and  
22 enforcement is a waste of tax funds. Plaintiffs have no adequate remedy at law to redress  
23 these wrongs and protect their rights.

24 b. Plaintiffs, and those represented by Plaintiffs, are lawful firearm owners within the  
25 City who must comply with the Ordinance if they are the victim of a firearm theft. If  
26 Plaintiffs or their members instead chose to comply with state law—Penal Code section  
27 25250—and wait for a period of up to 120 hours after a theft of or learning of a theft of  
28 their firearm to report such theft, they would be subject to prosecution under the Ordinance

1 even though they have fully complied with state law.

2 c. Plaintiffs, and those represented by Plaintiffs who live in the City, are taxpayers  
3 who, within the past year, have paid property tax, or sales tax, or both, with the proceeds  
4 of same, or portions thereof, remitted to the City treasury for use in general law  
5 enforcement purposes. Plaintiffs, as they continue to pay property tax, sales tax, or both,  
6 will continue to see such tax funds wasted in the training of officers of the Morgan Hill  
7 Police Department to enforce the Ordinance, in the enforcement by officers of the  
8 Ordinance, and in the printing, publication, and distribution of the Ordinance, and its  
9 codification in Municipal Code 9.04.030, within the official laws and publications of the  
10 City.

11 d. Plaintiffs and those represented by Plaintiffs, as citizens, properly bring this  
12 complaint for declaratory relief and petition for writ of mandate in the nature of a citizen  
13 mandamus action to promote the public interest in having the general laws obeyed. The  
14 Ordinance is preempted by state law, i.e., Penal Code section 25250. The statute upon  
15 which Plaintiffs rely is intended to assure orderly, consistent, and rational statewide  
16 compliance with firearm-theft-reporting requirements, without regard to whatever  
17 jurisdiction such victim may reside or be passing through. Such a “patchwork” approach  
18 would cause confusion to the public and cause members of the public seeking to comply  
19 with state law to nonetheless be unwitting violators of a local law of which they may have  
20 no knowledge. State law relating to theft-reporting is also intended to provide transparency  
21 and uniform application of laws by law enforcement in order to prevent, e.g., law  
22 enforcement officials in jurisdictions other than the City from having to apply one law to  
23 most victims of firearms theft, but another, more stringent law to a victim of firearms theft  
24 who also happens to be a resident of the City. Thus, the public has an interest in having the  
25 City refrain from enacting and enforcing laws such as the Ordinance, which duplicate or  
26 conflict with state law, otherwise encroach upon a field of law fully occupied by the State,  
27 and cause conflict in other, neighboring jurisdictions where law enforcement may be  
28 required to apply the City’s law in one instance, and state law in another instance, when



1 handling a report of a firearm theft.

2 35. Plaintiffs present important questions of statutory and constitutional interpretation,  
3 questions of public interest which further warrant prompt disposition of this matter.

4 36. Accordingly, Plaintiffs seek a writ of mandate, under Code of Civil Procedure  
5 sections 1085 and 1087, commanding that Defendants (a) stop enforcing the Ordinance, and (b)  
6 remove the Ordinance from any list of municipal ordinances and, specifically, delete the section  
7 requiring the reporting of stolen and lost firearms from Morgan Hill Municipal Code 9.04.030.

8 **PRAYER FOR RELIEF**

9 Wherefore Plaintiffs pray for the following relief:

10 1. For issuance of a declaration that the portion of the challenged Ordinance identified  
11 in Paragraph 3 of this complaint, and codified at Morgan Hill Municipal Code 9.04.030, is  
12 preempted by Penal Code section 25250, and is void and invalid;

13 2. For issuance of a peremptory writ and/or permanent injunction ordering Defendants  
14 to not enforce the Ordinance, and to strike the corresponding Morgan Hill Municipal Code  
15 9.04.030 from its books and records;

16 3. For issuance of a peremptory writ and/or permanent injunction ordering Defendants  
17 to not expend money from the City treasury on training regarding or enforcement of the Ordinance;

18 4. For a declaration that the striking of and enjoining of enforcement of the Ordinance  
19 confers a substantial benefit on the public;

20 5. For an award of reasonable costs of suit and attorney's fees under Code of Civil  
21 Procedure section 1021.5 and under any other state law for which such fees and costs are provided;  
22 and

23 6. For such other relief as may be just and proper.

24  
25 Dated: April 15, 2019

MICHEL & ASSOCIATES, P.C.

26   
27 Anna M. Barvir  
28 Attorneys for Plaintiffs

**VERIFICATION**

I, the undersigned, declare:

I am one of the petitioners in this action. I have read the above Complaint for Declaratory and Injunctive Relief; Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and know its contents. All facts regarding my personal circumstances that are alleged in the petition are within my own knowledge, and I know these facts to be true. As to all other facts alleged therein, I am informed and believe, and on those grounds allege, that those matters are also true.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 15, 2019, at Morgan Hill, California.

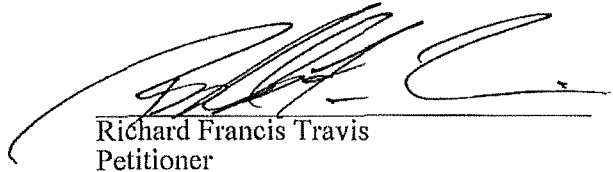
  
G. Mitchell Kirk  
Petitioner

VERIFICATION

I, the undersigned, declare:

I am the Executive Director of California Rifle & Pistol Association, Incorporated (CRPA), one of the petitioners in this action. As Executive Director, I am authorized to make this verification on behalf of CRPA. I have read the above Complaint for Declaratory and Injunctive Relief; Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and know its contents. All facts alleged in the petition regarding the particular circumstances of CRPA or its members are within my personal knowledge, and I know these facts to be true. As to all other facts alleged therein, I am informed and believe, and on those grounds allege, that those matters are also true.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 15, 2019, at Fullerton, California.



Richard Francis Travis  
Petitioner

# **EXHIBIT Y**

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10 Facsimile: (415) 433-3357

11 Attorneys for CITY OF MORGAN HILL,  
MORGAN HILL CHIEF OF POLICE DAVID  
12 SWING, MORGAN HILL CITY CLERK IRMA  
TORREZ

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE  
15

16 G. MITCHELL KIRK; and CALIFORNIA  
17 RIFLE & PISTOL ASSOCIATION,  
INCORPORATED,

18 Plaintiffs and Petitioners,

19 vs.  
20

21 CITY OF MORGAN HILL; MORGAN HILL  
CHIEF OF POLICE DAVID SWING, in his  
22 official capacity; MORGAN HILL CITY  
CLERK IRMA TORREZ, in her official  
23 capacity; and DOES 1-10,,  
24

Defendants and Respondents.

Case No. 19CV346360

**DEFENDANTS' ANSWER TO  
COMPLAINT FOR DECLARATORY  
RELIEF; VERIFIED PETITION FOR  
WRIT OF MANDATE AND/OR  
PROHIBITION OR OTHER  
APPROPRIATE RELIEF**

Action Filed: April 15, 2019

25 Defendants CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID  
26 SWING, MORGAN HILL CITY CLERK IRMA TORREZ ("Defendants") answer as follows  
27 Plaintiffs' G. MITCHELL KIRK and CALIFORNIA RIFLE & PISTOL ASSOCIATION,  
28 INCORPORATED ("Plaintiffs") verified Complaint For Declaratory Relief; Verified Petition For

1 Writ of Mandate And/or Prohibition or Other Appropriate Relief (“Complaint”). Any and all  
2 allegations not specifically admitted herein are denied. No statement herein constitutes a comment  
3 on the legal theories upon which Plaintiff purports to proceed. To the extent the Complaint asserts  
4 legal contentions, such legal contentions require no response in this Answer. To the extent any  
5 response is required to the headings in the Complaint, Defendants deny the factual allegations, if  
6 any, contained in such headings.

7 **I. NATURE OF THE CASE**

8 1. Defendants deny the allegations in paragraph 1 and allege that, on November 28, 2018,  
9 the CITY OF MORGAN HILL (“City”) adopted Ordinance No. 2289 (the “Ordinance”).

10 2. Defendants deny the allegations in paragraph 2 and allege that the  
11 Ordinance requires individuals to report the loss or theft of a firearm to the City’s Police  
12 Department within 48 hours if the loss or theft occurred within the City or the owner of the  
13 firearm resides in the City.

14 3. Defendants admit that the Ordinance now reads as written in paragraph 3 of the  
15 Complaint. Except as expressly admitted herein, Defendants deny the allegations in Paragraph 3  
16 of the Complaint, including footnote 1.

17 4. Defendants deny the allegations in paragraph 4 and allege that California voters  
18 passed Proposition 63 (“Prop 63”) on November 8, 2016. Among other things, Prop 63 included a  
19 mandatory reporting requirement when firearms are lost or stolen.

20 5. The allegations of Paragraph 5 constitute legal conclusions, to which no answer is  
21 required.

22 6. The allegations of Paragraph 6 constitute a legal conclusion, to which no answer is  
23 required.

24 7. Defendants admit that California Rifle & Pistol Association, Incorporated notified the  
25 City in writing that section 25250 (allegedly) preempted the Ordinance and requested that the City  
26 voluntarily repeal the Ordinance. The City did not voluntarily repeal the Ordinance. Except as  
27 expressly admitted herein, Defendants deny the allegations in Paragraph 7 of the Complaint.

28 8. Paragraph 8 includes a legal conclusion, to which no answer is required. As to the

1 remaining allegations, Defendants lack information or belief regarding the allegations set forth in  
2 Paragraph 8 of the Complaint, and on that basis deny each and every such allegation.

3 9. Defendants lack information or belief regarding the allegations set forth in Paragraph 9  
4 of the Complaint, and on that basis deny each and every such allegation.

5 **II. DECLARATORY AND WRIT RELIEF IS NECESSARY**

6 10. Paragraph 10 constitutes a legal conclusion, to which no answer is required.

7 11. Defendants deny the allegations in Paragraph 11 and allege that Municipal Code  
8 9.04.030 took effect on December 29, 2018. As of the date of this writing, no one has been cited  
9 for a violation.

10 12. Paragraph 12 constitutes a legal conclusion, to which no answer is required.

11 **PARTIES**

12 **I. PLAINTIFFS**

13 13. Defendants lack information or belief regarding the allegations set forth in Paragraph  
14 13 of the Complaint, and on that basis deny each and every such allegation. Defendants deny that  
15 if Plaintiff were to report a stolen firearm within 120 hours he would necessarily be subject to  
16 prosecution under the Ordinance, even though his conduct would conform with Penal Code  
17 section 25250.

18 14. Defendants lack information or belief regarding the allegations set forth in Paragraph  
19 14 of the Complaint, and on that basis deny each and every such allegation.

20 **II. DEFENDANTS**

21 15. Defendants admit that CITY OF MORGAN HILL is a municipal corporation formed  
22 under the laws of California.

23 16. Defendants admit that DAVID SWING is the Chief of Police of the Morgan Hill Police  
24 Department.

25 17. Defendants admit that IRMA TORREZ is the City Clerk of Morgan Hill.

26 18. Defendants lack information or belief regarding the allegations set forth in Paragraph  
27 18 of the Complaint, and on that basis deny each and every such allegation.

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20. The allegations in Paragraph 20 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

21. Defendants admit that Plaintiffs purport to incorporate by reference the allegations contained in all previous Paragraphs, and incorporates by this reference their responses to those Paragraphs.

23. Defendants lack information or belief regarding the allegations set forth in Paragraph 23 of the Complaint, and on that basis deny each and every such allegation.

25. The allegations in Paragraph 25 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

27. The allegations in Paragraph 27 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

28. Defendants admit that Plaintiffs purport to request an injunction forbidding Defendants, their agents, employees, representatives, and all those acting in concert with them from enforcing the Ordinance, and further requiring Defendants to remove corresponding Municipal Code 9.04.030 from the Morgan Hill Municipal Code.



**SECOND CAUSE OF ACTION**  
**FOR A WRIT OF MANDATE AND/OR PROHIBITION**  
**(By All Plaintiffs Against All Defendants)**

29. Defendants admit that Plaintiff purports to incorporate by reference the allegations contained in all previous Paragraphs, and incorporates by this reference their responses to those Paragraphs.

30. The allegations in Paragraph 30 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

31. The allegations in Paragraph 31 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

32. Defendants lack information or belief regarding the allegations set forth in Paragraph 32 of the Complaint, and on that basis deny each and every such allegation.

33. The allegations in Paragraph 33 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

34. The allegations in Paragraph 34 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

a. The allegations in Paragraph 34(a) constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

b. The allegations in Paragraph 34(b) constitute legal conclusions, to which no answer is required. Defendants admit that if Plaintiffs chose to wait for a period of more than 48 hours after learning of a lost or stolen firearm to report the loss or theft, they could be subject to prosecution under the Ordinance.

c. Defendants lack information or belief regarding the allegations set forth in Paragraph 34(c) of the Complaint, and on that basis deny each and every such allegation.

d. The allegations in Paragraph 34(d) constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the



1 barred from bringing or maintaining this action because they have failed to exhaust their  
2 administrative remedies.

3 **Fourth Affirmative Defense**

4 **(No Attorneys' Fees)**

5 As a fourth, separate and distinct affirmative defense, Defendants allege that Plaintiffs  
6 have failed to state facts sufficient to set forth a claim for recovery of their attorneys' fees.

7 **Fifth Affirmative Defense**

8 **(Irreparable Harm)**

9 As a fifth, separate and distinct affirmative defense, Defendants allege that Plaintiffs have  
10 not experienced irreparable harm, making injunctive relief improper.

11 **Sixth Affirmative Defense**

12 **(Ripeness)**

13 As a sixth, separate and distinct affirmative defense, Defendants allege that some or all of  
14 Plaintiffs' causes of action are premature and not ripe for adjudication.

15 **Seventh Affirmative Defense**

16 **(Statute of Limitations)**

17 As a seventh, separate and distinct affirmative defense, Defendants allege that the  
18 Complaint, and some or all of each cause therein, is barred by the applicable statute of limitations.

19 **Eighth Affirmative Defense**

20 **(Waiver)**

21 As an eighth, separate and distinct affirmative defense, Defendants allege that Plaintiffs  
22 have waived, expressly or by implication, the claims asserted in the Complaint.

23 **Ninth Affirmative Defense**

24 **(Estoppel)**

25 As a ninth, separate and distinct affirmative defense, Defendants allege that Plaintiffs'  
26 causes of action are barred, in whole or in part, by the equitable doctrine of estoppel.

1 **Tenth Affirmative Defense**

2 **(Laches)**

3 As a tenth, separate and distinct affirmative defense, Defendants allege that Plaintiffs'  
4 causes of action are barred, in whole or in part, by the equitable doctrine of laches.

5 **Eleventh Affirmative Defense**

6 **(Unclean Hands)**

7 As an eleventh, separate and distinct affirmative defense, Defendants allege that Plaintiffs'  
8 causes of action are barred, in whole or in part, by the equitable doctrine of unclean hands.

9 **Twelfth Affirmative Defense**

10 **(Additional Defenses)**

11 The Complaint is barred by other affirmative defenses that Defendants may allege as those  
12 defenses become known through discovery.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Defendants pray for relief as follows:

- 15 1. That Plaintiffs take nothing by their Complaint and that the Complaint be dismissed  
16 in its entirety, with prejudice;
- 17 2. That Defendants be awarded judgment in this action;
- 18 3. That Defendants be awarded costs of suit and attorneys' fees incurred herein; and,
- 19 4. That Defendants be awarded such other and further relief as the Court deems just  
20 and proper.

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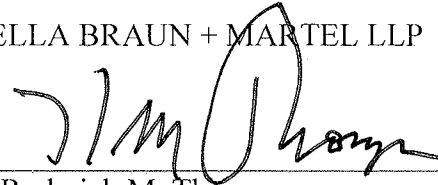
**DEMAND FOR JURY TRIAL**

Defendants CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ, hereby demand trial by jury in this matter.

Dated: July 19, 2019

FARELLA BRAUN + MARTEL LLP

By:



Roderick M. Thompson

Attorneys for CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ

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**VERIFICATION**

**STATE OF CALIFORNIA, COUNTY OF SANTA CLARA**

I am the Deputy City Clerk for the City of Morgan Hill, and am authorized to make this verification on behalf of the City Clerk, a party to this action. I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 19, 2019, at Morgan Hill, California.

For Morgan Hill City Clerk Irma Torrez  
Michelle Bigelow  
Deputy City Clerk

  
Signature

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**VERIFICATION**

**STATE OF CALIFORNIA, COUNTY OF SANTA CLARA**

I am the City Attorney for the City of Morgan Hill, a party to this action, and am authorized to make this verification on its behalf. I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 19, 2019, at Morgan Hill, California.

City of Morgan Hill  
\_\_\_\_\_  
Donald A. Larkin  
City Attorney

  
\_\_\_\_\_  
Signature

Forella Braun + Martel LLP  
235 Montgomery Street, 17th Floor  
San Francisco, California 94104  
(415) 954-4400

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**VERIFICATION**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 19, 2019, at Morgan Hill, California.

Morgan Hill Chief of Police David Swing  
David Swing

  
Signature



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STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

On July 19, 2019, I served true copies of the following document(s) described as on the interested parties in this action as follows: **DEFENDANTS' ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF**

**BY ELECTRONIC SERVICE:** I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at [www.onelegal.com](http://www.onelegal.com).

Executed on July 19, 2019, at San Francisco, California.

Pamela Woodfin  
Pamela Woodfin

# **EXHIBIT Z**

1 Roderick M. Thompson (State Bar No. 96192)  
rthompson@fbm.com

2 James Allison (State Bar No. 319204)  
jallison@fbm.com

3 Farella Braun + Martel LLP  
235 Montgomery Street, 17<sup>th</sup> Floor  
4 San Francisco, California 94104  
Telephone: (415) 954-4400  
5 Facsimile: (415) 954-4480

6 Hannah Shearer (State Bar No. 292710)  
hshearer@giffords.org  
7 Hannah Friedman (State Bar No. 324771)  
hfriedman@giffords.org  
8 Giffords Law Center to Prevent Gun Violence  
9 268 Bush Street #555  
San Francisco, California 94104  
10 Telephone: (415) 433-2062  
Facsimile: (415) 433-3357  
11

12 Attorneys for CITY OF MORGAN HILL,  
MORGAN HILL CHIEF OF POLICE DAVID  
13 SWING, MORGAN HILL CITY CLERK IRMA  
TORREZ

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE

16  
17 G. MITCHELL KIRK; and CALIFORNIA  
RIFLE & PISTOL ASSOCIATION,  
18 INCORPORATED,

19 Plaintiffs and Petitioners,

20 vs.

21 CITY OF MORGAN HILL; MORGAN HILL  
CHIEF OF POLICE DAVID SWING, in his  
22 official capacity; MORGAN HILL CITY  
CLERK IRMA TORREZ, in her official  
23 capacity; and DOES 1-10,,  
24

Defendants and Respondents.

Case No. 19CV346360

**DEFENDANT CITY OF MORGAN HILL  
RESPONSE TO PLAINTIFF'S FORM  
INTERROGATORIES, SET ONE**

Action Filed: April 15, 2019

25 PROPOUNDING PARTIES: PLAINTIFF G. MITCHELL KIRK

26 RESPONDING PARTIES: DEFENDANT CITY OF MORGAN HILL

27 SET NO: ONE  
28

Pursuant to California Civil Procedure Code § 2030.260, Defendant CITY OF MORGAN HILL (hereinafter “Morgan Hill”) hereby responds to the Form Interrogatories (Set One) propounded by plaintiff G. MITCHELL KIRK (hereinafter “Plaintiff”).

#### **GENERAL OBJECTIONS**

Morgan Hill objects to the definition of “the INCIDENT” to the extent that it seeks information not relevant to the parties’ claims or defenses. The test for preemption does not entail an analysis of Morgan Hill’s legislative drafting process, Morgan Hill’s legislative intent or motive, or Morgan Hill legislators’ deliberations or justifications.

Morgan Hill objects to the definition of “YOU OR ANYONE ACTING ON YOUR BEHALF” as overbroad and seeking information not relevant to the parties’ claims or defenses. Morgan Hill will limit this definition to the Morgan Hill City Council, City Manager, Police Chief, and City Attorney acting in their official capacities.

#### **RESPONSES TO FORM INTERROGATORIES**

##### **FORM INTERROGATORY NO. 1.1:**

1.0. Identity of Persons Answering These Interrogatories.

1.1. State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. *(Do not identify anyone who simply typed or reproduced the responses.)*

##### **RESPONSE:**

Subject to and without waiving its objections, Morgan Hill states as follows:

- 1) Donald Larkin, Morgan Hill City Attorney  
17575 Peak Avenue  
Morgan Hill, CA 95037  
(408) 778-3490
- 2) Roderick M. Thompson, undersigned counsel
- 3) Hannah Shearer, undersigned counsel
- 4) James Allison, undersigned counsel
- 5) Hannah Friedman, undersigned counsel

1 **FORM INTERROGATORY NO. 12.2:**

2 12.0. Investigation—General.

3 12.2. Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any  
4 individual concerning the **INCIDENT**? If so, for each individual state:

5 (a) the name, **ADDRESS**, and telephone number of the individual interviewed;

6 (b) the date of the interview; and

7 (c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the  
8 interview.

9 **RESPONSE TO INTERROGATORY NO. 12.2:**

10 Morgan Hill objects to this Interrogatory because, incorporating Plaintiff's definition of  
11 "the Incident," the Interrogatory seeks information not relevant to the parties' claims or defenses.  
12 The test for preemption does not entail an analysis of any interviews Morgan Hill may have  
13 conducted about "the passage, interpretation, application, enforcement, and notice of effective date  
14 of Ordinance No. 2289."

15 Morgan Hill objects to this Interrogatory on grounds that in context, the word "interview"  
16 is vague and ambiguous. The Morgan Hill City Council reviewed a body of information, including  
17 materials, reports, and public comments, in its deliberations before the passage of Ordinance No.  
18 2289, and it is unclear whether any of these materials reference or constitute interviews as defined  
19 in this Interrogatory. If the Interrogatory is intended to be interpreted to cover such materials, the  
20 information sought is equally available to the Plaintiff, from a public source  
21 (<https://morganhillca.iqm2.com/Citizens/Calendar.aspx>) that is more convenient and can be  
22 accessed at no cost to Morgan Hill, and without requiring Morgan Hill to create new records  
23 containing names of individuals who provided information in public records concerning  
24 Ordinance No. 2289.

25 Morgan Hill objects to this Interrogatory to the extent that it seeks attorney work product  
26 and/or communications or documents covered by the attorney-client privilege.

27 Based on this objection, Morgan Hill will not respond to this Interrogatory. Morgan Hill  
28 proposes instead to meet and confer with Plaintiffs to confirm that Plaintiffs can access the

1 requested information through Morgan Hill's website, and determine whether there is any other  
2 interpretation of this Request for Production that will resolve Morgan Hill's objections.

3 **FORM INTERROGATORY NO. 12.3:**

4 12.0. Investigation—General.

5 12.3. Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or  
6 recorded statement from any individual concerning the **INCIDENT**? If so, for each statement  
7 state:

8 (a) the name, **ADDRESS**, and telephone number of the individual from whom the  
9 statement was obtained;

10 (b) the name, **ADDRESS**, and telephone number of the individual who obtained the  
11 statement;

12 (c) The date the statement was obtained; and

13 (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original  
14 statement or a copy.

15 **RESPONSE TO FORM INTERROGATORY NO. 12.3:**

16 Morgan Hill objects to this Interrogatory as vague, ambiguous, burdensome, overbroad,  
17 and seeking information not relevant to the parties' claims or defenses. Plaintiffs have defined the  
18 Incident as "the passage, interpretation, application, enforcement, and notice of effective date of  
19 Ordinance No. 2289." Ordinance No. 2289 is legislation that the Morgan Hill City Council passed  
20 in the regular course of business and in connection with that legislation, Morgan Hill maintained  
21 an official volume of publicly available records that constitute written and recorded statements  
22 from individuals concerning the Ordinance's passage, interpretation, application, enforcement, and  
23 effective date. Given the Interrogatory's vague and burdensome scope, the fact that the parties  
24 have not yet completed discovery, the fact that the requested records are publicly available, and  
25 the fact that the test for preemption does not involve an analysis of statements Morgan Hill  
26 obtained from anyone about the passage of Ordinance No. 2289, this Interrogatory should properly  
27 be propounded as a Request for Production for Morgan Hill's records about Ordinance No. 2289.

28 Morgan Hill objects to this Interrogatory to the extent that it seeks attorney work product

1 and/or communications or documents covered by the attorney-client privilege.

2 Morgan Hill objects to this Interrogatory to the extent it asks Morgan Hill to identify  
3 persons with knowledge of facts that are not personally known, but are facts concerning matters of  
4 public record. Morgan Hill will interpret the request to identify persons with knowledge of  
5 Morgan Hill's awareness or consideration of those facts.

6 Subject to and without waiving its objections, Morgan Hill states as follows:

7 Based on these objections, Morgan Hill will respond to this Interrogatory by producing all  
8 non-privileged, responsive records in its possession, custody, or control concerning Ordinance  
9 2289.

10 **FORM INTERROGATORY NO. 12.4:**

11 12.0. Investigation—General.

12 12.3. Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any  
13 photographs, films, or videotapes depicting any place, object or individual concerning the  
14 **INCIDENT** or plaintiff's injuries? If so, state:

- 15 (a) the number of photographs or feet of film or videotape;  
16 (b) the places, objects, or persons photographed, filmed, or videotaped;  
17 (c) the date the photographs, films, or videotapes were taken;  
18 (d) the name, **ADDRESS**, and telephone number of the individual taking the photographs,  
19 films, or videotapes; and  
20 (e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original  
21 or a copy of the photographs, films, or videotapes.

22 **RESPONSE TO FORM INTERROGATORY NO. 12.4:**

23 Morgan Hill objects to this Interrogatory as vague, ambiguous, burdensome, overbroad,  
24 and seeking information not relevant to the parties' claims or defenses. Plaintiffs have defined the  
25 Incident as "the passage, interpretation, application, enforcement, and notice of effective date of  
26 Ordinance No. 2289." Ordinance No. 2289 is legislation that the Morgan Hill City Council passed  
27 in the regular course of business and in connection with that legislation, Morgan Hill maintained  
28 an official volume of publicly available records that constitute written and recorded statements

1 from individuals concerning the Ordinance's passage, interpretation, application, enforcement, and  
2 effective date. Given the Interrogatory's vague and burdensome scope, the fact that the parties  
3 have not yet completed discovery, the fact that the requested records are publicly available, and  
4 the fact that the test for preemption does not involve an analysis of statements Morgan Hill  
5 obtained from anyone about the passage of Ordinance No. 2289, this Interrogatory should properly  
6 be propounded as a Request for Production for Morgan Hill's records about Ordinance No. 2289.

7 Morgan Hill objects to this Interrogatory to the extent it asks Morgan Hill to identify  
8 persons with knowledge of facts that are not personally known, but are facts concerning matters of  
9 public record. Morgan Hill will interpret the request to identify persons with knowledge of  
10 Morgan Hill's awareness or consideration of those facts.

11 Subject to and without waiving its objections, Morgan Hill states as follows:

12 Based on these objections, Morgan Hill will respond to this Interrogatory by producing all  
13 non-privileged, responsive records in its possession, custody, or control concerning Ordinance  
14 2289.

15 **FORM INTERROGATORY NO. 15.1:**

16 15.0. Denials and Special or Affirmative Defenses.

17 15.1. Identify each denial of a material allegation and each special or affirmative defense  
18 in your pleadings and for each:

19 (a) state all facts upon which you base the denial or special or affirmative defense;

20 (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have  
21 knowledge of those facts, and

22 (c) identify all **DOCUMENTS** and other tangible things that support your denial or  
23 special or affirmative defense, and state the name, **ADDRESS**, and telephone number of the  
24 **PERSON** who has each **DOCUMENT**.

25 **RESPONSE TO FORM INTERROGATORY NO. 15.1:**

26 Morgan Hill objects to this Interrogatory to the extent it asks Morgan Hill to identify  
27 persons with knowledge of facts that are not personally known, but are facts concerning matters of  
28 public record. Morgan Hill will interpret the request to identify persons with knowledge of



1 Morgan Hill's awareness or consideration of those facts.

2 Morgan Hill objects to this contention-type Interrogatory as unduly burdensome in that it is  
3 premature, as discovery has only recently opened. Morgan Hill will respond to the best of its  
4 current abilities, but notes that Morgan Hill's factual investigation and analysis of the issues are  
5 ongoing. The Interrogatory is premature to the extent it requests the basis for Morgan Hill's  
6 affirmative defenses, which will depend on factual investigation during the discovery process.  
7 Morgan Hill will update its response, if necessary, as its investigation and analysis develops.

8 Morgan Hill objects to this Interrogatory to the extent that it seeks attorney work product  
9 or other documents covered by the attorney-client privilege. Morgan Hill will not describe legal  
10 theories supporting its affirmative defenses in the fact discovery process.

11 Subject to and without waiving its objections, Morgan Hill states as follows:

12 Morgan Hill identifies the following as denials of material allegations in its pleadings, and  
13 provides the information requested in parts (a), (b), and (c) for each.

14 (1) "Defendants deny the allegations in paragraph 2 and allege that the Ordinance requires  
15 individuals to report the loss or theft of a firearm to the City's Police Department within 48  
16 hours if the loss or theft occurred within the City or the owner of the firearm resides in the  
City" (Answer ¶ 2)

17 (a) Bases:

- 18 • Ordinance 2289: publicly available.

19 (b) Names:

- 20 • Donald Larkin, Morgan Hill City Attorney (address and telephone number above)

21 (c) Documents:

- 22 • Ordinance 2289: publicly available.
- 23 • Publicly available materials presented to and considered by the City Council in  
24 connection with the passage of Ordinance 2289, including materials available at  
<https://morganhillca.igim2.com/Citizens/Calendar.aspx>.

25 (2) Denial that ordinance is preempted (E.g., Answer ¶¶ 3, 7, 30, 34)

26 (a) Bases:

- 27 • Ordinance 2289: publicly available.
- 28

- California Penal Code § 25250 et seq., added by voter initiative Proposition 63, Sec. 4.1: publicly available.
- Proposition 63 ballot materials: publicly available. These materials include the text of Proposition 63 ([http://downloads.capta.org/leg/BallotMeasures/Prop63\\_FullText.pdf](http://downloads.capta.org/leg/BallotMeasures/Prop63_FullText.pdf)); and the voter guide (<https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf>, starting at page 84), which includes the official title and summary, fiscal impact statement, analysis by the Legislative Analyst's office, and arguments in favor and against the proposition.
- Information provided to Proposition 63 voters about the ballot initiative, including the archived version of the Proposition 63 proponents' website, which is publicly available at <http://web.archive.org/web/20161028221844/http://safetyforall.com/>.

(b) Without waiving applicable work product protection and attorney/client privilege, Morgan Hill states that its attorneys have knowledge of these facts:

- Donald Larkin, Morgan Hill City Attorney (address and telephone number above)
- Roderick M. Thompson, undersigned counsel
- Hannah Shearer, undersigned counsel
- James Allison, undersigned counsel
- Hannah Friedman, undersigned counsel

(c) Documents: publicly available documents listed in (a), above.

(3) "Defendants deny the allegations in Paragraph 11 and allege that Municipal Code 9.04.030 took effect on December 29, 2018. As of the date of this writing, no one has been cited for a violation." (Answer ¶ 11)

(a) Bases:

- Ordinance 2289: publicly available.

(b) Names:

- Donald Larkin, Morgan Hill City Attorney (address and telephone number above)

(c) Documents:

- Ordinance 2289: publicly available.
- Publicly available materials presented to and considered by the City Council in connection with the passage of Ordinance 2289, including materials available at <https://morganhillca.igq2.com/Citizens/Calendar.aspx>.

(4) "Defendants deny that if Plaintiff were to report a stolen firearm within 120 hours he would necessarily be subject to prosecution under the Ordinance, even though his conduct

1 would conform with Penal Code section 25250.” (Answer ¶ 13)

2 (a) Bases:

3 Ordinance 2289: publicly available.

4 (b) Names:

- 5 • Donald Larkin, Morgan Hill City Attorney (address and telephone number above)

6 (c) Documents:

7 Ordinance 2289: publicly available.

8 (5) Affirmative defenses, including first, second, and sixth affirmative defenses (no standing,  
9 failure to state a claim, and ripeness)

10 (a) Bases: Without waiving the right to assert a basis for additional affirmative defenses  
11 later in the discovery process, Morgan Hill states that its bases include the following.

- 12 • Ordinance 2289: publicly available

13 (b) Names:

- 14 • Donald Larkin, Morgan Hill City Attorney (address and telephone number above)


15 (c) Documents:

- 16 • Ordinance 2289: publicly available.

- 17 • Publicly available materials presented to and considered by the City Council in  
18 connection with the passage of Ordinance 2289, including materials available at  
19 <https://morganhillca.iqm2.com/Citizens/Calendar.aspx>.

1  
2 Dated: February 3, 2020

3  
4 By:

  
Roderick M. Thompson

5 Attorneys for CITY OF MORGAN HILL, MORGAN  
6 HILL CHIEF OF POLICE DAVID SWING, MORGAN  
7 HILL CITY CLERK IRMA TORREZ

8 Dated: February 3, 2020

GIFFORDS LAW CENTER TO PREVENT GUN  
VIOLENCE

9  
10 By: //s// Hannah Shearer

11 Hannah Shearer

12 Attorneys for CITY OF MORGAN HILL, MORGAN  
13 HILL CHIEF OF POLICE DAVID SWING, MORGAN  
14 HILL CITY CLERK IRMA TORREZ

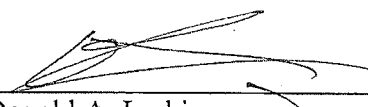
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**VERIFICATION**

*I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.*

Dated: February 3, 2020

By:

  
Donald A. Larkin

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**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

On March 3, 2020, I served true copies of the following document(s) described as on the interested parties in this action as follows: **DEFENDANT CITY OF MORGAN HILL  
RESPONSE TO PLAINTIFFS FORM INTERROGATORIES, SET ONE**

**BY ELECTRONIC SERVICE:** I served the document(s) on the person(s) listed in the Service List by submitting an electronic version of the document(s) to the emails listed thereon.

Executed on March 3, 2020, at San Francisco, California.

Pamela Woodfin  
Pamela Woodfin

# **EXHIBIT AA**



# State of California Secretary of State

**N**

## Statement of Information

(Domestic Nonprofit, Credit Union and General Cooperative Corporations)

**Filing Fee: \$20.00. If this is an amendment, see instructions.**  
**IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

**FW71792****FILED**

In the office of the Secretary of State  
of the State of California

**MAY-11 2018****1. CORPORATE NAME**

CALIFORNIA RIFLE &amp; PISTOL ASSOCIATION, INCORPORATED

**2. CALIFORNIA CORPORATE NUMBER**

C0327194

This Space for Filing Use Only

**Complete Principal Office Address** (Do not abbreviate the name of the city. Item 3 cannot be a P.O. Box.)**3. STREET ADDRESS OF PRINCIPAL OFFICE IN CALIFORNIA, IF ANY**

CITY

STATE

ZIP CODE

271 E. IMPERIAL HWY., #620, FULLERTON, CA 92835

**4. MAILING ADDRESS OF THE CORPORATION**

CITY

STATE

ZIP CODE

**Names and Complete Addresses of the Following Officers** (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)**5. CHIEF EXECUTIVE OFFICER/**

ADDRESS

CITY

STATE

ZIP CODE

CARL DAWSON MICHEL 180 E. OCEAN BLVD., SUITE 200, LONG BEACH, CA 90802

**6. SECRETARY**

ADDRESS

CITY

STATE

ZIP CODE

MATTHEW CORWIN 766 CANYON ROAD, REDWOOD CITY, CA 94062

**7. CHIEF FINANCIAL OFFICER/**

ADDRESS

CITY

STATE

ZIP CODE

RICHARD MINNICH 554 LONE OAK DRIVE, THOUSAND OAKS, CA 91362

**Agent for Service of Process** If the agent is an individual, the agent must reside in California and Item 9 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 9 must be left blank.

**8. NAME OF AGENT FOR SERVICE OF PROCESS** [Note: The person designated as the corporation's agent MUST have agreed to act in that capacity prior to the designation.]

MICHEL &amp; ASSOCIATES, A PROFESSIONAL CORPORATION

**9. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL**

CITY

STATE

ZIP CODE

**Common Interest Developments**

10. ☐ Check here if the corporation is an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (California Civil Code section 4000, et seq.) or under the Commercial and Industrial Common Interest Development Act, (California Civil Code section 6500, et seq.). The corporation must file a Statement by Common Interest Development Association (Form SI-CID) as required by California Civil Code sections 5405(a) and 6760(a). Please see instructions on the reverse side of this form.

**11. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.**

05/11/2018

JOSHUA ROBERT DALE

ATTORNEY

DATE

TYPE/PRINT NAME OF PERSON COMPLETING FORM

TITLE

SIGNATURE

SI-100 (REV 01/2016)

APPROVED BY SECRETARY OF STATE



# **EXHIBIT BB**

SENIOR PARTNER  
C. D. MICHEL\*

MANAGING PARTNER  
JOSHUA ROBERT DALE

SPECIAL COUNSEL  
JOSEPH A. SILVOSO, III  
W. LEE SMITH

ASSOCIATES  
ANNA M. BARVIR  
SEAN A. BRADY  
TIFFANY D. CHEUVRONT  
MATTHEW D. CUBEIRO  
ALEXANDER A. FRANK  
JENNIFER F. HOOSHMAND  
LOS ANGELES, CA



OF COUNSEL  
SCOTT M. FRANKLIN  
CLINT B. MONFORT  
ERIC M. NAKASU  
MICHAEL W. PRICE  
TAMARA M. RIDER  
LOS ANGELES, CA

WRITER'S DIRECT CONTACT:  
562-216-4450  
TCHEUVRONT@MICHELLAWYERS.COM

\* ALSO ADMITTED IN TEXAS AND THE  
DISTRICT OF COLUMBIA

June 1, 2018

**VIA FAX & U.S.MAIL**

Donald Larkin, City Attorney  
City of Morgan Hill  
17575 Peak Ave.  
Morgan Hill, CA 95037  
Fax: 408-779-1592

**Re: City Council Consideration of Proposals to Prevent Gun Violence**

Dear Mr. Larkin:

We write to you on behalf of our client California Rifle & Pistol Association, Inc. ("CRPA") as well as the hundreds of thousands of their members in California, many residing within the Morgan Hill ("City") area.

It has come to our attention that the City intends to consider several proposed ordinances that seek to impose firearm related restrictions on residents and visitors to the City. These proposals include: (1) A duty to report the theft or loss of a firearm within 48 hours; (2) A mandatory lock storage requirement while in the home; (3) A prohibition on the possession of magazines holding more than 10 rounds; and, (4) A requirement that all firearm retailers obtain a special permit as a condition of obtaining a business license. The City has also proposed certifying staff training for gun retailers, maintaining ammunition sale logs, and prohibiting the sale of "Assault-Style" weapons to persons under the age of 21.

We ask that the City carefully consider the intended objectives of any proposed ordinances, as many of these issues as identified in the May 16, 2018 staff report raise serious constitutional concerns and would fail to meet objectives of reducing gun violence or promoting public safety.

**I. REQUIRING INDIVIDUALS TO REPORT THE THEFT OF LOSS OF A FIREARM WITHIN 48 HOURS IS UNENFORCEABLE AND WILL ONLY RESULT IN FEWER REPORTS TO POLICE.**

Under the preemption doctrine a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication.<sup>1</sup> In the present case, the mandatory reporting of the theft or loss of a firearm is already required under state law following the enactment of Proposition 63.<sup>2</sup> This provision subjects gun owners to penalties if a firearm, which is lost or stolen, is not reported to authorities within 5 days of the time he or she knew or reasonably should have known that the firearm was lost or stolen.<sup>3</sup>

With the enactment of Proposition 63, the state has fully and completely occupied the field regarding the reporting of lost or stolen firearms. To pass additional requirements at the local level that is duplicative and otherwise contradictory to state law will be struck down as preempted.

From a policy perspective, mandatory reporting requirements may appear sound, but in practice will only result in fewer firearms being reported. This is because when coupled with the mandatory locked-storage requirements also being considered by the City, reporting a firearm as lost or stolen may expose an individual to additional criminal liability should the person have failed to secure their firearms in accordance with the ordinance. The Fifth Amendment of the United States Constitution, which reads “[n]o person. . . shall be compelled in any criminal case to be a witness against himself,” will prevent such individuals from being compelled to report the loss.<sup>4</sup>

As a bedrock of our criminal justice system, the Fifth Amendment prohibits police, prosecutors, and judges from requiring an individual to provide evidence or testimony that could result in potential criminal charges against them (compelled speech). Governor Brown noted these complicated policy issues when he vetoed numerous pieces of legislation prior to the voters passing Proposition 63. In his veto message, Governor Brown wrote that he had vetoed similar measures in 2012 and 2013 stating “I continue to believe that responsible people report the loss or theft of a firearm and irresponsible people do not... it is not likely that this bill would change that.” Even Governor Brown’s predecessor Governor Schwarzenegger vetoed a similar bill reasoning that it “could result in cases where law-

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<sup>1</sup> *Fisacal v. City of San Francisco* (2008) 158 Cal. App. 4th 895, 903-04.

<sup>2</sup> Cal. Penal Code § 25250.

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

<sup>4</sup> U.S. Const. amend.V.

abiding citizens face criminal penalties simply because they were the victim of a crime, which is particularly troubling.”<sup>5</sup>

Given the enforcement difficulties, other jurisdictions considering similar measures have rejected them. Recently, the Sacramento Police Department reviewed identical Oakland, Berkley, and Alameda County reporting requirements, only to discover that not a single investigation, arrest, or conviction had taken place. In San Francisco, when police do try to enforce this portion of the municipal code, the cases are dismissed on constitutional grounds. One District Attorney for the County of San Francisco even stated, “I do not believe [the ordinance] will expand my ability to prosecute crime.” This complete lack of the ability to enforce clearly illustrates how such a requirement will not further the objectives of the City.

What’s more, law abiding citizens already report firearms lost or stolen. Doing so protects them from becoming a suspect in any potential criminal investigation involving the misuse of the firearm and increases the chances of the firearm being returned. Therefore, the City should be taken steps to encourage the reporting by not imposing penalties on otherwise law-abiding gun owners for failing to do so.

## **II. MANDATING FIREARMS TO BE STORED IN A LOCKED CONTAINER IN ONE’S HOME RAISES SERIOUS SECOND AND FOURTH AMENDMENT CONCERNS AND IS OTHERWISE PREEMPTED**

As a threshold matter, the City cannot enforce the proposed locked storage requirements without running afoul of the Fourth Amendment of the United States Constitution, which provides for “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”<sup>6</sup> This prevents the City from inspecting how individuals are storing their firearms in their home or vehicle without first having established probable cause that the person is in violation of the ordinance. Tellingly, although some California cities have similar ordinances in effect, we are unaware of a single instance of enforcement.

In the words of the United States Supreme Court, the “inherent right of self-defense has been central to the Second Amendment right[,]” and “the need for self-defense, family, and property is most acute” in the home.<sup>7</sup> At issue in *Heller* was a District of Columbia ordinance substantially similar to the recommendations of Morgan hill requiring residence to store firearms in a locked container or disable the firearm when not in use. But because of the importance of self-protection in the home, the

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<sup>5</sup> A copy of Governor Schwarzenegger’s veto letter for SB59 can be viewed online at [ftp://leginfo.publicca.gov/pub/05-06/bill/sen/sb\\_0051-0100/sb\\_59\\_vt\\_20060929.html](http://leginfo.publicca.gov/pub/05-06/bill/sen/sb_0051-0100/sb_59_vt_20060929.html)

<sup>6</sup> U.S. Const. amend IV.

<sup>7</sup> *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008).

Supreme Court expressly held that “any ban on handgun possession in the home violates the Second Amendment, as does [a] prohibition against rendering any lawful firearm in the home operable for the purposes of immediate self-defense.”<sup>8</sup> Given the striking similarity, the proposed recommendation is completely at odds with *Heller* and violates the Second Amendment.

The Ninth Circuit case of *Jackson v. City of San Francisco*, while on point, is not dispositive of this issue. In *Jackson*, the Ninth Circuit only heard an appeal for the denial of a motion for preliminary injunction, not a final decision on the merits of the case. Upon appeal to the Supreme Court, where certiorari was denied, Justice Thomas wrote a scathing opinion noting that “The Court should have granted a writ of certiorari to review this questionable decision and to reiterate that courts may not engage in this sort of judicial assessment as to the severity of a burden imposed on core Second Amendment rights.”<sup>9</sup> Because of the *Heller* decision and the fact that *Jackson* was never decided on the merits, it is likely that the should the Supreme Court ever hear a case regarding a mandatory lock storage ordinance, it would hold such an ordinance unconstitutional.

In addition to the Second Amendment concerns, the ordinance also raises serious preemption concerns. As stated above, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulations, either expressly or by implication.<sup>10</sup> Dictating the manner in which residents keep their firearms while in the home, and requiring that they keep handguns in a locked storage container or disabled with a trigger lock, runs afoul of the preemption doctrine insofar as it contradicts state law and enters into an area that is fully occupied by state law.

A local law “contradicts state law when it is inimical to or cannot be reconciled with state law.”<sup>11</sup> The recommended ordinance is likely contrary to state law to the extent it dictates the manner one must store their firearms in the home. California maintains a comprehensive set of statutes, creating liability for the criminal storage of a firearm whenever a minor or prohibited person may access a firearm and uses that firearm to cause death or bodily injury or carries it to a public place.<sup>12</sup> Liability for such is subject to an equally comprehensive set of exceptions.<sup>13</sup> The proposed ordinance that would mandate locked storage of firearms in the home for residents of Morgan hill would strip from those residents the rights to engage in behavior specifically deemed lawful by the state.

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<sup>8</sup> *Id.* at 635.

<sup>9</sup> See *Heller*, 554 U.S., at 634; *Id.* at 635 (explaining that the Second Amendment “elevates above all other interest the right of the law-abiding, responsible citizens to use arms in defense of hearth and home.”).

<sup>10</sup> *Fiscal v. City and County of San Francisco*, 158 Cal. App.4th 895, 903-04 (2008).

<sup>11</sup> *O’Connell v. City of Stockton*, 41 Cal.4th 1061, 1068 (2007).

<sup>12</sup> Cal. Penal Code §§ 25100-25135, 25200-25225.

<sup>13</sup> Cal. Penal Code §§ 25105(a)-(g), 25135(a)(1)-(6), 25205.

Similarly, a recommended ordinance mandating locked storage of firearms is impliedly preempted by state law because it encroaches on an area of law occupied by state law. The storage of firearms is fully and completely regulated by the California Penal Code. In addition to the laws regarding the prevention of access by minors and prohibited persons discussed earlier, California mandates that any firearm sold by a licensed dealer must include a firearm safety device.<sup>14</sup> Additionally, whenever an individual purchases a long gun in California they must sign an affidavit stating ownership of a gun safe or lock box.<sup>15</sup> Such safety devices must meet rigorous safety standards as determined by the California Attorney General so that they “significantly reduce the rate of firearm-related injuries to children 17 years of age and younger.”<sup>16</sup>

There are also several firearm storage requirements when one lives with another individual who is prohibited by state or federal law from owning firearms.<sup>17</sup> Because the state’s firearm storage scheme is so comprehensive, any local interference with that scheme (except that which was expressly authorized) is preempted. If local governments are permitted to enact further criminal restrictions on the storage of firearms, firearm holders will be confronted by a patchwork quilt of firearm and storage laws each time they enter another jurisdiction, sowing frustration, uncertainty, and the fear of prosecution among California residents as they travel throughout the state.

### **III. ANY ORDINANCE PROHIBITING THE POSSESSION OF LARGE CAPACITY MAGAZINES IS PREEMPTED AND OTHERWISE AMOUNTS TO AN UNCONSTITUTIONAL TAKING**

As noted in the City Council May 16, 2018 report, there are challenges currently underway and pending in the courts regarding the legality of banning the possession of magazines over 10 rounds. One such case, *Duncan v. Becerra*,<sup>18</sup> challenges the state’s ban on magazines holding over 10 rounds and is currently working its way through the courts. On June 29, 2017, the court granted a motion for preliminary injunction and stayed enforcement of the state’s magazine possession ban for magazines holding more than 10 rounds while the case is litigated. In the preliminary injunction from the court, the Judge noted “The State of California’s desire to criminalize simple possession of a firearm magazine able to hold more than 10 rounds is precisely the type of policy choice that the Constitution takes off the table.” With the federal injunction in place, it would be completely improper for the City to consider an ordinance in direct conflict with such an injunction.

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<sup>14</sup> Cal. Penal Code § 23650(a).

<sup>15</sup> See State of California, Bureau of Firearms Form 978 (Re. 01/2013), available at [https://oag.ca.gov/all/files/agweb/pdf/firearms/forms/bof\\_978.pdf](https://oag.ca.gov/all/files/agweb/pdf/firearms/forms/bof_978.pdf)

<sup>16</sup> *Id.* at § 23650(a).

<sup>17</sup> *Id.* at § 25135.

<sup>18</sup> *Duncan v. Becerra*, 265 F.Supp.3d 1106 (2017).

What's more, such an ordinance will also be preempted under state law. In 2015 the City of Los Angeles attempted to pass a ban on the possession of magazines that held more than 10 rounds. They were sued by organizations and law enforcement. Eventually under the pressure of constitutional violations and the injunction ruling in *Duncan*, Los Angeles repealed the ordinance.

The Judge in *Duncan* spoke of the "complexity" of the state law and how the state has continued to add layers. <sup>19</sup>Banning the possession of "large capacity magazines" runs afoul of the preemption doctrine insofar as it contradicts state law and enters into an area of law that is fully occupied by state law.

By banning the possession of magazines lawfully acquired, the City's actions would constitute a physical appropriation of property without just compensation, which is *per se* unconstitutional.<sup>20</sup> A regulation that "goes too far"-for example, by depriving a property owner of economically beneficial use or otherwise "interfering with legitimate property interest"-also requires just compensation.<sup>21</sup>

#### **IV. THE PROPOSED FIREARM RETAIL SALE RESTRICTIONS ARE PREEMPTED AND WILL DO NOTHING TO PROMOTE PUBLIC SAFETY**

As noted in the City Council's May 16, 2018 report, the City does not currently regulate retail firearm sales. The proposal that the City should regulate retail firearm sales in the City poses serious preemption and Second Amendment issues. The City has proposed the following: (1) Certify that staff members who engage in retail sales are trained to recognize and prevent straw purchases, (2) Maintain an ammunition sales log, which records all ammunition sales made by the retailer, and (3) Prohibit the sale of assault-style firearms to minors under the age of 21, (4) proposals for restricting firearms on City property, and (5) Potential regulations of locations where firearms may be sold. Each of these proposals is likely preempted by state and federal law.

Pursuant to the Gun Control Act (GCA), a federal firearm license (FFL) holder must be a person engaged in the business of selling firearms at wholesale or retail, a person engaged in the business of repairing or making or fitting special barrels, stocks, or trigger mechanisms to firearms, or any person who is a pawnbroker. An FFL must be licensed under the provisions of 18 U.S.C. § 921.

Training to recognize and prevent straw purchases is already provided by the Bureau of Alcohol Firearms, Tobacco, and Explosives. The federal fine for making false statements on a federal firearm record is up to \$250,000 dollars and prison for up to 10 years. Additionally, in June of 2014, the U.S. Supreme Court issued a ruling in *Abramski v. U.S.* further emphasizing that an FLL is

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<sup>19</sup> *Id. Duncan v. Becerra*, Order Granting Preliminary Injunction (June 29, 2017).

<sup>20</sup> *See Horne v. Dep't of Agric.*, -- U.S.--, 135 S. Ct. 2419, 2427 (2015).

<sup>21</sup> *Lingle v. Chevron*, 544 U.S. 528, 537-39 (2005).

forbidden from “selling a gun to anyone it knows or has reasonable cause to believe is a forbidden buyer.”<sup>22</sup> This is clearly an area that is preempted by federal law because the federal government has completely permeated the field.

California Federal Licensed firearm dealers are one of the most heavily regulated businesses in the county. The Penal Code addressed all requirements and inspections by state officials for licensed dealers. California generally prohibits anyone without a firearm license from selling, leasing, or transferring a firearm to another.<sup>23</sup> The California Department of Justice (CADOJ) must approve of any licenses for persons desiring to sell firearms or ammunition in California. The CADOJ conducts background checks on all owners of a business and any employee of the business who must now have a Certificate of Eligibility if they have access to firearms or ammunition.<sup>24</sup> California law also requires a licensee to report any secondhand or pawned firearms to the DOJ on a daily basis.<sup>25</sup> This includes any firearm taken in trade, pawn, accepted for sale on consignment, or accepted for auction.

Several times in the City Council meeting dated March 7, 2018, the terms “assault-style” or “assault weapons” were referred to. Assault Weapons have been banned from sale since the 1990’s.<sup>26</sup> *There are no Assault Weapons currently being sold.* California banned the sale even before the federal government in the late 1980s. The term “assault-style” is an undefined media term that is extremely difficult to distinguish for determining which firearms are being singled out and which are not. Any attempt by the City to prohibit “assault-style” firearm would be ambiguous and overly-broad at best.

Limits on those under the age of 21 years would violate numerous federal and state preemption laws. Specifically, the age restriction would violate the California Unruh Civil Rights Act which courts have held applies to age discrimination as well as the listed categories of discrimination within the Act. Just this week the California Senate passed SB 1100 which prohibits the sale of firearms to those persons under 21 years of age who do not possess a valid hunting license. This area of the law is very much still in flux at this point and any action by the City would be premature at this time.

Action from the City to further regulate ammunition sales would also run afoul of state law and would therefore be preempted. Beginning in January 2018 all transactions (sale, transfer, purchase) must occur through a face-to-face transaction.<sup>27</sup> There are no more on-line transactions. While this is being currently challenged in the courts, the finality as to the legal basis for this law has not yet been

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<sup>22</sup> 134 S.Ct. 2259 (2014).

<sup>23</sup> Cal. Penal Code § 26500.

<sup>24</sup> Cal. Penal Code §§ 26700-27140 26915, 30347.

<sup>25</sup> Business & Professional Code § 21628.2.

<sup>26</sup> See Federal Assault Weapons Ban of 1994.

<sup>27</sup> Cal. Penal Code § 30312 (b).



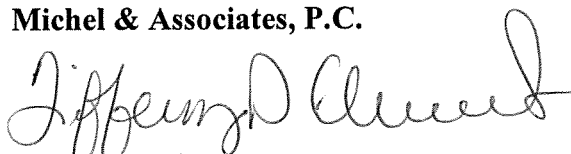
determined. Additionally, beginning in January 2019 the state will require those purchasing ammunition to obtain a license from the state, undergo an additional background check, and mandates that licensed ammunition dealers must maintain records on each transaction.<sup>28</sup> The collected information must be submitted to the CADOJ where the CADOJ will maintain an information database. Any person who is prohibited from owning or possessing a firearm is also now prohibited from possessing or owning ammunition.<sup>29</sup> Several years ago the City of Pasadena repealed a similar ordinance because the police found that “The registration information sat unused in a filing cabinet in police headquarters, and police investigators said it would not help them solve crimes because the information would not stand up in court.” As you can see, action by the City would not only be preempted by state laws already in place but would also seek to add additional burdens on ammunition dealers that are an unnecessary government action and unconstitutional.

## V. CONCLUSION

Our clients understand the need to combat the criminal misuse of firearms and to keep communities safe. The proposed items only seek to target law-abiding citizens, licensed dealers who already report to the state and federal authorities, and residents will be powerless to prevent or minimize the criminal elements that you seek to eliminate in your communities should these provisions be enacted. For the reasons noted herein, we strongly encourage the City Council not to adopt the recommended ordinances noted in the City Council May 16, 2018 report and instead look at how education and community action can better work to serve the safety needs in your community.

Sincerely,

**Michel & Associates, P.C.**



Tiffany D. Cheuvront

Cc: Hon. Steve Tate, Mayor  
Hon. Rich Constantine Mayor Pro Tem  
Hon. Larry Carr, Council Member  
Hon. Rene Spring, Council Member  
Hon. Caitlin Robinett Jachimowicz, Council Member

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<sup>28</sup> Cal. Penal Code § 30352(a).

<sup>29</sup> Cal. Penal Code § 30305(a)(1).

# **EXHIBIT CC**

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October 22, 2018

**VIA FAX & U.S. MAIL**

Donald Larkin, City Attorney  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037  
Fax: 408-779-1592

**Re: Pre-Litigation Demand  
Proposed Firearm Ordinance-Theft or Lost Firearm Reporting  
and Mandatory Locked Storage of Firearms- OPPOSED**

Dear Mr. Larkin:

On June 1, 2018 our office wrote to you on behalf of our clients California Rifle & Pistol Association, Incorporated ("CRPA") and their tens of thousands of supporters, many of which live in the Morgan Hill area, to oppose the proposed ordinances that seek to impose firearm related restrictions on residents and visitors to the City of Morgan Hill ("City").

Since then, the City has held two meetings regarding the proposed changes. Both supporters and opponents to the new regulations voiced their concerns at the meetings but the media reported that most of those in attendance at the community meetings were more interested in promoting education and firearm safety training programs than they were in the City presenting more regulations against law-abiding gun owners. <https://www.morganhilltimes.com/2018/10/11/gun-control-ordinance-to-come-before-council/> Nonetheless, the City has placed consideration of these ill-conceived proposed ordinances on its October 24, 2018 agenda.

Our clients continue to oppose the proposed ordinances, and urge you to advise your client concerning the illegality of these ordinances -- which are preempted by existing state laws.

**There is Already a State Law Requiring Theft or Loss of a Firearm to be Reported That Preempts Duplicative or Conflicting Local Ordinances**

A local regulation will be struck down if it duplicates state law, conflicts with state law, or enters a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication.<sup>1</sup> An explicit contradiction between an ordinance and a state statute occurs “where the language of the ordinance directly contradicts the operative language and statute, e.g., by penalizing conduct which the state law expressly authorizes...” (See *Small Property Owners of S.F. Instit. v. City and County of San Francisco* (2018) 22 Cal.App.5th 77, 86 (*Small Property Owners*), quoting *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 396-397.)

Proposition 63<sup>2</sup> created a state statute that subjects gun owners to penalties if a lost or stolen firearm is not reported to authorities within 5 days of the time he or she knew or reasonably should have known that the firearm was lost or stolen.<sup>3</sup>

The proposed ordinance mandating the reporting of the theft or loss of a firearm within 48 hours both duplicates and conflicts with the existing state law. The proposed ordinance conflicts with the existing state law and the 5-day reporting requirement. (See, e.g., *O’Connell v. City of Stockton* (2007) 41 Cal.App.4th 895, 1068.) Under the City’s proposed ordinance, after 48 hours the victim who has not yet reported the theft would still be in compliance with state law but would be in violation of the proposed ordinance. The proposed Ordinance contains the sort of localized penalization of conduct otherwise authorized under state law that the preemption doctrine forbids. (See *Small Property Owners, supra*, 22 Cal.App.5th at p. 86.) “The consequences of the preemption of a local measure is that the measure is unenforceable against anyone.” (*City and County of San Francisco v. Regents of University of Cal.* (2017) 11 Cal.App.5th 1107, 1118.)

### **Mandating Locked Storage of Firearms in One’s Home Raises Second and Fourth Amendment Concerns and is Preempted**

Dictating the manner in which residents keep their firearms while in their own home and requiring that they keep handguns in a locked storage container or disabled with a trigger lock, runs afoul of the preemption doctrine because it contradicts state law and enters into an area that is fully occupied by state law.<sup>4</sup>

California state laws create liability for the criminal storage of a firearm for any gun owner who allows a minor or prohibited person to access and misuse a firearm.<sup>5</sup> The statute contains a comprehensive set of exceptions.<sup>6</sup> There are also several firearm storage requirements when one lives

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<sup>1</sup> *Fiscal v. City of San Francisco* (2008) 158 Cal. App. 4th 895, 903-04.

<sup>2</sup> Cal. Penal Code § 25250.

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

<sup>4</sup> *Fiscal v. City and County of San Francisco*, 158 Cal.App.4th 895, 903-04 (2008).

<sup>5</sup> Cal. Penal Code §§ 25100-25135, 25200-25225.

<sup>6</sup> Cal. Penal Code §§ 25105(a)-(g), 25135(a)(1)-(6), 25205.

with another individual who is prohibited by state or federal law from owning firearms.<sup>7</sup> California law also mandates that any firearm sold must include a firearm safety device.<sup>8</sup> Additionally, whenever an individual purchases a long gun in California they must sign an affidavit stating ownership of a gun safe or lock box.<sup>9</sup> Such safety devices must meet rigorous safety standards.

The state's firearm storage regulatory scheme is comprehensive. Local ordinances imposing further criminal restrictions on the storage of firearms are preempted.

Additionally, the City will generally not be able to enforce the proposed locked storage requirements because the Fourth Amendment prohibits an inspection unless probable cause is established.<sup>10</sup>

The ordinance also infringes on Second Amendment rights. The "inherent right of self-defense has been central to the Second Amendment right[,] and "the need for self-defense, family, and property is most acute" in the home.<sup>11</sup> At issue in *Heller* was a District of Columbia ordinance substantially similar to the proposed ordinance. The Supreme Court held that "any ban on handgun possession in the home violates the Second Amendment, as does [a] prohibition against rendering any lawful firearm in the home operable for the purposes of immediate self-defense."<sup>12</sup> The proposed recommendation is completely at odds with the ruling in *Heller*.

The Ninth Circuit case of *Jackson v. City of San Francisco* is not dispositive of this issue and did not address preemption at all. In *Jackson*, the Ninth Circuit only heard an appeal from the denial of a motion for preliminary injunction, not a final decision on the merits of the case. A request for review by the Supreme Court was denied, but Justice Thomas wrote a scathing opinion noting that "The Court should have granted a writ of certiorari to review this questionable decision and to reiterate that courts may not engage in this sort of judicial assessment as to the severity of a burden imposed on core Second Amendment rights."<sup>13</sup> Because of the *Heller* decision and the fact that *Jackson* was never decided on the merits, it is likely that the newly comprised Supreme Court would find the proposed ordinance unconstitutional.

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<sup>7</sup> *Id.* at § 25135.

<sup>8</sup> Cal. Penal Code § 23650(a).

<sup>9</sup> See State of California, Bureau of Firearms Form 978 (Re. 01/2013), available at [https://oag.ca.gov/all/files/agweb/pdfe/firearms/forms/bof\\_978.pdf](https://oag.ca.gov/all/files/agweb/pdfe/firearms/forms/bof_978.pdf)

<sup>10</sup> U.S. Const. amend IV.

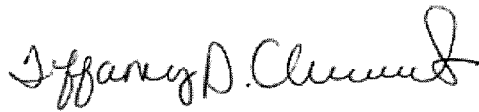
<sup>11</sup> *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008).

<sup>12</sup> *Id.* at 635.

<sup>13</sup> See *Heller*, 554 U.S., at 634; *Id.* at 635 (explaining that the Second Amendment "elevates above all other interest the right of the law-abiding, responsible citizens to use arms in defense of hearth and home.").

We welcome any question you may have, and hope that a legal challenge to these ordinances will not be necessary.

Sincerely,  
**Michel & Associates, P.C.**

A handwritten signature in black ink, appearing to read "Tiffany D. Cheuvront". The signature is fluid and cursive, with a large loop at the end.

Tiffany D. Cheuvront

cc: Hon. Steve Tate, Mayor  
Hon. Rich Constantine, Mayor Pro Tem  
Hon. Larry Carr, Council Member  
Hon. Rene Spring, Council Member  
Hon. Caitlin Robinett Jachimowicz, Council Member

# **EXHIBIT DD**

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October 30, 2018

**VIA EMAIL & CERTIFIED U.S.MAIL**

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**Re: Morgan Hill Ordinance Regarding Mandatory Reporting of Lost  
and Stolen Firearms (Proposed 9.04.030)  
Pre-Litigation Demand**

Dear Mr. Larkin:

On October 24, 2018, Morgan Hill enacted and has in effect an ordinance ("Ordinance") that is more onerous toward firearm-theft victims than subsequently enacted state law. The Ordinance criminalizes theft victims for reasonably being unaware of a theft and compels victims to speak under threat of criminal prosecution. On behalf of one of our clients, the California Rifle & Pistol Association, Incorporated, we previously identified the legal complications and policy reasons why such an ordinance was foolhardy and subject to challenge. (See letters of June 1, 2018 and October 22, 2016.)

Irrespective of policy issues weighing against the passage of the Ordinance, the fact that the subject of the Ordinance is also the subject of a less onerous state law precludes Morgan Hill from continuing to have and enforce an Ordinance with conflicting obligations imposed on victims of firearm theft. In 2016, California voters approved Proposition 63, which, among its provisions, requires victims of firearm theft to report such thefts to law enforcement no later than five days after the victim knows or reasonably should have known about the theft. (See Penal Code, § 25250, subd. (a) [effective July 1, 2017].)

As you know, the Ordinance contains a more onerous reporting requirement than Section 25250: 48 hours. For the reasons discussed below, this more onerous requirement, as well as the whole of the Ordinance, is preempted by Penal Code section 25250. Because Section 25250 preempts the Ordinance, if the Ordinance is not repealed, we will file suit on behalf of affected and interested parties



seeking writ relief and a declaration invalidating the ordinance and enjoining its enforcement. If successful, we will seek our attorney's fees and costs of suit in invalidating the ordinance.

### **Why the Penal Code Preempts Ordinance 11.16.040**

Under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. (See Cal. Const., art. XI, §7; *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 (*O'Connell*); *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 903-904.) A local law "duplicates state law when it is 'coextensive' with state law." (See *O'Connell*, supra, 41 Cal.4th at p. 1068.) It "contradicts state law when it is inimical to or cannot be reconciled with state law." (*Ibid.*)

Here, the subject of the Ordinance and Penal Code section are the same: reporting requirements for firearm theft victims. (Compare the Ordinance ["Any person who owns or possesses a firearm . . . shall report the theft or loss of the firearm to the Morgan Hill Police Department within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost. . . ."] with Penal Code, § 25250, subd. (a) ["Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost."].) To the extent that both the Ordinance and Section 25250 impose a mandatory reporting obligation on firearm theft victims, they are duplicative, and state law preempts the Ordinance. (See *O'Connell*, supra, 41 Cal.4th at p. 1068.)

But the Ordinance further runs afoul of the preemption doctrine by imposing an obligation on firearm theft victims that cannot be reconciled with Section 25250's express requirement, i.e., the five-day reporting requirement. (See, e.g., *O'Connell*, supra, 41 Cal.4th at 1068.) For purposes of determining whether state law preempts a local ordinance, an explicit contradiction between an ordinance and a state statute occurs "where the language of the ordinance directly contradicts the operative language of the statute, e.g., by penalizing conduct which the state law expressly authorizes. . . ." (See *Small Property Owners of S.F. Instit. v. City and County of San Francisco* (2018) 22 Cal.App.5th 77, 86 (*Small Property Owners*), quoting *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 396-397.)

Here, the state statute allows a firearm theft victim to wait up to 120 hours after knowledge of a theft to report it. Under the Ordinance, after the 48th hour, the victim who had not yet reported the theft would still be in compliance with state law but would nonetheless be in violation of the ordinance and subject to local prosecution. The Ordinance contains the sort of local penalization of conduct otherwise authorized under Section 25250 that the preemption doctrine forbids. (See *Small Property Owners*, supra, 22 Cal.App.5th at p. 86.) [Where a local ordinance prohibiting landlords from making changes to rental property after an eviction was found to be in conflict with an existing law that prohibited cities from preventing landlords from evicting tenants and making improvements and was preempted].)

Mr. Donald Larkin, Esq.  
October 30, 2018  
Page 3 of 3

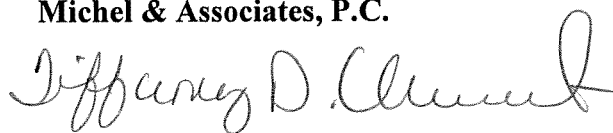
“The consequence of the preemption of a local measure is that the measure is unenforceable against anyone.” (*City and County of San Francisco v. Regents of University of Cal.* (2017) 11 Cal.App.5th 1107, 1118, italics omitted.) Because the Ordinance is both coextensive with the subject of Section 25250 as well as penalizes conduct that is lawful under Section 25250, the Ordinance is preempted and unenforceable. Our clients are therefore entitled to seek a declaration that the Ordinance is void and an order that it be stricken from the Morgan Hills Municipal Code.

**The City Will Be Liable for Attorney’s Fees and Costs of Suit Should They Be Forced to File Suit to Have the Ordinance Declared Void**

If our clients are forced to seek a judicial declaration that the Ordinance is void and must be stricken from the Municipal Code, then our clients will be entitled to seek and recover their reasonable attorney’s fees and costs of suit. (See Code Civ. Proc., § 1021.5, and see *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 220-221 [where writ relief confers a significant benefit on a large class of persons, an award of attorney’s fees is appropriate].) In light of the indisputable application of the preemption doctrine to the Ordinance, however, hopefully legal action will not be required, and the City Council will act quickly to repeal the Ordinance.

Please let us know within 30 days of the date of this letter what steps the City is taking to repeal the ordinance. If we do not learn within that time period that significant, demonstrable steps are being taken to repeal the ordinance, we will file suit.

Sincerely,  
**Michel & Associates, P.C.**



Tiffany D. Cheuvront

Cc: Hon. Steve Tate, Mayor  
[Steve.Tate@morganhill.ca.gov](mailto:Steve.Tate@morganhill.ca.gov)

# **EXHIBIT EE**

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July 6, 2016

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Mayor Pro Tem Chris Mills  
Councilmember Ginny Foat  
Councilmember Geoff Kors  
Councilmember J.R. Roberts  
Executive Assistant Jennifer Nelson  
CITY HALL  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

**Re: Ordinance Amending Chapter 11.16 of the Palm Springs Municipal  
Code Relating to Firearms - OPPOSITION**

Dear Honorable Members of the Palm Springs City Council,

We write on behalf of our clients, the National Rifle Association of America and the California Rifle and Pistol Association, as well as the hundreds of thousands of their members in California, including those members residing in the City of Palm Springs.

Our clients oppose adoption of the proposed ordinance amending Chapter 11.16 of the Palm Springs Municipal Code as related to firearms. The proposal seeks to (1) require the reporting of lost or stolen firearms, (2) require the safe storage of firearms in the home, (3) prohibit the possession of firearm magazines capable of holding more than 10 rounds, (4) require ammunition sales to be recorded at the time of purchase, and (5) prohibit unsecured firearms and ammunition in vehicles.

We ask the City Council to reconsider its support for the proposal because it is preempted by state law, duplicative of recently enacted state legislation, raises serious constitutional concerns under the Second Amendment, Fifth Amendment, and Equal Protection Clause of the United States Constitution, and will expose the city to costly and time consuming litigation, all while failing to promote public safety.

**I. MANY OF THE KEY PROVISIONS OF THE PROPOSED ORDINANCE ARE PREEMPTED AND UNENFORCEABLE BECAUSE THEY DUPLICATE OR CONFLICT WITH STATE LAW**

Under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication.<sup>1</sup> A local law “*duplicates* state law when it is “coextensive” with state law.”<sup>2</sup> A local law “*contradicts* state law when it is inimical to or cannot be reconciled with state law.”<sup>3</sup>

On Friday, July 1, 2016, California Governor Jerry Brown signed a number of firearm-related bills into law. These include Senate Bill 1235 (De Leon) - Ammunition (“SB 1235”), and Senate Bill 1446 (Hancock) - Firearms: Magazine Capacity (“SB 1446”). SB 1235 establishes a comprehensive ammunition sales registration and licensing scheme that will apply to all ammunition sales in the state of California. SB 1446 bans the possession magazines capable of holding more than 10 rounds.

With the passage of these bills, sections 11.16.070 (barring possession of magazines capable of holding more than 10 rounds) and 11.16.080 (requiring the reporting of ammunition sales) of the proposed ordinance are now duplicative of and/or conflict with state law. They are thus preempted. Because enacting either provision of the proposed ordinance will only serve to expose the city to costly and time consuming litigation, we urge the City Council to reconsider its support for such an ordinance.

As the California Court of Appeals has made clear, “the goal of any local authority wishing to legislate in the area of gun control should be to accommodate the local interest with the least possible interference with state law[,]” and thus, “when it comes to regulating firearms, local governments are well advised to tread lightly.”<sup>4</sup> Jurisdictions failing to follow this advice have subjected themselves to expensive and time consuming litigation, contrary to what the City Council Staff Report states.

For example, the City of Sunnyvale was sued in 2013 for enacting an ordinance that, among its other provisions, prohibited the possession of lawfully owned magazines capable of holding more than 10 rounds.<sup>5</sup> Although the Ninth Circuit upheld a denial for a motion for preliminary injunction, the case has yet to be resolved. And just last year, the City of Los Angeles was sued for enacting a nearly identical ordinance relating to the possession of magazines capable of holding more than 10 rounds because such an ordinance is preempted by state law.

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<sup>1</sup> See Cal. Const., art. XI, § 7; *O’Connell v. City of Stockton*, 41 Cal.4th 1061, 1067 (2007); *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 903-04 (2008).

<sup>2</sup> *O’Connell*, 41 Cal.4th at 1068.

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

<sup>4</sup> *Id.* at 919-20.

<sup>5</sup> *Fyock v. Sunnyvale*, Case No. 13-05807 (N.D. Cal. 2013).

## **II. GOVERNOR BROWN RECENTLY VETOED A PROPOSED BILL REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS BECAUSE SUCH A LAW DOES NOT PROMOTE PUBLIC SAFETY**

While he signed SB 1235 and SB 1446, Governor Brown vetoed several proposals because they would not promote public safety or further any law enforcement efforts to prevent crime. One such bill was Senate Bill 894 (Jackson) - Firearms: Lost or Stolen: Reports ("SB 894"), which would require every person to report the theft or loss of a firearm to a local law enforcement agency within 5 days of the time they knew or reasonably should have known that the firearm had been stolen or lost.

In his veto message of SB 894,<sup>6</sup> Governor Brown stated that he "did not believe that a measure of this type would help identify gun traffickers or enable law enforcement to disarm people prohibited from having guns." Governor Brown also noted "responsible people report the loss of theft of a firearm and irresponsible people do not; it is not likely that this [proposed law] would change that."

As a result, the City of Palm Springs should carefully consider the intended goals of the proposed ordinance. By mandating the reporting of lost or stolen firearms, otherwise innocent and responsible citizens may be deterred from reporting the theft or loss of a firearm should they be subject to potential prosecution simply because they may have failed to make the report within the specified time.

## **III. LAW ENFORCEMENT WIDELY OPPOSE SIMILAR MEASURES**

Setting the above aside, law enforcement professionals are opposed to measures identical to those contained in the proposed ordinance. In the case of the Los Angeles Ordinance which is now facing a legal challenge, the lead plaintiffs are composed of over two dozen county sheriffs.<sup>7</sup> Many of the ordinance's proposals are contained in a proposed ballot initiative that will be included in the November general election.<sup>8</sup> But not a single law enforcement agency or organization has publicly supported this initiative. In fact, the Association of Deputy District Attorneys,<sup>9</sup> the California State Sheriffs' Association,<sup>10</sup> the California Fish and Game Wardens' Association,<sup>11</sup> and Los Angeles

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<sup>6</sup> A copy of Governor Brown's veto letter for SB 894 can be viewed online at [https://www.gov.ca.gov/docs/SB\\_894\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/SB_894_Veto_Message.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> The initiative, titled by its proponents as the "Safety for All Act of 2016," has just recently qualified for the November 2016 ballot.

<sup>9</sup> See [http://stoptheammograb.com/images/ADDA\\_Letter\\_to\\_Newsom.pdf](http://stoptheammograb.com/images/ADDA_Letter_to_Newsom.pdf).

<sup>10</sup> See <http://stoptheammograb.com/images/CSSALetterreOpposeSafetyforAllActof2016.pdf>.

<sup>11</sup> See <https://www.facebook.com/CACFCL/photos/a.456595907859437.1073741828.445776255608069/467534206765607/?type=3&fref=nf>.

County District Attorney Steve Cooley (Ret.)<sup>12</sup> are just a handful of the growing number of law enforcement groups opposing the initiative as it would do nothing to promote public safety or law enforcement efforts to deter crime.

#### IV. CONCLUSION

Our clients understand the need to combat the criminal misuse of firearms, and they have a variety of effective programs for doing so available to the City upon request. These programs do not overburden responsible business owners or flout the constitutional guarantees of law-abiding citizens. We ask the City Council to consider implementing such programs before pursuing any action on this proposal that targets otherwise lawful firearm businesses who are the purveyors of constitutional rights and their law-abiding customers. For these reasons, we strongly encourage the City Council not to adopt the Ordinance.

If you have any questions or concerns regarding the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,  
**Michel & Associates, P.C.**



Matthew Cubeiro

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<sup>12</sup> See [http://stoptheammograb.com/images/Coalition\\_Letter-March\\_28.pdf](http://stoptheammograb.com/images/Coalition_Letter-March_28.pdf).

# **EXHIBIT FF**



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September 6, 2016

Mayor Robert Moon  
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Councilmember Ginny Foat  
Councilmember Geoff Kors  
Councilmember J.R. Roberts  
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CITY HALL  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

**Re: Ordinance Amending Chapter 11.16 of the Palm Springs Municipal  
Code Relating to Firearms - OPPOSITION**

Honorable City Council Members,

We write on behalf of our clients, the National Rifle Association of America and the California Rifle and Pistol Association, as well as the hundreds of thousands of their members in California, including those members residing in the City of Palm Springs.

Our clients oppose adoption of the proposed ordinance amending Chapter 11.16 of the Palm Springs Municipal Code as related to firearms. As currently drafted, the proposal seeks to: (1) require the reporting of lost or stolen firearms; (2) mandate the locked-storage of firearms in the home; and, (3) prohibit unsecured firearms and ammunition in vehicles.

We ask the City Council to carefully consider the intended objectives of the proposed ordinance, as many of its provisions are generally unenforceable until after the fact. What's more, the ordinance raises serious constitutional concerns, and it will actually be detrimental to its intended objective while simultaneously failing to promote public safety.

**I. REQUIRING INDIVIDUALS TO REPORT THE THEFT OR LOSS OF A FIREARM WITHIN 48 HOURS IS UNENFORCEABLE AND WILL ONLY RESULT IN FEWER REPORTS TO POLICE**

On its face, a requirement that gun owners report the theft or loss of a firearm appears to be sound public policy. But in reality, such a requirement conflicts with the Fifth Amendment and will only result in individuals being *less likely* to report to police the theft or loss of a firearm, thereby obstructing the ordinance's purported goals.

The Fifth Amendment to the United States Constitution reads “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”<sup>1</sup> As a bedrock of our criminal justice system, the amendment prohibits police, prosecutors, and judges from requiring individuals to provide evidence or testimony that could result in potential criminal charges against them. The proposed ordinance, however, completely ignores these protections.

For example, if a person prohibited from possessing firearms nonetheless possesses a firearm illegally, they can be prosecuted for that crime. But if the firearm is ever lost or stolen from that same prohibited person, the Fifth Amendment prohibits that person from being prosecuted for failing to incriminate themselves by not reporting the firearm as lost or stolen.

Given these enforcement difficulties, other jurisdictions considering similar ordinances have rejected them. Recently, the Sacramento Police Department reviewed identical Oakland, San Francisco, Berkeley, and Alameda County reporting requirements, only to discover that not a single investigation, arrest, or conviction had taken place. This complete lack of enforcement clearly illustrates how such a requirement will not further any purported objective. As one Assistant District Attorney for the County of San Francisco stated, “I do not believe [the ordinance] will expand my ability to prosecute crime.”

What's more, law-abiding gun owners already report stolen or lost firearms to police. Doing so protects them from becoming a suspect in any potential criminal investigation involving the misuse of the firearm, and increases the chances that the firearm is returned to its lawful owner if ever recovered. As a result, law-abiding individuals already have more than enough incentive to report the theft or loss of a firearm.

But by placing criminal and civil penalties for the failure to report the theft or loss of a firearm, the ordinances forces crime victims to decline to cooperate with police for fear of prosecution. This is because many gun owners may not be aware of the 48-hour legal requirement, or are otherwise unsure at exactly which point they “knew or reasonably should have known” the firearm was lost or stolen. In these situations, lawyers will advise their clients to remain silent while immunity is negotiated, rather than quickly supplying police with the necessary information to properly and promptly investigate the crime, which may be time sensitive.

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<sup>1</sup> U.S. Const. amend. V.

## **II. EVERY PROPOSED CALIFORNIA LAW REQUIRING THE REPORTING OF THE THEFT OR LOSS OF A FIREARM HAS BEEN VETOED—AND FOR GOOD REASON**

In July of this year, Governor Jerry Brown vetoed Senate Bill 894, which would require every person to report the theft or loss of a firearm to a local law enforcement agency within five days of the time they knew or reasonably should have known that the firearm had been stolen or lost.

In his veto message, Governor Brown stated that he “did not believe that a measure of this type would help identify gun traffickers or enable law enforcement to disarm people prohibited from having guns,” and that “responsible people report the loss of theft of a firearm and irresponsible people do not; it is not likely that this [proposed law] would change that.”<sup>2</sup>

In addition to vetoing Senate Bill 894, Governor Brown has vetoed every identical bill that has come before him. In 2013, he vetoed Senate Bill 299, stating that he “was not convinced that criminalizing the failure to report a lost or stolen firearm would improve identification of gun traffickers or help law enforcement disarm people prohibited from possessing guns.”<sup>3</sup> And in 2012, he vetoed Senate Bill 1366 with a similar message.<sup>4</sup>

Even Brown’s predecessor, Arnold Schwarzenegger, vetoed an identical bill in 2006, stating that “the ambiguous manner in which this bill was written would make compliance with the law confusing for legitimate gun-owners and could result in cases where law-abiding citizens face criminal penalties simply because they were the victim of a crime, which is particularly troubling given the unproven results of other jurisdictions in California that have passed similar measures.”<sup>5</sup>

The recurring theme in all of these veto messages is this—a mandatory theft/loss reporting requirement will *not* achieve a higher rate of reporting, and will instead be *detrimental* to this objective. As a result, we strongly urge the City of Palm Springs to reconsider its proposal and seek an alternative that will educate gun owners on the benefits associated with reporting the loss or theft of a firearm without subjecting them to criminal or civil penalties for failing to do so.

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<sup>2</sup> A copy of Governor Brown’s veto letter for SB 894 can be viewed online at [https://www.gov.ca.gov/docs/SB\\_894\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/SB_894_Veto_Message.pdf).

<sup>3</sup> A copy of Governor Brown’s veto letter for SB 299 can be viewed online at [https://www.gov.ca.gov/docs/SB\\_299\\_2013\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/SB_299_2013_Veto_Message.pdf).

<sup>4</sup> A copy of Governor Brown’s veto letter for SB 1366 can be viewed online at [https://www.gov.ca.gov/docs/SB\\_1366\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/SB_1366_Veto_Message.pdf).

<sup>5</sup> A copy of Governor Schwarzenegger’s veto letter for SB 59 can be viewed online at [ftp://leginfo.public.ca.gov/pub/05-06/bill/sen/sb\\_0051-0100/sb\\_59\\_vt\\_20060929.html](ftp://leginfo.public.ca.gov/pub/05-06/bill/sen/sb_0051-0100/sb_59_vt_20060929.html).

### **III. THE LOCKED-STORAGE REQUIREMENTS WILL NOT PREVENT THE UNAUTHORIZED ACCESS OF FIREARMS AND WILL BE DETRIMENTAL TO THE SAFETY OF PALM SPRINGS RESIDENTS**

As a threshold matter, the City of Palm Springs cannot enforce the proposed locked storage requirements without running afoul of the Fourth Amendment, which provides for “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.”<sup>6</sup> This prevents the City from inspecting how individuals are storing their firearms in their home or vehicle without first having established probable cause that they are in violation of the ordinance. Tellingly, although some California cities have similar ordinances in effect, we are unaware of a single instance of enforcement.

What’s more, California already provides a comprehensive series of laws regarding the criminal storage of firearms.<sup>7</sup> Among these provisions are restrictions against storing a firearm in a manner that allows a child to gain unauthorized access, with varying degrees of punishment depending on the result of the child’s access (such as if the child injured themselves or another).<sup>8</sup> These laws specifically provide for an exception to the restriction if the firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.<sup>9</sup> Finally, California law also requires any person who owns a firearm, and who knows or has reason to know that another person residing with them is prohibited from possessing firearms, to store the firearm in a locked container or keep the firearm disabled with a firearm safety device.<sup>10</sup>

As you can see, California law already addresses many aspects of the proposed ordinance’s provisions. But California law is written in a manner allowing individuals to choose, based on their particular needs and circumstances, how best to store their firearms. The ordinance’s blanket approach fails to consider the needs of many Palm Springs residents who may wish to have immediate access to their firearms for the lawful purpose of self-defense and are otherwise unable to quickly access their firearms in an emergency.

### **IV. CONCLUSION**

As we stated in our previous letter, our clients have a number of programs available to the City upon request that will promote public safety and not flout the constitutional guarantees of law-abiding

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<sup>6</sup> U.S. Const. amend. IV.

<sup>7</sup> See Cal. Penal Code §§ 25000-25225.

<sup>8</sup> *Id.*

<sup>9</sup> Cal. Penal Code § 25205(b).

<sup>10</sup> Cal. Penal Code § 25135.

citizens.<sup>11</sup> These programs include firearm safety training,<sup>12</sup> the Eddie Eagle GunSafe® Program,<sup>13</sup> the National School Shield Program,<sup>14</sup> and youth specific programs,<sup>15</sup> all of which have proven to reduce accidental gun deaths and promote public safety more than any gun-control law ever will. Instead of implementing laws that will be detrimental to the City's objectives and otherwise ineffective, we ask the City to consider such alternatives.

For these reasons, we strongly encourage the City Council not to adopt the Ordinance. If you have any questions or concerns regarding the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,  
**Michel & Associates, P.C.**



Matthew Cubeiro

---

<sup>11</sup> <https://explore.nra.org/interests/safety-and-education/>.

<sup>12</sup> <https://explore.nra.org/interests/firearms-training/>. With roughly 1 million people attending NRA training courses annually, the NRA is recognized nationally as the Gold Standard for firearm safety training.

<sup>13</sup> <https://eddieeagle.nra.org/>. The Eddie Eagle GunSafe® program is a gun accident prevention program that seeks to help parents, law enforcement, community groups and educators navigate a topic paramount to our children's safety, teaching children when they see a gun to "Stop! Don't touch! Leave the Area, and tell an adult."

<sup>14</sup> <https://www.nationalschoolshield.org/>. The National School Shield program is committed to addressing the many facets of school security, including best practices in security infrastructure, technology, personnel, training, and policy.

<sup>15</sup> <http://youth.nra.org/>.

# **EXHIBIT GG**

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August 14, 2018

**VIA EMAIL & CERTIFIED U.S. MAIL**

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**Re: Palm Springs Ordinance 11.16.040  
Pre-litigation Demand**

Dear Mr. Kotkin:

Palm Springs enacted and still has in effect an ordinance that is more onerous toward firearm-theft victims than subsequently enacted state law. Ordinance 11.16.040 criminalizes theft victims for reasonably being unaware of a theft and compels victims to speak under threat of criminal prosecution. On behalf of one of our clients, the California Rifle & Pistol Association, Incorporated, we previously identified the policy reasons why such an ordinance was foolhardy and subject to challenge. (See letters of July 6, 2016 and September 6, 2016.)

Irrespective of policy issues weighing against the passage of the ordinance, the fact that the subject of the ordinance is also the subject of a less onerous state law precludes Palm Springs from continuing to have and enforce an ordinance with conflicting obligations imposed on victims of firearm theft. In 2016, California voters approved Proposition 63, which, among its provisions, requires victims of firearm theft to report such thefts to law enforcement no later than five days after the victim knows or reasonably should have known about the theft. (See Penal Code, § 25250, subd. (a) [effective July 1, 2017].)

As you know, Ordinance 11.16.040 contains a more onerous reporting requirement than Section 25250: 48 hours. For the reasons discussed below, this more onerous requirement, as well as the whole of Ordinance 11.16.040, is preempted by Penal Code section 25250. Because Section 25250 preempts the ordinance, if Ordinance 11.16.040 is not repealed, we will file suit on behalf of affected and interested parties seeking writ relief and a declaration invalidating the ordinance and enjoining its

enforcement. If successful, we will seek our attorney's fees and costs of suit in invalidating the ordinance.

### **Why the Penal Code Preempts Ordinance 11.16.040**

Under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. (See Cal. Const., art. XI, §7; *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 (*O'Connell*); *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 903-904.) A local law "duplicates state law when it is 'coextensive' with state law." (See *O'Connell*, supra, 41 Cal.4th at p. 1068.) It "contradicts state law when it is inimical to or cannot be reconciled with state law." (*Ibid.*)

Here, the subject of Ordinance 11.16.040 and Penal Code section are the same: reporting requirements for firearm theft victims. (Compare Ordinance 11.16.040 ["Any person who owns or possesses a firearm . . . shall report the theft or loss of the firearm to the Police Department of the City of Palm Springs within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost. . . ."] with Penal Code, § 25250, subd. (a) ["Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost."].) To the extent that both the ordinance and Section 25250 impose a mandatory reporting obligation on firearm theft victims, they are duplicative, and state law preempts the ordinance. (See *O'Connell*, supra, 41 Cal.4th at p. 1068.)

But Ordinance 11.16.040 further runs afoul of the preemption doctrine by imposing an obligation on firearm theft victims that cannot be reconciled with Section 25250's express requirement, i.e., the five-day reporting requirement. (See, e.g., *O'Connell*, supra, 41 Cal.4th at 1068.) For purposes of determining whether state law preempts a local ordinance, an explicit contradiction between an ordinance and a state statute occurs "where the language of the ordinance directly contradicts the operative language of the statute, e.g., by penalizing conduct which the state law expressly authorizes. . . ." (See *Small Property Owners of S.F. Instit. v. City and County of San Francisco* (2018) 22 Cal.App.5th 77, 86 (*Small Property Owners*), quoting *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 396-397.)

Here, the state statute allows a firearm theft victim to wait up to 120 hours after knowledge of a theft to report it. Under Ordinance 11.16.040, after the 48th hour, the victim who had not yet reported the theft would still be in compliance with state law but would nonetheless be in violation of the ordinance and subject to local prosecution. Ordinance 11.16.040 contains the sort of local penalization of conduct otherwise authorized under Section 25250 that the preemption doctrine forbids. (See *Small Property Owners*, supra, 22 Cal.App.5th at p. 86.) [Where a local ordinance prohibiting landlords from making changes to rental property after an eviction was found to be in conflict with an existing law that prohibited cities from preventing landlords from evicting tenants and making improvements and was preempted].)



Mr. Edward Kotkin, Esq.

August 2, 2018

Page 3 of 3

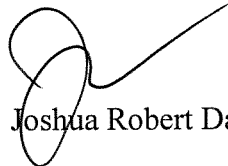
“The consequence of the preemption of a local measure is that the measure is unenforceable against anyone.” (*City and County of San Francisco v. Regents of University of Cal.* (2017) 11 Cal.App.5th 1107, 1118, italics omitted.) Because Ordinance 11.16.040 is both coextensive with the subject of Section 25250 as well as penalizes conduct that is lawful under Section 25250, Ordinance 11.16.040 is preempted and unenforceable. Our clients are therefore entitled to seek a declaration that Ordinance 11.16.040 is void and an order that it be stricken from the Palm Springs Municipal Code.

**The City Will Be Liable for Attorney’s Fees and Costs of Suit Should They Be Forced to File Suit to Have the Ordinance Declared Void**

If our clients are forced to seek a judicial declaration that Ordinance 11.16.040 is void and must be stricken from the Municipal Code, then our clients will be entitled to seek and recover their reasonable attorney’s fees and costs of suit. (See Code Civ. Proc., § 1021.5, and see *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 220-221 [where writ relief confers a significant benefit on a large class of persons, an award of attorney’s fees is appropriate].) In light of the indisputable application of the preemption doctrine to Ordinance 11.16.040, however, hopefully legal action will not be required, and the City Council will act quickly to repeal the ordinance.

Please let us know within 30 days of the date of this letter what steps the City is taking to repeal the ordinance. If we do not learn within that time period that significant, demonstrable steps are being taken to repeal the ordinance, we will file suit.

Sincerely,  
**Michel & Associates, P.C.**



Joshua Robert Dale

Certified U.S. Mail # 7018 0360 0000 6851 6700

USPS TRACKING#



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First-Class Mail  
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USPS  
Permit No. G-10

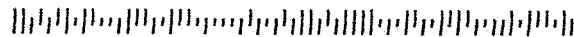
United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

**MICHEL & ASSOCIATES, P.C.**  
Attorneys at Law

180 East Ocean Boulevard, Suite 200  
Long Beach, CA 90802

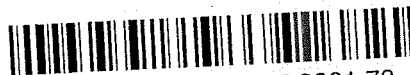
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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
Edward Kotkin, Esq.  
City Attorney  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262



9590 9402 3490 7275 9091 73

2. Article Number (Transfer from service label)  
7018 0360 0000 6851 6700

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A. Signature ☒ Agent ☐ Addressee  
**X** *[Signature]*  
B. Received by (Printed Name) C. Date of Delivery 8-20  
D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type  
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☐ Adult Signature Restricted Delivery  
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☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail  
☐ Insured Mail Restricted Delivery (over \$500)  
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☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

# **EXHIBIT HH**

SENIOR PARTNER  
C. D. MICHEL\*

MANAGING PARTNER  
JOSHUA ROBERT DALE

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\* ALSO ADMITTED IN TEXAS AND THE  
DISTRICT OF COLUMBIA

WRITER'S DIRECT CONTACT:  
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JDALE@MICHELLAWYERS.COM

September 14, 2018

**VIA EMAIL & CERTIFIED U.S. MAIL**

Edward Kotkin, Esq.  
City Attorney  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
[Edward.Kotkin@palmspringsca.gov](mailto:Edward.Kotkin@palmspringsca.gov)

**Re: Palm Springs Ordinance 11.16.040**

Dear Mr. Kotkin:

On August 14, 2018, our office sent you a detailed letter requesting that the City of Palm Springs repeal Palm Springs Municipal Ordinance 11.16.040, which is a preempted local ordinance requiring that the loss or theft of any firearm be reported to law enforcement within 48 hours of discovery. As set forth in our prior letter, the mandatory reporting of the theft or loss of a firearm is already required under state law following the enactment of Proposition 63. And the provisions of Ordinance 11.16.040 materially conflict with portions of this state law.

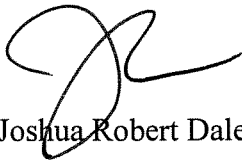
In our earlier letter, we informed you that we planned on behalf of affected citizens and civil rights groups to file suit to have Ordinance 11.16.040 declared void and repealed. We also requested that the City take concrete steps to begin repeal of the ordinance within 30 days of our demand letter in lieu of such a lawsuit being necessary. **We have received no response to our letter.** Although we have record that the letter was received, and that it was on the closed session agenda for the September 5, 2018 City Council meeting, neither you nor any other city official has acknowledged receipt of the letter, identified steps that the City will be taking to repeal the clearly preempted ordinance, or provided any other response.

As evidenced by the September 5th council agenda, the City has had time to consider the matter, yet remains silent. Notwithstanding our attempts to correct this issue short of litigation, we reasonably interpret the City's consideration of our August 14, 2018 letter and its complete silence in response as an indication that the City has no intent to take any action to repeal the ordinance. We are thus filing suit.

Mr. Edward Kotkin, Esq.  
September 14, 2018  
Page 2 of 2

Litigation should be wholly unnecessary in light of the patent and thoroughly explained preemption issues dooming the City's ordinance, but because of the City's silence and inaction in response to our efforts, we are left with no choice but to file suit to address the illegal ordinance. Given this, we will seek to recover the reasonable attorney's fees and costs of litigation incurred to resolve an issue that should have been voluntarily resolved by the City.

Sincerely,  
**Michel & Associates, P.C.**

A handwritten signature in black ink, appearing to read "Joshua Robert Dale", written over the printed name.

Joshua Robert Dale

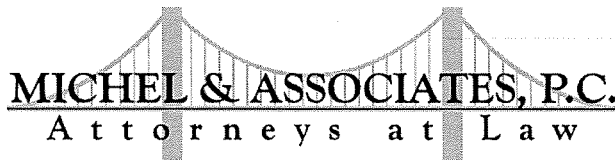
# **EXHIBIT II**

SENIOR PARTNER  
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MANAGING PARTNER  
JOSHUA ROBERT DALE

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\* ALSO ADMITTED IN TEXAS AND THE  
DISTRICT OF COLUMBIA

WRITER'S DIRECT CONTACT:  
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JDALE@MICHELLAWYERS.COM

October 10, 2018

**VIA EMAIL & U.S. MAIL**

Edward Kotkin, Esq.  
City Attorney  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
[Edward.Kotkin@palmspringsca.gov](mailto:Edward.Kotkin@palmspringsca.gov)

**Re: Palm Springs Municipal Ordinance 11.16.040  
Preemption Issues**

Dear Mr. Kotkin:

I am following up our telephone conversation on October 9, 2018 regarding Palm Springs Municipal Ordinance 11.16.040. In that conversation, you indicated that the Palm Springs City Council was taking steps to repeal or modify the ordinance in response to our August 14, 2018 letter sent on behalf of our clients.

The proposed modifications you discussed included modifying the current ordinance to increase the theft reporting period from 48 hours to 5 days, which time period matches the reporting period under state law, i.e., Penal Code section 25250. Another modification apparently being considered is changing the language of the statute to expressly defer to the Penal Code section itself.

Until such time as the language for the modification or repeal is proposed, we cannot say for certain whether any such modified ordinance language is appropriate or comports with the preemption doctrine we previously identified. In the absence of the specific language, we can state that as a general rule, any municipal ordinance that purports to address conduct already fully occupied by state law would be void as preempted by state law, and subject to the same legal attack as the current ordinance.

While we appreciate the City agreeing to address without the need for litigation the aspect of the ordinance that requires a shorter time period for firearm theft reporting than state law allows, we believe that any modification to the ordinance where the ordinance would still purport to mandate a duty under the municipal code for citizens to report firearm theft would leave the ordinance still preempted, void, and subject to a lawsuit. Thus, we urge the City to repeal the ordinance in its entirety, instead of attempting a modification, to address the current preemption problems with it.

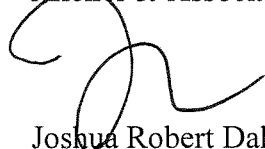
As a reminder, under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. (See Cal. Const., art. XI, §7; *Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067; *Fiscal v. City and County of San Francisco* (2008) 58 Cal.App.4th 895, 903-904.) A local law “duplicates state law when it is ‘coextensive’ with state law.” (See *O’Connell, supra*, 41 Cal.4th at 1068.)

The general principles governing state statutory preemption are well settled. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893.) An ordinance may be preempted by state law if it is duplicative of state law, i.e., it criminalizes “ ‘precisely the same acts which are . . . prohibited’ ” by statute.” (*Great Western Shows* (2002) 27 Cal.4th 853, 865, quoting *Pipoly v. Benson* (1942) 20 Cal.2d 366, 370.) Here, should the City act to change the ordinance in a matter that only make it a restatement of existing state law, the ordinance would be duplicative because it denotes the exact same law that is already in place. Where local laws are duplicative, they are void because a “conviction under the ordinance will operate to bar prosecution under state law for the same offense.” (*People v. Orozco* (1968) 266 Cal.App.2d 507, 511, fn. 1.)

The state has also pervaded the field of mandatory reporting of lost or stolen firearms with Penal Code section 25250 and provides a firearm theft victim up to 120 hours after the victim has knowledge of a theft to report it to law enforcement. Local legislation enters an area that is “fully occupied” by general law when the Legislature has expressly manifested its intent to “fully occupy” the area, or when it has impliedly done so. (*Sherwin-Williams Co., supra*, 4 Cal.4th at 897-898.) Unquestionably, Penal Code section 25250 marks the state’s entrance into the field of regulation regarding reporting requirements for victims of firearm theft in such a manner such that the state law has “so completely covered this field and clearly indicated that it has become exclusively a matter of state concern.” (*Id.* at 898.) The City’s modification of Ordinance 11.16.040 to duplicate the state Penal Code would therefore be pointless and would not work to meet any government interest of the City that is not already met by enforcement of the state law.

“The consequence of the preemption of a local measure is that the measure is unenforceable against anyone.” (*City and County of San Francisco v. Regents of University of Cal.* (2017) 11 Cal.App.5th 1107, 1118, italics omitted.) A modification of Ordinance 11.16.040 to expressly or impliedly restate Penal Code section 25250 or its requirements would make the ordinance coextensive with the subject of Section 25250 and would make the ordinance preempted, unenforceable, and void.

Sincerely,  
**Michel & Associates, P.C.**



Joshua Robert Dale



# **EXHIBIT JJ**



## CITY COUNCIL STAFF REPORT

DATE: November 14, 2018

LEGISLATIVE

SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA REPEALING PALM SPRINGS MUNICIPAL CODE SECTION 11.16.040 AND DISCUSSION OF POTENTIAL NEW FIREARMS REGULATIONS

FROM: David H. Ready, City Manager

BY: Edward Z. Kotkin, City Attorney

---

### SUMMARY

Staff recommends that the City Council repeal Palm Springs Municipal Code (PSMC) Section 11.16.040. In reviewing the matter of this ordinance's repeal for Council consideration, staff engaged in a comprehensive review of the substance and history of the PSMC provisions addressing firearms. In addition to the proposed repeal, staff requests a City Council discussion of potential new firearm regulations, including without limitation a potential prohibition of firearms at certain public gatherings.

### RECOMMENDATION:

1. Waive the reading of text in its entirety, read by title only, and introduce for first reading Ordinance No. \_\_\_\_\_, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA REPEALING PALM SPRINGS MUNICIPAL CODE SECTION 11.16.040."
2. Discuss potential new firearm regulations, including but not limited to a potential prohibition of firearms at certain public gatherings, and provide direction to staff.

### STAFF ANALYSIS:

#### *REPEAL OF PSMC 11.16.040*

The City Council adopted Ordinance 1899, the City's local ordinance that regulates firearms, on September 21, 2016. After the City acted, the state's voters approved Proposition 63 on November 8, 2016. California Penal Code Section 25250, effective January 1, 2017 as a part of Proposition 63, mandated reporting of a lost or stolen firearm

ITEM NO. 3.A.



to a local law enforcement agency within five (5) days. PSMC Section 11.16.040 mandates the same type of reporting to the Palm Springs Police Department within forty-eight (48) hours of a firearm loss or theft.

Staff has consulted with the Police Chief in this matter. Reporting of stolen firearms is taking place and will very likely continue under state law. As of the beginning of last month when staff inquired, since September 30, 2016 (just prior to the effective date of PSMC Section 11.16.040, the Police Department received forty six (46) reports of sixty one (61) stolen firearms. Some statutes adopted as part of Proposition 63 provide that cities may adopt more stringent standards than the state. There is no such provision in relation to the reporting requirement in Penal Code Section 25250, the state law addressing reporting of lost or stolen firearms. An impermissible conflict between state law and a local ordinance only exists when the ordinance contradicts, duplicates, or enters an area occupied by general law, either expressly or by legislative implication. The City of Palm Springs is a charter city and does not acknowledge that it lacks the authority to establish a timeline for reporting a firearm lost or stolen that is shorter than that mandated by state law. Regardless of whether there is in fact an impermissible conflict between Proposition 63 and PSMC Section 11.16.040, staff has determined that the repeal proposed will not have any foreseeable impact on the reporting of firearm theft or loss. Staff has determined that based upon a threat of litigation, any arguable conflict with state law should be resolved, and that it is appropriate to repeal PSMC Section 11.16.040. The proposed repeal ordinance is attached to this report as **ATTACHMENT A**.

#### *DISCUSSION RE POTENTIAL NEW FIREARMS REGULATIONS*

On June 15, 2016 in the wake of the Orlando nightclub shootings, the City Council considered adoption of a firearms regulatory program. On July 6, 2016, the Council discussed the legal landscape with respect to firearm regulation, including the issue of preemption. The Council reviewed the 2016 "California Firearm Laws Summary" published by the Attorney General. That version, although somewhat dated, remains the most up to date iteration of this publication. It is available for review, along with a wide variety of material available through the Attorney General's Bureau of Firearms at the following URL: <https://oag.ca.gov/firearms>.

Notwithstanding the Second Amendment right to bear arms as it has been broadly interpreted by the courts, municipalities have the right to regulate firearms. The State Constitution's fundamental and straightforward rule is that cities have the broad and elastic power to suppress, prohibit and regulate all things injurious to the public welfare. See e.g., California Constitution Article XI, section 7, providing for what is often referenced as the City's "police power." Despite its breadth and depth, the City's police power has limits. Cities cannot pass ordinances that conflict with the Constitution and laws of the State of California or the United States. See e.g., California Government Code Section 37100. However, conflict does not exist in many instances.

One good example of a local law explicitly upheld by a court is the Alameda County gun dealer zoning ordinance upheld in 2017 by the Ninth Circuit Court of Appeals sitting as an eleven (11) judge panel. See *Teixeira v. Cnty. of Alameda* (9<sup>th</sup> Cir. 2016) 822 F.3d 1047. Another is the state court of appeal that upheld a law prohibiting minors from entering premises where firearm sales are the primary on-site business. See *Suter v. City of Lafayette* (1997) 57 Cal.App.4<sup>th</sup> 1109. The Eighth Circuit Court of Appeals has held that since firearms dealers are not a suspect class, and their right to operate without a conditional use permit is not a fundamental right, a local ordinance should be upheld if it bears a rational relationship to a legitimate governmental interest. See *Koscielski v. Minneapolis* (8<sup>th</sup> Cir. 2006) 435 F.3d 898). The important principle at work in that case is an important one: local gun legislation not in conflict with federal or state law, and tailored to address a regulatory issue (such as zoning for firearms dealerships) squarely within the local jurisdiction's authority to regulate, will be upheld.

At the previously referenced City Council meeting on July 6, 2016, the Council considered a draft ordinance that addressed the following topics:

1. Shooting permits,
2. Imposition of a duty to report theft or loss of firearms,
3. Requiring safe storage of firearms in the home,
4. Prohibition, with certain exceptions, of possession of large-capacity ammunition magazines,
5. Imposition of record-keeping requirements for ammunition sales, and
6. Prohibiting unsecured firearms and ammunition in unattended vehicles.

On September 7, 2018 the City Council introduced, and on September 21, 2016 it adopted Ordinance 1899, codified in PSMC Chapter 11.16. At the Council's direction, the City Attorney deleted some provisions previously discussed (numbers 4 and 5 above) as state law adopted in the interim time had addressed them.<sup>1</sup> Since its adoption, Ordinance 1899 has not changed. As a matter of interest, the Council should note that the Ninth Circuit Court of Appeals upheld the "safe storage" ordinance adopted by the City and County of San Francisco. See *Jackson v. City and County of San Francisco* (9<sup>th</sup> Cir. 2014) 746 F.3d 953. Now, in the context of evaluating the proposed repeal, Councilmember Kors, in his role as City Council liaison to staff regarding potential new firearm regulations, worked with staff explored additional subject areas that the Council may wish to address in Chapter 11.16.

To assist the Council in defining its options to be considered during the requested discussion, staff notes that California expressly preempts very few specific areas of firearms law. Preempted areas include (1) licensing and registration of commercially

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<sup>1</sup> Proposition 63 also addressed record-keeping in the field of ammunition sales, but explicitly stated that its adoption would not "preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to the sale or transfer of ammunition." As is noted in the section of the staff report addressing the repeal of PSMC Section 11.16.040, the provision of Proposition 63 addressing reporting of lost or stolen firearms contains no such language.

manufactured firearms, (2) licensing and permitting related to the purchase, ownership, possession or carrying of a concealable firearm in the home, or in a place of business, and the (3) regulation of the manufacture, sale or possession of “imitation firearms.”

Various options for new firearm regulation in the City exist. Councilmember Kors identified and staff researched an ordinance unanimously adopted by the City and County of San Francisco on May 8, 2018 regarding “Firearms Prohibited at Public Gatherings.” Staff has verified with the San Francisco City Attorney’s office that since its adoption, this ordinance has not been subject to any legal challenge. A copy of the ordinance is provided as **ATTACHMENT B**; the Council will note that this ordinance, which complements San Francisco’s general prohibition of firearms on City property, only applies to a discreet and well-defined class of public gatherings.

In support of this ordinance, staff notes that the Ninth Circuit Court of Appeals has determined that the second amendment right to keep and bear arms, does not include, to any degree, the right of member of general public to carry concealed firearms in public. See *Peruta v. Cty. of San Diego* (9<sup>th</sup> Cir. 2016) 824 F.3d 919. In 2017 the United States Supreme Court refused to grant review of the *Peruta* case. Staff would be remiss if it did not note that other U.S. Circuit Courts of Appeals have diverged from the position of the Ninth in the *Peruta* decision, and viewed this issue through a different lens. An important state case worth noting in support of the San Francisco ordinance held that a county ordinance prohibiting possession and use of guns in parks and recreational areas was not preempted by state law authorizing sheriffs to issue concealed weapon licenses, and that a local agency has the authority to provide, *via* its legislative process, for exceptions and conditions to when and where an issued “carry license” may be validly used. See *Calguns Found., Inc. v. Cty. of San Mateo* (2013) 218 Cal. App. 4<sup>th</sup> 661.

In the event that the Council wants to provide direction on other specific potential areas for local legislation, those might include:

- Requirement of a special permit issued to firearm sellers by police chief with conditions attached;
- Requirement of videotaping of areas where firearm purchases occur;
- Prohibition of firearm possession on city property;
- Zoning restrictions applicable to firearm sellers;
- Prohibition of firearm sales businesses in residences as home occupation;
- Requirement of posting of warnings at firearm sellers;
- Requirement of firearm sellers having liability insurance;
- Requirement of mandatory reporting of inventory by firearm sellers;
- Required mandatory periodic inspection of firearm sellers’ premises;
- Revision of M-2 and E-I zoning, fabrication of ordinance and firearms are currently a permitted use and/or revision of C-2 zoning, gun shops are currently allowed with a land use permit; and
- Prohibition of firearm sellers operating within certain distance of sensitive uses.



ALTERNATIVES:

Decline to repeal PSMC 11.16.040.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Neither introduction nor adoption of this Ordinance represents a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378, because this Ordinance is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

FISCAL IMPACT:

Not analyzed.



Edward Z. Kotkin,  
City Attorney



David H. Ready, Esq., Ph.D.,  
City Manager

Attachments:

- A. Proposed Ordinance
- B. San Francisco Ordinance re "Firearms Prohibited at Public Gatherings"

# ATTACHMENT A

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF PALM SPRINGS,  
CALIFORNIA REPEALING PALM SPRINGS MUNICIPAL  
CODE SECTION 11.16.040.**

***City Attorney's Summary***

*This Ordinance repeals a provision of the Palm Springs Municipal  
Code that is adequately addressed by state law.*

**THE CITY COUNCIL OF THE CITY OF PALM SPRINGS FINDS:**

**The City Council of the City of Palm Springs ordains:**

**SECTION 1.** Title 11, Chapter 11.16, Section 11.16.040 of the Palm Springs Municipal Code (PSMC), the section of the City's municipal code that provides for a "Duty to Report Theft or Loss of Firearms," is hereby repealed.

**SECTION 2.** Neither introduction nor adoption of this Ordinance represents a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378, because this Ordinance is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

**SECTION 3.** The Mayor shall sign, and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of applicable law; this Ordinance shall take effect thirty (30) days after passage.

**PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF NOVEMBER 2018.**

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Robert Moon, Mayor

ATTEST:

\_\_\_\_\_  
Anthony J. Mejia, MMC, City Clerk



# ATTACHMENT B

[Police Code - Prohibition of Firearms at Public Gatherings]

**Ordinance amending the Police Code to prohibit firearms at certain public gatherings.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
**Additions to Codes** are in *single-underline italics Times New Roman font*.  
**Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
**Board amendment additions** are in double-underlined Arial font.  
**Board amendment deletions** are in ~~strikethrough Arial font~~.  
**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Police Code is hereby amended by adding Article 36C, to read as follows:

**ARTICLE 36C: PROHIBITION OF FIREARMS AT PUBLIC GATHERINGS**

**SEC. 3600C. FINDINGS.**

*(a) The presence of concealed firearms in crowds of people at large public gatherings has the potential to present public safety risks associated with the accidental or intentional discharge of a weapon. Subject to limited exceptions, Section 617 of the Police Code prohibits the possession of firearms on City property. But Section 617 does not apply to the public right-of-way owned by the City.*

*(b) The U.S. Supreme Court emphasized in District of Columbia v. Heller, its 2008 decision which characterized the Second Amendment as recognizing an individual right to keep and bear arms, that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" are valid public safety regulations under the Second Amendment.*

1        (c) In recent years, public, densely populated spaces have been targeted by gunmen with the  
2 apparent goal of causing mass physical and emotional harm, particularly apparent with the recent and  
3 horrific mass shootings on the Las Vegas strip and at a nightclub in Orlando.

4        (d) A July 2015 Congressional Research Service Report found that between 1999 and 2013,  
5 offenders committed 66 mass shootings in public places, killing 446 victims and injuring 329 victims.  
6 The report defined a mass shooting as one where four or more victims are killed at a single event.

7        (e) Studies show that in general guns do not protect those who possess them from gun violence.  
8 A 2009 study published in the American Journal of Public Health found that individuals possessing a  
9 gun were 4.46 times more likely than individuals not possessing a gun to be shot when assaulted by  
10 another individual possessing a gun.

11        (f) City residents must have a reasonable expectation of safety while at public gatherings.  
12 Perceptions of safety are important to encouraging civic engagement and participation. The presence  
13 of firearms at public gatherings can therefore depress involvement in civic life.

14        (g) The presence of firearms at public gatherings where expressive activity is taking place is  
15 likely to intimidate some participants and chill or suppress speech, and cause some interested persons  
16 not to attend such gatherings. According to news reports, the presence of firearms at the recent white  
17 supremacist rallies in Charlottesville, Virginia, intimidated some people who disagreed with the  
18 message of the rally participants into silence. While the threat of such chilling is reduced when the  
19 open carrying of firearms is prohibited, nonetheless the knowledge that demonstrators may be carrying  
20 concealed firearms can operate to deter and silence speech.

21        (h) Prohibiting the possession of firearms at certain outdoor public gatherings in the City will  
22 promote the public health and safety by reducing the presence of firearms and the potential for gunshot  
23 fatalities and injuries. The prohibition will also promote public participation at events involving  
24 expressive activities, because it will reduce the likelihood of people being intimidated by the presence  
25 of concealed firearms.

1           **SEC. 3601C. DEFINITIONS.**

2           *For purposes of this Article 36C, the following definitions shall apply:*

3           *"Demonstration" shall mean a group of persons advocating for or against a political or other*  
4 *cause by conveying a message to the public through expressive conduct, such as carrying or wearing*  
5 *signs, singing, or speaking.*

6           *"Firearm" means any gun, pistol, revolver, rifle, or any other device designed or modified to be*  
7 *used as a weapon, from which is expelled through a barrel a projectile by the force of an explosion or*  
8 *other form of combustion. "Firearm" does not include imitation firearms as defined by California*  
9 *Penal Code Section 16700, or BB devices or air rifles as defined in California Penal Code Section*  
10 *16250.*

11           *"Public Gathering" shall mean:*

12                     *(1) a parade that requires a permit under Article 4 of the Police Code and involves ~~50~~*  
13 *20 or more persons;*

14                     *(2) a Demonstration held in the Right-of Way involving ~~50-20~~ or more persons within*  
15 *an area circumscribed by a 500-foot radius;*

16                     *(3) a Demonstration on publicly-owned park land within the geographic boundaries of*  
17 *the City involving ~~50-20~~ or more persons within an area circumscribed by a 500-foot radius; and*

18                     *(4) an event that requires a permit under Article 6 of the Transportation Code and*  
19 *involves ~~50-20~~ or more persons.*

20           *"Right of Way" shall mean any area across, along, on, over, upon, and within the dedicated*  
21 *public alleys, boulevards, courts, lanes, roads, sidewalks, streets, and ways within the City.*

22  
23           **SEC. 3602C. FIREARMS PROHIBITED AT PUBLIC GATHERINGS.**

24           *Except as stated in Section 3603C, no person shall possess a Firearm at any Public Gathering.*  
25

1           **SEC. 3603C. EXCEPTIONS.**

2           Section 3602C shall not apply to the following:

3           (a) A peace officer, retired peace officer, or person assisting a peace officer, when authorized  
4 to carry a concealed weapon under California Penal Code Sections 25450-25475 or a loaded firearm  
5 under California Penal Code Sections 25900-25925, and/or under 18 U.S.C. 926B or 926C;

6           (b) Members of the armed forces when on duty, and members of other organizations when  
7 authorized to carry a concealed weapon under California Penal Code Section 25620 or a loaded  
8 firearm under California Penal Code Section 26000;

9           (c) Military or civil organizations carrying unloaded weapons while parading or when  
10 authorized to carry a concealed weapon under California Penal Code Section 25625;

11           (d) Patrol special police officers, animal control officers, zookeepers, and harbor police  
12 officers, when authorized to carry a loaded firearm under California Penal Code Section 26025; and

13           (e) A guard or messenger of a common carrier, bank, or other financial institution; a guard of  
14 a contract carrier operating an armored vehicle; a licensed private investigator, patrol operator, or  
15 alarm company operator; a uniformed security guard or night watch person employed by a public  
16 agency; a uniformed security guard or uniformed alarm agent; a uniformed employee of a private  
17 patrol operator or private investigator, when any of the above are authorized to carry a loaded firearm  
18 under California Penal Code Section 26030.

19  
20           **SEC. 3604C. PENALTY.**

21           Any person who violates Section 3602C shall be deemed guilty of a misdemeanor and upon  
22 conviction shall be punished by a fine not to exceed \$1,000 or by imprisonment in the county jail not to  
23 exceed six months, or by both.

1       **SEC. 3605C. PERMIT CONDITIONS.**

2       For any Public Gathering that requires a permit issued by the City, the City official,  
3 department, board, commission, committee, or other authority responsible for issuing such permit shall  
4 include as a condition of the permit that Firearms be prohibited at the Public Gathering, subject to the  
5 exceptions stated in Section 3603C. This Article 36C shall not preclude the City from exercising its  
6 discretion to impose a similar condition on a permit that does not meet the definition of a Public  
7 Gathering.

8  
9       **SEC. 3606C. UNDERTAKING FOR THE GENERAL WELFARE.**

10       In enacting and implementing this Article 36C, the City is assuming an undertaking only to  
11 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an  
12 obligation for breach of which it is liable in money damages to any person who claims that such breach  
13 proximately caused injury.

14  
15       **SEC. 3607C. SEVERABILITY.**

16       If any provision, clause, or word of this Article 36C or the application thereof to any person or  
17 circumstance is held invalid, such invalidity shall not affect any other provision, clause, word, or  
18 application of this Article which can be given effect without the invalid provision, clause, word, or  
19 application; and to this end the provisions of this Article are declared to be severable.

20       ///

21       ///

22       ///

23       ///

24       ///

25       ///

1 Section 2. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
4 of Supervisors overrides the Mayor's veto of the ordinance.

5  
6 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

7  
8 By:

  
BRADLEY A. RUSSI  
Deputy City Attorney

9  
10 n:\vegana\as2018\1800525\01268994.docx



**City and County of San Francisco**  
**Tails**  
**Ordinance**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 180159

**Date Passed:** May 08, 2018

Ordinance amending the Police Code to prohibit firearms at certain public gatherings.

April 18, 2018 Public Safety and Neighborhood Services Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

April 18, 2018 Public Safety and Neighborhood Services Committee - CONTINUED AS AMENDED

April 25, 2018 Public Safety and Neighborhood Services Committee - RECOMMENDED

May 01, 2018 Board of Supervisors - PASSED ON FIRST READING

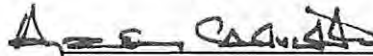
Ayes: 11 - Breed, Cohen, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Stefani, Tang and Yee

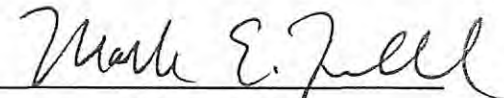
May 08, 2018 Board of Supervisors - FINALLY PASSED

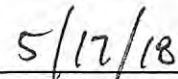
Ayes: 11 - Breed, Cohen, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Stefani, Tang and Yee

File No. 180159

I hereby certify that the foregoing  
Ordinance was FINALLY PASSED on  
5/8/2018 by the Board of Supervisors of the  
City and County of San Francisco.

  
\_\_\_\_\_  
Angela Calvillo  
Clerk of the Board

  
\_\_\_\_\_  
Mark E. Farrell  
Mayor

  
\_\_\_\_\_  
Date Approved



# **EXHIBIT KK**

# Palm Springs repeals gun ordinance passed after Pulse shooting, will look at other measures

Corinne S Kennedy, Palm Springs Desert Sun

Published 9:47 a.m. PT Nov. 15, 2018 | Updated 10:54 a.m. PT Nov. 15, 2018



(Photo: The Desert Sun)

The Palm Springs City Council voted to repeal part of a series of gun control measures put in place after the Pulse nightclub shooting in Orlando in 2016, but will discuss implementing additional measures such as preventing people from bringing firearms to some public events.

Council members voted 3-2 to repeal a law that required Palm Springs residents to report stolen firearms to the police within 48 hours. A state law, which was passed by the voters as a proposition a few months after the Palm Springs ordinance was passed, requires the reporting of stolen firearms within five days.

Council members Christy Holstege and Geoff Kors voted against the repeal.

A [staff report prepared by City Attorney Ed Kotkin \(https://destinyhosted.com/palmsdocs/2018/CC/20181114\\_131/1142\\_Item%203A%20OCR.pdf\)](https://destinyhosted.com/palmsdocs/2018/CC/20181114_131/1142_Item%203A%20OCR.pdf) concluded repealing Palm Springs' law would not have a "foreseeable impact" on people reporting lost or stolen guns.

He wrote that "based on a threat of litigation, any arguable conflict with state law should be resolved." The National Rifle Association sent a letter to Palm Springs before the measure was passed threatening to sue the city, but no lawsuit was filed. Kotkin did not specify if the current litigation threat was from the NRA.

Holstege said she wasn't swayed by the threat of litigation and she "couldn't politically support reducing gun safety legislation at this time."

**LAW ENFORCEMENT:** [Election 2018: Chad Bianco elected in heated Riverside County Sheriff's race \(/story/news/politics/elections/2018/11/05/election-2018-riverside-county-sheriffs-race-deserts-most-expensive/1858572002/\)](#)

**LOCAL NEWS:** [Palm Springs police chief OK with pot possession at airport, but prefers people just leave it home \(/story/money/business/tourism/2018/11/14/palm-springs-international-airport-pot-possession-policy/2005612002/\)](#)

The city staff report noted that from Sept. 30, 2016, shortly before the Palm Springs ordinance took effect, to the beginning of October, Palm Springs police received 46 reports of 61 stolen firearms.



The Palm Springs City Council could repeal controversial gun laws it passed in 2016 and replace them with new restrictions. (Photo: Associated Press)

“Reporting of stolen firearms is taking place and will very likely continue under state law,” Kotkin wrote.

Council member Lisa Middleton said she hoped the federal government would follow California’s lead.

“We’re doing this because the state of California has acted very responsibly and the California public has acted very responsibly,” she said. “I look forward to the day that we can say that the president and the United States Congress has acted responsibly to pass gun safety legislation and I hope that happens before the next mass shooting.”

The council also agreed to form a subcommittee to research other potential firearms regulations that could be brought forward for a vote.

There was no public comment on the matter Wednesday.

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Two other firearms restrictions put in place in 2016 — that guns and ammunition left in unattended vehicles must be in the trunk or a locked container and at home and that gun owners must keep firearms in a locked container or disabled with a trigger lock when not in their immediate possession — remain on the books.

The measures were the subject of heated debate in the meetings leading up to the council’s final approval two years ago. While gun-control advocacy groups like Moms Demand Action applauded the council’s move and said the restrictions could prevent accidental shootings, local gun owners said the measures were overly restrictive and could make law-abiding gun owners less safe by making it more difficult to access and use their firearms in life-threatening situations.

City Council members were also split by the debate. The measure passed 3-2, with former council members Ginny Foat and Chris Mills voting no.

*Corinne Kennedy covers the west valley for The Desert Sun. She can be reached at [Corinne.Kennedy@DesertSun.com](mailto:Corinne.Kennedy@DesertSun.com) or on Twitter @CorinneSKennedy*

Read or Share this story: <https://www.desertsun.com/story/news/local/palm-springs/2018/11/15/palm-springs-consider-additional-gun-control-measures/1973202002/>

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# **EXHIBIT LL**

# **The Science of Gun Policy**

**A Critical Synthesis of Research Evidence  
on the Effects of Gun Policies in the United States**

A PART OF THE RAND

**Gun Policy  
in AMERICA**

INITIATIVE





For more information on this publication, visit [www.rand.org/t/RR2088](http://www.rand.org/t/RR2088)

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---

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## Preface

---

Effective gun policies in the United States must balance the constitutional right to bear arms and public interest in gun ownership with concerns about public health and safety. However, current efforts to craft legislation related to guns are hampered by a paucity of reliable information about the effects of such policies. To help address this problem, the RAND Corporation launched the Gun Policy in America initiative. Throughout RAND's 70-year history, in multiple projects, in many policy arenas, and on topics that are sensitive and controversial, researchers have conducted analyses, built tools, and developed resources to help policymakers and the public make effective decisions. The primary goal of the Gun Policy in America project is to create resources where policymakers and the general public can access unbiased information that facilitates the development of fair and effective firearm policies.

This report is one of several research products stemming from the initiative. The research described here synthesizes the available scientific evidence on the effects of 13 types of firearm policies on a range of outcomes related to gun ownership. In addition, this report includes essays on several topics that frequently arise in discussions of gun policy.

Other project components include a survey of policy experts that identifies where access to reliable data would be most useful in resolving policy debates, plus an online tool allowing users to explore how different combinations of gun policies are likely to affect a range of outcomes. In another line of effort, RAND conducted simulation studies to evaluate the strengths and weaknesses of different approaches to modeling the effects of gun policies on outcomes, the results of which will be used to develop new estimates of the effects of state firearm policies. Finally, the project includes the development of a longitudinal database of state firearm laws as a resource for other researchers and the public.

The Gun Policy in America initiative did not attempt to evaluate the merits of different values or principles that sometimes drive policy disagreements. Rather, our focus is strictly on the empirical effects of policies on the eight outcomes specified in this report. All of our resources are publicly available on the project website at [www.rand.org/gunpolicy](http://www.rand.org/gunpolicy).

The work should be of interest to policymakers and other stakeholders considering decisions related to firearm policy. Furthermore, this report may be of interest to the research community and to the general public.

## **RAND Ventures**

The RAND Corporation is a research organization that develops solutions to public policy challenges to help make communities throughout the world safer and more secure, healthier and more prosperous. RAND is nonprofit, nonpartisan, and committed to the public interest.

RAND Ventures is a vehicle for investing in such policy solutions. Philanthropic contributions support our ability to take the long view, tackle tough and often-controversial topics, and share our findings in innovative and compelling ways. RAND's research findings and recommendations are based on data and evidence and therefore do not necessarily reflect the policy preferences or interests of its clients, donors, or supporters.

Funding for this venture was provided by gifts from RAND supporters and income from operations.

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## Summary

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The RAND Corporation's Gun Policy in America initiative is a unique attempt to systematically and transparently assess available scientific evidence on the real effects of gun laws and policies. Our goal is to create resources where policymakers and the general public can access unbiased information that informs and enables the development of fair and effective policies. Good gun policies in the United States require consideration of many factors, including the law and constitutional rights, the interests of various stakeholder groups, and information about the likely effects of different policies on a range of outcomes. This report seeks to provide the third factor—objective information about what the scientific literature examining gun policies can tell us about the likely effects of those policies.

This report synthesizes the available scientific evidence on the effects of various gun policies on firearm deaths, violent crime, the gun industry, participation in hunting and sport shooting, and other outcomes.<sup>1</sup> It builds and expands on earlier comprehensive reviews of scientific evidence on gun policy conducted more than a decade ago by the National Research Council (NRC) (see NRC, 2004) and the Community Preventive Services Task Force (see Hahn et al., 2005).

## Methodology

We used Royal Society of Medicine guidelines for conducting systematic reviews of a scientific literature (Khan et al., 2003). We focused on the empirical literature assessing the effects of 13 classes of firearm policies or of the prevalence of firearms on any of eight outcomes, which include both public health outcomes and outcomes of concern to many gun owners. We reviewed scientific reports that have been published since 2003, a date chosen to capture studies conducted since the last major systematic reviews of the science of gun policy were published by NRC (2004) and Hahn et al. (2005).

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<sup>1</sup> Although not all guns are firearms, in this report, we follow conventional use in U.S. policy discussions and treat the terms *gun* and *firearm* as interchangeable.

The 13 classes of gun policies considered in this research are as follows:

1. background checks
2. bans on the sale of assault weapons and high-capacity magazines
3. stand-your-ground laws
4. prohibitions associated with mental illness
5. lost or stolen firearm reporting requirements
6. licensing and permitting requirements
7. firearm sales reporting and recording requirements
8. child-access prevention laws
9. surrender of firearms by prohibited possessors
10. minimum age requirements
11. concealed-carry laws
12. waiting periods
13. gun-free zones.

The eight outcomes considered in this research are

1. suicide
2. violent crime
3. unintentional injuries and deaths
4. mass shootings
5. officer-involved shootings
6. defensive gun use
7. hunting and recreation
8. gun industry.<sup>2</sup>

## Policy Analyses, by Outcome

Building on the earlier reviews (NRC, 2004; Hahn et al., 2005) and using standardized and explicit criteria for determining the strength of evidence that individual studies provide for the effects of gun policies, we produced research syntheses that describe the quality and findings of the best available scientific evidence. Each synthesis defines the class of policies being considered; presents and rates the available evidence; and describes what conclusions, if any, can be drawn about the policy's effects on outcomes.

In many cases, we were unable to identify any research that met our criteria for considering a study as providing minimally persuasive evidence for a policy's effects. Studies were excluded from this review if they offered only correlational evidence for a

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<sup>2</sup> The terms in these lists describe broad categories of policies and outcomes that are defined and described in detail in the full report.

possible causal effect of the law, such as showing that states with a specific law had lower firearm suicides at a single point in time than states without the law. Correlations like these can occur for many reasons other than the effects of a single law, so this kind of evidence provides little information about the effects attributable to specific laws. We did not exclude studies on the basis of their findings, only on the basis of their methods for isolating causal effects. For studies that met our inclusion criteria, we summarize key findings and methodological weaknesses, when present, and provide our consensus judgment on the overall strength of the available scientific evidence. We did this by establishing the following relativistic scale describing the strength of available evidence:

1. *No studies.* This designation was made when no studies meeting our inclusion criteria evaluated the policy's effect on the outcome.
2. *Inconclusive evidence.* This designation was made when studies with comparable methodological rigor identified inconsistent evidence for the policy's effect on an outcome or when a single study found only uncertain or suggestive effects.
3. *Limited evidence.* This designation was made when at least one study meeting our inclusion criteria and not otherwise compromised by serious methodological problems reported a significant effect of the policy on the outcome, even if other studies meeting our inclusion criteria identified only uncertain or suggestive evidence for the effect of the policy.
4. *Moderate evidence.* This designation was made when two or more studies found significant effects in the same direction and contradictory evidence was not found in other studies with equivalent or strong methods.
5. *Supportive evidence.* This designation was made when (1) at least three studies found suggestive or significant effects in the same direction using at least two independent data sets or (2) the effect was observed in a rigorous experimental study.

These ratings are meant to describe the relative strengths of evidence available across gun policy research domains, not any rating of our absolute confidence in the reported effects. For instance, when we find *supportive* evidence for the conclusion that child-access prevention laws reduce self-inflicted injuries and deaths, we do not mean to suggest that it is comparable to the evidence available in more-developed fields of social science. That is, in comparison to the evidence that smoking causes cancer, the evidence base in gun policy research is very limited. Nevertheless, we believe that it may be valuable to the public and to policymakers to understand which laws currently have more or less persuasive evidence concerning the effects the laws are likely to produce.

Table S.1 summarizes our judgments for all policy and outcome pairings. Several outcomes show multiple judgments, and these correspond to different characterizations of the specific policy-outcome association. For instance, we identified limited evidence that background checks reduce *total suicides* and moderate evidence that they reduce *firearm suicides*.

**Table S.1**  
**Strength of Evidence Across Gun Policies and Outcomes**

	Background Checks	Bans on the Sale of Assault Weapons and High-Capacity Magazines	Stand-Your-Ground Laws	Prohibitions Associated with Mental Illness	Lost or Stolen Firearm Reporting Requirements	Licensing and Permitting Requirements	Firearm Sales Reporting and Recording Requirements	Child-Access Prevention Laws	Surrender of Firearms by Prohibited Possessors	Minimum Age Requirements		Concealed-Carry Laws		Waiting Periods	Gun-Free Zones
										Purchasing	Possessing	Shall Issue	Permitless Carry		
Suicide															
Total suicides	↓ L		I	↓ L		I		↓ L		I	I	I			
Firearm suicides	↓ M		I	↓ L		I		↓ M			I	I			
Firearm suicides among children										↓ L					
Firearm self-injuries (nonfatal)												I			
Firearm self-injuries (including suicides)								↓ S							
Violent crime	↓ L			↓ M				I	I			↑ L		I	
Total homicides	↓ L	I	↑ M	↓ L		I				I	I	I			
Firearm homicides	↓ M, I <sup>a</sup>	I	↑ L	I		I		I		I	I	I			
Intimate partner homicides									I					I	
Robberies												I			
Assaults												I			
Rapes												I			
Other violent crime			I												



Table S.1—Continued

	Background Checks	Bans on the Sale of Assault Weapons and High-Capacity Magazines	Stand-Your-Ground Laws	Prohibitions Associated with Mental Illness	Lost or Stolen Firearm Reporting Requirements	Licensing and Permitting Requirements	Firearm Sales Reporting and Recording Requirements	Child-Access Prevention Laws	Surrender of Firearms by Prohibited Possessors	Minimum Age Requirements		Concealed-Carry Laws		Waiting Periods	Gun-Free Zones
										Purchasing	Possessing	Shall Issue	Permitless Carry		
Unintentional injuries and deaths															
Unintentional firearm deaths											I				
Unintentional firearm injuries and deaths among adults								↓ L							
Unintentional firearm injuries and deaths among children								↓ S							
Unintentional firearm injuries among adults												↑ L			
Unintentional firearm injuries among children												I			
Mass shootings	I	I				I		I		I		I	I	I	
Officer-involved shootings															
Defensive gun use			I												
Hunting and recreation															

Table S.1—Continued

	Gun-Free Zones	Waiting Periods	Concealed-Carry Laws		Minimum Age Requirements		Surrender of Firearms by Prohibited Possessors	Child-Access Prevention Laws	Firearm Sales Reporting and Recording Requirements	Licensing and Permitting Requirements	Lost or Stolen Firearm Reporting Requirements	Prohibitions Associated with Mental Illness	Stand-Your-Ground Laws	Bans on the Sale of Assault Weapons and High-Capacity Magazines	Background Checks
			Permitless Carry	Shall Issue	Possessing	Purchasing									
Gun industry															
Gun ownership				I											
Prices of banned firearms in the short term														↑ L	

NOTE: I = inconclusive; L = limited; M = moderate; S = supportive. When we identified no studies meeting eligibility criteria, cells are blank. ↑ = the policy increases the outcome; ↓ = the policy decreases the outcome.

<sup>a</sup> We concluded that there is moderate evidence that dealer background checks decrease firearm homicides, and there is inconclusive evidence for the effect of private-seller background checks on firearm homicides.

Rather than concerning how strong a policy's effects are, our findings concern the strength of the available scientific evidence examining those effects. Thus, even when the available evidence is limited, the actual effect of the policy may be strong. Presumably, every policy has some effect on a range of outcomes, however small or unintended. Until researchers design studies that can detect these effects, available evidence is likely to remain inconclusive or limited. But this fact should not be confused with the conclusion that the policies themselves have limited effects. They may or may not have the effects they were designed to produce; available scientific research cannot yet answer that question. Moreover, even a policy with a small effect may nevertheless be beneficial to society or worth its costs. For instance, a policy that reduces firearm deaths by just a few percentage points could save more than 1,000 lives per year. This kind of “small” effect might be very difficult to detect with existing study methods but could represent an important contribution to public health and safety.

## Supplementary Essays

The 13 types of policies reviewed in this report and the scope of the systematic review for the research synthesis were selected a priori and represent the central focus of our research synthesis efforts. Nevertheless, in reviewing evidence on these policies, other important themes emerged that the research team believed provided useful context for the policies or that were frequently cited in gun policy debates. Thus, we also researched what rigorous studies reveal about

- the possible mechanisms by which laws may affect outcomes
- how taxes, access to health care, and media campaigns might affect gun violence
- the effectiveness of laws used to target domestic violence
- methodological challenges in defining and estimating the prevalence of mass shootings and defensive gun use
- how suicide, violence, and mass shootings were affected by Australia's implementation of the National Firearms Agreement.

## Conclusions and Recommendations

Of more than 100 combinations of policies and outcomes, we found that surprisingly few were the subject of methodologically rigorous investigation. Notably, research into four of our outcomes was essentially unavailable, with three of these four outcomes—defensive gun use, hunting and recreation, and the gun industry—representing issues of particular concern to gun owners or gun industry stakeholders. Here, we summarize the key conclusions and recommendations that can be drawn from the policy-outcome

combinations with the strongest available evidence (conclusions 1 through 8). Thereafter, we draw conclusions and recommendations concerning how to improve evidence on the effects of gun policies (conclusions 9 through 13).

### **Conclusions and Recommendations Based on the Existing Evidence Base**

Our first set of conclusions and recommendations describes the policy-outcome combinations with the strongest available evidence as identified through our review of the existing literature, as well as recommendations for policy based on this evidence.

**Conclusion 1.** Available evidence supports the conclusion that child-access prevention laws, or safe storage laws, reduce self-inflicted fatal or nonfatal firearm injuries among youth. There is moderate evidence that these laws reduce firearm suicides among youth and limited evidence that the laws reduce total (i.e., firearm and non-firearm) suicides among youth.

**Conclusion 2.** Available evidence supports the conclusion that child-access prevention laws, or safe storage laws, reduce unintentional firearm injuries or unintentional firearm deaths among children. In addition, there is limited evidence that these laws may reduce unintentional firearm injuries among adults.

*Recommendation 1.* States without child-access prevention laws should consider adopting them as a strategy to reduce firearm suicides and unintentional firearm injuries and deaths. We note, however, that scientific research cannot, at present, address whether these laws might increase or decrease crime or rates of legal defensive gun use.

*Recommendation 2.* When considering adopting or refining child-access prevention laws, states should consider making child access to firearms a felony; there is some evidence that felony laws may have the greatest effects on unintentional firearm deaths.

**Conclusion 3.** There is moderate evidence that background checks reduce firearm suicides and firearm homicides, as well as limited evidence that these policies can reduce overall suicide and violent crime rates.

**Conclusion 4.** There is moderate evidence that stand-your-ground laws may increase state homicide rates and limited evidence that the laws increase firearm homicides in particular.

**Conclusion 5.** There is moderate evidence that laws prohibiting the purchase or possession of guns by individuals with some forms of mental illness reduce violent crime, and there is limited evidence that such laws reduce homicides in particular. There is also limited evidence these laws may reduce total suicides and firearm suicides.

*Recommendation 3.* States that currently do not require a background check investigating all types of mental health histories that lead to federal prohibi-

tions on firearm purchase or possession should consider implementing robust mental illness checks, which appear to reduce rates of gun violence. The most robust procedures involve sharing data on all prohibited possessors with the National Instant Criminal Background Check System.

**Conclusion 6.** There is limited evidence that before implementation of a ban on the sale of assault weapons and high-capacity magazines, there is an increase in the sales and prices of the products that the ban will prohibit.

**Conclusion 7.** There is limited evidence that a minimum age of 21 for purchasing firearms may reduce firearm suicides among youth.

**Conclusion 8.** No studies meeting our inclusion criteria have examined required reporting of lost or stolen firearms, required reporting and recording of firearm sales, or gun-free zones.

### **Conclusions and Recommendations for Improving Gun Policy Research**

Based on our review of the existing literature on the effects of firearm policy changes, we offer the following conclusions and recommendations for improving the evidence base on the effects of gun laws.

**Conclusion 9.** The modest growth in knowledge about the effects of gun policy over the past dozen years reflects, in part, the reluctance of the U.S. government to sponsor work in this area at levels comparable to its investment in other areas of public safety and health, such as transportation safety.

*Recommendation 4.* To improve understanding of the real effects of gun policies, Congress should consider whether to lift current restrictions in appropriations legislation, and the administration should invest in firearm research portfolios at the Centers for Disease Control and Prevention, the National Institutes of Health, and the National Institute of Justice at levels comparable to its current investment in other threats to public safety and health.

*Recommendation 5.* Given current limitations in the availability of federal support for gun policy research, private foundations should take further steps to help fill this funding gap by supporting efforts to improve and expand data collection and research on gun policies.

**Conclusion 10.** Research examining the effects of gun policies on officer-involved shootings, defensive gun use, hunting and recreation, and the gun industry is virtually nonexistent.

*Recommendation 6.* To improve understanding of outcomes of critical concern to many in gun policy debates, the U.S. government and private research sponsors should support research examining the effects of gun laws on a wider

set of outcomes, including crime, defensive gun use, hunting and sport shooting, officer-involved shootings, and the gun industry.

**Conclusion 11.** The lack of data on gun ownership and availability and on guns in legal and illegal markets severely limits the quality of existing research.

*Recommendation 7.* To make important advances in understanding the effects of gun laws, the Centers for Disease Control and Prevention or another federal agency should resume collecting voluntarily provided survey data on gun ownership and use.

*Recommendation 8.* To foster a more robust research program on gun policy, Congress should consider whether to eliminate the restrictions it has imposed on the use of gun trace data for research purposes.

**Conclusion 12.** Crime and victimization monitoring systems are incomplete and not yet fulfilling their promise of supporting high-quality gun policy research in the areas we investigated.

*Recommendation 9.* To improve the quality of evidence used to evaluate gun policies, the National Violent Death Reporting System should be expanded to include all states with rigorous quality control standards.

*Recommendation 10.* The Bureau of Justice Statistics should examine the cost and feasibility of expanding its existing programs to generate state-level crime data.

*Recommendation 11.* The Bureau of Justice Statistics should continue to pursue its efforts to generate state-level victimization estimates. The current goal of generating such estimates for 22 states is a reasonable compromise between cost and the public's need for more-detailed information. However, the bureau should continue to expand its development of model-based victimization rates for all states and for a wider set of victimization experiences (including, for instance, crimes involving firearm use by an assailant or victim).

**Conclusion 13.** The methodological quality of research on firearms can be significantly improved.

*Recommendation 12.* As part of the Gun Policy in America initiative, we have published a database containing a subset of state gun laws from 1979 to 2016 (Cherney, Morral, and Schell, 2018). We ask that others with expertise on

state gun laws help us improve the database by notifying us of its errors, proposing more-useful categorizations of laws, or submitting information on laws not yet incorporated into the database. With such help, we hope to make the database a resource beneficial to all analysts.

*Recommendation 13.* Researchers, reviewers, academics, and science reporters should expect new analyses of the effects of gun policies to improve on earlier studies by persuasively addressing the methodological limitations of earlier studies, including problems with statistical power, model overfitting, covariate selection, poorly calibrated standard errors, multiple testing, undisclosed state variation in law implementation, unjustified assumptions about the time course of each policy's effects, the use of spline and hybrid effect codings that do not reveal coherent causal effect estimates, and inadequate attention to threats of reciprocal causation and simultaneity bias.

In conclusion, with a few exceptions, there is a surprisingly limited base of rigorous scientific evidence concerning the effects of many commonly discussed gun policies. This does not mean that these policies are ineffective; they might well be quite effective. Instead, it reflects shortcomings in the contributions that scientific study can currently offer to policy debates in these areas. It also reflects, in part, the policies we chose to investigate, all of which have been implemented in some U.S. states and, therefore, have proven to be politically and legally feasible, at least in some states. This decision meant that none of the policies we examined would dramatically increase or decrease the stock of guns or gun ownership rates in ways that would produce more readily detectable effects on public safety, health, and industry outcomes. The United States has a large stock of privately owned guns in circulation—estimated in 2014 to be somewhere between 200 million and 300 million firearms (Cook and Goss, 2014). Laws designed to change who may buy new weapons, what weapons they may buy, or how gun sales occur will predictably have only a small effect on, for example, homicides or participation in sport shooting, which are affected much more by the existing stock of firearms. Although small effects are especially difficult to identify with the statistical methods common in this field, they may be important. Even a 1-percent reduction in homicides corresponds to more than 1,500 fewer deaths over a decade.

By highlighting where scientific evidence is accumulating, we hope to build consensus around a shared set of facts that have been established through a transparent, nonpartisan, and impartial review process. In so doing, we also mean to highlight areas where more and better information could make important contributions to establishing fair and effective gun policies.

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NRC—See National Research Council.



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## Abbreviations

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aOR	adjusted odds ratio
ARIMA	autoregressive integrated moving average
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
BJS	Bureau of Justice Statistics
BRFSS	Behavioral Risk Factor Surveillance Survey
CAP	child-access prevention
CC	concealed carry
CDC	Centers for Disease Control and Prevention
CI	confidence interval
DGU	defensive gun use
FBI	Federal Bureau of Investigation
FS/S	proportion of suicides that are firearm suicides
GSS	General Social Survey
IPH	intimate partner homicide
IRR	incidence rate ratio
NCVS	National Crime Victimization Survey
NFA	(Australian) National Firearms Agreement
NIBRS	National Incident-Based Reporting System
NICS	National Instant Criminal Background Check System

NIS	Nationwide Inpatient Sample
NRC	National Research Council
NSDS	National Self Defense Survey
NSPOF	National Survey of Private Ownership of Firearms
NSSF	National Shooting Sports Foundation
NVDRS	National Violent Death Reporting System
OR	odds ratio
VA	U.S. Department of Veterans Affairs

PART A

## **Introduction and Methods**

---



## Introduction

---

Americans are deeply divided on gun policy (Parker et al., 2017). Many Americans cherish the traditions of hunting, sport shooting, and collecting guns and value the security and protection that guns can provide. Many regions rely on hunting as an important driver of the tourism economy (Nelson, 2001; BBC Research & Consulting, 2008; Hodur, Leistriz, and Wolfe, 2008), and the wider gun industry employs hundreds of thousands of Americans, including instructors; shooting range operators; hunting equipment suppliers; and manufacturers, distributors, and retailers of firearms and ammunition. At the same time, many Americans have suffered grievous injuries and lost friends and family members in incidents involving firearms.<sup>1</sup> More than 36,000 Americans die annually from deliberate and unintentional gun injuries, and two-thirds of these deaths are suicides (Centers for Disease Control and Prevention [CDC], 2017a). Another 90,000 Americans per year receive care in a hospital for a nonfatal gun injury (CDC, 2017c).

Few are satisfied with the levels of mortality and injury associated with firearms, but there is passionate disagreement about how policies could be shaped to create a better future. There is a quite limited base of science on which to build sound and effective gun policies. Instead, when the public or members of Congress consider proposals affecting gun policy, they encounter conflicting opinions and inconsistent evidence about the likely effects of new laws. Views on what is factual concerning gun policies, or what the facts imply for decisionmaking, frequently divide along political and partisan lines (Kahan, 2017).

Entrenched disagreements on gun policy are not surprising, given the number and variety of contested and contradictory studies, selective misuse of facts by some on all sides of the debate, and today's hyper-partisan political environment. Moving past such roadblocks will be impossible unless decisionmakers can draw on a common set of facts based on transparent, nonpartisan, and impartial research and analysis. Even when individuals disagree about the objectives of gun policies, empirical evidence can help determine the most likely benefits and harms associated with such policies.

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<sup>1</sup> Although not all guns are firearms, in this report, we follow conventional use in U.S. policy discussions and treat the terms *gun* and *firearm* as interchangeable.

## Gun Policy in America

To help fill the gap in impartial research and analysis, the RAND Corporation launched the Gun Policy in America initiative, which is premised on the idea that the real effects of policies can be objectively determined and that establishing these facts will help lead to sound policies. Our goal is to create a resource where policymakers and the general public can access unbiased information that informs and enables the development of fair and effective firearm policies.

This report synthesizes the available scientific data on the effects of various firearm policies on firearm deaths, violent crime, the gun industry, participation in hunting and sport shooting, and other outcomes. It builds and expands on earlier comprehensive reviews of scientific evidence on gun policy conducted more than a decade ago by the National Research Council (2004) and the Community Preventive Services Task Force (see Hahn et al., 2005). This report is one of several research products stemming from RAND's Gun Policy in America initiative (see [www.rand.org/gunpolicy](http://www.rand.org/gunpolicy)).

In the Gun Policy in America initiative, we have made no attempt to evaluate the merits of different values and principles that sometimes drive policy disagreements. We also have not evaluated the legality of any candidate laws or how they may infringe on Second Amendment rights. Instead, our focus is strictly on the empirical effects of policies on the eight outcomes specified in this report. However, all of the policies we investigate have been implemented in multiple states, and many have withstood Supreme Court review; therefore, we have selected policies that have previously been found not to violate the Constitution.

Laws are not the only interventions that have been used to shape how guns are used in the United States, and research is available on the effectiveness of other approaches, such as public information campaigns, safety and training programs, policing interventions, and school and community programs. In this report, however, our focus is on what scientific studies tell us about the probable effects of certain laws.

## Research Focus

The primary focus of this report is our systematic review of 13 broad classes of gun policies that have been implemented in some states and the effects of those policies on eight outcomes. We selected the 13 classes from a larger set of more than 100 gun policies that have been advocated for; proposed; or passed into law by the federal government, states, or municipalities. Specifically, we restricted our attention to policies or laws that have already been implemented in some states so that researchers could examine the effects of each. In addition, we sought policies designed to have a direct effect on our selected outcomes. These policies, the presumed mechanisms whereby they produce intended (and possibly unintended) effects on our selected outcomes,



and the various ways that U.S. states have implemented them are discussed in detail in Chapters Three through Fifteen of this report. Although, in many cases, these policies have been implemented by local municipalities rather than states, we have not sought to review implementation at the local level.

The 13 classes of gun policies considered in this research are as follows:

1. background checks
2. bans on the sale of assault weapons and high-capacity magazines
3. stand-your-ground laws
4. prohibitions associated with mental illness
5. lost or stolen firearm reporting requirements
6. licensing and permitting requirements
7. firearm sales reporting and recording requirements
8. child-access prevention laws
9. surrender of firearms by prohibited possessors
10. minimum age requirements
11. concealed-carry laws
12. waiting periods
13. gun-free zones.

When deciding on the outcomes to examine in our research, we first included those related to public health and safety—suicide, violent crime, unintentional injuries and deaths, mass shootings, and officer-involved shootings. These are the outcomes most commonly examined in the research literature we were familiar with. However, we recognized that such outcomes omit many of the benefits of gun ownership that are attractive to gun owners and that may also be affected by laws designed to reduce the gun-related harms to public health and safety. Therefore, we also systematically searched the research literature for studies examining how gun laws affect defensive gun use, hunting and recreation, and the gun industry. Together, these eight outcomes cover many of the areas of concern frequently discussed in debates on gun policy. Here, we provide a short description of each outcome.

### **Suicide**

Official statistics on suicide in the United States are compiled by the CDC. Recent data, from 2015, indicate that 44,193 suicides occurred that year, for a rate of 13.75 per 100,000 people. Of these, 22,018 (49.8 percent) were firearm suicides (CDC, 2017a). Researchers have often examined the effects of laws on total suicides (i.e., suicide deaths by any means, including those involving a firearm), firearm suicides, nonfirearm suicides, and suicide attempts. From a societal perspective, the most important of these outcomes is total suicide; that is, the goal is to reduce the total number of suicide deaths, regardless of how one goes about attempting to die. In many cases, however, we would expect the effects of gun laws to be more easily observed in rates of firearm

suicides, not total suicides. The consensus among public health experts is that reducing firearm suicides in contexts where more-lethal means of attempting suicide are unavailable will result in reductions in the total suicide rate (see, for example, Office of the Surgeon General and National Alliance for Suicide Prevention, 2012; World Health Organization, 2014; for review, see Azrael and Miller, 2016). Nevertheless, it is also clear that some people prevented from attempting suicide with a firearm will substitute another lethal means and successfully end their lives. The rate at which this substitution occurs is not known. Thus, for laws that increase or decrease firearm suicides, the effects on total suicides are likely smaller and harder to detect. For this reason, we examine the effects of policies on both total suicides and firearm suicides.

Suicide rates in the United States have increased 25 percent since 1999 (Curtin, Warner, and Hedegaard, 2016).<sup>2</sup> There is some degree of misclassification of suicide deaths, with some suicides likely classified as unintentional deaths (Kapusta et al., 2011) or overdose deaths (Bohnert et al., 2013). The CDC provides limited nationwide data on suicides for all states. More-expansive data are contained in the National Violent Death Reporting System, also maintained by the CDC, but because that system currently releases information on just a subset of U.S. states, we cannot use this data set to characterize suicides nationally.

Data on suicide attempts generally derive from two sources: hospital admission records and self-reports. In hospital data, suicides are generally categorized as “self-harm” with unspecified intent; although there is a field to code cause of injury, this field is completed inconsistently across states (Coben et al., 2001). In 2014, there were 469,096 self-harm, nonfatal hospital admissions to emergency departments in the United States, 3,320 (less than 1 percent) of which were caused by a firearm (CDC, 2017c). This may be because between 83 and 91 percent of those who attempt suicide with a firearm die, which is a higher rate than some other methods of suicide, such as drowning (66–84 percent) or hanging (61–83 percent) (Azrael and Miller, 2016).

Emergency room data contain only self-harm incidents that resulted in an emergency room visit; as a complementary data source, national data based on self-reports reveal that, in 2015, 1.4 million adults aged 18 or older (0.6 percent) attempted suicide in the past year (Piscopo et al., 2016).

### Violent Crime

The Federal Bureau of Investigation (FBI) defines *violent crime* as including forcible rape, robbery, aggravated assault, and murder or nonnegligent manslaughter. The last category excludes deaths caused by suicide, negligence, or accident, as well as justifiable homicides (such as the killing of a felon by a peace officer in the line of duty) (FBI, 2016d).

<sup>2</sup> The 25-percent increase in suicides refers to the age-adjusted rate, although the crude rate and the absolute number of suicides have also increased.

One source of data on violent crime is the FBI's Uniform Crime Reporting program, which relies on voluntary reporting of crimes by city, university/college, county, state, tribal, and federal law enforcement agencies. Data from the program indicate that there were approximately 1.2 million violent crimes in the United States in 2015, including 764,449 aggravated assaults, 327,374 robberies, 124,047 rapes, and 15,696 instances of murder or nonnegligent manslaughter (FBI, 2016d). The overall violent crime rate was 372.6 per 100,000 people, with the highest rate for aggravated assault (237.8 per 100,000), followed by robbery (101.9 per 100,000), rape (38.6 per 100,000) and murder or nonnegligent manslaughter (4.9 per 100,000). Nationwide, firearms were used in 71.5 percent of all instances of murder or nonnegligent manslaughter, 40.8 percent of robberies, and 24.2 percent of aggravated assaults in 2015 (FBI, 2016d).

Death certificate data and emergency department admission data provide additional insights into the prevalence and consequences of violent crime. Based on mortality data, the CDC estimated that there were 17,793 homicides in the United States in 2015, for a rate of 5.54 per 100,000 people; of these, 12,979 (73 percent) were caused by a firearm (CDC, 2017a). Emergency department data show that in 2014 there were more than 1.5 million admissions to hospital emergency departments for assault; of these, 60,470 (3.8 percent) were firearm-related (CDC, 2017c).

### Unintentional Injuries and Deaths

Like suicide, official statistics on unintentional injuries and deaths in the United States are compiled by the CDC. The most recent data, from 2015, indicate that 146,571 fatal unintentional injuries occurred that year, for a rate of 46.50 per 100,000 people (CDC, 2017a). Of these, 489 (less than 1 percent) were caused by a firearm. Some of these fatal unintentional injuries were likely misclassified and were actually suicides or homicides. Nevertheless, the true number of unintentional firearm deaths may be substantially greater than reported in the CDC's vital data. For example, inconsistent classification of child firearm deaths by local coroners may result in 35–45 percent of all unintentional firearm deaths being classified instead as suicides or homicides (Everytown for Gun Safety Support Fund, 2014; Hemenway and Solnick, 2015a). We also include research examining nonfatal unintentional injuries. There were close to 29 million unintentional injury discharges from emergency rooms in 2014, of which 15,928 (less than 1 percent) were caused by a firearm. These reports omit injuries that did not result in an emergency room visit.

### Mass Shootings

Although only a small fraction of annual firearm deaths result from a mass shooting, these events attract enormous public, media, and social media attention in the country, and they frequently prompt discussions about legislative initiatives for how better to prevent gun violence. The U.S. government has never defined *mass shooting*, and there is no single universally accepted definition of the term. The FBI's definition of a *mass*

*murderer* requires at least four casualties, excluding the offender or offenders, in a single incident. Public law (the Investigative Assistance for Violent Crime Act of 2012; Pub. L. 112-265) defines a *mass killing* as a single incident in which three or more people were killed. Alternative definitions include two or more injured victims or four or more people injured or killed, including the shooter. Depending on which data source is referenced, and its definitions, there were seven, 65, 332, or 371 mass shootings in the United States in 2015 (see a discussion of these estimates in Chapter Twenty-Two).

### Officer-Involved Shootings

Police shootings of civilians have triggered fierce debates locally and nationally about when use of lethal force is appropriate and whether it is being used disproportionately against minorities. Although the FBI has tried to collect information on police shootings from around 17,000 local law enforcement agencies, recent efforts by news organizations (such as the *Washington Post* and the *Guardian*) have demonstrated that the FBI's data collection misses many such cases. Whereas the FBI's count typically comes to around 400 killings by police per year, the *Washington Post* documented news stories on 963 individuals shot and killed by law enforcement in 2016, a number that could omit any individuals shot and killed by police about whom no news story was written. The FBI has announced plans to begin a new data collection effort that will reportedly track all incidents in which law enforcement seriously injure or kill citizens (Kindy, 2015).

Because reliable data on police shootings are often available only for individual police departments, prior studies using such data typically present information at the city level. For example, using police reports and other administrative data, Klinger et al. (2016) looked at 230 use-of-force shootings by police officers involving 373 suspects in St. Louis between 2003 and 2012. Similarly, medical records of shooting victims contain information on whether the shooter was a member of the law enforcement community. Using data from New York City's medical examiner, Gill and Pasquale-Styles (2009) looked at law enforcement shootings resulting in a fatality there between 2003 and 2006. The data included 42 cases for the four-year period. Like suicide attempts and unintentional injuries and deaths, this data source misses incidents in which the officer did not injure the suspect or the suspect did not seek medical attention.

### Defensive Gun Use

Defensive gun use has typically been measured in the empirical literature using self-reports on surveys of gun owners, although some studies have used firearm deaths coded as justifiable homicides to investigate subsets of defensive gun use. Although there are some variations, *defensive gun use* has often been defined as incidents that involve (1) protection against humans (i.e., not animals); (2) gun use by civilians (not official use by military, police, or security personnel); (3) contact between persons (not, for instance, carrying a firearm to investigate a suspicious sound when no intruder is encountered); and (4) use of a gun, at least as a visual or verbal threat (not

incidents in which a gun may have simply been available for use). Definitions this broad would include defensive use of a gun by criminals during the commission of a crime, as well as use of a gun for personal defense by those who are prohibited by law from being in possession of a weapon (itself a crime). More-restrictive definitions specify that the defensive gun use be performed by the victim of certain crimes or by someone trying to protect the victim. These definitions may miss instances in which crimes were deterred or averted when a firearm was brandished.

Differences in the definitions of defensive gun use, and in the manner of collecting information about it, lead to wide differences in estimates of the annual incidence of defensive gun use. Low estimates (based on the experiences of crime victims) are a little more than 100,000 such incidents per year, and high estimates are 4.7 million per year (Cook and Ludwig, 1996, 1997, 1998; McDowall, Loftin, and Wiersema, 1998). This literature and the challenges of defining and measuring defensive gun use are reviewed in Chapter Twenty-Three.

### **Hunting and Recreation**

Federal statistics on hunters largely come from the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation Survey, which is conducted every five years as a coordinated effort by the U.S. Fish and Wildlife Service and the U.S. Census Bureau. According to the most recent data, from 2011, approximately 13 million people used firearms for hunting, more than 50 percent of all hunters participated in target shooting, and 22 percent of hunters visited shooting ranges (U.S. Fish and Wildlife Service, U.S. Department of the Interior, and U.S. Department of Commerce, 2012). Estimates from the National Shooting Sports Foundation (NSSF) suggest that approximately 20 million individuals participate in target shooting annually (Southwick Associates, 2013). Data from the General Social Survey suggest that hunting has decreased significantly since 1977, when 31.6 percent of adults lived in households where they, their spouse, or both hunted. In 2014, households with a hunter was down to 15.4 percent (Smith and Son, 2015).

### **Gun Industry**

Estimates produced by the NSSF suggest that there are 141,000 jobs in the United States involving the manufacture, distribution, or retailing of ammunition, firearms, and hunting supplies and potentially another 150,000 jobs in supplier and ancillary industries connected with the firearm market (NSSF, 2017). According to the U.S. Census Bureau, in 2014, more than 90,000 people were employed in U.S. firms coded as being involved in just the manufacture of firearms, ammunition, or ordnance (North American Industry Classification System [NAICS] codes 332992, 332993, and 332994; U.S. Census Bureau, 2016). The manufacturing industry alone is estimated to generate \$16 billion in revenue annually (IBISWorld, 2016). In 2011, hunters spent \$3 billion on firearms and \$1.2 billion on ammunition (U.S. Fish and Wildlife Ser-

vice, U.S. Department of the Interior, and U.S. Department of Commerce, 2012). More than 9 million firearms were manufactured in the United States in 2014, nearly triple the number manufactured one decade prior. An additional 3.6 million firearms were imported in 2014, while just more than 420,900 firearms were exported from the United States (Bureau of Alcohol, Tobacco, Firearms and Explosives, 2016b).

As of the end of fiscal year 2015, 139,840 federal firearms licensees had active licenses to sell firearms in the United States. Just more than 46 percent of these licenses were held by dealers or pawnbrokers, 43 percent were held by collectors, about 9 percent were held by manufacturers of ammunition or firearms, and less than 1 percent were held by importers (Bureau of Alcohol, Tobacco, Firearms and Explosives, 2016b).

## Organization of This Report

The report is organized into five parts. Part A introduces the project scope and objectives in Chapter One and the methods used to conduct systematic reviews and syntheses of the literature in Chapter Two. In Part B, we present a research synthesis on each of the 13 state policies selected for review (Chapters Three through Fifteen). Each of these chapters defines the class of policies under review; presents and rates the available evidence; and describes what conclusions, if any, can be drawn about how each policy affects each outcome. Part B includes all of the research syntheses we selected a priori; however, in the course of developing these, several related themes frequently came up in the literature and in policy debates, and we believed that these themes warranted further discussion or review. Therefore, to augment and provide context for Part B's syntheses, Part C presents supplementary essays on what rigorous studies reveal about

- the possible mechanisms by which laws may affect outcomes (Chapters Sixteen and Seventeen on the effects of firearm prevalence on suicide and violent crime)
- how taxes, access to health care, and media campaigns might affect gun violence (Chapters Eighteen through Twenty)
- the effectiveness of laws used to target domestic violence (Chapter Twenty-One)
- methodological challenges in defining and estimating the prevalence of mass shootings and defensive gun use (Chapters Twenty-Two and Twenty-Three)
- how suicide, violent crime, and mass shootings were affected by Australia's implementation of the National Firearms Agreement (Chapter Twenty-Four).

In Part D, we draw general conclusions from the main policy analyses and offer recommendations for how to improve the state of evidence for the effects of state laws. Finally, in an appendix section, Appendix A describes common methodological shortcomings found in the existing scientific literature examining gun policy, and Appendix B describes the source data used to display study effect sizes and rate study methodologies.



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## Methods

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Our review of evidence concerning the effects of 13 policies on eight outcomes used Royal Society of Medicine (Khan et al., 2003) guidelines for conducting systematic reviews of a scientific literature. Those guidelines consist of a five-step protocol: framing questions for review, identifying relevant literature, assessing the quality of the literature, summarizing the evidence, and interpreting the findings. Our objective was to identify and assess the quality of evidence provided in research that estimated the causal effect of one of the selected gun policies (or the prevalence of firearm ownership) on any of our eight key outcomes.

Before undertaking the review, we knew that we would need to draw on primarily observational studies across a range of disciplines, including economics, psychology, public health, sociology, and criminology. The Royal Society of Medicine approach is suitable in this context because of its flexibility and applicability to social and policy interventions. Other approaches for systematic reviews (e.g., Institute of Medicine, 2011; Higgins and Green, 2011) are designed primarily for reviews specific to health care. We consulted guidelines from the Campbell Collaboration to ensure that our review criteria were based on relevant factors prescribed for reviews of social and policy interventions (e.g., determination of independent findings, statistical procedures; Campbell Collaboration, 2001). However, to more efficiently examine the range of outcomes and interventions we set out to review, and because of the wide range of methods researchers have used to examine these effects, we do not follow the Campbell Collaboration guidelines exactly, as detailed next.

### Selecting Policies

RAND assembled a list of close to 100 distinct gun policies advocated by diverse organizations, including the White House and other U.S. government organizations, advocacy organizations focused on gun policy (such as the National Rifle Association and the Brady Campaign to Prevent Gun Violence), academic organizations focused on gun policy or gun policy research, and professional organizations that had made public recommendations related to gun policy (e.g., the International Association of Chiefs of

Police and the American Bar Association). Our objective was to evaluate state firearm laws because there is considerable variation that could be examined to understand the causal effects of such laws. Moreover, because the laws are applied statewide, observed effects may generalize to new jurisdictions better than the effects of local gun policies or programs that may be more tailored to the unique circumstances giving rise to them. We therefore eliminated policies that chiefly concerned local programs or interventions that are not mandated by state laws (e.g., gun buy-back programs or policing strategies that have been recommended on the basis of favorable research findings). For the same reason, we eliminated policies that either have never been passed into state laws or that have not yet had their intended effects (e.g., laws requiring new handguns to incorporate smart-gun technologies). We excluded policies that we concluded were likely to have only an indirect effect on any of the eight outcomes we were examining (e.g., policies concerning mental health coverage in group health insurance plans; the public availability of Bureau of Alcohol, Tobacco, Firearms and Explosives data on gun traces). We clustered some policy proposals that we regarded as sufficiently similar in concept to be included in the same general class of policies (e.g., policies of repealing the Safe Schools Act and the conceptually similar policy to prohibit gun-free zones).

This process resulted in 13 classes of firearm policies that we subsequently reviewed with multiple representatives of two advocacy organizations (one strongly aligned with enhanced gun regulation, and one strongly aligned with reduced gun regulation). The purpose of these consultations was to establish whether we had identified policies that are important, coherent, and relevant to current gun policy debates. This consultation resulted in substituting two of our original 13 classes of laws. As noted in Chapter One, the final set of policies, defined and explained in Chapters Three through Fifteen, is as follows:

1. background checks
2. bans on the sale of assault weapons and high-capacity magazines
3. stand-your-ground laws
4. prohibitions associated with mental illness
5. lost or stolen firearm reporting requirements
6. licensing and permitting requirements
7. firearm sales reporting and recording requirements
8. child-access prevention laws
9. surrender of firearms by prohibited possessors
10. minimum age requirements
11. concealed-carry laws
12. waiting periods
13. gun-free zones.

These classes of gun policies do not comprehensively account for all—or necessarily the most effective—laws or programs that have been implemented in the United States with the aim of reducing gun violence. For example, our set of policies does not include mandatory minimum sentencing guidelines for crimes with firearms. Further, by restricting our evaluation to state policies, we exclude local interventions (e.g., problem-oriented policing, focused deterrence strategies) that have been found to reduce overall crime in prior meta-analyses (Braga, Papachristos, and Hureau, 2014; Braga and Weisburd, 2012). However, we recognize the potential importance of these other interventions and believe a similar systematic review of their effects on outcomes relevant to the firearm policy debate merits future research.<sup>1</sup>

While Part B of this report evaluates the existing literature on the effects of these 13 classes of firearm policies, Part C includes essays describing scientific research on possible mechanisms by which laws may affect firearm-related outcomes, such as by affecting the prevalence of gun ownership (see Chapters Sixteen and Seventeen).

## Selecting and Reviewing Studies

Our selection and review of the identified literature involved the following steps:

1. Article retrieval: Across all outcomes, we identified a common set of search terms to capture articles relevant to firearm prevalence or firearm policies. We then identified search terms unique for each outcome.
2. Title and abstract review: We conducted separate title and abstract reviews for each outcome using DistillerSR to code criteria used to determine whether the article appeared to meet minimum inclusion criteria (described later).
3. Full-text review: All studies retained after abstract review received full-text review and coding using DistillerSR. The purpose of this review was to identify studies that examined the effects of one or more of our policies on any of our outcomes and that employed methods designed to clarify the causal effects of the policy.
4. Synthesis of evidence: Once we identified the subset of quasi-experimental studies for each outcome and policy,<sup>2</sup> members of the multidisciplinary methodology team met to discuss each study's strengths and limitations. Then, the group discussed each set of studies available for a policy-outcome pair to make a determination about the level of evidence supporting the effect of the policy on each outcome.

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<sup>1</sup> For a recent review of the evidence on criminal justice interventions to reduce criminal access to firearms, see Braga, 2017.

<sup>2</sup> We identified no experimental studies.

Article Retrieval

In spring 2016, we queried all databases listed in Table 2.1 for English-language studies. Because the National Research Council (NRC) (2004) and the Community Preventive Services Task Force (Hahn et al., 2005) published comprehensive and high-quality research reviews in 2004 and 2005, we limited our search primarily to research published during or after 2003 (assuming a lag from the time the NRC review was complete and the final report was published). We supplemented this search with a review of all studies reviewed by NRC (2004) and Hahn et al. (2005). Finally, to ensure inclusion of the most-seminal studies, including those that may have been missed by NRC or Hahn et al., we conducted additional searches in the Web of Science and Scopus

Table 2.1  
Databases Searched for Studies Examining the Effects of Firearm Policies

Database	Details
PubMed	National Library of Medicine's database of medical literature. <i>Not used for gun industry or hunting searches.</i>
PsycINFO	Journal articles, books, reports, and dissertations on psychology and related fields. <i>Not used for gun industry or hunting searches.</i>
Index to Legal Periodicals	Includes indexing of scholarly articles, symposia, jurisdictional surveys, court decisions, books, and book reviews.
Social Science Abstracts	Journal articles and book reviews on anthropology, crime, economics, law, political science, psychology, public administration, and sociology.
Web of Science	Includes the Book Citation Index, Science Citation, Social Science Citation, Arts & Humanities Citation Indexes, and Conference Proceedings Citation Indexes for Science, Social Science, and Humanities, which include all cited references from indexed articles.
Criminal Justice Abstracts	Abstracts related to criminal justice and criminology; includes current books, book chapters, journal articles, government reports, and dissertations published worldwide.
National Criminal Justice Reference Service	Contains summaries of the more than 185,000 criminal justice publications housed in the National Criminal Justice Reference Service Library collection.
Sociological Abstracts	Citations and abstracts of sociological literature, including journal articles, books, book chapters, dissertations, and conference papers.
EconLit	Journal articles, books, and working papers on economics.
Business Source Complete	Business and economics journal articles, country profiles, and industry reports.
WorldCat	Catalog of books, web resources, and other material worldwide.
Scopus	An abstract and citation database with links to full-text content, covering peer-reviewed research and web sources in scientific, technical, medical, and social science fields, as well as arts and humanities.
LawReviews (LexisNexis)	A database of legal reviews.

databases for any study that had been cited in the literature 70 or more times, regardless of its publication date. Finally, after completing our search, several relevant studies were published in summer and fall 2016. When we became aware of these, we included them in our review.

We conducted separate searches for each of the eight outcomes. The search strings that were applied universally across all outcomes included the following:

- gun or guns or firearm\* or handgun\* or shotgun\* or rifle\* or longgun\* or machinegun\* or pistol\* OR automatic weapon OR assault weapon OR semi-automatic weapon OR automatic weapons OR assault weapons OR semi-automatic weapons  
AND
- ownership OR own OR owns OR availab\* OR access\* OR possess\* OR purchas\* OR restrict\* OR regulat\* OR distribut\* OR “weapon carrying” OR “weapon-carrying” OR legislation OR legislating OR legislative OR law OR laws OR legal\* OR policy OR policies OR “ban” OR “bans” OR “banned.”

In addition, we searched for the following outcome-specific search terms:

- suicide: (suicide\* OR self-harm\* OR self-injur\*);
  - the following were the only terms used for “firearms” for this search: gun or guns or firearm\* or handgun\* or shotgun\* or rifle\* or longgun\* or machine-gun\* or pistol\*
- violent crime: homicide\* OR murder\* OR manslaughter OR “domestic violence” OR “spousal abuse” OR “elder abuse” OR “child abuse” OR “family violence” OR “child maltreatment” OR “spousal maltreatment” OR “elder maltreatment” OR “intimate relationship violence” OR “intimate partner violence” OR “dating violence” OR (violen\* AND [crime\* OR criminal\*]) OR rape OR rapes OR rapist\* OR “personal crime” OR “personal crimes” OR robbery OR assault\* OR stalk\* OR terroris\*
- unintentional injuries and deaths: accident\* OR unintentional
- mass shootings: “mass shooting” OR “mass shootings”
- officer-involved shootings: “law enforcement” OR police\* OR policing
- defensive gun use: self-defense OR “self defense” OR “personal defense” OR defens\* OR self-protect\* OR self protect\* OR DGU OR SDGU
- hunting and recreation: hunt OR hunting OR “sport shooting” OR “shooting sports” OR recreation\* (The terms “ammunition” and “bullets” were also included in the set containing the terms for “firearms.”)
- gun industry: industr\* OR manufactur\* OR produc\* OR distribut\* OR supply OR trade OR price\* OR export\* OR revenue\* OR sales OR employ\* OR profit\* OR cost OR costs OR costing OR “gun show” OR tax OR taxes OR taxing OR taxation OR payroll OR “federal firearms license.”

We used a three-stage study review process and standardized review criteria (described next) to identify all studies with evidence for policy effects meeting minimum evidence standards. When possible, we calculated and graphed standardized effect sizes for reported effects included in our research syntheses (Chapters Three through Fifteen).

In addition to the planned research syntheses analyzing the effects of the 13 policies outlined in Chapter One, we summarized evidence on other topics when members of the research team believed that a topic provided important supplemental evidence or explanatory information (see Chapters Sixteen through Twenty-Four). For instance, we identified a substantial literature examining the effects of firearm prevalence on rates of suicide (Chapter Sixteen) and homicide (Chapter Seventeen). This literature did not evaluate the effects of a specific policy but nevertheless examined a key mechanism by which policies might affect the outcomes. For these discussions, we occasionally augmented the search strategy described earlier, as detailed in the individual chapters.

### **Title and Abstract Review**

At this stage, we screened studies to determine whether they met our inclusion criteria. In all cases, a study was included if it met the following: *any empirical study that demonstrated a relationship between a firearm-related public policy and the relevant outcome* OR *any empirical study that demonstrated a relationship between firearm ownership and access and a relevant outcome (including proxy measures for gun ownership).*

Studies were excluded if they were case studies, systematic reviews, dissertations, commentaries or conceptual discussions, descriptive studies, studies in which key variables were assumed rather than measured (e.g., a region was assumed to have higher rates of gun ownership), studies that did not concern one of the eight outcomes we selected, studies that did not concern one of the 13 policies we selected (or gun ownership), or studies that duplicated the analyses and results of other included studies.

### **Full-Text Review**

Next, we used full-text review to ensure that the studies included thus far did not meet any of the exclusion criteria and to exclude studies with no credible claim to having identified a causal effect of policies. In addition to coding all studies on the policy and outcome they examined and on their research design, we coded the country or countries in which the policy effects were evaluated. Because of the United States' unique legal, policy, and gun ownership context, we excluded studies examining the effects of policies on foreign populations. However, in the special-topic discussions (Chapters Sixteen through Twenty-Four), we include analysis of some studies in foreign countries (such as an analysis of the Australian experience with gun regulation) and various foreign studies of the effects of gun prevalence on suicide.

Our research syntheses (Chapters Three through Fifteen) focus exclusively on studies that used research methods designed to identify causal effects among observed



associations between policies and outcomes. Specifically, we required, at a minimum, that studies include time-series data and use such data to establish that policies preceded their apparent effects (a requirement for a causal effect) and that studies include a control group or comparison group (to demonstrate that the purported causal effect was not found among those who were not exposed to the policy). Experimental designs provide the gold standard for establishing causal effects, but we identified none in our literature reviews. On a case-by-case basis, we examined studies that made a credible claim to causal inference on the basis of data that did not include a time series. In practice, these discussions determined that some studies using instrumental-variable approaches to isolating causal effects satisfied our minimum standards for inclusion.

We refer to the studies that met our inclusion criteria as *quasi-experimental*. We distinguish these from simple *cross-sectional* studies that may show an association between states with a given policy and some outcome but that have no strategy for ensuring that it is the policy that caused the observed differences across states. For instance, there could be some other factor associated with both state policy differences and outcome differences or there could be reverse causality (that is, differences in the outcome across states could have caused states to adopt different policies). In excluding cross-sectional studies from this review, we have adopted a more stringent standard of evidence for causal effects than has often been used in systematic reviews of gun policy.

Although excluding cross-sectional research eliminates a large number of studies on gun policy, longitudinal data are much better for estimating the causal effect of a policy. Specifically, empirical demonstration of causation generally requires three types of evidence (Mill, 1843):

- The cause and effect regularly co-occur (i.e., association).
- The cause occurs before the effect (i.e., precedence).
- Alternative explanations for the association have been ruled out (i.e., elimination of confounds).

Cross-sectional research is largely limited to demonstrating association. Longitudinal studies that include people or regions that are exposed to a policy and those that are not exposed have the potential to provide all three types of evidence. Such a design can demonstrate that the policy preceded the change in the outcome of interest, and it can rule out a wider range of potential confounds, including historical time trends and the time-invariant characteristics of the jurisdictions in which the policies were implemented (Wooldridge, 2002).

We also excluded studies that offered no insight into the causal effects of individual policies. For instance, we excluded studies that evaluated the effects of an aggregate state score describing the totality of each state's gun policies or studies of the aggregate effects of legislation that included multiple gun policies. In rare cases, we excluded from consideration studies that provided insufficient information about their methodologies to evaluate whether they used a credible approach to isolating a causal



effect of policies. In one case (Kalesan et al., 2016), we excluded a study that examined the effects of many of our selected policies on firearm deaths. We did so because of significant methodological problems that we concluded made the findings uninformative, as documented in Schell and Morral (2016). In cases in which authors updated prior published analyses, we generally chose the updated study. However, in one case (Cook and Ludwig, 2003), we present the results from the earlier analysis (Ludwig and Cook, 2000), which was inclusive of more years of data, provided more detail, and included multiple model specifications (although findings were qualitatively the same). The identified studies included individual-level studies (i.e., studies comparing outcomes among people over time) and ecological studies (i.e., studies comparing outcomes in regions over time).

Finally, we excluded studies published prior to 2003 on one policy-outcome pair—concealed-carry laws and violent crime. Our discussion of this topic (see Chapter Thirteen) reviews much of the earlier literature in this area, but we do not count the earlier work in our evidence ratings for several reasons. For starters, this area of gun policy has received the greatest research attention since 2003, and considerable advances have been made in understanding the effects of these laws. In addition, researchers have uncovered serious problems with data sets that were frequently used before 2003. Indeed, Hahn et al. (2005) dismissed all the earlier work that had been done with county-level data (which meant most of the work) on grounds that it was too flawed to rely on for evidence. We do not take that position but do agree with NRC (2004) and Hahn et al. (2005) that the primary conclusion that can be drawn from this earlier literature is that estimates of the effects of concealed-carry laws are highly sensitive to model specification choices, meaning no conclusive evidence can be drawn from the estimates. Because many of the authors engaged in the pre-2003 concealed-carry research continued to publish improved models on improved data sets, we restrict our evidence ratings to just this later work. We do not exclude pre-2003 studies of concealed-carry laws for outcomes other than violent crime, because there are much fewer later studies on which to base evidence ratings for these other outcomes.

Using these inclusion and exclusion criteria, we identified the studies providing the highest-quality evidence of a causal relationship between a policy and an outcome. In judging the quality of studies, we always explicitly considered common methodological shortcomings found in the existing gun policy scientific literature (see Appendix A), especially the following:

- *Models that may have too many estimated parameters for the number of available observations.* We consistently note whenever estimates were based on models with a ratio of less than ten observations per estimated parameter. When the ratio of observations to estimated parameters dropped below five to one and no supplemental evidence of model fit was provided (such as the use of cross-validation or evidence from an analysis of the relative fit of different model specifications), we discount the study's results and do not calculate effect sizes for its estimates.

- *Models making no adjustment to standard errors for the serial correlation regularly found in panel data frequently used in gun policy studies.* We consistently note when studies did not report having made any such adjustment. When a study noted a correction for only heteroscedasticity, we consider that to be evidence of some correction, although this does not generally fully correct bias in the standard errors due to clustering (Aneja, Donohue, and Zhang, 2014).
- *Models for which the dependent variable appears to violate model assumptions, such as linear models of dichotomous outcomes or linear models of rate outcomes (many of which are close to zero).* We consistently note when the data appeared to violate modeling assumptions.
- *Effects with large changes in direction and magnitude across primary model specifications.* We consistently note when a study presented evidence that model results were highly sensitive to different model specifications.
- *Models that identify the effect of policies with too few cases.* We consistently note when the effects of policies were identified on the experiences of a single state or a small number of states. These analyses generally provide less persuasive evidence that observed differences between treated and control cases result from the effects of the policy as opposed to other contemporaneous influences on the outcome.

In Appendix A, we describe other common shortcomings in the existing literature that we do not explicitly discuss in our research syntheses. For instance, in the main chapters of the report, we do not note when papers provided no goodness-of-fit tests or other statistical evidence to justify their covariate selections. Neither do we focus on interpretational difficulties and confusion frequently present in studies using spline or hybrid models to estimate the effects of policies, although we discuss this problem in detail in Appendix A. These problems are so common in this literature that consistently commenting on them as shortcomings would become repetitive and cumbersome.

### Synthesis of Evidence

Members of the research team summarized all available evidence from prioritized studies for each of the 13 policies on each of the eight outcomes. When at least one study met inclusion criteria, a multidisciplinary group of methodologists on the research team discussed each study to identify its strengths and weaknesses. The consensus judgments from these group discussions are summarized in the research syntheses. Then, the group discussed the set of available studies as a whole to make a determination about the level of evidence supporting the effect of the policy on each outcome.

When considering the evidence provided by each analysis in a study, we counted effects with  $p$ -values greater than 0.20 as providing *uncertain* evidence for the effect of a policy. We use this designation to avoid any suggestion that the failure to find a statistically significant effect means that the policy has no effect. We assume that every policy will have some effect, however small or unintended, so any failure to detect it is a shortcoming of the science, not the policy. When the identified effect has a  $p$ -value

less than 0.05, we refer to it as a *significant effect*. Finally, when the  $p$ -value is between 0.05 and 0.20, we refer to the effect as *suggestive*.

We include the suggestive category for several reasons. First, the literature we are reviewing is often underpowered. This means that the probability of rejecting the null hypothesis of no effect even when the policy has a true effect is often very low. As we argue in Appendix A, conducting analyses with low statistical power results in an uncomfortably high probability that effects found to be statistically significant at  $p < 0.05$  are in the wrong direction and all effects have exaggerated effect sizes (Gelman and Carlin, 2014). If we had restricted our assessment of evidence to just statistically significant effects, we might base our judgments on an unreliable and biased set of estimates while ignoring the cumulative evidence available in studies reporting nonsignificant results. While the selection of  $p < 0.20$  as the criterion for rating evidence as suggestive is arbitrary, this threshold corresponds to effects that are meaningfully more likely to be in the observed direction than in the opposite direction. For instance, if we assume that the policy has about as much chance of having a nonzero effect as having no effect, and the power of the test is 0.8, then  $p < 0.20$  suggests that there is only a 20-percent probability of incorrectly rejecting the null hypothesis of no effect. For tests that are more weakly powered, as is common in models we review, a  $p$ -value less than 0.20 will result in false rejection less than half the time so long as the power of the test is above 0.2 (see, for example, Colquhoun, 2014).

In the final step, we rated the overall strength of the evidence in support of each possible effect of the policy. We approached these evidence ratings with the knowledge that research in this area is modest. Compared with the study of the effects of smoking on cancer, for instance, the study of gun policy effects is in its infancy, so it cannot hope to have anything like the strength of evidence that has accrued in many other areas of social science. Nevertheless, we believed that it would be useful to distinguish the gun policy effects that have relatively stronger or weaker evidence, given the limited evidence base currently available. We did this by establishing the following relativistic scale describing the strength of available evidence:

1. *No studies*. This designation was made when no studies meeting our inclusion criteria evaluated the policy's effect on the outcome.
2. *Inconclusive evidence*. This designation was made when studies with comparable methodological rigor identified inconsistent evidence for the policy's effect on an outcome or when a single study found only uncertain or suggestive effects.
3. *Limited evidence*. This designation was made when at least one study meeting our inclusion criteria and not otherwise compromised by serious methodological problems reported a significant effect of the policy on the outcome, even if other studies meeting our inclusion criteria identified only uncertain or suggestive evidence for the effect of the policy.

4. *Moderate evidence.* This designation was made when two or more studies found significant effects in the same direction and contradictory evidence was not found in other studies with equivalent or strong methods.
5. *Supportive evidence.* This designation was made when (1) at least three studies found suggestive or significant effects in the same direction using at least two independent data sets or (2) the effect was observed in a rigorous experimental study. Our requirement that the effect be found in distinct data sets reflects the fact that many gun policy studies use identical or overlapping data sets (e.g., state homicide rates over several years). Chance associations in these data sets are likely to be identified by all who analyze them. Therefore, our supportive evidence category requires that the effect be confirmed in a separate data set.

These rating criteria provided a framework for our assessments of where the weight of evidence currently lies for each of the policies, but they did not eliminate subjectivity from the review process. In particular, the studies we reviewed spanned a wide range of methodological rigor. When we judged a study to be particularly weak, we discounted its evidence in comparison with stronger studies, which sometimes led us to apply lower evidence rating labels than had the study been stronger.

## Effects of the Inclusion and Exclusion Criteria on the Literature Reviewed

Table 2.2 presents the results of the literature search across all eight outcomes. The final column shows the number of studies meeting all inclusion criteria. No studies satisfying our inclusion criteria were found for two of the eight outcomes.

**Table 2.2**  
**Number of Studies Selected for Review at Each Stage of the Review Process**

Outcome	Total Search Results	Included After Title and Abstract Review	Included After Full-Text Review
Suicide	1,274	183	11
Violent crime	2,656	373	47
Unintentional injuries and deaths	531	27	3
Mass shootings	77	11	8
Officer-involved shootings	187	34	0
Defensive gun use	1,435	115	1
Hunting and recreation	229	0	0
Gun industry	3,180	19	2

Of the studies that were published before 2003, all but Duwe, Kovandzic, and Moody (2002) were considered in the earlier reviews (Hahn et al., 2005; NRC, 2004). Table 2.3 lists the 63 studies meeting all inclusion criteria.

**Table 2.3**  
**Studies Meeting Inclusion Criteria**

No.	Study	No.	Study
1	Aneja, Donohue, and Zhang (2011)	33	La Valle and Glover (2012)
2	Aneja, Donohue, and Zhang (2014)	34	Lott (2003)
3	Ayres and Donohue (2003a)	35	Lott (2010)
4	Ayres and Donohue (2003b)	36	Lott and Mustard (1997)
5	Ayres and Donohue (2009a)	37	Lott and Whitley (2001)
6	Ayres and Donohue (2009b)	38	Lott and Whitley (2003)
7	Cheng and Hoekstra (2013)	39	Lott and Whitley (2007)
8	Cook and Ludwig (2003)	40	Luca, Deepak, and Poliquin (2016)
9	Crifasi et al. (2015)	41	Ludwig and Cook (2000)
10	Cummings et al. (1997a)	42	Maltz and Targonski (2002)
11	DeSimone, Markowitz, and Xu (2013)	43	Manski and Pepper (2015)
12	Donohue (2003)	44	Martin and Legault (2005)
13	Donohue (2004)	45	Moody and Marvell (2008)
14	Duggan (2001)	46	Moody and Marvell (2009)
15	Duggan, Hjalmarsson, and Jacob (2011)	47	Moody et al. (2014)
16	Durlauf, Navarro, and Rivers (2016)	48	Plassman and Whitley (2003)
17	Duwe, Kovandzic, and Moody (2002)	49	Raissian (2016)
18	French and Heagerty (2008)	50	Roberts (2009)
19	Gius (2014)	51	Rosengart et al. (2005)
20	Gius (2015a)	52	Rudolph et al. (2015)
21	Gius (2015b)	53	Sen and Panjamapirom (2012)
22	Gius (2015c)	54	Strnad (2007)
23	Grambsch (2008)	55	Swanson et al. (2013)
24	Helland and Tabarrok (2004)	56	Swanson et al. (2016)
25	Hepburn et al. (2006)	57	Vigdor and Mercy (2003)
26	Humphreys, Gasparrini, and Wiebe (2017)	58	Vigdor and Mercy (2006)
27	Kendall and Tamura (2010)	59	Webster, Crifasi, and Vernick (2014)
28	Koper (2004)	60	Webster and Starnes (2000)
29	Kovandzic, Marvell, and Vieraitis (2005)	61	Webster et al. (2004)
30	La Valle (2007)	62	Wright, Wintemute, and Rivara (1999)
31	La Valle (2010)	63	Zeoli and Webster (2010)
32	La Valle (2013)		

In a few cases, some studies published updates to earlier works that expanded the time frame of the analysis, corrected errors, or applied more-advanced statistical methods to a nearly identical data set. In these cases, we do not treat both the earlier and later works as each contributing an equally valid estimate of the effects of a policy. Instead, we treat the latest version of the analysis as superseding the earlier versions, and we focus our reviews on the superseding analysis. In one case, we substituted an earlier study (Ludwig and Cook, 2000) for a later study (Cook and Ludwig, 2003). We did this because the earlier study included a longer data series, used a model with greater statistical power, and provided more-detailed results; in addition, the estimated effects of policies in the two papers were identical for the estimates of interest to us in this review. Table 2.4 lists the superseded studies and their superseding versions.

Table 2.5 describes the policies and outcomes evaluated by each study that was not superseded, and studies are indicated with their corresponding number in Table 2.3. These studies are discussed in detail in subsequent chapters.

**Table 2.4**  
**Superseded Studies**

Superseded	Superseding
Aneja, Donohue, and Zhang (2011); Ayres and Donohue (2003a, 2003b, 2009a, 2009b); Donohue (2003, 2004)	Aneja, Donohue, and Zhang (2014)
La Valle (2007, 2010)	La Valle (2013), La Valle and Glover (2012)
Moody and Marvell (2008, 2009)	Moody et al. (2014)
Vigdor and Mercy (2003)	Vigdor and Mercy (2006)

**Table 2.5**  
**Included Studies, by Policy and Outcome**

<b>Policy</b>	<b>Suicide</b>	<b>Violent Crime</b>	<b>Unintentional Injuries and Deaths</b>	<b>Mass Shootings</b>	<b>Officer-Involved Shootings</b>	<b>Defensive Gun Use</b>	<b>Hunting and Recreation</b>	<b>Gun Industry</b>	<b>Total</b>
Background checks	15, 41, 53	15, 20, 32, 35, 41, 53, 55, 56, 58, 62		40					11
Bans on the sale of assault weapons and high-capacity magazines		19, 35		22, 40				28	5
Stand-your-ground laws	26	7, 26, 59				7			3
Prohibitions associated with mental illness	53, 56	53, 55, 56							3
Lost or stolen firearm reporting requirements									0
Licensing and permitting requirements	9, 61	32, 52, 59		40					6
Firearm sales reporting and recording requirements									0
Child-access prevention laws	10, 11, 21, 37, 61	10, 37	10, 11, 21, 25, 37, 60, 61	34					8
Surrender of firearms by prohibited possessors		49, 58, 63							3
Minimum age requirements	21, 51, 61	51, 52	21	40					5
Concealed-carry laws	11, 51	2, 16, 18, 19, 23, 24, 27, 29, 32, 33, 38, 39, 42, 43, 44, 47, 48, 50, 51, 54, 59	11, 36	17, 34, 40				14	27
Waiting periods	41	41, 50		34, 40					4
Gun-free zones									0
<b>Total</b>	<b>12</b>	<b>37</b>	<b>8</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>50</b>

NOTE: Numbers refer to individual studies; see Table 2.3 to view which study corresponds to which number. Totals along the bottom row do not exactly match those in Table 2.2 because superseded studies are not counted in this table, and other studies were identified after the initial literature search.

## Effect Size Estimates

To compare the magnitude of effects across studies, we calculated and present incidence rate ratios (IRRs) for most of the estimates of policy effects that we considered in reaching our consensus ratings. In rare cases noted in the text, we were unable to calculate IRRs from the information provided in the report. Studies reporting the results from a negative binomial or Poisson regression model are directly reported in our report figures as IRRs with their associated confidence intervals (CIs). Given the low probability of most of our outcomes, odds ratios were interpreted and reported as IRRs with their associated CIs.

Many studies used fixed-effects ordinary linear regression models. In these cases, an average base rate (usually taken from the study's paper itself) of the outcome of interest was determined. We then used the base rate to transform the regression estimate,  $\beta$ , to an IRR using the following formula:

$$IRR = \frac{(\text{average base rate} + \beta)}{\text{average base rate}}.$$

However, if the linear model used a logged dependent variable, we used the exponentiated estimate as its IRR. CIs for the IRRs derived from the linear regression models were transformed in a similar fashion.

When a study did not report a measure of variation, we performed back calculation from a test statistic to estimate the CIs. For Rudolph et al. (2015), we inferred approximate standard errors from the  $p$ -value associated with a permutation test presented to demonstrate the likely statistical significance of the reported finding. For Crifasi et al. (2015), we present the IRR and CI for a secondary specification that used a negative binomial model. For several other studies, we note that we could not extrapolate an IRR or its CIs from the data provided in the paper.

Models estimating linear or other trend effects for policies do not have a constant effect size over time. Even if we selected an arbitrary period over which to calculate an effect size, these papers do not provide sufficient information to estimate CIs for such effects. Therefore, we do not calculate or display IRR values that take into account trend effects or effects calculated as the combination of a trend and a step effect (*hybrid models*). Although we report the authors' interpretation of these effects, we do not count them as compelling evidence for the effects of a policy, for reasons discussed in Appendix A.

IRRs are calculated and graphed so that estimates of the effects of policies can be compared on a common metric. We do not use them to construct meta-analytic estimates of policy effects for two reasons. First, most studies we reviewed examining the effect of a policy on a particular outcome used nearly identical data sets, meaning the studies do not offer independent estimates of the effect. Second, there are usually only



two or three studies available on which to estimate the effect of the policy, and these studies often differ considerably in their methodological rigor. These limitations in the existing literature led us to pursue a more qualitative evaluation of the conclusions that available studies can support.

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## Lost or Stolen Firearm Reporting Requirements

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Federal law requires licensed firearm dealers to report lost or stolen guns to local authorities or the U.S. Attorney General within 48 hours (18 U.S.C. 923). There is no federal law requiring individuals to report lost or stolen firearms.

In 2015, federally licensed firearm dealers reported 14,800 firearms as lost or stolen (Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF], 2016a). Quantifying the number of firearms lost or stolen from private citizens is more challenging, but based on data from ATF, 173,675 firearms were reported lost or stolen from non-federal firearm licensee entities and private citizens in 2012 (ATF, 2013). Using an alternative data source, another study estimated that about 233,000 guns were stolen annually during household property crimes between 2005 and 2010, and about four out of five firearms stolen were not recovered (Langton, 2012). Data from police departments in 14 American cities suggest that the number of guns reported lost or stolen in 2014 varies from 17 in San Francisco to 364 in Las Vegas (Everytown for Gun Safety Support Fund, 2016). A recent national survey (Hemenway, Azrael, and Miller, 2017) estimates that 2.4 percent of American gun owners had at least one gun stolen in the past five years and that the average number of guns stolen per person was 1.5. The authors use these data to estimate that 380,000 guns were stolen per year.

Laws requiring gun owners to report lost or stolen firearms are intended to help prevent gun trafficking and straw purchases (in which a lawful buyer makes the purchase on the behalf of a prohibited buyer) and to help ensure that prohibited possessors are disarmed. Data collected from ATF trafficking investigations covering 1999 to 2002 showed that 6.6 percent (7,758 of 117,138) of diverted firearms were stolen from a residence or vehicle (Braga et al., 2012).

There are several plausible mechanisms through which these policies might reduce criminal use or trafficking of firearms. First, reporting requirements might encourage private gun owners to take steps that decrease the ease with which their firearms might be lost or stolen. Second, reporting requirements could deter some straw purchasers who are reluctant to report as stolen the guns they have diverted to prohibited possessors but who also fear that failure to report transferred guns as stolen could leave them accountable for explaining how their guns later turned up at crime scenes. Third, timelier reporting of gun losses or thefts may aid law enforce-



ment gun-tracing efforts and increase criminal prosecutions of illegal users or traffickers of stolen firearms, potentially reducing the stock of firearms among prohibited possessors. However, required reporting policies could have the unintended effect of discouraging individuals from reporting lost or stolen weapons in order to avoid legal penalties from failing to report loss or theft within a certain number of days. Thus, to estimate how requirements for reporting lost or stolen firearms affect such outcomes as violent crime, we might first examine to what extent such policies affect gun owners' reporting and storage behavior.

To assess whether required reporting of lost or stolen guns reduces violent crime by disrupting illegal firearm trafficking, causal inference could be strengthened by examining crime gun trace data,<sup>1</sup> as well as changes in homicide or violent crime rates. Specifically, if these laws restrict trafficking operations from in-state sources, one should observe a larger share of crime guns originating from out-of-state sources after law passage, as well as a reduction in guns with a short time-to-crime (Webster and Wintemute, 2015; Braga et al., 2012).<sup>2</sup> However, a series of provisions attached to ATF appropriations (commonly known as the Tiahrt Amendments) has denied most researchers access to firearm trace data since 2003, making it currently infeasible to conduct this type of analysis (Krouse, 2009).

Requiring gun owners to report lost or stolen firearms is unlikely to have measureable effects on such outcomes as suicide, unintentional injuries and death, defensive gun use, or hunting and recreation. If the requirements successfully discouraged straw purchases, it could have a small effect on firearm sales.

## State Implementation of Lost or Stolen Firearm Reporting Requirements

A minority of states require firearm owners to report to law enforcement when their weapons are lost or stolen. California,<sup>3</sup> Connecticut,<sup>4</sup> Delaware,<sup>5</sup> Illinois,<sup>6</sup>

<sup>1</sup> The Bureau of Alcohol, Tobacco, and Firearms (2002, p. A-3) defined *crime gun* as “any firearm that is illegally possessed, used in a crime, or suspected to have been used in a crime. An abandoned firearm may also be categorized as a crime gun if it is suspected it was used in a crime or illegally possessed.”

<sup>2</sup> Per Webster and Wintemute (2015), the metric known as *time-to-crime* is the “unusually short interval—ranging from less than 1 year to less than 3 years—between a gun’s retail sale and its subsequent recovery by police from criminal suspects or crime scenes . . . . A short [time-to-crime] is considered an indicator of diversion, especially when the criminal possessor is someone different from the purchaser of record.”

<sup>3</sup> Calif. Penal Code § 25250 (within five days).

<sup>4</sup> Conn. Gen. Stat. § 53-202g (report within 72 hours).

<sup>5</sup> Del. Code tit. 11 § 1461 (report within seven days).

<sup>6</sup> 720 Ill. Comp. Stat. 5/24-4.1 (report within 72 hours).



Massachusetts,<sup>7</sup> New Jersey,<sup>8</sup> New York,<sup>9</sup> Ohio,<sup>10</sup> Rhode Island,<sup>11</sup> and the District of Columbia<sup>12</sup> require individuals to report the loss or theft of all firearms. Maryland requires the reporting of loss or theft of handguns and assault weapons,<sup>13</sup> and Michigan requires the reporting of thefts, but not loss, of all firearms.<sup>14</sup>

## **Outcomes Without Studies Examining the Effects of Lost or Stolen Firearm Reporting Requirements**

Neither the National Research Council (2004) nor Hahn et al. (2005) identified any research examining the relationship between required reporting of lost or stolen firearms and the following outcomes, and we identified no such studies that met our inclusion criteria:

- suicide
- violent crimes
- unintentional injuries and deaths
- mass shootings
- officer-involved shootings
- defensive gun use
- hunting and recreation
- gun industry.

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<sup>7</sup> Mass. Gen. Laws Ch. 140 § 129C.

<sup>8</sup> N.J. Stat. Ann. § 2C:58-19 (within 36 hours).

<sup>9</sup> N.Y. Penal Law § 400.10 (within 24 hours).

<sup>10</sup> Ohio Rev. Code § 923.20.

<sup>11</sup> R.I. Gen. Laws § 11-47-48.1 (within 24 hours).

<sup>12</sup> D.C. Code Ann. § 7-2502.08.

<sup>13</sup> Md. Ann. Code § 5-146 (within 72 hours).

<sup>14</sup> Mich. Comp. Laws § 28.430 (within five days).

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# **EXHIBIT MM**



# A HIGH PRICE TO PAY: THE ECONOMIC AND SOCIAL COSTS OF YOUTH GUN VIOLENCE IN SAN MATEO COUNTY

SEPTEMBER 2011



## INTRODUCTION FROM SUPERVISOR ROSE JACOBS GIBSON

Dear Friends:

Safe streets and parks, schools free of violence, and communities where our children prosper are goals we all share. Yet each year, more than 20,000 children and young adults in the United States are killed or injured by guns in their own neighborhoods. Here in the Bay Area, youth firearm violence, often perpetrated by gang members, is on the rise, threatening the safety and security we all deserve. From the physical, economic, and social costs for the community to the psychological effects experienced by children and their families, firearm violence touches every segment of our society.

As a member of the San Mateo County Board of Supervisors, I have worked closely with law enforcement and community leaders to improve the safety of our residents through the establishment of programs like Operation Ceasefire and the East Palo Alto Crime Reduction Task Force. During my tenure as Association of Bay Area Government's (ABAG) President, we established a Youth Gun Violence Task Force charged with developing common sense approaches to keep guns out of the hands of young people and to curb youth firearm violence. During my twenty years in public service, I have come to understand that addressing youth gun violence through law enforcement efforts and community-driven prevention programs is the only way to ensure that all children in our community, regardless of their race or socio-economic background, have the opportunity to reach their full potential.

In 2010, the Silicon Valley Community Foundation provided funding to ABAG's Youth Gun Violence Task Force to conduct a youth firearm violence research project. This publication is the outcome of the concerted efforts of many government agencies, community-based organizations, and my office. I hope you find it compelling and that it inspires you to work with me to enhance our efforts to curb youth firearm violence locally and in the greater Bay Area.

My goal continues to be turning this eloquent sentiment recently expressed by a parent in one of our focus groups into reality: "How beautiful it would be, if instead of seeing a wall of graffiti, we saw a young person changed. Look, he's studying now, or going to church, or working. How great that would be..."

Sincerely,

A handwritten signature in black ink that reads "Rose Jacobs Gibson". The signature is fluid and cursive, with the first name "Rose" being particularly prominent.

Rose Jacobs Gibson  
Supervisor  
San Mateo County Board of Supervisors



# A HIGH PRICE TO PAY: THE ECONOMIC AND SOCIAL COSTS OF YOUTH GUN VIOLENCE IN SAN MATEO COUNTY

San Mateo County governments and communities are committed to reducing and preventing youth firearm violence.<sup>1, 2, 3</sup> In an effort to measure the true human and financial impact of youth firearm violence in San Mateo County, the county has analyzed crime, health, and cost data. With the help of community partners, the county also conducted qualitative interviews, focus groups, and surveys of residents and law enforcement in communities with pronounced rates of youth firearm violence, which include Daly City, East Palo Alto, Redwood City, and San Mateo. (See *Appendix for detailed methodology*.) This report summarizes this analysis, providing a reference for policymakers and service providers, as well as a benchmark that may be used to assess the effectiveness of future prevention efforts. The most compelling findings from our research are as follows:

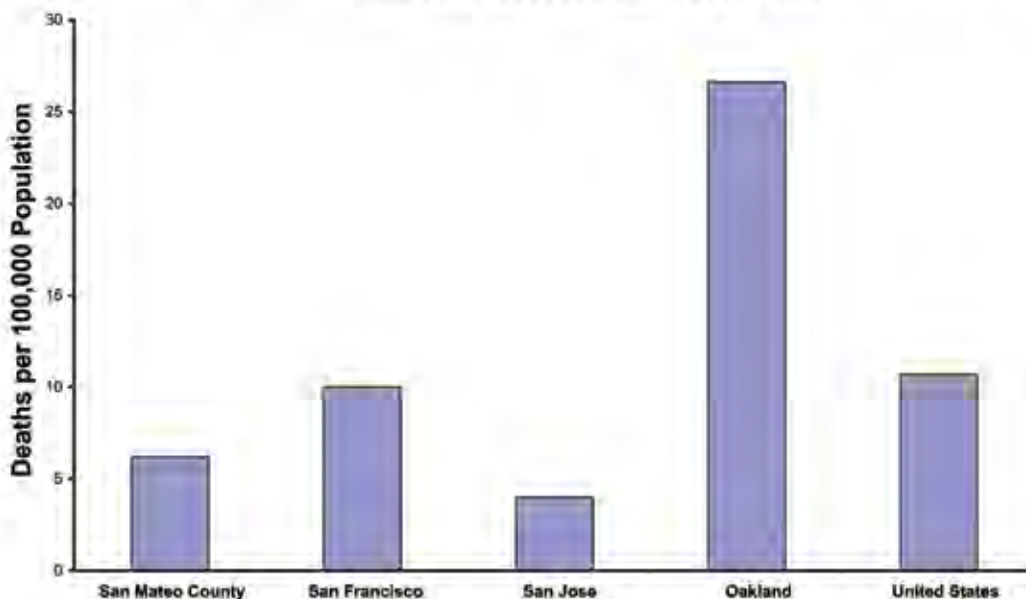
- The firearm violence mortality rate in San Mateo County is 42 percent lower than the United States, 39 percent lower than neighboring San Francisco, but 55 percent higher than San Jose.
- African American males aged 15 to 24 years are up to 18 times more likely than the overall county population and 3.5 times more likely than other San Mateo County youth to be shot and killed. The rate of non-fatal injuries among Latinos aged 15 to 24 years is 14 percent higher than that of other San Mateo County youth.
- The cities of East Palo Alto, Daly City, South San Francisco, and Redwood City comprise 38 percent of the total San Mateo County population, but disproportionately account for 57 percent of non-fatal firearm injuries and 74 percent of fatal firearm injuries.

- Nonfatal and fatal injuries of San Mateo County youth from 2005-2009 will cost society an estimated \$234 million in medical care, criminal proceedings, future lost wages, disability benefits, and lost quality of life
- Eighty-one percent of adults and 56 percent of youth incarcerated\* for firearm crime in San Mateo County had been previously arrested.
- Nine out of 18 (50 percent) juveniles incarcerated\* and 31 of 75 (41 percent) adults incarcerated\* for firearm crime are gang-affiliated.
- The County Gang Intelligence Unit reports that gangs actively recruit disadvantaged San Mateo County youth, as young as 11 years of age, in schools and afterschool programs.
- San Mateo County local governments spend an estimated \$57,000-\$856,000 per crime—depending on crime severity—investigating, prosecuting, defending, punishing, and preventing youth firearm crime.

\*These figures are based on the jail and juvenile hall population for a single day in 2011. It is conceivable that these figures vary considering the transient nature of the jail population.

**Countywide statistics do not tell the whole story about youth firearm crime and violence.** The firearm violence mortality rate in San Mateo County is 6.2 deaths per 100,000 residents per year, 42 percent lower than the United States, 39 percent lower than San Francisco, but 55 percent higher than San Jose (*Figure 1*).

**Figure 1: Rate of Violent Firearm Mortality in San Mateo County, the United States and Other Bay Area Cities 2005 - 2009**

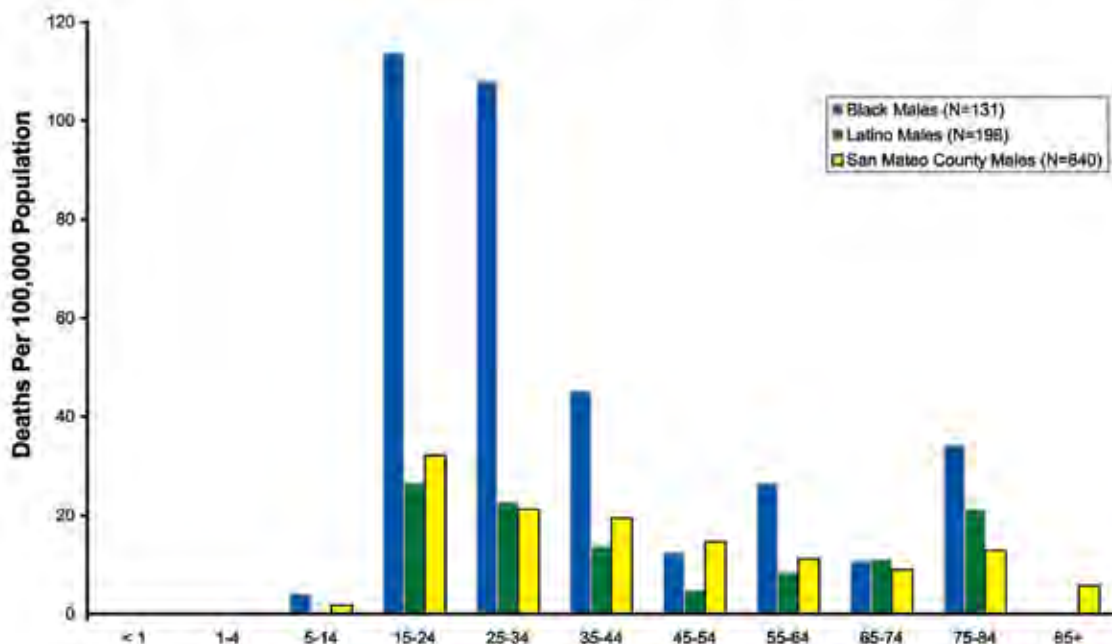




However, the countywide statistic masks the fact that certain communities and demographic groups within the county suffer a disproportionate impact from firearm crime and violence. For example, young African American males aged 15 to 24 years

are up to 18 times more likely to be shot and killed than the overall county population and up to 3.5 times more likely than other San Mateo County youth to be shot and killed (*Figure 2*).

**Figure 2: Mortality Due to Firearms Among Black and Latino Males**  
Cumulative Unadjusted Data, San Mateo County 1990 - 2009 (N = 329)



Firearm violence in San Mateo County is concentrated in the four cities of East Palo Alto, Daly City, Redwood City, and South San Francisco. Combined, these cities account for 74 percent

of fatal injuries and 57 percent of non-fatal firearm injuries, but only 38 percent of the total San Mateo County population (*Table 1*).

**Table 1: Percentage of Fatal and Non-Fatal Firearm Injury and Mortality and Total San Mateo County Population by City 2005-2009**

City	Percent of SMC Firearm Homicides	Percent of SMC Non-Fatal Firearm Injuries	Percent of SMC Population	Ratio of Percent of Homicides to Percent of SMC Population
Daly City	21.2%	6.7%	14.2%	1.5
East Palo Alto	25.8%	21.0 %	4.7%	5.5
Redwood City	15.2%	18.1 %	10.4%	1.5
South San Francisco	12.1%	11.0%	8.7%	1.4
All other SMC cities	25.8%	43.2%	62.0%	0.4



**Incarceration and recidivism for firearm crime is also high and concentrated in select communities and demographics.**

A snapshot of the 75 adults held at the county's correctional facilities for any firearm crime (ranging from possession to homicide) on a single day in 2011 reveals that 45 percent were Latino, 28 percent were African American, and 96 percent were male. Of the 18 inmates held at the juvenile facility for firearm crime on a single day in 2011, 67 percent were Latino, 22 percent were African American, and 94 percent were male. Both adults and youth charged with firearm crimes had a high recidivism rate; 81 percent of incarcerated adults had been arrested before, as compared with 56 percent for youth. Seventy-eight percent of the 18 incarcerated juveniles were from the three communities of East Palo Alto, San Mateo, and the North Fair Oaks neighborhood of Redwood City. While the City of San Mateo has relatively low rates of fatal and non-fatal firearm injuries, it has high rates of incarceration for juveniles engaging in firearm crime.

**Members of communities with pronounced rates of youth firearm violence live in an environment of fear, distrust, and diminished opportunities.**

Youth firearm violence was perceived to occur in the context of a community environment that is unstable, unpredictable, and chaotic. The characteristics of an unsafe community that respondents mentioned included economic deprivation, vandalism and graffiti, drug dealing, frequent interpersonal and family conflict, and gang activity. Unsafe communities were described as "lonesome" places where neighbors don't know one another or watch out for one another. Youth may lack family support as well as educational and employment opportunities, causing service providers to lament that "in this population, kids don't see themselves after high school." When faced with a lack of optimism about the future, youth may become involved in gangs and criminal activity, leading a focus group participant to comment, "If youth don't value their own lives, how can we expect them to value ours?"

**Youth firearm violence is driven by gang activity.** Based on information provided by law enforcement and corrections personnel, as well as by community members, it is reasonable to conclude that gang activity is the main driver of youth firearm violence in San Mateo County. On a single day in 2011, 50 percent of juvenile inmates and 41 percent of adult inmates incarcerated and charged with a firearm crime in San Mateo County had a known gang affiliation. While gang members commit crimes in nearly all municipalities of the county and often cross city and county lines, in San Mateo County they are concentrated in the following cities: East Palo Alto, Daly City, Menlo Park, Millbrae, South San Francisco, Redwood City, San Mateo, San Bruno, Half Moon Bay, and in unincorporated areas such as the North Fair Oaks neighborhood of Redwood City. Gang culture glamorizes the use of firearms and encourages youth to gain respect and status through violence and criminal activity. Gang members "take their pictures with their guns and

text it to friends or post it on Facebook," where "kids as young as 14 years old are shown holding their guns with their 'rag and colors'." (Service Provider)

**GANGS TARGET VULNERABLE YOUTH**

Even youth who are reluctant to become involved with a gang may be forced to do so. According to Gang Intelligence Unit (GIU) officers, youth are often approached by gang members at school or at afterschool programs. "Youth as young as 11 years old are approached by their school friends to join the gang. Many of these youth come from broken homes, are being raised by a single parent, live in poverty, or face other family issues. Gangs capitalize on this lack of stability by offering the at-risk youth a place or group to belong. Recruiters further entice kids by offering them a chance to earn money and respect on the streets. Otherwise, gangs coerce youth. Refusing to join a gang could result in bullying, intimidation, embarrassing the youth in front of peers at school, or being accused of association with rival gangs, which can have drastic consequences." (GIU Officer).

**Reprisals and revenge create a cycle of violence.**

A service provider described how the typical cycle of violence plays out: "If someone is playing around with the idea of being in a gang and their friend gets shot, all of a sudden it becomes easier for them to retaliate and do harm to someone else...When the shooting happened in South San Francisco, that's something I heard a lot about at Juvenile Hall. Affected youth were declaring that 'we're going to load up on guns, our neighborhood needs more guns'." Youth described being given firearms by gang members, or even family members, and being asked to take part in reprisals. One young woman recounted a story of resisting pressure to take part in revenge and telling her grandmother, "No, it ain't happening" when she was handed a gun and asked to avenge her cousin's death. Bullying may also be a contributing factor to retaliatory violence in some cases; unfortunately "there is a lack of communication and awareness [about bullying] on the part of parents and staff at school," according to service providers. A pattern of retaliation against "snitching" may be a factor in the reluctance to report firearm crimes; both parents and youth reported that fears of reprisal may keep them from informing law enforcement about firearm crimes in their communities.



**Youth firearm violence negatively impacts quality of life in multiple ways.** The majority of youth and parents from affected communities who participated in surveys and focus groups believed that they or a loved one could be a victim of firearm violence in the near future. Similarly, 67 percent of youth and 57 percent of parents reported that youth firearm violence was a “very significant” or “somewhat significant” problem in their lives. Youth and parents described their sadness at losing friends and relatives to youth firearm violence, as well as being fearful when shootings happened near their homes. Others reported apathy, helplessness, and desensitization that can occur as a result of frequent exposure to violence. For example, one youth stated, “I’m immune to it now. I’ve gotten used to it. I’ve seen people die, friends die, brothers die, cousins die,” while another noted that firearm violence is “normal” in his community.

Fear of violence leads both youth and adults to lead their lives differently, especially with respect to outside play and walking around their neighborhoods. Sixty-three percent of youth and 38 percent of parents surveyed reported avoiding areas of their neighborhoods they would otherwise pass through, while parents participating in focus groups reported staying in at night and not allowing their children to walk to school or to play in local parks. The majority of youth and parents surveyed felt that youth firearm violence was an important factor in deciding where to live, though parents reported that economic considerations may force them to live in neighborhoods they consider to be unsafe.

**Firearm violence has massive hidden financial costs that are difficult to measure.** Researchers have attempted to estimate total costs for fatal and non-fatal injuries in the United States. These total costs include not only criminal proceedings, lost productivity and medical care, but also the suffering and decreased quality of life experienced by victims. Such dollar estimates are necessarily inexact, but nonetheless

can be useful for decision-makers as they weigh the cumulative costs of violence against the costs of preventive measures. Values are assigned to parameters such as suffering and decreased quality of life by using benchmarks such as “pain and suffering” jury damage awards and workers’ compensation payments, as well as “Willingness to Pay” methodology.<sup>4</sup>



Based on these methods, each fatal injury costs society an estimated \$6.4 million (range \$3.4 to \$9.1 million), and each non-fatal injury costs society an estimated \$46,000. Using these parameters, the cost of the 36 fatal and 133 non-fatal firearm injuries to youth in San Mateo County from 2005-2009 will total \$234 million over time.

**We all pay for youth firearm crime.** Although youth firearm violence is concentrated in a small number of San Mateo County communities, the cost of youth firearm crime is shared by all county residents. Local government institutions spend vast public funds responding to, investigating, prosecuting, defending, preventing, and punishing youth firearm crime. Because of the concentrated nature of youth firearm violence, affected police departments must also recruit and train additional officers to investigate gangs and interact with youth. *Table 2* describes these costs and programs.

## EASE OF ACCESS TO FIREARMS

Sixty-three percent of youth surveyed felt it was “very easy” or “somewhat easy” to get access to firearms, and the majority of participants in a youth focus group felt that they could get a gun “with one phone call.” Youth most commonly obtained guns by stealing, by illegally purchasing them from an individual on the black market, or “from their homes.” Respondents reported that firearms could be purchased for “as little as \$80 to \$300—depending on the size of the gun.” An intergenerational pattern of gang involvement or criminal activity may lead to youth having access to guns from family members, and being able to borrow or informally barter for guns. Respondents pointed out that getting a gun is “as easy as access to drugs.” This climate of ready gun availability led a service provider to observe that “it seems harder for adults to get legal access to guns than for kids to get illegal access.” This surprising information regarding the ease of youth access to guns is supported by data from the 2007 California Healthy Kids Survey, in which 4.8 percent of San Mateo County 7th, 9th, and 11th graders reported having brought a gun to school, a rate similar to that for the Bay Area overall (5 percent).



Table 2

**Estimated Costs to Local Police Departments to Prevent and Respond to Youth Firearm Crime in 2010**

Police Department (n = total youth firearm crime investigations 2010)	Crime Investigation	Crime Prevention	Miscellaneous Overhead	Average Total Cost per Youth Firearm Crime Investigation <sup>5</sup>
Daly City (n = 22)	\$117,900	\$435,801	\$88,425	36,935 (\$1,283- \$72,430)
East Palo Alto (n = 76)	\$6,556,200 <sup>2</sup>	6	7	\$86,265
Redwood City (n = 23) <sup>8</sup>	---	---	---	---
San Mateo (n = 17)	\$108,536	\$1,356,000	—	\$86,149

When police department estimates are combined with those from other County agencies, San Mateo County taxpayers spend from \$57,117 to \$856,323 for their County and City governments to respond to one youth firearm crime (*Table 3*).

Incarceration represents a significant proportion of these costs, because the average length of detention from pre-trial through completion of sentence for a firearm crime is 297 days for adults (at \$172 per day) and 610 days for juveniles (at \$428 per day).

Table 3

**Estimated Range of Costs for one Firearm Crime to San Mateo County Taxpayers for Local Government Law Enforcement Response to Youth Firearm Crime in 2010**

San Mateo County Local Government Agency	Juvenile	Adult
Youth Services Center Costs to detain a youth from pretrial to sentence for firearm crime (610 days)	\$261,080	NA
San Mateo County Jail Costs to detain an adult from pretrial to sentence (297 days)	NA	\$51,084
San Mateo County Coroner (homicide cases only) Transportation of the deceased, morgue, autopsy, etc	\$7,500	\$7,500
San Mateo County Superior Court* Costs to try suspects of firearm crime	(\$98-\$1,478)	(\$750-\$5,456)
San Mateo County District Attorney Legal costs to prosecute firearm crime	(\$2,000-\$250,000)	(\$2,000-\$250,000)
San Mateo County Private Defender Services Legal costs to defend firearm crime	(\$2,000-\$250,000)	(\$2,000-\$250,000)
Local Police Department (Response and Investigation, see Table 3)	(\$1,283-\$86,265)	(\$1,283-\$86,265)
<b>Estimated cost range of one firearm crime based on severity (i.e. illegal firearm possession to homicide)</b>	<b>(\$266,461-\$856,323)</b>	<b>(\$57,117-\$650,305)</b>

\*Court costs are averages weighted by stage of court proceeding of firearm crime prosecuted by the District Attorney from 2009-July 2011 combined with cost estimates from the Superior Court.

These costs encompass the range of firearm crime severity from illegal possession to murder. Costs for State prison incarceration

are not included here, nor are costs averted because suspects posted bail. The District Attorney provided a range of legal prosecution costs; since we were unable to obtain cost estimates from the Chief of the County Private Defender Program, we assumed defense costs to be comparable to those of the prosecution.



As we have seen, youth firearm violence impacts safety and quality of life, and causes incalculable human suffering. Taxpayers bear the expense for incarceration, court costs, and law enforcement, and society as a whole is burdened by the hidden costs of the death and disability of gun violence victims. Furthermore, the existing law enforcement response mechanisms emphasize extraordinarily costly punitive measures, rather than preventive or rehabilitative ones. Cost effectiveness studies show that the fiscal benefits of youth violence prevention programs are significant, but not generally realized for 15 years or more.<sup>9</sup> The benefits of prevention are real, but are often delayed and are impossible to link to an individual. While not optimal, fiscal pressures tend to influence policymakers to devote resources to immediate needs instead of a more systematic perspective, which includes wisely investing in critically necessary prevention programs.

Effective strategies to reduce youth violence include programs targeted at young children, their parents, the community, and school environment, and more intensive services for youth who have already committed crimes. In general, research shows that the most effective interventions focus on young children and their families, or youth who have already exhibited criminal behavior. For example, violent and delinquent youth have been found to benefit the most from programs that provide a wide array of support, such as skills and behavioral training, and family therapy. The following proposed solutions represent “best practices” drawn from our experience in San Mateo County and from success stories across the nation, as well as the opinions and recommendations of community members who participated in this study. These solutions should be included in, and strongly connected with, any funding decisions related to public safety.

## **Breaking the cycle of violence among vulnerable youth:**

Violence prevention interventions must be a part of a comprehensive effort to create a supportive family and community environment for all children and youth. In addition, however, intensive interventions, both preventive and rehabilitative, specifically directed at youth who are at-risk or already involved in criminal activity, are critical to saving lives and preventing firearm crime. Youth directly affected by firearm violence have the highest risk of becoming perpetrators. In the words of one service provider, the community needs to be there “as a support for those affected, because they are the ones that are more likely to take revenge.” CeaseFire Chicago<sup>10</sup> utilizes prevention, intervention and community mobilization tactics to reduce street violence. The program offers at-risk individuals GED programs, anger management counseling, drug and alcohol treatment, and assistance with finding work and childcare. CeaseFire also hires “violence interrupters” as outreach workers to mediate conflict between gangs. After a shooting, they offer nonviolent conflict resolution alternatives to halt the cycle of retaliatory violence. As a direct result of the program, shootings decreased 16 to 28 percent in four of

the seven targeted areas. The decrease was “immediate and permanent” in three areas and “gradual and permanent” in one area.

This violence interruption program is very similar to the current activities of the Gang Intelligence Unit and Operation Ceasefire in San Mateo County. The San Mateo County Gang Intelligence Unit (GIU) consists of members of the Sheriff’s Office, San Mateo County Probation, and assigned detectives from the local municipalities. GIU’s primary responsibility is collecting and analyzing information and then distributing the developed intelligence to law enforcement agencies in and around San Mateo County, as well as patrolling the streets of all twenty municipalities in the county several days a week to counter gang activity. The GIU is highly effective in countering gang activity. In 2010, the GIU arrested more than 434 individuals engaging in gang activity. To maintain its success, San Mateo County must craft a sustainable funding plan to ensure that the Sheriff’s Department, which funds the GIU, has the resources it needs to continue its support of GIU’s critical efforts in curbing youth firearm violence.



Operation Ceasefire was established by the East Palo Alto Police Department in partnership with numerous law enforcement, government, community-based and faith organizations to implement a violence and drug market reduction strategy. Operation Ceasefire partners with law enforcement and the community to sit down with gang-affiliated individuals and offer them services that provide alternatives to their destructive behavior, and use strategic enforcement programs to hold accountable those who fail to take advantage of the services and continue to victimize the community. Operation Ceasefire is currently based in the City of East Palo Alto. To further enhance the program’s success, San Mateo County should explore Ceasefire’s methods to determine which are most effective and how to best apply them to reduce youth firearm violence in other cities in San Mateo County.

## **Law enforcement and communities working together:**

Law enforcement serves as the community’s primary response against armed violence, but can be most effective in the context of a community collaboration. A successful example of this collaboration in San Mateo County is the Violence Prevention Network that brings local police and the Sheriff together with



parents and students in the school setting. Some youth may be more open to addressing issues of violence at school, “because that’s where kids feel safe, and that’s where kids will speak up.” In general, more frequent positive interactions between youth and police in a setting where the power imbalance is reduced help youth become more comfortable with law enforcement and more open to their presence. Law enforcement can take on primary prevention of violence as a critical function. Another critical strategy to break the cycle of violence is law enforcement support to protect youth who make a good faith effort to leave gangs. San Mateo County law enforcement leadership should consider establishing debriefing units to help gang-affiliated youth safely leave gangs. In exchange for providing information about the gang, a youth would receive protection, skill-building, and educational services. The potential benefits of such a program could outweigh the financial costs over time; not only could it make the County’s streets safer, it would provide opportunities for the most at-risk youth to turn away from a life of violence. One young person transformed could result in multiple lives saved. Trust and cooperation generated by programs like these will increase the effectiveness of enforcement efforts in the larger community.

### Youth empowerment in the community and educational context:

By valuing youth perspectives, prioritizing youth issues, and incorporating youth voices, communities will be able to reduce youth firearm violence more effectively. Empowering at-risk youth means helping them gain confidence, life skills, and hope for the future. This empowerment can come from active involvement in community service, afterschool programs, sports, creative activities (art, music, theater), dealing assertively with technological aggression (on-line bullying), and job skills training or part-time jobs. By providing youth with more options that promote the constructive use of time, communities keep youth off the streets, let youth know that the community cares, and give youth the opportunity to explore and discover their talents. In addition, many parents and service providers who participated in this study expressed a wish for more mentorship programs led by successful male role models, who originate from low-income communities. These male leaders, “who will fight for our kids,” serve as true-to-life examples that economic background does not necessarily dictate one’s future.

Not surprisingly, research shows that staying in school reduces the risk of violent behavior. The “School Transitional Environment Program” (STEP)<sup>11</sup> was developed at the University of Illinois to help schools create a supportive environment that promotes academic achievement and reduces behavioral problems and truancy. Students transitioning to middle school or high school are placed in small cohorts that remain together over time, and teachers partner with families to follow-up on school absences and behavior problems. Participants in the STEP program generally have fewer absences from school, lower drop-out rates, lower rates of delinquency, higher

## SELF-CONTROL AND PROBLEM-SOLVING SKILLS CRITICAL FOR YOUTH

A strong emotional and behavioral foundation can help youth successfully avoid violence. In general, parents and schools can work together from early childhood to establish boundaries, rules, and expectations for children. Conflict resolution and communication skills in youth are paramount. Two successful programs for younger children at use in communities nationwide show the power of emotional awareness and problem-solving skills in promoting positive behaviors and discouraging violence. “Promoting Alternative Thinking Strategies” is aimed at elementary school kids through fifth grade. It trains children in self-expression, self-control, and interpersonal problem-solving skills. The program has yielded positive effects on risk factors associated with violence, including aggressive behavior, anxiety and depression, and conduct problems. The “I Can Problem Solve” program teaches interpersonal problem-solving skills to children of nursery school age through sixth grade. Studies have demonstrated that improvements in impulsivity and conflict resolution were sustained 3 to 4 years after the end of the program. This program has been generally most effective for at-risk children living in poor, urban areas. For youth who have already suffered the harsh effects of violence, there needs to be an increased and systematic use of alternative dispute resolution processes. Such methods include mediation among youth offenders, victims, and others impacted by violence in the community.

grade-point averages, more positive feelings about school, and a better self-image.

### Asset building among parents and community members:

Educating parents, youth and community members is essential to curbing youth firearm violence. Several service providers participating in this study suggested that the County educate community members about how easy it is for youth to get guns. This increased awareness may lead community members to play a more active role in advocating for strategies

## CONCLUSION

that prevent unlawful youth access to guns. Parents and service providers could also be taught how to look for signs of negative peer influence or gang affiliation. "Right now, parents are concerned about drug use or the way their children dress, and who they hang out with, but they're failing to make the link between the types of influences that can lead to gun use." (Service Provider) Holding community information sessions concerning recognition of these early signs could help parents and service providers better respond to at-risk youth. In addition, parents need to be made aware of the media's influence on children and youth. Subtle messages presented to youth through music and television too frequently promote and glorify guns and violence. Educating parents to assess the media their children come in contact with in order to decrease exposure to violent content could help lessen the appeal of guns and violence.

Just as an unsafe community environment promotes youth involvement in gangs and violence, a positive community environment will promote positive choices and behaviors. Supporting and empowering youth to make mature decisions is a complex task, which requires active contributions from families, schools, neighbors, community organizations, local

government, and law enforcement. More than ever, youth need caring adults to establish rules and boundaries and provide opportunities for education, employment, and healthy social outlets. By giving at-risk youth the support and guidance they need, we can help them lead violence-free lives and give them the confidence and skills to build successful futures.

Listed are the model ordinances and resolutions for cities and counties to pursue.

- Model Ordinance Regulating Firearms Dealers and Ammunition Sellers
- Model Ordinance Requiring Reporting of Lost or Stolen Firearms
- Model Ordinance Prohibiting the Possession of Large Capacity Ammunition Magazines
- Model Resolution Encouraging Law Enforcement to Send Letters to Prospective Handgun Purchasers
- Model Resolution Encouraging Law Enforcement to Obtain and Utilize Department of Justice Information About Prohibited Armed Persons

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**or visit:**

**<http://www.abag.ca.gov/model-ordinances/>**





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## APPENDIX: METHODS

### Qualitative methods

Peninsula Conflict Resolution Center (PCRC), a community-based organization that provides problem solving expertise in San Mateo County through mediation, violence prevention, and family engagement, was contracted by the Office of Supervisor Rose Jacobs Gibson and the Association of Bay Area Governments to collect community input for this project. PCRC and the Office of Supervisor Rose Jacobs Gibson recruited a demographically diverse convenience sample of participants from local schools, service organizations, and other sites within the communities most affected by youth firearm violence. Surveys were completed by 84 youth, 275 parents, and 115 service providers, faith-based leaders, and law enforcement representatives. In addition, 37 youth, 23 parents, and 9 service providers participated in focus groups and 20 youth, parents, and service providers were interviewed individually or in small groups by PCRC staff. Gang Intelligence Unit personnel were interviewed by San Mateo County staff. Focus group summaries, video and audio interviews, and free text survey responses were analyzed for common themes and concerns. A convenience sample methodology is acceptable in this setting, because the goals of this qualitative analysis were to obtain a deeper understanding of the causes, motivations, and lived experiences underlying observed behaviors and outcomes.

### Quantitative methods

Multiple data sources and analytic methods were used for the quantitative portion of this analysis. Countywide emergency room discharge data were obtained from the Office of Statewide Health Planning and Development and analyzed to determine the number of firearm injuries over the last 5 years, as well as the demographics of those affected. Firearm death statistics were obtained from death certificates. Demographic and other information such as gang affiliation and recidivism was obtained for inmates incarcerated for firearm crimes at the county's two detention facilities for single "snapshot" days. Local police departments supplied counts of firearm-related arrests, as well as operating budgets and (in the case of one department) costs of responding to individual firearm crimes. The District Attorney, Private Defender, County Superior Court, and County Coroner also contributed cost information. In addition, methodologies for calculating global societal costs for injuries and deaths were obtained from scholarly literature and applied to the San Mateo County youth firearm injury and death counts.

### Police Department Notes

Four local police departments provided data on the number and costs of their youth firearm crime response and prevention activities in 2010. These responses attempt to account for all of the officers, detectives, specialized crime investigation and prevention units, school resource officers, and other staff involved in youth firearm crime investigations. Although these data are informal and not standardized, they are the best available considering the few resources available for their collection. Please see the appendix for further police department details.

**Daly City Police Department:** The Daly City Police Department was able to time survey and calculate the investigation, prevention-program, overhead, and employee benefit costs for the 22 youth firearm crime investigations in Daly City in 2010. The range of costs reflects the severity (i.e. from illegal possession to murder) of crime and the number of personnel hours involved in each. The Daly City prevention costs are lower than the other police department estimates because they only account for the time youth crime prevention staff spent working on the specific youth firearm crime investigations. Prevention programs include the Crime Suppression Unit and School Resource Officer, both of whom are involved in every youth firearm crime investigation.

**East Palo Alto Police Department:** The East Palo Alto Police Department estimates that as much as 60 percent of its total operating budget is spent on the law enforcement response, investigation and prevention of youth firearm crime.

As many of these enforcement intervention and prevention programs are interrelated, it is difficult to attribute exact costs to each component. Among the numerous firearm prevention and enforcement programs, the Police Department has identified Project Ceasefire (see pages 9-10) as one with significant promise.

**Redwood City Police Department:** The Redwood City Police Department has worked actively in youth firearm crime prevention. The Department's Juvenile Unit and Street Crime Suppression Team and School Resource Officer have been active in educating schools, at-risk youth and their parents about gangs and have incorporate preventing firearm violence in their presentations.

**San Mateo City Police Department:** The San Mateo City Police Department's Youth Service Bureau coordinates prevention and enforcement of youth crime. Through this agency, school resource officers, the Police Activities Leagues, the Juvenile detective, and schools work to identify at-risk youth who are candidates for diversion from the juvenile justice system. Through this program, youth are referred to activities in or after school designed to foster his or her positive development and relationships with law enforcement.





**Selected Demographics of Youth Service Provider Respondents to the  
San Mateo County Youth Firearm Violence Impact Survey 2011  
(n = 115)**

<b>Race Ethnicity</b>	<b>Percent</b>
Asian and Pacific Islander	2.6
African American	8.7
Latino	24.3
Native American	0.9
Other	18.3
White	45.2
<b>Household Income</b>	<b>Percent</b>
\$10,000-\$29,999	4.3
\$30,000-\$59,999	18.3
\$60,000-\$79,999	14.8
\$80,000-\$99,999	17.4
\$100,000 +	45.2

**Selected Demographics of Parent Respondents to the San Mateo  
County Youth Firearm Violence Impact Survey 2011  
(n = 275)**

<b>Race Ethnicity</b>	<b>Percent</b>
Asian and Pacific Islander	5.5
African American	2.9
Latino	46.5
Native American	1.5
Other	5.5
White	38.2

<b>Household Income</b>	<b>Percent</b>
0-\$9,999	13.5
\$10,000-\$19,999	9.5
\$20,000-\$29,999	10.5
\$30,000-\$59,999	13.1
\$60,000-\$79,999	9.8
\$80,000 +	43.6





<b>Selected Demographics of East Palo Alto and Redwood City Youth Respondents to the San Mateo County Youth Firearm Violence Impact Survey 2011 (n = 85)</b>	
<b>Race Ethnicity</b>	<b>Percent</b>
<b>Asian and Pacific Islander</b>	3.6
<b>African American</b>	3.6
<b>Latino</b>	89.3
<b>Other</b>	2.4
<b>White</b>	1.2
<b>Household Income</b>	<b>Percent</b>
<b>0-\$9,999</b>	23.8
<b>\$10,000-\$19,999</b>	20.2
<b>\$20,000-\$29,999</b>	29.8
<b>\$30,000-\$59,999</b>	13.1
<b>\$60,000-\$79,999</b>	8.3
<b>\$80,000 +</b>	4.8

<sup>1</sup> "Youth" is as youth and young adults from ages 12 - 25 years of age.

<sup>2</sup> The terms "Firearm" and "Gun" are used interchangeably in this report.

<sup>3</sup> "Youth violence" is as violence involving a in which the perpetrator and/or the victim is a youth.

<sup>4</sup> U.S. Department of Transportation of the Assistant Secretary for Transportation Policy. (2007) Treatment of the Economic Value of a Statistical Life in Departmental Analysis (Accessed July 5, 2011 from <http://ostpxweb.dot.gov/policy/reports/080205.htm>). Washington DC: Peter Belenky

<sup>5</sup> Average was calculated by dividing the estimated crime investigation, prevention, and overhead costs spent on youth crime by the number of youth violent crimes investigated, except in Daly City. For Daly City, the average cost was weighted based on the frequency and severity of crime investigated.

<sup>6</sup> Because crime investigation, enforcement, and prevention programs in the East Palo Alto Police Department are integrated, each program's cost contribution to a youth crime investigation could not be separated.

<sup>7</sup> Ibid

<sup>8</sup> See appendix for Redwood City information.

<sup>9</sup> Greenwood, Peter W., Karyn Model, C. Peter Rydell and James Chiesa.

CA: RAND Corporation, 1998. [http://www.rand.org/pubs/monograph\\_reports/MR699-1](http://www.rand.org/pubs/monograph_reports/MR699-1).

<sup>10</sup> <http://www>

<sup>11</sup> <http://www.aypf.org/publications/compendium/C1S18.pdf>

<sup>12</sup> <http://www.surgeongeneral.gov/library/youthviolence/>

<sup>13</sup> Ibid

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Silicon Valley Community Foundation.



# **EXHIBIT NN**



Legal Community Against Violence

expertise, information & advocacy to end gun violence

*LCAV Model Law*  
**REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS  
(LOCAL GOVERNMENTS IN CALIFORNIA)**

May 2009

**About LCAV and Our Model Laws**

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

LCAV serves governmental and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, [www.lcav.org](http://www.lcav.org), is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

*This report and model law do not offer, and are not intended to constitute, legal advice.*

**Executive Summary**

**Policy Background**

Legal Community Against Violence (LCAV) has developed a model ordinance for use by California jurisdictions to require the reporting of lost or stolen firearms.

Federal and California laws currently require licensed firearms dealers, but not gun owners, to report the loss or theft of firearms.<sup>1</sup> Seven states (Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island), the District of Columbia, and several local jurisdictions, many in California, impose this requirement on gun owners as well. Local governments with reporting laws include San Francisco, Sacramento, Oakland, Berkeley, Los Angeles, West Hollywood, Thousand Oaks, Simi Valley and Port Hueneme in California, as well as Chicago, Illinois, Cleveland and Columbus, Ohio, Hartford, Connecticut, and New York, New York.

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<sup>1</sup> References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model law below.

Laws requiring the reporting of lost or stolen firearms are useful to law enforcement for several reasons. First, when a crime gun is traced by law enforcement to the last purchaser of record, the owner may claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking.<sup>2</sup> Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it. These laws allow law enforcement to charge an individual with a crime if he or she failed to file a timely report of a lost or stolen firearm, or, alternatively, if he or she filed a false report.

Second, reporting laws help disarm prohibited persons. When a person who legally owned a gun falls into a prohibited category, it is crucial that law enforcement remove the firearm from his or her possession. For example, a gun owner who is convicted of a felony or who becomes the subject of a domestic violence restraining order is not permitted under federal or state law to continue to possess his or her firearm.<sup>3</sup> However, when ordered to surrender the firearm by law enforcement or a judge, the owner may falsely claim it has been lost or stolen. Mandatory reporting laws provide a deterrent to this behavior.

Third, the reporting requirement makes it easier for law enforcement to locate a lost or stolen firearm and return it to its owner. Timely reporting of gun thefts or losses enables police to trace guns more effectively, and makes the successful prosecution of users of stolen guns more likely.

Finally, reporting laws make gun owners more accountable for their weapons. Such laws also protect gun owners from unwarranted criminal accusations when a gun that was lost or stolen is later recovered at a crime scene.

According to a December 2008 report by Mayors Against Illegal Guns (a coalition of over 300 mayors that targets illegal guns nationwide), lost or stolen firearm reporting laws “can help law enforcement more easily identify and prosecute gun traffickers.” The report presents data showing that states that require the reporting of lost or stolen firearms export crime guns at less than one-third the rate of states that do not have lost or stolen reporting laws. In a 2007 report, The International Association of Chiefs of Police states, “law enforcement’s early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence.” The report recommends that state and local governments mandate reporting of lost or stolen firearms.

A 2008 survey of Americans’ attitudes toward gun violence prevention measures found almost unanimous support for laws requiring the reporting of lost or stolen firearms: 91 percent of all people surveyed, and 88 percent of polled gun owners favored reporting laws.

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<sup>2</sup> Gun trafficking occurs when a person buys a gun legally and subsequently transfers it to another illegally.

<sup>3</sup> Note that the California Department of Justice maintains a Prohibited Armed Persons File to identify prohibited persons who remain in possession of firearms. This database currently identifies roughly 13,000 armed and prohibited persons.

### **Opposition Arguments**

Opponents of such laws sometimes argue that these measures could unfairly punish otherwise law-abiding gun owners who fail to report a weapon lost or stolen. However, prosecutorial discretion allows law enforcement officials to focus only on persons suspected of falsely claiming the loss or theft of a firearm, rather than persons who innocently fail to comply with the reporting requirement.

Opponents also sometimes argue that these laws will impose an undue burden on gun owners. However, federal and state laws already require firearms dealers to report lost and stolen firearms. In addition, California requires motorists to report serious automobile accidents to the Department of Motor Vehicles. A reporting requirement for firearms is no more burdensome on gun owners than the accident reporting law is on motorists. Moreover, the highly lethal nature of firearms justifies an increased level of responsibility over that required for ownership of other, less dangerous products.

Another opposition argument is that criminals could easily thwart the law by filing false reports of lost or stolen guns. As noted above, however, a gun owner who repeatedly files reports claiming his or her firearms have been lost or stolen puts law enforcement on notice of possible gun trafficking. In addition, the model law makes it a crime to file a false report that a firearm has been lost or stolen. This provides a deterrent to the filing of false reports, and provides prosecutors another basis upon which to charge a trafficker or someone whose gun turns up at a crime scene where his or her involvement may be suspected.<sup>4</sup>

### **This Model Law**

This model law requires a person to report the loss or theft of a firearm he or she owns or possesses within 48 hours of the time he or she knew or reasonably should have known of such loss or theft.<sup>5</sup> In addition, an objective standard is used regarding the onset of the reporting period. This means that reporting is required within 48 hours of the time a reasonable person knew or *reasonably should have known* that the firearm was lost or stolen. A subjective standard, based on when the owner actually became aware of the loss or theft, would allow dishonest gun owners to thwart the law simply by claiming that they never knew the firearm was lost or stolen.

The model also provides an optional provision that requires persons who have had a firearm lost or stolen within five years prior to the effective date of the law to report the loss or theft within sixty days of the ordinance's effective date. This provision is

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<sup>4</sup> Opponents of lost or stolen reporting requirements also sometimes argue that gun owners will be unaware of the new duties imposed upon them and will unwittingly fail to comply. However, a jurisdiction adopting such a measure can take steps, such as mailing letters to gun owners or requiring firearms dealers to post notices, to ensure that gun owners learn of the new requirement. And, as noted above, prosecutors have discretion. If the circumstances suggest that an otherwise law-abiding gun owner was truly unaware of the law, it is unlikely that he or she would be prosecuted.

<sup>5</sup> Forty-eight hours is the reporting time period required of dealers by both federal and state law.

designed to decrease the ability of a gun owner to falsely claim that his or her gun was lost or stolen before the reporting requirement went into effect.

This model law requires the reporting of lost or stolen firearms and is designed specifically for use by local governments in California. LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to enact this or other laws to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

## Text of Model Law

### CHAPTER 1 REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS

Sec. 1	Findings
Sec. 2	Reporting of Loss or Theft of Firearm
Sec. 3	Exceptions
Sec. 4	Penalty
Sec. 5	Severability

#### Sec. 1 Findings

[Findings regarding the need for and benefits of this law should be included. Findings in support of a law are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

*Whereas*, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 other people were hospitalized for non-fatal gunshot wounds;<sup>6</sup>

*Whereas*, federal and California law require licensed firearms dealers to report the loss or theft of firearms to law enforcement within 48 hours;<sup>7</sup>

*Whereas*, when a crime gun is traced by law enforcement to the last purchaser of record, the owner may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it;

*Whereas*, when a person who legally owned a gun falls into a prohibited category, it is crucial that law enforcement remove the firearm from his or her possession. Reporting laws help disarm prohibited persons by deterring them from falsely claiming that their firearms were lost or stolen;

*Whereas*, existing reporting laws, like California's requirements that firearms dealers report the lost or theft of firearms and that motorists report serious automobile accidents to the Department of Motor Vehicles, demonstrate that reporting laws are not unduly burdensome. Moreover, the highly lethal nature of firearms justifies an increased level of responsibility over that required for ownership of other, less dangerous products;

*Whereas*, reporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene, and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner;

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<sup>6</sup> California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), *Firearm Injuries in California* (2008).

<sup>7</sup> 18 U.S.C. § 923 (g)(6); Cal. Penal Code §§ 12071(b)(13), 12086(c)(3).



*Whereas*, the extreme danger firearms pose to public safety requires a heightened level of accountability on the part of individuals who choose to own firearms. Reporting laws make gun owners more accountable for their weapons;

*Whereas*, neither federal nor California law contains any requirement that firearm owners report lost or stolen firearms;

*Whereas*, Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, and Rhode Island, and the District of Columbia, require the reporting of lost or stolen firearms;

*Whereas*, several local governments in California already require the reporting of lost or stolen firearms, including San Francisco, Sacramento, Oakland, Berkeley, Los Angeles, West Hollywood, Thousand Oaks, Simi Valley and Port Hueneme. Local ordinances often serve as catalysts for statewide policies;<sup>8</sup>

*Whereas*, several major cities outside of California, including Chicago, Illinois, Cleveland and Columbus, Ohio, Hartford, Connecticut, and New York, New York, also require reporting of lost or stolen firearms;

*Whereas*, a December 2008 report by Mayors Against Illegal Guns (a coalition of over 300 mayors that targets illegal guns nationwide) states that lost or stolen firearm reporting laws “can help law enforcement more easily identify and prosecute gun traffickers.” The report presents data showing that states that require the reporting of lost or stolen firearms export crime guns to other states at less than one-third the rate of states that do not have lost or stolen reporting laws;<sup>9</sup>

*Whereas*, in a 2007 report, The International Association of Chiefs of Police states, “law enforcement’s early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence.” The report recommends that state and local governments mandate reporting of lost or stolen firearms;<sup>10</sup>

*Whereas*, a 2008 survey of Americans’ attitudes toward gun violence prevention measures found almost unanimous support for requiring the reporting of lost or stolen

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<sup>8</sup> For example, state laws regulating junk guns and requiring trigger locks were enacted only after numerous local communities in California adopted these measures. For citations to these and other local laws, *see*, Legal Community Against Violence, *Communities on the Move: How California Communities are Addressing the Epidemic of Handgun Violence* (2000), at [http://www.lcav.org/library/surveys\\_local\\_orcs/com2000\\_pdf.pdf](http://www.lcav.org/library/surveys_local_orcs/com2000_pdf.pdf).

<sup>9</sup> Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking*, (December 2008), at [http://www.mayorsagainstillegalsguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalsguns.org/downloads/pdf/trace_report_final.pdf). States “export” a crime gun when the last purchase of record occurred in the state and the gun is later recovered at a crime scene in a different state.

<sup>10</sup> International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 16, 22 (Sept. 2007).

firearms: 91 percent of all people surveyed, and 88 percent of polled gun owners favored reporting laws;<sup>11</sup>

Therefore, the [jurisdiction/governing body] hereby adopts the following:

## **Sec. 2            Reporting of Loss or Theft of Firearm**

It is unlawful for any person to fail to report to the Police/Sheriff's Department the theft or loss of a firearm he or she owns or possesses within forty eight (48) hours of the time he or she knew or reasonably should have known that the firearm has been stolen or lost, if the person resides in City/County or the loss or theft occurs in City/County.\*

**[Optional provision:**

**It is unlawful for any person to fail to report to the Police/Sheriff's Department within sixty days (60) of the effective date of this ordinance the theft or loss of a firearm he or she owned or possessed within the five years prior to the effective date of this ordinance if the person resided in City/County at the time of the loss or theft, or the loss or theft occurred in City/County, unless the firearm has been recovered.]<sup>12</sup>**

Pursuant to Penal Code § 11108, the Chief of Police/Sheriff shall submit a description of each firearm which has been reported lost or stolen directly into the California Department of Justice automated property system for firearms.

## **Sec. 3            Exceptions**

Section 2 shall not apply to the following persons:

- a) Law enforcement officials while engaged in their official duties;
- b) Members of the Armed Forces of the United States or the National Guard while engaged in their official duties;
- c) Firearms dealers and manufacturers licensed under federal and state law while engaged in the course and scope of their activities as licensees.

## **Sec. 4            Penalty**

- a) Any person violating section 2 is guilty of a misdemeanor;

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\* Where the words "Police/Sheriff," "City/County" or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>11</sup> Greenberg Quinlan Rosner Research and The Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* (April 10, 2008), available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf)

<sup>12</sup> This provision is designed to decrease the ability of a gun owner to falsely claim that his or her gun was lost or stolen before the reporting requirement went into effect.

b) Any person who reports to any law enforcement officer, pursuant to section 2 of this ordinance, that a firearm has been lost or stolen, knowing the report to be false, is guilty of a misdemeanor.

**Sec. 5            Severability**

If any section, subsection, sentence or clause of this Chapter is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity or the enforceability of the remaining portions of this chapter or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

# **EXHIBIT OO**



# TAKING A STAND: REDUCING GUN VIOLENCE IN OUR COMMUNITIES

A REPORT FROM THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE  
2007 GREAT LAKES SUMMIT ON GUN VIOLENCE



with support from  
**209TheJoyceFoundation**



# **TAKING A STAND: REDUCING GUN VIOLENCE IN OUR COMMUNITIES**

A REPORT FROM THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE 2007  
GREAT LAKES SUMMIT ON GUN VIOLENCE





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The IACP is grateful to a number of individuals who lent their time and talent to summit planning and execution. Their efforts were instrumental in creating a successful summit and this report, containing the results and recommendations of that summit. We thank:

- IACP President Joseph Carter for his vision and leadership, and in particular for his guidance as IACP and the Joyce Foundation took on this critical public safety issue.
- IACP 2nd Vice President and Chief of the Algonquin Police Department in Illinois, Russell Laine for his continuing and insightful guidance throughout the entire summit effort.
- We are grateful to several key staff at the Joyce Foundation; President Ellen Alberding for her leadership, passionate concern for quality of life in our communities, and particularly for her interest in partnering with the IACP to address gun violence, Program Officer Roseanna Ander for her dedication to reducing gun violence in the Great Lake States and the nation, and her relentless enthusiasm as she worked with IACP staff to make the summit a reality and Communications Director Mary O'Connell, who has aided in highlighting and supporting the vision of our summit participants through her editing, writing and consistent work to produce this report.
- Each of the members of the Great Lakes States Summit Advisory Committee (listed in Appendix C) who worked tirelessly to help us design and accomplish a powerful policy summit by attending many meetings and events and by voicing their invaluable counsel as we moved forward with this important initiative.

Most importantly, we thank each of the more than 180 summit participants (listed in Appendix B) for coming to the summit ready to serve, and for bringing with them the many excellent ideas that are now reflected in the recommendations in this report.



# EXECUTIVE SUMMARY



Nearly 30,000 American lives are lost to gun violence each year—a number far higher than in any other developed country. Since 1963, more Americans died by gunfire than perished in combat in the whole of the 20<sup>th</sup> century.

The impact goes far beyond the dead and injured. Gun violence reaches across borders and jurisdictions and compromises the safety of everyone along the way. No other industrialized country suffers as many gun fatalities and injuries as the United States. And no community or person in America is immune.

Law enforcement understands and embraces its leadership role in combating gun violence. When Federal Bureau of Investigation data for 2006 showed gun violence rates rising for the second year in a row with many Midwest cities leading the trend, the International Association of Chiefs of Police (IACP) convened law enforcement leaders and others concerned with gun violence from around the Midwest in Chicago in April 2007 at the Great Lakes Summit on Gun Violence, with support from the Joyce Foundation. Attendees reviewed the research, listened to experts, shared information and worked hand in hand to draft recommendations. This report comes from a regional group, but addresses a national problem, and it demands national attention.

The recommendations focus on three main areas:

***Keeping Communities Safe*** by improving public understanding about the risks of gun violence, working with community leaders, and reducing easy access to firearms, especially for at-risk individuals.

***Preventing and Solving Gun Crime*** by stopping the flow of illegal guns, sharing information among jurisdictions, and training officers to respond to gun crimes, including tracing all guns.

***Keeping Police Officers Safe*** by reducing the firepower available to criminals, providing protective technologies, and improving training and support for officers in handling guns and situations involving guns and their aftermath.

Specific recommendations include:

- Requiring judges and law enforcement to remove guns from situations of domestic violence, as well as from people whose adjudicated mental illness, drug use, or previous criminal record suggests the possibility of violence
- Requiring that all gun sales take place through Federal Firearms License (FFL) holders with mandatory background checks
- Enacting an effective ban on military-style assault weapons, armor-piercing handgun ammunition, .50 caliber sniper rifles and other weapons that enable criminals to outgun law enforcement
- Restoring COPS funding to provide vital resources to state, local and tribal law enforcement
- Repealing the Tiahrt Amendment, which hinders investigation of illegal gun trafficking

- Destroying guns that come into police possession once their law enforcement use has ended
- Improving officer training in debriefing suspects and handling crime guns, including tracing all guns
- Training police officers in tactics that can lessen the possibility that a hostile situation will erupt in violence
- Mandating safe storage of firearms by private citizens and providing safe facilities where gun owners can store their weapons
- Mandating reporting of lost and stolen firearms

Many of these recommendations call on law enforcement to improve the way it responds to and investigates gun crimes, protects officers, and fosters gun violence prevention while protecting communities.

But one of the most important insights that came out of the summit was the realization that law enforcement and the IACP cannot fight this battle alone. Law enforcement leaders need public support; they need partners in every community; and they need elected officials, in Congress and in state legislatures, to stop catering to special interests and instead act in the public interest to reduce the terrible, and escalating, risk of gun violence in America.

As discouraging as today's gun violence statistics are, they can, and must, prompt public officials to take firm action. The tragic assassinations of leaders like John and Robert Kennedy and Martin Luther King, Jr. moved Congress to enact the Gun Control Act of 1968. Now, the American public appears ready for action once again.

In poll after poll, an overwhelming majority supports common-sense laws and stricter enforcement of the laws that are now on the books. Notably, a majority of gun owners voice support for laws that would reduce illegal gun trafficking and require background checks for all gun purchases.

The recommendations offered here, if implemented, will prevent many of the senseless killings that wreak havoc in our communities, end so many lives prematurely and put law enforcement officers at unrelenting risk.

Implementation, however, will require the support of everyone: not just law enforcement, but the public, community leaders, elected officials, the court system, public health officials, and many others.

Summit participants and the IACP believe Americans are ready to take that step.



# INTRODUCTION



A troubled student goes on a rampage at a university and by early afternoon 33 people are dead. An angry father shoots his wife and then himself, leaving his children orphans in an instant. A 13-year-old boy, the son of a police officer and a firefighter, is shot and killed on a bus riding home from school. A lonely old man, mourning the loss of his wife, uses a rifle and kills himself.

Nearly 30,000 American lives are lost to gun violence each year—a number far higher than in any other developed country. Two to three times that many suffer non-fatal injuries. Since 1963, more Americans died by gunfire than perished in combat in the whole of the 20th century (statistics cited in *Private Guns, Public Health*, University of Michigan Press, 2004). And the overall impact goes much farther. Gun violence reaches across borders and jurisdictions and compromises the safety of everyone along the way.

To understand its impact, recall the events of 2002 in the region surrounding the nation's capital. For 23 days, the citizens of the Washington, D.C. metropolitan area lived in a state of growing fear because of the random and senseless violence wreaked by an anonymous and elusive sniper.

Many, if not most, outdoor activities and weekend sporting events were canceled. Schoolchildren were no longer allowed to go outside during their afternoon recess. It was not uncommon to see parents escorting their children into their school buildings and trying to ensure that their bodies were between their children and any potential sniper locations.

Citizens waiting for buses could be seen crouching behind automobiles trying to limit their exposure. Some gas stations and other commercial businesses erected large screens to shield their customers from view so that they could complete their transactions without fear. Some businesses even reported a sudden increase in customers after a shooting; people who had been “hiding” in their homes felt that it was now safe to make a quick trip. An entire region of our country was brought to a virtual standstill—all due to one gun and two men.

Far too many of our citizens live with similar fear each day. They live in communities where the level of violence means they cannot sit on their porches at night. Many have reason to be afraid even inside their own homes because of the real possibility that bullets may come flying through their windows. All too often innocent children are the victims of drive-by shootings and retaliatory gunfire.

Beyond the personal tragedies and emotional wreckage, gun violence also imposes extraordinary societal burdens and financial costs. It results in more than \$2.3 billion in medical costs every year—of which taxpayers pay \$1.1 billion. There are other costs as well: the money we pay for law enforcement to combat gun violence; the lost productivity of the killed and wounded; the lost economic opportunity in communities plagued by gun violence; and the devastation to the fabric of civil society.

That is why, when FBI 2006 data showed gun violence rates rising for the second year in a row, with many Midwest cities leading the trend, the IACP convened approximately 200 law enforcement executives and other regional leaders in gun violence reduction in Chicago in April 2007 at the Great Lakes Summit on Gun Violence.

With support from the Joyce Foundation, the summit participants reviewed the research, listened to experts, shared what they knew from their own jurisdictions and, ultimately, drafted recommendations.

This report is the product of that summit. It comes from a regional group, but it addresses a national problem, and it demands national attention.

Law enforcement leaders understand and embrace their leadership role in combating gun violence. Every time a shooting happens, law enforcement gets the call: to stop the shooter; solve the murder; deal with the suicide; and put their own lives on the line to protect the community. When an officer is assaulted or killed by gunfire, it is an assault on justice and on society as a whole.

Law enforcement leaders know that they and the officers they lead have signed up to serve on the front lines of this fight. Many of the recommendations here address law enforcement officials and institutions, with the goal of improving the way police respond to and investigate gun crimes, protect officers and protect communities from gun violence.

Other recommendations address elected officials, community partners and the public. That is because one of the most important insights that arose from the summit was the realization that law enforcement cannot fight this battle alone. Law enforcement leaders need community partners. They need public support. And, they need elected officials to act in the public interest to reduce the terrible, and escalating, risk of gun violence in America.

# KEEPING COMMUNITIES SAFE



Contrary to popular belief, gun violence is not simply an urban problem, a gang problem or a criminal problem. The yearly toll of deaths includes more than 16,000 suicides by firearms, plus shootings involving young children, the mentally ill and domestic violence—all the tragic situations that turn lethal because of the easy availability of firearms.

The United States is the most highly armed country in the world. There are 90 guns for every 100 citizens, according to 2007 figures from the Small Arms Survey; in the rest of the world, the rate is ten firearms for every 100 citizens. The U.S. rate of lethal violence is correspondingly higher than other developed countries. A study of crime in the 1990's by the Centers for Disease Control and Prevention (CDC) put the U.S. firearm homicide rate for children at 16 times that of other developed countries.

This section focuses on a range of strategies aimed at keeping communities safe by reducing the overall threat of gun violence. Specific recommendations for preventing and solving gun crime are in Section II. Recommendations for keeping police officers safe are in Section III.

## INCREASE PUBLIC AWARENESS OF THE IMPACT OF GUN VIOLENCE

The first step to solving a problem is understanding it. Despite alarming statistics, many Americans have not grappled with basic issues of gun violence. As one chief who participated in the summit said, “safety issues concerning a weapon in the home, the danger to families and friends experiencing mental health problems or in abusive relationships, the types of weapons available to criminals on the street, the absence of regulations—the average citizen is unaware of all this. When you talk to them, they’re somewhat amazed.”

To protect themselves, and to work with law enforcement on behalf of more effective public policies and practices to protect their communities, the public needs to become better informed. People need to know more about the prevalence of guns in their communities; they need to become aware of the troubling prominence of guns in all types of street crime, domestic violence and suicide, and the insidious influence of illegal gun trafficking.

Law enforcement executives and their agencies should ensure that these educational efforts extend not only to every adult, but also to every youth through every appropriate forum.

**1. The Joyce Foundation and the International Association of Chiefs of Police should develop research-based campaigns to educate policy makers and the public regarding the causes, costs, risks, and effects of gun violence, and strategies for preventing it.**

These education campaigns should be tailored to the needs of individual communities, but drawn from sound academic research being developed at such leading institutions as the Injury Control Research Center at the Harvard School of Public Health, the Firearm and Injury Center at the University of Pennsylvania, the Violence Prevention Research Program at the University of California, Davis, the Project Safe Neighborhoods (PSN) studies at Michigan State University and many others.

As first responders and investigators of gun violence, law enforcement executives and their agencies possess a uniquely informed perspective on the ways in which gun violence affects communities. They must work with others to get that message across.

By partnering with other sectors and spearheading public and policy maker education efforts, law enforcement executives and their officers can ensure that the community and policy makers have an accurate understanding not only of the causes, costs, risks, and effects of gun violence, but also an accurate understanding of the role law enforcement plays in combating it. Furthermore, such campaigns will help community members and policy makers understand the role that they too must play if we are to turn the tide on gun violence.

Law enforcement executives and their officers should continue to make public appearances and participate in gun violence workshops at community councils, churches, businesses, schools, after-school programs and neighborhood gatherings. Where possible, they should testify at local, state and national legislative hearings on gun violence prevention legislation. They should invest in outreach efforts through public service announcements, mail campaigns, educational literature, billboard advertisements, press releases, newspaper and magazine articles and crime prevention toolkits. The more diverse the outreach efforts, the more community members and policy makers it will be possible to educate.

A campaign that presents gun violence as a national crisis and a major public health concern also must confront the seeming acceptance of gun violence as a normal part of life in the United States. Therefore, law enforcement also should look for ways to partner with the entertainment and news media to inform the public of the devastating consequences of gun violence and possible strategies to prevent it.

## **2. Law enforcement agencies and their partners should work to identify and implement effective education and prevention programs focused on youth at risk of gun violence.**

Research shows significant overlap between youth at risk of being perpetrators, and those who become victims of gun violence. Broad-based partnerships with the public health, medical, faith, education, community groups, social service community and philanthropic sectors should work to establish gun violence prevention programs in a wide range of settings where young people gather.

Gun violence prevention should be included as a part of the regular health education curriculum, added to existing drug and gang prevention programs, and incorporated into after-school and out-of-school programs, faith-based programs and youth leadership development initiatives.

A particularly determined effort should be made to reach youth already engaged in criminal activity, because research shows they are at greater risk of engaging in gun violence than their non-criminally involved peers. To reach young people already involved in the criminal justice system, the partnerships described above should work with corrections officials to ensure that education on preventing gun violence is a mandatory part of juvenile detention and diversion programs.

## **3. Law enforcement agencies and their partners should work to develop and implement education campaigns targeted at gun owners.**

The 2006 General Social Survey, conducted by the National Opinion Research Center at the University of Chicago, found that 35 percent of the nation's households and 21 percent of individuals reported owning at least one firearm. This is a decline from a few decades ago, when the rates were around 50 percent and 30 percent respectively. However, the United States still has rates of household firearm ownership that are considerably higher than rates in any other high-income country.

Research summarized in *Private Guns, Public Health* has demonstrated that gun owners are disproportionately at risk for gun injuries and gun suicide. Other research, including a 2003 study by economists at Duke University and Georgetown University, published by the Brookings Institution, effectively disputes the argument that gun ownership deters crime.



Law enforcement agencies and the public health, medical and philanthropic sectors should work together to identify, develop and promote public education materials that explain to gun owners and potential purchasers the known risks of gun ownership. Every community member should hear about the risks before purchasing a gun; if they proceed with the purchase, that information should help shape their determination to follow best practices on safe storage and gun access to reduce the risks.

## ENGAGE COMMUNITY SUPPORT IN REDUCING GUN VIOLENCE

Beyond taking steps to protect themselves and their families, the public also needs to work to prevent gun violence on a broader scale. They must do so both by working with law enforcement and by demanding stronger public policies to reduce the threat.

Public support means more than passive acceptance of law enforcement's presence in the community. The public must become an active partner with law enforcement officers to secure the safety of their communities and make sure that public officials hear and respond to their concerns.

### **4. Law enforcement leaders should devote resources and personnel to establishing and sustaining partnerships with community leaders to combat gun violence.**

Community partnerships are the key to many aspects of successful policing. These partnerships foster a greater understanding of the roles that community members and law enforcement each play in preventing and solving crime. Regular communication and sustained partnerships with community members provide the support law enforcement officers need to combat gun violence, and can also help develop information that can be critical in solving, or preventing violent incidents.

Law enforcement executives should make community relations officers, line officers and staff members available to the public through hotline calls, interactions with community groups or beat patrols and other street level communications.

In addition, the IACP and other law enforcement leadership organizations should work with the philanthropic sector to identify and promote successful law enforcement/community partnership models in the Great Lakes region and across the nation. Successful models should be shared with local agencies through law enforcement leadership websites, publications and conferences.

### **5. Congress should restore funding for Community Oriented Policing Service (COPS) to strengthen community/police partnerships for combating gun violence.**

Putting more police officers in our communities is one of the most cost-effective ways to reduce crime. Repeated funding cuts, however, have undermined the power of a federally funded program, Community Oriented Policing Service (COPS), to ensure that law enforcement officers become intimately familiar with their communities and build relationships with people who live there.

Between 1995 and 1999, COPS provided nearly \$1 billion annually in hiring grants to state and local police. In 2000, its peak year, the program funded approximately 17,000 additional sworn officers across the country. This period also witnessed a dramatic drop in the nation's homicide rate. Research recently published by the Brookings Institution indicates that the COPS program played a role in that decrease; the researchers called COPS "one of the most cost-effective options available for fighting crime."

In 2001, the COPS program and many other law enforcement assistance grants suffered significant budget reductions. This was both unfortunate and shortsighted, because these programs have consistently

demonstrated that they provide critical resources to state, local and tribal law enforcement communities. By reducing, and in some cases eliminating, funding for these successful programs, Congress and the Administration have significantly reduced the ability of law enforcement agencies to combat both crime and terrorism. The result is that police departments throughout the nation have far fewer officers and resources today than they did in 1990s.

Despite the best efforts of our nation's law enforcement officers, the disturbing truth is that each year in the United States, well over a million of our fellow citizens are victims of violent crime. The rate of such crimes has increased steadily over the last two years. According to the FBI Uniform Crime Report, violent crime rose at a rate of 2.5 percent during 2005. To put that statistic in perspective, the increase represents an additional 31,479 victims. Unfortunately, this increase in the crime rate appears to be accelerating. It seems to be no coincidence that it comes at a time of severe cuts in resources and funding.

Specifically, funding for COPS dropped to \$541 million in 2007, from \$756 million in 2004. In 2008, a scant \$32 million is budgeted for COPS—a reduction of 94 percent. IACP, in its Law Enforcement Agenda for the 110th Congress, expressed great concern over these severe cuts to programs that create safer neighborhoods. Summit participants echoed this concern and demanded that Congress fully fund the COPS program at \$1.05 billion.

## REDUCE EASY ACCESS TO GUNS

Research at the Harvard School of Public Health, the Firearm Injury Center at Penn, and other leading research centers makes clear that the wide availability of guns is correlated with the high levels of lethal violence that distinguish the United States from other high income nations.

Similarly, regions of the United States with higher gun availability have higher firearm homicide and suicide rates, as well as higher *overall* homicide and suicide rates. Children in those states with higher gun ownership are about twice as likely to be victims of homicide and suicide as their peers in states with fewer guns.

In part because guns are so effective at ending life compared to other common suicide methods, research consistently shows that the presence of a gun in the home substantially increases the risk of suicide, especially among youth. Reducing easy access to guns is one important way to keep communities safe.

### **6. IACP should develop a best practices protocol for voluntary gun surrender programs.**

People who wish to dispose of firearms should have a clear, consistent and convenient process for doing so. When possible, voluntary firearm surrender programs should be implemented by state, local and tribal law enforcement agencies within their jurisdictions. In conjunction with its members, IACP should survey the field for best practices and programs for other agencies to implement in their jurisdictions.

### **7. Law enforcement executives should develop and implement policies to ensure the secure storage of guns temporarily in the department's possession. Procedures including a criminal background check for returning firearms and for third party transfers should also be implemented.**

Gun surrender programs require a system for securely storing and managing confiscated firearms. Law enforcement executives should design and implement clear and enforceable agency policies for storage of confiscated or surrendered weapons.

Agencies should also require a criminal background check be conducted prior to returning any firearms to their owners or allowing any third-party transfers. All third parties should be informed by law enforcement of the legal consequences of allowing a prohibited party access to the firearm.



**8. Law enforcement agencies should mandate destruction of all firearms that come into their possession once any law enforcement use for them is completed.**

Law enforcement is in the unique position of acquiring tens of thousands of firearms a year either through confiscation, recovery or surrender. These weapons should be destroyed, in keeping with IACP's *Mandatory Destruction of Firearms* resolution.

The resolution calls for all law enforcement agencies to adopt a mandatory destruction policy, which includes surrendered guns as well as agency-issued service weapons. Once a gun has become clear of evidentiary and court procedures it should be destroyed. This action helps to keep officers and residents alike safe from re-circulated weapons.

**9. Congress, as well as state, local and tribal governments, should enact laws requiring that all gun sales and transfers proceed through a Federal Firearms License (FFL), thus ensuring that a mandatory background check will be conducted on the transferee.**

The federal Gun Control Act of 1968 stipulates that individuals “engaged in the business” of selling firearms must possess a Federal Firearms License (FFL). Holders of FFLs are required to conduct background checks and maintain a record of all their firearm sales. Certain gun sales and transfers between private individuals, however, are exempt from this requirement. This unregulated secondary market includes private sales, classified ads, flea markets, Internet sales and gun shows. Approximately 40 percent of all gun transfers currently fall into these categories.

Those who would fail a background check can access firearms through these sources. As a result, guns are far too easily acquired by prohibited possessors, and too often end up being used in gun crime and gun violence. Guns that are not sold or transferred through FFLs become more difficult to trace if lost, stolen or criminally misused, making crimes involving them more difficult to solve. These private sales and transfers also contribute to illegal gun trafficking because, unlike an FFL, the seller is not required to conduct a background check to determine whether the purchaser is prohibited from purchasing and possessing a gun.

Federal, state, local and tribal laws should be enacted to close these loopholes. If all gun sales proceed through an FFL, a single, consistent system for conducting gun sales, including background checks, will be established. In addition, the requirement that FFLs keep a record of gun sales would allow law enforcement to trace the gun to the last point of sale should it be criminally misused, lost or stolen.

**10. State and/or local governments should license all gun dealers.**

While all guns sales and transfers should be conducted through FFLs, state and local governments should also impose their own licensing requirements on gun dealers.

State and local requirements can respond to specific community concerns regarding gun commerce. State and local review of licenses would bring additional resources to identify and stop corrupt gun dealers. State-level regulations might include, for example, requiring background checks on all gun dealer employees, enhancing record keeping regarding gun sales within their jurisdictions, or heightening other security measures, including requiring that FFLs secure their inventory.

**11. State and local governments should regulate and/or limit the sale of multiple handguns as a measure to reduce gun trafficking.**

While federal law requires that gun dealers report to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) if multiple handgun sales are made to a single individual within a five-day period, state and local governments may impose restrictions of their own. Such restrictions would enhance public safety by guaranteeing that certain precautions, including the notification of state and local law enforcement agencies, are in place. Examples of current restrictions include laws in California, Maryland and Virginia limiting handgun sales to one per month.

## **12. State and local governments should mandate that a ballistic fingerprint is recorded for every gun sold.**

The distinctive markings left on projectiles and cartridge casings whenever a gun is fired comprise a ballistic fingerprint. Each gun produces a unique and unvarying ballistic fingerprint that becomes invaluable to law enforcement investigators should gun violence occur.

Ballistic fingerprints can prove that multiple crimes were committed by the same gun, and investigators can then trace those crimes to the exact gun used by determining to whom it was sold and when. These leads can potentially determine the identity of the shooter by allowing law enforcement officials to follow the “tale of the gun.” Recording the ballistic fingerprint of every gun sold could enhance public safety and curtail gun violence.

# PROTECTING CHILDREN AND YOUTH FROM GUN VIOLENCE

From 2000-2004 in the United States, more than four children (aged 0-14) were murdered with a gun in an average week, and another three were unintentionally killed or committed suicide with a firearm. A CDC study of the 1990’s put the U.S. firearm homicide rate for children at 16 times that of other developed countries.

Once children reach adolescence (aged 15-19), the death rates from firearms skyrocket. From 2000-2004, an average of 30 American adolescents were murdered with a gun each week, and another 15 committed suicide with a firearm. An average week saw 48 adolescents die from firearm wounds. (Statistics from the Harvard School of Public Health.)

The African-American community has seen the greatest toll on its youth. Young African-American males are killed by guns at a much higher rate than any other segment of the U.S. population, according to *Black Homicide Victimization in the United States* (Violence Policy Center, 2007).

Such events end young lives and devastate families. They also traumatize children who lose friends and classmates, and leave parents and communities unable to offer children the most basic assurance of safety.

A May 2007 investigation by the *Chicago Tribune* reported that 27 Chicago Public School students were murdered during the 2006-2007 school year, most of them by firearms. After one student (the son of a police officer and a firefighter) was shot on a city bus coming home from school, Chicago School Superintendent Arne Duncan reacted angrily to a remark that the student was in the wrong place at the wrong time. “He was in exactly the right place, on the bus, coming home from school!,” Duncan said. “How can he not be safe there?”

Shootings on school grounds, while rare, are extremely disturbing. Nearly a decade after Columbine, we are still seeing deadly gun violence in our schools, including the shootings in the Amish school house, tribal school shootings in the Red Lakes area, and other tragedies.

Clearly, protecting young children from guns and addressing problems of youth violence must be major concerns for law enforcement, elected officials and communities across the country. In addition to the recommendations here, several recommendations in previous sections can also help reduce the risks to children and young people.

## **13. State, local and tribal governments should mandate that every gun sold comes with a lock or security device that meets minimum safety standards to help protect against accidental discharge and misuse.**

As previously cited research shows, and as the American Academy of Pediatrics advocates, the safest home for a child is one without a firearm. However, many parents choose to own firearms and keep them in the home for a variety of reasons. Thousands of people, including many young children, are killed or injured every year

by firearms that are left unsecured. Furthermore, millions of firearms are in the FBI stolen gun database, and many more firearms stolen every year are added to the file; many of these firearms are used in the commission of other crimes.

To protect against the criminal or accidental misuse of guns, every gun sold should come with an effective security device and educational information on safe storage of that gun.

**14. State, local and tribal governments should mandate safe storage of guns, provide voluntary off-site storage facilities, and prosecute those who fail to comply with safe storage laws.**

Recent studies reveal that many gun owners knowingly store their guns loaded and unlocked. Others in these households—primarily partners and mothers—may not know this. These families may not realize that their own households are at risk as a result of improper gun storage.

Safe gun storage should be a societal and legal imperative. Firearms owners should secure their firearms to help deter misuse and theft by using devices like safes, trigger locks and monitored alarm systems. Elected officials should mandate safe storage of guns and impose criminal penalties when individuals fail to comply and when improperly stored guns are criminally misused or result in accidental death or injury. State and local jurisdictions should develop voluntary off-site gun storage facilities to help gun owners reduce the risks to their families.

Professional law enforcement and philanthropic organizations should work with public health officials and medical personnel to identify, develop and promote public education materials on safe gun storage that law enforcement may use to educate gun owners within their communities.

## REMOVE GUNS FROM DOMESTIC VIOLENCE SITUATIONS

While all incidents of gun violence are unacceptable, incidents of domestic violence are particularly troubling.

Every year, more than 600,000 individuals are the victims of intimate partner violence; between three and ten million children witness some form of domestic abuse. Roughly 1,600 people—mostly women—die as a result of intimate partner violence each year. Over half of these deaths are firearm related.

New research seems to suggest that firearms are used by many domestic violence offenders to intimidate their victims. Threats during arguments include pointing the gun at the victim, cleaning it, shooting it outside or threatening to kill oneself, according to a 2004 study by the Harvard School of Public Health. Six percent of women in the United States report having been threatened with a gun; most of these threats were by intimate partners, according to a 1998 Department of Justice study.

Many of these occurrences might be prevented if strong state and federal laws were enacted and enforced prohibiting individuals with a history of domestic violence from possessing guns.

**15. All states should have laws that reinforce the federal laws prohibiting domestic violence misdemeanants and the subjects of domestic violence protection orders from purchasing or possessing firearms. The state laws should mandate that law enforcement remove all firearms and ammunition when responding to domestic violence incidents and when serving a domestic violence protective order. These important state and federal laws should be vigorously enforced by judges and law enforcement.**

A study conducted by Iowans for the Prevention of Gun Violence in 2005 revealed that of the domestic violence protective orders issued in Iowa district courts, only one in four prohibited the defendant from possessing a

firearm. Anecdotal evidence indicates that Iowa is not unique in its failure to consistently enforce state and federal laws to protect victims of domestic violence from firearm violence.

State, local and tribal laws should be enacted to authorize law enforcement officers to remove all guns and ammunition from the scene of a domestic violence incident and at the time a domestic violence protective order is served. Judges should be required by law to order the removal of all guns and ammunition from domestic violence misdemeanants and the subjects of domestic violence protection orders. These laws must be vigorously enforced. First responders should be required (and trained) to ask victims and batterers about the presence of firearms in the home.

State laws should also mandate that judges ensure that defendants have complied with these orders by holding subsequent status hearings to determine whether all firearms have been surrendered or seized. In any instance of failure to comply, judges should then—as directed by state law—issue a warrant for law enforcement to seize all firearms and ammunition from individuals under domestic violence protection orders or convicted of domestic violence misdemeanors.

Finally, every state should maintain records of these actions so that courts, judges and law enforcement agencies may monitor compliance.

## PROHIBIT GUN POSSESSION BY AT-RISK INDIVIDUALS

In addition to people in situations of domestic violence, other classes of people are at special risk of using firearms in violent ways. These include people with certain kinds of qualifying mental health adjudications and commitments, people with a history of drug abuse and people who have been convicted of misdemeanors involving violence.

Strong laws and policies, along with vigorous enforcement efforts, are needed to keep guns away from those deemed ineligible to possess or purchase firearms.

**16. Federal, state, local and tribal governments should enact laws prohibiting persons with misdemeanor convictions involving violence, qualifying mental health adjudications and commitments, or a history of domestic violence and/or drug abuse from purchasing, possessing and transporting any guns or ammunition. These laws should be consistently and vigorously enforced.**

The federal government has laws, as do many states, prohibiting firearm purchase or possession by individuals at particular risk for committing firearm violence against others or themselves. Several states, however, have few or no such laws in addition to federal standards. State and local governments should review the laws they currently have on the books to see if stronger laws are needed.

To close the gap between policy and practice, federal, state, local and tribal governments in partnership with relevant law enforcement agencies, judicial bodies and prosecutors should establish and implement clear protocols regarding enforcement of these laws. Especially important are cross-jurisdictional collaboration, regular information sharing and cross-jurisdictional training. The roles of judges, prosecutors and law enforcement at different levels regarding enforcement of firearm prohibitions should be clearly defined.

**17. Law enforcement executives should create policies and protocols on the appropriate removal and seizure of firearms from prohibited persons and ensure that necessary training is provided.**

To ensure that their officers remove all guns from individuals prohibited from possessing them, law enforcement executives must establish policies and procedures governing the appropriate seizure of firearms and ensure

that all officers receive training to implement them. Law enforcement executives must ensure that their officers act to the full extent of the law to remove guns from individuals prohibited from possessing them.

## FOCUS ON SUICIDE PREVENTION

According to figures from the federal Centers for Disease Control and Prevention (CDC), on an average day approximately 50 people in the United States kill themselves with a firearm. More people commit suicide by guns than by all other methods combined; guns are the most lethal means among common suicide methods.

Many suicides are impulsive acts, a response to a real but temporary crisis. This is particularly true among young people. According to data from the CDC's National Violent Death Reporting System (NVDRS), the interval from suicidal intent to attempt among young people is frequently less than one hour. Such patterns suggest that reducing access to firearms is an especially promising strategy for preventing suicide. Studies consistently show that firearms in the home are associated with increased risk of suicide.

**18. The CDC should work with law enforcement executives to standardize investigations into all violent deaths, including suicide, to improve the quality and comprehensiveness of National Violent Death Reporting System (NVDRS) data.**

NVDRS is a database covering every homicide, suicide and suspicious injury death that occurs in participating states. Its purpose is to assist local and national prevention efforts by providing detailed data on precipitating circumstances, victim and offender demographics, toxicological results and weapon information.

Law enforcement supplies vital data to the system, and not only in the area of homicide. With the exception of a few large urban police departments, most local agencies will respond to far more suicides than homicides. Many of the questions that the responding officer asks to establish whether a death was a suicide—e.g., whether the deceased had disclosed suicidal intent, left a note, previously attempted suicide, was in treatment for a substance abuse or mental illness or was experiencing a problem, such as a divorce or arrest—could provide critical information that suicide prevention groups need to better plan and evaluate their prevention strategies.

In order to prevent suicide, including firearm suicide, it is important to improve the quality and comprehensiveness of the NVDRS. The CDC should work with law enforcement executives to (1) improve the flow of data from local law enforcement to state NVDRS offices, and (2) standardize the information documented in death investigation summaries, particularly for suicides, where police may be unaware of the importance of the information they provide.

**19. The philanthropic and public sectors should support the development, distribution and evaluation of curricula for healthcare providers, law enforcement and mental health providers regarding their role in reducing suicidal individuals' access to firearms.**

Surveys of patients and providers have indicated that many medical and mental health providers do not ask suicidal patients or their families about access to firearms at home and are not comfortable counseling families on the best methods to secure weapons or temporarily or permanently dispose of them. Many police departments do not have policies for responding to families' requests to temporarily remove or permanently dispose of firearms, and they may be unfamiliar with provisions of state and federal laws that prohibit suicidal individuals or mentally ill persons with certain mental health commitments and adjudications from obtaining or possessing a gun.

Selected jurisdictions have begun developing training in this area. The philanthropic and public sector should support efforts to develop and evaluate these programs, and, if they prove useful, to disseminate information broadly.

**20. The IACP should develop a set of recommended best practices for preventing suicide by law enforcement officers.**

Of particular concern to the IACP and law enforcement executives is the problem of police officer suicide.

Persons working in law enforcement have stressful jobs, encounter dangerous situations, and routinely deal with trauma. This stress can be exacerbated by a police culture that tells officers to “be strong” and keep feelings “inside.” Alcohol and drug abuse can add to the risk. The scarce data that is available shows that police officers are at the same or even higher risk than the general population of committing suicide. Because law enforcement officials have ready access to firearms, tragic situations occur much more often than they should. Evidence offers that police officers stand a greater chance of being killed by their own hand than by someone else.

The IACP is developing a project that will result in recommendations for suicide prevention for law enforcement agencies. These will serve to reduce the tragedy of suicide among police officers by surveying the field for best practices regarding the prevention and response to police officer suicide, encouraging sound research on the issue and working to turn around a culture that has not successfully addressed prevention and stressed that suicide is not the only way out.

Police officers need assurance that if they do come forward with thoughts of suicide or patterns of depression, they will not be looked upon as weak, but will instead be given the assistance they need.

# PREVENTING AND SOLVING GUN CRIME



The previous section detailed strategies for making it less likely that firearms turn everyday life situations into tragedy through suicide, domestic violence or the use of firearms by people who are mentally ill, using drugs or otherwise prone to violence.

This section concentrates on patterns of illegal gun distribution and criminal gun use.

## STOPPING THE FLOW OF ILLEGAL GUNS

To help prevent gun crime, keeping guns out of the hands of gangs and criminals is a critical imperative. Illegal gun trafficking is a serious problem, one that law enforcement agencies cannot combat on their own. Partnerships across jurisdictional and professional lines—ATF, judges, prosecutors, government officials and researchers, in collaboration with law enforcement are necessary to facilitate information sharing and to discover illegal gun trafficking patterns.

**21. Congress should restore funding for the Byrne Justice Assistance Grant Program for state, local and tribal agencies to investigate and prosecute cases of gun trafficking and gun violence.**

The federal Byrne grants were created two decades ago, originally to assist with drug enforcement, prosecution, and training. More recently, the scope of the program has been expanded to include gangs, guns, and gun trafficking. In 2004, Byrne Justice Assistance Grant Program (Byrne-JAG) grants allowed law enforcement at the state and local level to seize more than 54,000 weapons, thus reducing the impact of firearms traffickers.

Despite this expanded mandate, Byrne-JAG funding has decreased dramatically over the last several years, from \$884 million in 2004 to \$525 million in 2007, and it is currently targeted for elimination in FY 2008. Although the administration has proposed replacing Byrne-JAG funding through monies channeled through new law enforcement programs, the proposed levels of funding for these alternate programs are far below the FY 2007 levels.

Restoring Byrne grants to \$900 million in FY2008—the FY2000 level—and increasing FY2009 funding to \$1.1 billion would enable state and local law enforcement agencies to more effectively investigate and prosecute incidents of firearms violence and trafficking.

**22. The federal government should increase funding to ATF for personnel and technical assistance to combat gun violence.**

A demand for funding to combat gun violence cannot stop with the programs that direct funding specifically toward state, local and tribal law enforcement agencies. There must also be an increase in funding for the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Efforts to combat gun violence must proceed through partnerships in order to succeed. Increased funding for ATF personnel and technical assistance acknowledges the critical importance of partnerships between state, local and tribal law enforcement agencies and their federal counterparts, and would enhance collaborative investigations and prosecutions of incidents of gun violence and gun trafficking.

In addition, according to a Department of Justice Inspector General's report, ATF is "currently unable to even begin" to meet its own target schedule for inspecting federally licensed firearms dealers. At the current inspection rate, it would take 22 years to inspect all dealers. ATF needs additional resources to do its job.

### **23. Law enforcement agencies should increase investments in technologies and strategies that facilitate intelligence-led investigations.**

While agencies see a vast majority of their funds going to personnel support, it is imperative that investments be made to acquire technologies that advance intelligence-led investigations, and that all agency employees, civilian, patrol, lab technicians, investigators and commanders are trained to use all resources at their disposal.

An in-depth, productive investigation begins when information is gathered at the initial reporting of a crime or crime scene. Protocols should be in place to establish a clear chain of command and identify agency personnel tasked with clearing the scene, collecting evidence, gathering suspect and witness information and identifying any patterns involving serial crimes.

Follow-up to initial reports and crime scenes should include all technology at an agency's disposal. If an agency does not have the resources to conduct a thorough investigation, other agencies can help move investigations forward. Investigators should use information databases such as the National Crime Information Center (NCIC), ATF's National Tracing Center (NTC), the National Integrated Ballistics Information Network/Integrated Ballistics Information System (NIBIN/IBIS), and any "rapid start" programs that alert surrounding jurisdictions of serious crimes that might have multi-jurisdictional implications.

The use of reporting and data systems such as CompStat, GIS mapping and monthly inter- and intra-agency reports will help investigators close unwanted gaps in cases and gain further intelligence. The use of Shot Spotter, in-car cameras and computers, as well as GPS systems will increase officer safety as well as productivity.

### **24. Congress should repeal the Tiahrt Amendment, which restricts the sharing of gun trace data.**

The Tiahrt Amendment is contained in the federal legislation making appropriations for ATF. This is a provision that restricts the release of most information about guns traced to crime scenes contained in the agency's Firearms Tracing System database.

For many years, crime gun tracing data was made publicly available under the provisions of the Freedom of Information Act (FOIA). The information was routinely used by city officials and law enforcement agencies to identify patterns that help to determine the patterns and sources of illegally trafficked firearms and the types of guns most often traced to crime. Since 2004, the Tiahrt Amendment has prohibited ATF from releasing any data contained in the database, except on a case-by-case basis, to individual law enforcement agencies.

Proponents of the restrictions claim that the release of tracing data could interfere with ongoing law enforcement investigations. However, prior to implementation of the Tiahrt Amendment, exemptions to the FOIA enabled ATF to withhold any information that could interfere with law enforcement investigations. The FOIA explicitly protects from disclosure any information that could reasonably be expected to interfere with enforcement proceedings or disclose the identity of a confidential source, or that could reasonably be expected to endanger the life or physical safety of any individual.

The restrictions imposed by the Tiahrt Amendment should be repealed and the data contained in the Firearms Tracing System database should be released under the FOIA. The Tiahrt Amendment's restriction on the release of crime gun trace data serves only to withhold information that was historically available to law enforcement, policymakers, and the public under the FOIA.

These restrictions also appear to severely limit the ability of local law enforcement agencies to conduct critical investigations designed to identify and apprehend corrupt firearms dealers and the traffickers they supply. Law enforcement should work with policy makers and ATF to ensure they have access to the data they need to prevent, interdict and investigate gun crime.



**25. State and local governments should mandate the reporting of lost and stolen firearms, and federal law in this area should be tightened.**

The federal government has already taken steps to protect citizens against the criminal misuse of lost and stolen guns. As of 1994, federal law requires FFLs to report their lost and stolen guns to ATF and local law enforcement within 48 hours of discovering that the gun is missing. This law should be strengthened to ensure that dealers keep track of their inventories by requiring them to report missing firearms within 48 hours after they know or should know that the gun is missing.

As a result of current federal policy, and in particular the work of ATF's Stolen Firearms Program at the National Tracing Center, many stolen guns have been recovered and instances of gun violence averted.

Every state and local government should mandate that gun owners report lost and stolen guns. Stolen guns represent a major risk to the community at large, because they have, by definition, entered criminal hands. Ensuring law enforcement's early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence.

## INCREASE RESOURCES FOR INFORMATION SHARING BETWEEN JURISDICTIONS

**26. Congress should fully fund the National Violent Death Reporting System, and it should be implemented in all 50 states.**

In 2002, the Centers for Disease Control and Prevention established the National Violent Death Reporting System (NVDRS). NVDRS calls upon law enforcement agencies, coroners and medical examiners, along with other involved parties, to deliver a detailed report on the circumstances surrounding every violent death. Such information helps in a wide variety of violence prevention activities. Implementing NVDRS in all 50 states would cost an estimated \$20 million annually, a relatively small sum for such an important violence prevention tool.

Utilizing NVDRS can help reduce violence. Providing information such as whether drugs or alcohol were involved in an incident, the type of weapon used, the location of the incident, the age and demographics of the victim and perpetrator, and the circumstances preceding the incident helps law enforcement and other public safety officials better understand the patterns underlying violent deaths and improve violence prevention efforts. For example, the New Jersey Violent Death Reporting System has made it possible to identify patterns of gang homicide and develop strategies for addressing it.

Although only 17 states currently participate in NVDRS, the benefits that these states realize from this relatively low-cost program are substantial. Federal funding should be made available to implement NVDRS in every state.

**27. Congress should fund the National Integrated Ballistic Information Network (NIBIN) and law enforcement agencies should use it consistently; it should also be funded to become integrated nation-wide.**

Because each gun makes its own entirely distinct and unique markings on fired bullets and cartridge cases, these markings positively identify the gun involved in any particular crime.

Through NIBIN and in coordination with ATF, state, local and tribal law enforcement agencies can enter the fired bullets and cartridge cases recovered from crime scenes into the Integrated Ballistics Information System (IBIS) database to determine whether the ballistic evidence from that particular crime gun matches the evidence from any other crime scene. Matching ballistic evidence across crimes allows law enforcement to identify patterns of crime gun use, solve gun crimes (including crimes that have remained unsolved over several years) and disrupt illegal gun trafficking.

NIBIN enables law enforcement to combat crimes—including gang crimes—where frequent incidents of gun violence may be conclusively linked and establish a case for prosecution. Ideally, NIBIN allows law enforcement to follow guns wherever the guns themselves are used and to connect crimes that might have never been connected, whether because of geography, jurisdictions with their own separate intelligence databases or other factors.

It is recommended that all law enforcement agencies partner with ATF to ensure that a robust forensic database is built and continuously maintained. In calling for the full funding, implementation and national integration of NIBIN and its use by law enforcement executives, summit participants echoed the IACP's 2006 resolution of "Support for the Department of Justice National Integrated Ballistics Information Network (NIBIN) Program."

**28. Law enforcement leaders should provide, and public and private funding should support, training for law enforcement agencies to use the necessary tools to investigate, share information about, and prosecute incidents of gun violence and illegal gun trafficking.**

Training on gun crime is crucial for all agencies, large or small, urban or rural. From the point that a gun is diverted out of legal commerce to the point of a crime and arrest, there are many prevention, intervention and enforcement techniques that officers must know.

Once an arrest has been made, it is crucial that law enforcement be trained to solidly document cases for state and federal prosecution, work in partnership with prosecutors, and learn the most effective techniques of interviewing and testifying in court.

Officers and investigators should also know how to best utilize resources such as ATF's National Tracing Center, the National Integrated Ballistics Information Network/Integrated Ballistics Information System (NIBIN/IBIS), and National Crime Information Center (NCIC). Many officers are not aware of the vast amount of information that can be gleaned from trace and ballistic reports, as well as by sharing information across jurisdictions.

Once an arrest has been made and a case has gone through the court system, it is also imperative that law enforcement agencies partner with probation and parole departments to prevent and or reduce recidivism to reduce further incidents of gun violence, which runs as high as two-thirds in some jurisdictions.

The IACP, through grant funding, has long provided no-cost training to law enforcement executives, investigators, and patrol officers in many issues surrounding violent crime, technology and partnerships. Using face-to-face learning, online resources, up-to-date publications and roll-call CD-Rom's, law enforcement can remain educated and focused on the goal of preventing and punishing crimes involving guns.

The federal government and the philanthropic community must continue to invest the necessary resources to provide agencies with the most up-to-date training possible.

**29. State, local and tribal agencies should forge partnerships with federal law enforcement, the U.S. Attorney's Office, researchers, and other relevant organizations and individuals to investigate and prosecute incidents of gun violence and patterns of illegal gun trafficking.**

Law enforcement executives and their agencies will be more successful in preventing gun violence and illegal gun trafficking if they coordinate and share resources with other criminal justice agencies. Establishing partnerships to share information across jurisdictional and professional divides can lead to the discovery of patterns of illegal gun use and gun trafficking. Law enforcement executives must ensure that their agencies are ready to play their part in the process.

While "following the gun" may begin with law enforcement efforts to identify and trace a recovered crime gun, these efforts immediately demand that law enforcement officers move beyond their own agencies. ATF has taken the lead in collaborating with state, local and tribal agencies on gang violence and gun trafficking, and there are strong working partnerships in this area.

In “Following the Gun: Enforcing Federal Laws against Firearm Traffickers,” ATF estimates that a significant majority—68 percent—of their investigations involve local and state law enforcement agencies. A “close working relationship,” their analysis suggests, “seems especially appropriate because 70 percent of the trafficking investigations involved intrastate trafficking and about 10 percent involved trafficking in firearms stolen from residences.”

ATF, with its Violent Crime Impact Teams (VCIT), makes use of local knowledge but with federal resources. VCIT allows ATF agents to partner with state, local and tribal law enforcement to combat violence in areas that see the highest rates of crime. ATF allows the local jurisdiction to guide where and how federal resources should be distributed to prevent and respond to violent gun and gang crime. These teams, in their first year, showed a significant impact: the 15 pilot sites of VCIT saw crime rates drop by as much as 17 percent in just six months.

Initiatives such as VCIT, Project Safe Neighborhoods, and the FBI’s Safe Streets Program all focus on partnerships between law enforcement at every level. These programs also stress the need to build solid cases once an arrest is made.

As cases develop in the courtroom, partnerships between law enforcement agencies, local and state prosecutors, and the US Attorney’s Office become critical. Because state and federal laws impose different punishments for gun crimes, prosecutorial partnerships across the state-federal divide are invaluable in determining whether to pursue local or federal prosecution for a particular incident or pattern of gun violence.

Information-sharing partnerships with academic researchers enable law enforcement agencies to discover and respond to overarching trends in illegal gun trafficking and gun violence. Compelling private-sector research can also be useful in demonstrating a need for greater resources for departments and agencies, or to establish how much impact a new initiative is having on reducing gun violence in an area.

Initiatives designed to combat gun violence depend on information sharing partnerships between law enforcement, prosecutors and academic researchers. For instance, Project Safe Neighborhoods identifies partnerships as an essential element of success in combating gun violence. PSN task forces involve state, local, tribal and federal law enforcement, the U.S. Attorney’s Office, academic researchers and community leaders. In forming and sustaining such partnerships, law enforcement agencies can contribute to broader preventive efforts.

Especially given limited resources, a multi-agency approach is the most effective and efficient means of investigating and prosecuting incidents of gun violence and patterns of illegal gun trafficking. Law enforcement executives and their agencies should take their own investment in such partnerships with seriousness and commitment.

## DEALING WITH GUN CRIME INCIDENTS

Despite law enforcement’s best efforts to reduce gun violence by the means outlined in the previous section, incidents of gun violence will inevitably occur. Law enforcement executives must make sure their officers have the specialized training necessary to effectively handle these incidents and their aftermath.

Every law enforcement officer should know how to effectively recover and process a gun from a crime scene. Every law enforcement officer should know how to interact with the individuals involved in gun violence. And every law enforcement agency should know what to do with the information their officers gather.

Law enforcement executives who establish standard operating protocols and train their officers in these protocols will ensure the most effective response both to individual incidents and to patterns of gun violence that disrupt our communities.

**30. Every law enforcement agency should use E-Trace, ensure that officers know how to properly recover and process crime guns and make sure that officers trace all firearms recovered.**

Handling a recovered gun is an exacting process. Officers must first guard their own safety by ensuring that the gun is unloaded, a potentially dangerous process in itself. Then they must generate a comprehensive description of the gun. This description should include serial number, manufacturer, type of firearm, caliber, model and any distinguishing features.

This description, entered into the National Crime Information Center (NCIC), may yield critical information including whether the gun has been reported lost or stolen or was used in a previous crime. Such information is invaluable to officers interacting with individuals at the scene of a crime, or investigating the crime long afterwards. Ensuring that officers are knowledgeable about NCIC and the way in which records must be submitted and received will ensure agency success in handling crime guns as tools for solving crimes.

The requirement, established by the Gun Control Act of 1968, that all guns manufactured or imported into the U.S. contain a serial number and the name, city and state of the gun's manufacturer assists law enforcement in tracing the gun's history. The accurate identification and tracing of recovered firearms is one of the most important steps in a criminal gun investigation. Tracing every recovered crime gun will eventually reveal previously unidentified persons or suspects, addresses and other critical associations.

Comprehensive tracing facilitates the development of a database that tracks each traced gun from manufacturer to the wholesaler and eventually to the FFL, who by law must identify the first known purchaser of that gun. In conjunction with ATF's Firearms Tracing System (FTS), which contains millions of records such as prior traces, lost or stolen guns, multiple handgun sales, and interstate firearms shipments, a trace can yield information that is critical in solving many crimes, such as firearms trafficking, straw purchases or an FFL who has falsified a sale or has failed to provide accurate information on purchasers, homicides and gang shootings.

When law enforcement recovers a gun with an obliterated serial number (which in itself is a crime that should result in arrest), it is quite likely that the serial number can be raised by a lab and the trace can still be completed. ATF and other agencies can provide critical information to help officers and lab technicians complete traces of guns with obliterated serial numbers. Agencies should also pay close attention to the number of guns recovered with obliterated serial numbers; this is one of the most telling signs that the gun in question has likely been trafficked.

Law enforcement executives should commit their agencies, through written policy, to tracing guns using the best means available, including E-Trace. Maintained by the National Tracing Center Division (NTC) of ATF, E-Trace allows law enforcement agencies to make trace requests and receive the results of those requests over the Internet. E-Trace, available only to accredited agencies, enables them to expedite traces, pursue multiple traces and review all trace results at once. It is imperative that agencies learn to trace all guns through NTC and also strive to become accredited to receive E-Trace.

**31. Law enforcement agencies should make sure that officers know how to debrief individuals involved in incidents of gun violence or arrested in possession of a gun.**

Expert debriefing of individuals involved in incidents of gun violence, or arrested in possession of a gun, is also critically important to solving crimes, revisiting unresolved crimes and preventing future crimes.

Such debriefing should involve questions about the crime, the role of guns and the role of the individual in relationship to the recovered gun. Questions about drug use, criminal convictions, domestic violence misdemeanors or restraining orders or the possession of ammunition may reveal whether the individual involved have committed firearm possession violations. Questions about gun sales, gun circulation and gun use may reveal how guns enter the community and help officers address local cycles of gun violence.

# KEEPING POLICE OFFICERS SAFE



Law enforcement officers on a daily basis respond to incidents of gun violence, confront individuals in criminal possession of guns and diffuse potentially violent situations. All of these situations have the potential to escalate and turn lethal if firearms are easily accessible.

Over one-third of law enforcement deaths that occur in the line of duty are the result of gunfire. For the first time in decades, more law enforcement officers are being feloniously killed with firearms than are being killed in car crashes. The National Law Enforcement Officers Memorial Fund (NLEOMF) and the Concerns of Police Survivors (COPS) report that the rate of officers killed in the first six months of 2007 skyrocketed by an astonishing 44 percent.

The entire law enforcement community is stricken over the sharp rise in gun-related deaths of police officers. The startling statistics make plain the need for more protection for our officers and more action from policy makers to keep them safe.

This section suggests steps to protect police officers operating on the front lines against gun violence.

## REDUCE THE AVAILABILITY AND LETHALITY OF FIREARMS TO CRIMINALS

### **32. Congress should enact legislation to allow federal health and safety oversight of the firearms industry.**

Unlike other consumer products, domestically manufactured firearms are not subject to any design standards to reduce risk to the user or protect the safety of the general public and those sworn to protect them. Moreover, unlike other consumer products, no federal agency is empowered to require a remedy in the case of a defectively designed or manufactured firearm.

The lack of health and safety oversight is particularly worrisome given the manufacture and sale of firearms that pose a unique threat to law enforcement and the general public, such as high-caliber handguns that can penetrate bullet-resistant vests, anti-personnel military-style assault weapons and .50 caliber sniper rifles that can penetrate armor plating from a mile away.

### **33. Congress should enact an effective ban on military-style assault weapons.**

A 2003 analysis of Federal Bureau of Investigation data found that at least 41 of the 211 law enforcement officers slain in the line of duty between January 1, 1998, and December 31, 2001, were killed with weapons that can be defined as or classified as assault weapons.

Anecdotal evidence from law enforcement leaders around the country suggests that military-style assault weapons are increasingly being used against law enforcement and by drug dealers and gang members; unfortunately, current restrictions on the release of ATF trace data make it impossible to know how often these firearms are being used in crimes.

Law enforcement officials, municipal officials and public health and safety officials should support and promote an effective ban on military-style assault weapons.

**34. Congress should enact an effective ban on .50 caliber sniper rifles.**

Accurate to over a mile, .50 caliber sniper rifles can penetrate armor plating and destroy aircraft, but are sold with fewer federal controls than a standard handgun. The Government Accountability Office has reported that .50 caliber sniper rifles have been found in the armories of drug dealers in California, Missouri and Indiana.

**35. Congress should enact an effective ban on armor-piercing handgun ammunition.**

There is no sporting or other purpose for armor-piercing handgun ammunition, other than overwhelming the protections available to police officers in the course of their work. Such ammunition simply should not be available for civilian use.

Current federal law does not define “armor-piercing” in the practical terms of a handgun round’s actual performance—i.e., whether it is capable of piercing ballistic armor—but in terms of content and weight. IACP should work with Congress to enact federal legislation that uses a penetration standard—gauging handgun ammunition’s actual ability to penetrate body armor—to effectively ban all handgun ammunition that is, in fact, armor piercing.

## PROVIDE OFFICERS WITH THE MOST ADVANCED FIREARM PROTECTIVE TECHNOLOGIES AND INFORMATION

**36. Local law enforcement agencies, policy makers and the federal government should increase investments in protective technologies that improve officer safety.**

Full funding for a wide range of protective technologies that improve officer safety should rank among law enforcement’s highest priorities in the fight against gun violence.

While some technologies are still in the development phase, many existing technologies would dramatically improve officer safety now. Body armor is a key example of available technology that should be widely deployed. Investments should also be made in technologies that improve individual officers’ ability to share information and to work as part of a seamless network, as described earlier.

# TRAIN OFFICERS TO BE EXPERTS IN HANDLING GUNS AND SITUATIONS INVOLVING GUNS

## **37. State, local and tribal law enforcement agencies should establish agency standards for law enforcement officer firearm certification.**

Each year, not including suicides, an average of 55 officers are killed by firearms, and many more are injured in the line of duty. This includes an overwhelming number who are killed with their own firearms by an assailant. Today, in 2007, the number of officers killed in the line of duty is at its highest point in decades. It is imperative to promote the highest level of firearms training and enforce firearm certification at the highest standard possible to protect officers and prevent the staggering human and financial costs that result when they are lost. Rigorous firearm certification standards would greatly reduce the number of incidents in which firearms are accidentally or inappropriately discharged.

Firearms expertise cannot be taught in a single class, in an hour at the range, or by watching an educational video. Training should focus on the many real-life situations that an officer may face. Important concepts to include are night shooting, combat situations, active shooter situations and simulations of other specific scenarios that allow officers to learn in a controlled environment about behaviors that can be deadly on the street.

Every officer should be able to demonstrate proficiency in the proper use of firearms in the various situations in which they may find themselves. Similarly, every officer should demonstrate mastery of agency use-of-force policies and procedures.

Certification standards should ensure that every officer understands which firearms and ammunition are agency-authorized, how and when officers must and must not bear firearms, and how and where firearms may be safely stored. These standards should specify how the agency will respond should an officer fail to meet these demands.

Agencies should require on-going, in-service and supplemental training in gun safety and other firearms issues for all law enforcement officers.

In addition, states should establish their own independent standards for law enforcement officer firearm certification. By setting firearm proficiency standards, states acknowledge and reinforce the public's commitment to police officer safety.

Supporting professional organizations, including state associations of chiefs of police, should develop training tools on topics such as the prevalence of gun violence, safe gun storage and handling the emotional aftermath of encounters with gun violence. Such training tools should be produced in a variety of formats (web-based, CDs, brochures, etc). These materials should be used to supplement the physical training that officers receive throughout their career.

## **38. Local law enforcement agencies should continue to enhance and promote training in less lethal tactics and officer safety for all officers.**

Weapons expertise should include proficiency in the use of less lethal force options such as electronic control devices, impact systems (e.g., bean bags, rubber bullets) and chemical irritants (e.g., pepper sprays).

Departmental policies and procedures should emphasize an officer's need for restraint, without limiting their ability to protect themselves and others in the event a situation escalates. The practical application of these policies and procedures using simulations and/or role playing exercises further reinforces the learning experience and conditions officers to select the appropriate use of force for any given situation.

# PROVIDE ACCESS TO MENTAL HEALTH SUPPORT AND TRAINING

## **39. Local law enforcement agencies should require training for officers to reduce stress and post-incident trauma.**

Even with the best training, gun violence will claim officers' lives. Nationally, an average of 55 officers are slain by gunfire every year. Moreover, every year even more officers commit suicide; nearly all of these suicides involve the use of a firearm.

Every law enforcement officer is impacted by these realities and other job stresses, and entire departments feel the loss when a police officer dies.

Federal, state, local and tribal governments should provide adequate resources for support and training to help with mental health issues affecting officers and require training in emotional survival and suicide prevention for all officers. Every law enforcement executive should have a plan in place to respond to an officer's death or injury by gunfire.

Providing officers with mental health support, preparing them for the emotional costs of violent confrontations, and responding effectively when they happen will save officers' lives.



# APPENDIX A



## SUMMIT PLANNING & PROCEEDINGS

Since 1994, the IACP has hosted annual national policy summits focusing on critical issues confronting law enforcement agencies and the communities they serve. Each summit has brought together law enforcement executives, community leaders, policy experts, scholars and other stakeholders to share information, deliberate and discuss, and draft recommendations that form the basis of a national law enforcement policy on a select issue. In past years, this summit series has offered recommendations on the following issues:

1994	Violence in the United States
1995	Murder in America
1996	Youth Violence
1997	Family Violence: Breaking the Cycle for Children Who Witness
1998	Hate Crime in America
1999	What do Victims Want?: Effective Strategies to Achieve Justice for Victims of Crime
2000	Improving Safety in Indian Country
2001	Building Partnerships that Protect Our Children
2002	Criminal Intelligence Sharing: Overcoming Barriers to Enhance Domestic Security
2003	DNA Evidence: Enhancing Law Enforcement's Impact From Crime Scene to Courtroom and Beyond
2004	Building Private Security/Public Policing Partnerships to Prevent and Respond to Terrorism and Public Disorder
2005	National Leadership Summit
2006	Offender Re-Entry: Exploring the Leadership Opportunity for Law Enforcement Executives and their Agencies

The recommendations that emerged from these IACP national summits have been widely distributed to participants, law enforcement, the public and the media. The response has been very positive. In many instances, summit recommendations have served as a guide for program improvement in communities through the United States.

In 2007, the IACP departed from this national summit series model to collaborate with the Joyce Foundation on a regional summit, the Great Lakes States Summit on Gun Violence. This summit—like the ongoing IACP-Joyce Foundation collaboration on gun violence reduction from which it emerged—is the result of a shared concern regarding the recent increase in incidents of gun violence.

Although overall crime levels are at a historic low, gun crime itself is increasing. Nearly 30,000 individuals are killed by gun violence every year; an additional 65,000 individuals suffer non-fatal gun injuries; and a staggering 335,000 criminal misuses of guns occur every year. These levels of gun violence are simply unacceptable.

The IACP and the Joyce Foundation have long pursued independent efforts to combat gun violence. The IACP's interest is the natural result of its concern over the costs that such violence imposes on law enforcement officers across the nation. Every year, incidents of gun violence claim the lives of an average of 55 law enforcement officers acting in the line of duty; many others die by their own hand.

For decades, the IACP has issued resolutions that identify potential legislative solutions to these tragedies. The Joyce Foundation's commitment to reducing gun violence emerges out of its stated interest in enhancing the quality of life in the Great Lakes region. Since 1993, the Joyce Foundation has dedicated more than \$30 million in grants to organizations whose work contributes to the reduction of gun deaths and gun injuries.

The IACP and the Joyce Foundation jointly organized the 2007 Great Lakes States Summit on Gun Violence in the conviction that joining their efforts will enhance the ability of each to combat gun violence. The summit also called on the expertise of nearly 200 professionals, including law enforcement executives, criminal justice experts, public health officials, academic researchers, community leaders and elected officials to consider and confront all aspects of gun violence. Together, these experts called upon law enforcement executives to lead their agencies in the fight against gun violence.

Although the 2007 Great Lakes States Summit on Gun Violence embraced a regional focus, the IACP believes that the recommendations contained in this report have national implications. The impact of gun violence in the Great Lakes States mirrors that of gun violence in the nation at large; the recommendations address the concerns and challenges of law enforcement executives the nation over.

The value of these recommendations is the result, in large part, of the well-tested, deliberative process in which experts from various disciplines engaged during the summit itself. In this 2007 summit, participants were directed through the deliberative process by introductory remarks, keynote addresses, a panel presentation and a screening of the IACP/Joyce Foundation summit video on gun violence.

Introductory remarks were delivered by the president of the IACP; the president of the Joyce Foundation; the sheriff of Cook County, Illinois; the superintendent of the Chicago Police Department, and the mayor of Chicago. The keynote addresses, delivered by the president of the IACP and the acting director of ATF, both noted the disturbing upward trend in violent crime. The acting director of ATF argued that this trend necessitated the establishment of interagency partnerships to combat gun violence; the president of the IACP suggested that the trend made summit participants' efforts to craft realistic policy to reduce gun violence a law enforcement imperative.

The panel presentation—featuring a mayor, a public health researcher and an ATF special agent—addressed the barriers to common sense solutions to gun violence raised by America's distinctive gun culture. Finally, the IACP/Joyce Foundation summit video on gun violence demonstrated the terribly high costs that gun violence imposes on law enforcement officers through its examination of the experience of colleagues, families and friends of officers lost to gun violence in the line of duty.

Summit participants drew upon this information and their individual expertise as they separated into six working groups to discuss the challenges law enforcement executives and their agencies confront as they work to combat gun violence. These working groups dedicated the first day of the conference to sharing ideas, deliberating, and synthesizing differing viewpoints, then met the following morning in order to frame specific recommendations.

In a concluding plenary session, each working group presented its recommendations, thus offering all summit participants an opportunity to consider the emerging policy. This report was written on the basis of extensive documentation of the working group discussions. This documentation was taken by charts, laptop note-takers and facilitated, written recordings of group-driven agreements regarding final recommendations in their respective subject areas. Additionally, the final draft was reviewed by each of the 28 members of the Great Lakes States Summit Advisory Committee (see list at back of publication) to ensure its consistency with summit participant recommendations. The report reflects a thorough, genuine and energetic collaboration of experts and forms the basis of a national law enforcement agenda to combat the gun violence that cripples communities.

# APPENDIX B



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# **EXHIBIT PP**



## Crime Data Brief

November 2012

NCJ 239436

# Firearms Stolen during Household Burglaries and Other Property Crimes, 2005–2010

Lynn Langton, *BJS Statistician*

Victimizations involving the theft of firearms declined from 283,600 in 1994 to 145,300 in 2010 (**figure 1**). Overall, about 1.4 million guns, or an annual average of 232,400, were stolen during burglaries and other property crimes in the six-year period from 2005 through 2010. Of these stolen firearms, at least 80% (186,800) had not been recovered at the time of the National Crime Victimization Survey (NCVS) interview.

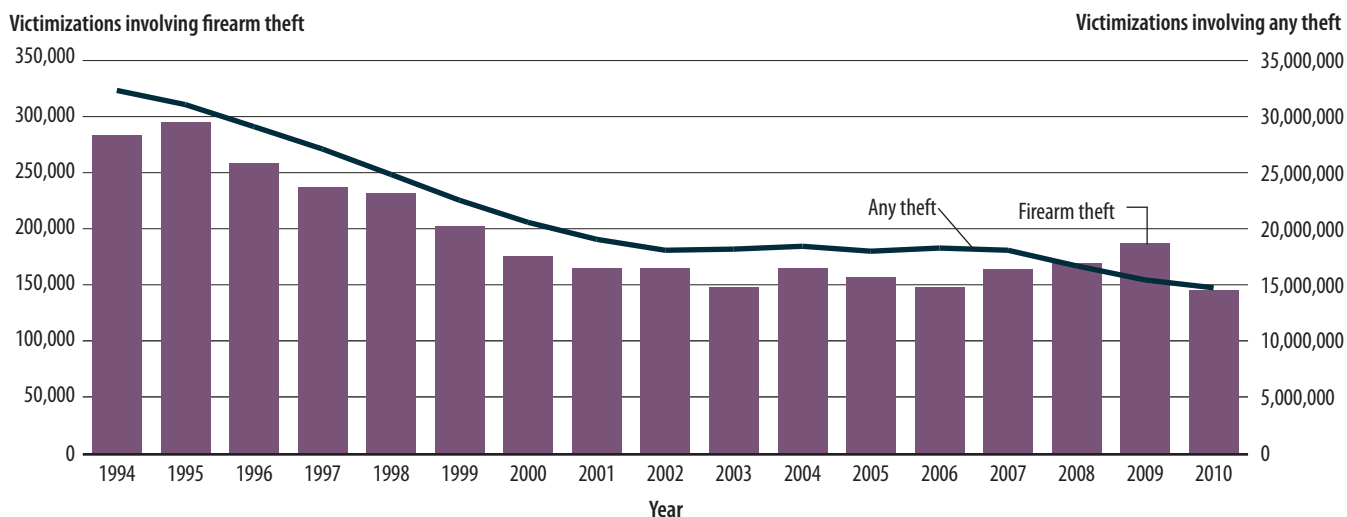
The data in this report were drawn from the Bureau of Justice Statistics' (BJS) NCVS, which annually collects information on nonfatal victimizations

reported and not reported to the police against persons age 12 or older from a nationally representative sample of U.S. households. The NCVS collects data on criminal incidents for which theft or attempted theft is either a component of the victimization (i.e., robbery, personal larceny, burglary, motor vehicle theft, and other property theft) or could occur in connection with the victimization (i.e., rape or sexual assault). This report examines the theft of firearms in criminal victimizations, focusing on the rate, number, amount of loss, and recovery of guns taken during burglaries and other property crimes, which include motor vehicle theft and other theft. It

presents information on how firearms may end up in the hands of persons to whom they do not belong.

Trend estimates are based on two-year rolling averages centered on the most recent year (**figure 1**). For example, estimates reported for 2010 represent the average estimates for 2009 and 2010. This method improves the reliability and stability of estimate comparisons over time. For all tables in this report, aggregate data for the time from 2005 through 2010 are the focus.

**FIGURE 1**  
Victimizations involving any theft and firearm theft, 1994–2010



Note: Data based on two-year rolling averages. See appendix table 1 for standard errors.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 1993–2010.

## Firearms were stolen in 2% of violent and 1% of property crimes involving theft from 2005 through 2010

On average, firearms were stolen in an annual average of about 4% of the 2.4 million burglaries occurring each year, in 2% of the 529,200 robberies, and in less than 1% of the 13.6 million other crimes involving theft from 2005 through 2010 (table 1). Burglaries accounted for 58% of the 153,900 victimizations each year in which a gun was stolen, and robberies accounted for about 7% of the victimizations involving a gun theft. About 0.4% of thefts involved the theft of a gun, yet thefts accounted for about a third (33%) of the victimizations in which a gun was stolen. Overall, about 93% of gun thefts occurred during property crimes. Therefore, the remainder of this report focuses on property crime.

Between 1994 and 2010, no statistically significant change was observed in the percentage of completed burglaries or other property crimes that involved the theft of at least one firearm (figure 2). This may suggest that the overall decline in the number of victimizations involving gun theft was not due to a decline in the number of privately owned guns that could be stolen.

**TABLE 1**  
Average annual victimizations involving the theft of at least one firearm, by type of crime, 2005–2010

Type of crime	Any theft <sup>a</sup>	Firearm theft	
	Number	Number	Percent of any theft
<b>Violent</b>	537,090	10,440 !	1.9% !
Rape or sexual assault	7,940 !	--	--
Robbery <sup>b</sup>	529,150	10,440 !	2.0 !
<b>Personal larceny</b>	171,910	--	--%
<b>Property</b>	15,828,190	143,480	0.9%
Burglary	2,394,250	89,400	3.7
Motor vehicle theft	670,700	3,060 !	0.5 !
Other theft	12,763,250	51,020	0.4

Note: Numbers rounded to the nearest 10. See appendix table 2 for standard errors.

--Less than 0.5 or 0.05%.

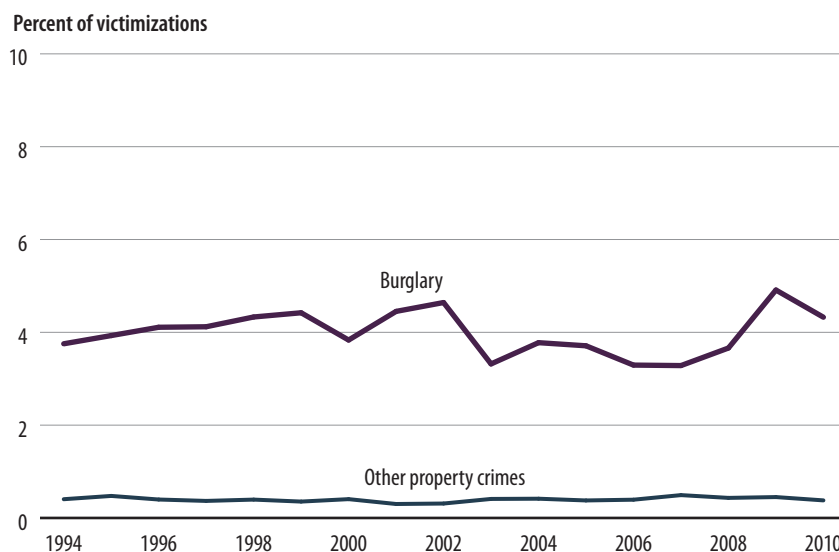
<sup>a</sup>Includes victimizations in which at least one item was stolen. Excludes attempted burglaries and other attempted property crimes.

<sup>b</sup>Assaults involving theft are classified as robberies.

! Interpret with caution; estimate is based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2005–2010.

**FIGURE 2**  
Completed burglaries and other property crimes involving the theft of at least one firearm, 1994–2010



Note: Data based on two-year rolling averages. See appendix table 3 for standard errors.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 1993–2010.

## Handguns were the most common type of firearm stolen

At least one handgun was stolen in 63% of burglaries involving gun theft (table 2). In 19% of burglaries, a handgun was stolen along with another type of firearm. About 39% of burglaries involving gun theft resulted in the theft of multiple guns, compared to about 15% of other property crimes involving gun theft. An average of about three guns were stolen during burglaries involving the theft of multiple guns, and about two guns were stolen during other property crimes involving multiple gun thefts. Due to the greater percentage of victimizations involving more than one gun, as well as the greater number of victimizations involving stolen firearms each year, burglaries accounted for nearly three times as many stolen guns than did other property crimes. In the six-year period from 2005 through 2010, an average of about 172,000 guns were stolen during burglaries and 60,300 guns were stolen during other property crimes each year. A total of 1.4 million guns were stolen during the six-year period.

## Property crimes involving only stolen firearms resulted in an average annual loss of \$27 million

Each year from 2005 through 2010, households that experienced gun theft from burglaries or other property crimes lost a total of about \$600 million on average from these crimes. The majority of the loss was from other items stolen along with firearms. Households that experienced the theft of a firearm and other items had a mean loss of \$7,600 in burglaries and \$4,700 in other property crimes (table 3). The mean loss when only one gun and nothing else was stolen was between \$400 and \$500 per incident. Among households that experienced burglaries and other property crimes in which a gun was the only type of item stolen, the total loss was about \$27 million per year.

**TABLE 2**

**Average annual burglaries or other household property crimes involving the theft of at least one firearm, by theft characteristic, 2005–2010**

Theft characteristic	Burglary		Other property crimes	
	Number	Percent	Number	Percent
Number of stolen firearms*	172,040	~	60,320	~
Victimizations by stolen item	89,400	100%	54,080	100%
Firearm only	22,620	25	24,720	46
Firearm and at least one other item	66,790	75	29,360	54
Victimizations by type of stolen firearm	89,400	100%	54,080	100%
Handgun	39,210	44	35,890	66
Other firearm	33,260	37	17,340	32
Both	16,940	19	850!	2!
Victimizations by number of stolen firearms	89,400	100%	54,080	100%
One	48,470	54	41,490	77
More than one	35,000	39	8,060	15
Unknown	5,940	7	4,520!	8!

Note: Numbers rounded to the nearest 10. See appendix table 4 for standard errors.

\*Excludes the annual average 5,940 burglaries for which the number of firearms stolen was unknown.

~Not applicable.

! Interpret with caution; estimate is based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2005–2010.

**TABLE 3**

**Loss attributed to burglaries or other property crimes involving the theft of at least one firearm, 2005–2010**

Stolen item	Burglary	Other property crimes
<b>One firearm only and no other items<sup>a</sup></b>		
Mean	\$500	\$400
Median	\$400	\$300
Average annual total	\$7,220,200	\$6,759,600
<b>More than one firearm and no other items<sup>b</sup></b>		
Mean	\$2,900!	\$900!
Median	\$800!	\$600!
Average annual total	\$10,136,300!	\$2,430,200!
<b>One or more firearms and other items<sup>c</sup></b>		
Mean	\$7,600	\$4,700
Median	\$3,000	\$2,000
Average annual total	\$465,952,200	\$131,977,500

Note: Numbers rounded to the nearest 100. See appendix table 5 for standard errors.

<sup>a</sup>Excludes 7% of households experiencing gun theft in which number of firearms stolen was unknown, 4% of households experiencing gun theft during burglary and 10% of households experiencing gun theft during other property crimes that did not report the value.

<sup>b</sup>Excludes 11% of households experiencing gun theft that did not report the value.

<sup>c</sup>Excludes 8% of households experiencing gun theft during burglary and 5% of households experiencing gun theft during other property crimes that did not report the value.

! Interpret with caution; estimate is based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2005–2010.

## Nearly 90% of burglaries involving stolen firearms were reported to the police

From 2005 through 2010, 86% of burglaries and 75% of other property crimes involving a stolen firearm were reported to police (table 4). Households were more likely to report to the police burglaries or other property crimes involving a stolen gun than property crimes in which other items with comparable value were stolen (approximately \$500 on average).

Among burglary victimizations, a greater percentage of households reported the incident to the police when a handgun (91%), another type of firearm (76%), or both (94%) were stolen than when other items valued from \$500 to \$999 were stolen (62%). A slightly greater percentage of households reported the theft of one firearm and no other items stolen to the police (77%) (not shown in table) than other stolen items valued from \$500 to \$999 (62%).

## About 4 of 5 firearms stolen during household property crimes were not recovered

In 83% of burglaries and 85% of other property crimes that involved a stolen firearm, none of the stolen guns had been recovered at the time of the NCVS interview (table 5). Assuming these guns were not recovered later, this amounts to an annual average of at least 135,000 unrecovered guns from burglaries and 51,800 unrecovered guns from other property crimes.

Although the victimizations involving stolen firearms could have occurred from one day to up to six months before the NCVS interview, the amount of time that had elapsed made no significant difference in the percentage of households for which guns had not been recovered at the time of the interview (not shown in table).

**TABLE 4**

**Percent of burglaries or other property crimes involving theft reported to police, by theft characteristic, 2005–2010**

Theft characteristic	Burglary		Other property crimes	
	Number	Percent reported to police	Number	Percent reported to police
<b>Victimizations by stolen item</b>	89,400	86%	54,080	75%
Firearm only	22,620	79%	24,720	65%
Firearm and at least one other item	66,790	88	29,360	84
<b>Victimizations by type of stolen firearm</b>				
Handgun	39,210	91%	35,890	82%
Other firearm	33,260	76	17,340	64
Both	16,940	94	850	41 !
<b>Victimizations by number of stolen firearms</b>				
One	48,470	83%	41,490	74%
More than one	35,000	90	8,060	82
Unknown	5,940	86	4,520	77 !
<b>Victimizations involving other stolen items by loss*</b>	1,911,770	56%	10,858,920	35%
\$0–\$99	330,800	26	4,322,500	19
\$100–\$499	604,600	43	4,194,600	34
\$500–\$999	297,140	62	898,850	52
\$1,000 or more	679,226	82	1,443,000	80

Note: Numbers rounded to the nearest 10. See appendix table 6 for standard errors.

\*Includes victimizations in which at least one item was stolen, excluding firearms. Excludes attempted burglaries and other attempted property crimes.

! Interpret with caution; estimate is based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2005–2010.

**TABLE 5**

**Average annual recovery of items stolen during burglaries or other property crimes, 2005–2010**

	Burglary		Other property crimes	
	Number	Percent	Number	Percent
<b>Number of stolen firearms<sup>a</sup></b>	172,040	100%	60,320	100%
Recovered	9,080 !	5 !	3,310 !	5 !
Not recovered	135,010	78	51,820	86
Unknown <sup>b</sup>	27,950	16	5,180 !	9 !
<b>Victimizations involving a stolen firearm</b>	89,400	100%	54,080	100%
All items recovered	3,910 !	4 !	3,060 !	6 !
Some items recovered	9,080	10	4,720 !	9 !
No items recovered	74,030	83	45,760	85
Unknown	2,390 !	3 !	540 !	1 !
<b>Victimizations involving other stolen items<sup>c</sup></b>	2,304,800	100%	13,379,870	100%
All items recovered	94,470	4	953,580	7
Some items recovered	88,060	4	529,270	4
No items recovered	2,051,030	89	11,172,270	84
Unknown	71,300	3	724,750	5

Note: Numbers rounded to the nearest 10. Across households interviewed within the first six months after gun theft victimization, no differences were detected in the percentage of households that reported no firearms recovered. See appendix table 7 for standard errors.

! Interpret with caution; estimate is based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

<sup>a</sup>Excludes gun thefts in which the number of stolen firearms was unknown.

<sup>b</sup>Includes burglaries and other property crimes in which at least one firearm and at least one other item were stolen and some items were recovered because it was unknown whether the some items recovered included a firearm.

<sup>c</sup>Includes victimizations in which at least one item other than a firearm was stolen. Excludes attempted burglaries and attempted other thefts.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2005–2010.

No items had been recovered at the time of the NCVS interview in a lower percentage of burglaries involving the theft of a firearm (83%) than in burglaries involving the theft of items other than guns (89%). Among other property crimes, there was no difference in the percentage of incidents from which no items were recovered regardless of whether the victimization involved theft of a gun or other items. In about 85% of other property crime victimizations, no items were recovered.

### The majority of property crimes involving stolen firearms occurred in the South

An estimated 22% of burglaries involving a stolen firearm occurred in households comprised of one male adult with no children. In contrast, these households accounted for 13% of all households (table 6). Households comprised of one female adult with no children experienced 8% of the burglary victimizations in which a gun was stolen, while accounting for 16% of households nationwide.

A greater percentage of households with two or more adult residents with children experienced gun theft during burglaries or other property crime victimizations than households with one male or female adult resident with children. Households with a white non-Hispanic head of household

accounted for the majority of burglaries and other property crimes in which a gun was stolen. White non-Hispanics also accounted for the majority of U.S. households (71%).

Households in the South were more likely than households in other regions to have experienced gun theft during burglaries or other property crimes. Households in the South accounted for

37% of all households in the U.S., but 56% of all burglaries and 59% of other property crimes involving the theft of a firearm. Similarly, a disproportionate percentage of households in rural areas experienced burglaries involving the theft of a gun (34%), compared to the overall percentage of households in rural areas (17%).

**TABLE 6**  
Characteristics of households that experienced burglary or other property crimes involving the theft of at least one firearm, 2005–2010

Household characteristic	All households	Burglary		Other property crimes	
		Firearm theft	Other theft	Firearm theft	Other theft
<b>Household structure</b>	100%	100%	100%	100%	100%
Two or more adults					
Without children	52	45	46	54	53
With children	14	16	13	13	19
One male adult					
Without children	13	22	14	19	10
With children	1	5!	2	3!	1
One female adult					
Without children	16	8	14	7!	8
With children	5	4!	11	4!	7
<b>Race and Hispanic origin</b>	100%	100%	100%	100%	100%
White*	71	75	64	78	68
Black/African American*	12	14	18	13	13
Hispanic/Latino	11	7	13	6!	14
American Indian/Alaska Native*	1	2!	1	1!	1
Asian/Native Hawaiian/other Pacific Islander*	4	1!	2	--!	3
Two or more races*	1	1!	2	2!	2
<b>Household income</b>	100%	100%	100%	100%	100%
Less than \$25,000	18	20	29	22	22
\$25,000–\$49,999	20	21	21	26	22
\$50,000 or more	32	30	24	31	33
Not reported	30	29	26	21	23
<b>Location of residence</b>	100%	100%	100%	100%	100%
Urban	33	23	39	28	40
Suburban	50	43	41	51	46
Rural	17	34	20	21	15
<b>Region</b>	100%	100%	100%	100%	100%
Northeast	18	4!	12	6!	13
Midwest	23	19	25	16	23
South	37	56	41	59	36
West	22	21	22	19	28

Note: See appendix table 8 for standard errors.

\*Excludes persons of Hispanic or Latino origin.

--Less than 0.5%.

! Interpret with caution; estimate is based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2005–2010.



## Methodology

### Survey coverage

The National Crime Victimization Survey (NCVS) is an annual data collection conducted by the U.S. Census Bureau for the Bureau of Justice Statistics (BJS). The NCVS is a self-report survey in which interviewed persons are asked about the number and characteristics of victimizations experienced during the prior six months. The NCVS collects information on nonfatal personal crimes (rape or sexual assault, robbery, aggravated and simple assault, and personal larceny) and property crimes (burglary, motor vehicle theft, and other theft) both reported and not reported to police.

The NCVS is administered to persons age 12 or older from a nationally representative sample of households in the United States. The NCVS defines a household as a group of members who all reside at a sampled address. Persons are considered household members when the sampled address is their usual place of residence at the time of the interview and when they have no usual place of residence elsewhere. Once selected, households remain in the sample for three years, and eligible persons in these households are interviewed every six months for a total of seven interviews. New households rotate into the sample on an ongoing basis to replace outgoing households that have been in the sample for the three-year period. The sample includes persons living in group quarters, such as dormitories, rooming houses, and religious group dwellings, and excludes persons living in military barracks and institutional settings, such as correctional or hospital facilities, and the homeless. (For more detail, see the *Survey Methodology in Criminal Victimization in the United States, 2008*, NCJ 231173, BJS website, May 2011.)

In 2010, about 41,000 households and 73,300 individuals age 12 or older were interviewed for the NCVS. Each household was interviewed twice during the year. The response rate was 92.3% of households and 87.5% of eligible individuals.

From 2005 through 2010, the primary reference period for this data brief, a total of 835,000 persons from about 472,000 households were interviewed. This equates to an annual average of 139,000 persons age 12 or older in 79,000 households interviewed each year from 2005 through 2010.

Victimizations that occurred outside of the U.S. were excluded from this report. From 2005 through 2010, about 1% of the total unweighted victimizations involving theft of a firearm occurred outside the U.S. and were excluded from the analyses. Also excluded were the smaller number of attempted burglaries and other thefts in which the perpetrator tried to steal a firearm. The NCVS is unable to measure whether safes, locks, alarms, or other target hardening devices were in place in the home. The use of anti-theft measures may vary by population demographics.

### Weighting adjustments for estimating household victimization

Estimates in this report use data from the 1993 to 2010 NCVS data files. These files are weighted to produce annual estimates of victimization for persons age 12 or older living in U.S. households. Because the NCVS relies on a sample rather than a census of the entire U.S. population, weights are designed to inflate sample point estimates to known population totals and to compensate for survey nonresponse and other aspects of the sample design.

The NCVS data files include both person and household weights. Person weights provide an estimate of the population

represented by each person in the sample. Household weights provide an estimate of the total U.S. household population. Both household and person weights, after proper adjustment, are also used to form the denominator in calculations of crime rates.

Victimization weights used in this analysis account for the number of persons present during an incident and for repeat victims of series incidents. The weight counts series incidents as the actual number of incidents reported by the victim, up to a maximum of 10 incidents. Series victimizations are similar in type but occur with such frequency that a victim is unable to recall the details of each individual event. Survey procedures allow NCVS interviewers to identify and classify these similar victimizations as series victimizations and to collect detailed information on only the most recent incident in the series.

In 2010, about 3% of all victimizations were series incidents. Weighting series incidents as the number of incidents up to a maximum of 10 incidents produces more reliable estimates of crime levels, while the cap at 10 minimizes the effect of extreme outliers on the rates. Additional information on the series enumeration is detailed in the report *Methods for Counting High Frequency Repeat Victimization in the National Crime Victimization Survey*, NCJ 237308, BJS website, April 2012.

Trend estimates provided are based on two-year rolling averages centered on the most recent year. For example, estimates reported for 2010 represent the average estimate from 2009 through 2010. This method is used to smooth trend lines and improve the reliability of estimates by increasing the sample sizes for each annual average estimate.

### *Standard error computations*

When national estimates are derived from a sample, as is the case with the NCVS, caution must be taken when comparing one estimate to another estimate or when comparing estimates over time. Although one estimate may be larger than another, estimates based on a sample have some degree of sampling error. The sampling error of an estimate depends on several factors, including the amount of variation in the responses, the size of the sample, and the size of the subgroup for which the estimate is computed. When the sampling error around the estimates is taken into consideration, the estimates that appear different may, in fact, not be statistically different.

One measure of the sampling error associated with an estimate is the standard error. The standard error can vary from one estimate to the next. In general, for a given metric, an estimate with a smaller standard error provides a more reliable approximation of the true value than an estimate with a larger standard error. Estimates with relatively large standard errors are associated with less precision and reliability and should be interpreted with caution.

In order to generate standard errors around estimates from the NCVS, the Census Bureau produces generalized variance function (GVF) parameters for BJS. The GVFs take into account aspects of the NCVS complex sample design and represent the curve fitted to a selection of individual standard errors based on the Jackknife Repeated Replication technique. The GVF parameters were used to generate standard errors for each point estimate (such as counts, percentages, and rates) in the report.

In this report, BJS conducted tests to determine whether differences in estimated numbers and percentages were statistically significant once sampling error was taken into account. Using statistical programs developed specifically for the NCVS, all comparisons in the text were tested for significance. The primary test procedure used was Student's *t*-statistic, which tests the difference between two sample estimates. To ensure that the observed differences between estimates were larger than might be expected due to sampling variation, the significance level was set at the 95% confidence level.

Data users can use the estimates and the standard errors of the estimates provided in this report to generate a confidence interval around the estimate as a measure of the margin of error. The following example illustrates how standard errors can be used to generate confidence intervals:

According to the NCVS, from 2005 through 2010, 86% of burglaries involving the theft of a firearm were reported to police (see table 4). Using the GVFs, BJS determined that the estimate has a standard error of 2.6% (see appendix table 5). A confidence interval around the estimate was generated by multiplying the standard errors by  $\pm 1.96$  (the *t*-score of a normal, two-tailed distribution that excludes 2.5% at either end of the distribution). Thus, the confidence interval around the 86% estimate is equal to  $86\% \pm 2.6\% \times 1.96$  (or 80.9% to 91.1%). In other words, if different samples using the same procedures were taken from the U.S. population during the period from 2005 through 2010, 95% of the time the percentage of burglaries involving gun theft that were reported to police would fall between 80.9% and 91.1%.

In this report, BJS also calculated a coefficient of variation (CV) for all estimates, representing the ratio of the standard error to the estimate. CVs provide a measure of reliability and a means to compare the precision of estimates across measures with differing levels or metrics. In cases where the CV was greater than 50%, or the unweighted sample had 10 or fewer cases, the estimate was noted with a “!” symbol (interpret data with caution; estimate is based on 10 or fewer sample cases, or the coefficient of variation exceeds 50%).

Many of the variables examined in this report may be related to one another and to other variables not included in the analyses. Complex relationships among variables were not fully explored in this report and warrant more extensive analysis. Readers are cautioned not to draw causal inferences based on the results presented.



## Appendix: External measures of gun ownership, gun stock, and gun theft

Gun theft in this report varies by demographic group. This variation is driven, in part, by the prevalence of gun ownership; however, the NCVS does not collect information on gun ownership. This appendix describes external measures of gun ownership, stock, and theft. One of the limitations of this report is that NCVS data are not aligned with these external measures to the extent that rates of firearm theft can be easily or reliably computed from a denominator of households with guns or the total number of guns in the United States. For example, although the NCVS shows a decline in the percentage of households experiencing firearm theft from 1994 to 2010, and the General Social Survey

and Gallup poll both show declines in the percentage of households owning firearms during the same period, when these data were combined to generate trends in the rate of firearm theft among gun-owning households, no differences were detected in the rate in 1994 compared to 2010 (figure 3). This may be indicative of stability in the rate of gun theft among gun-owning households over time or it may be a function of the lack of precision due to the large standard errors associated with generating estimates from surveys with different sampling methodologies. Similarly, while the UCR theft measure provides context for these findings, due to methodological differences in the collection of data on firearm theft, direct comparison between NCVS and UCR measures of gun theft are not feasible.

### Household gun ownership

Although a number of surveys have collected data on household gun ownership at the state level or at particular points in time,<sup>1</sup> there are two main sources of national data on long-term trends in household gun ownership: the General Social Survey (GSS) and the Gallup poll.

### General Social Survey

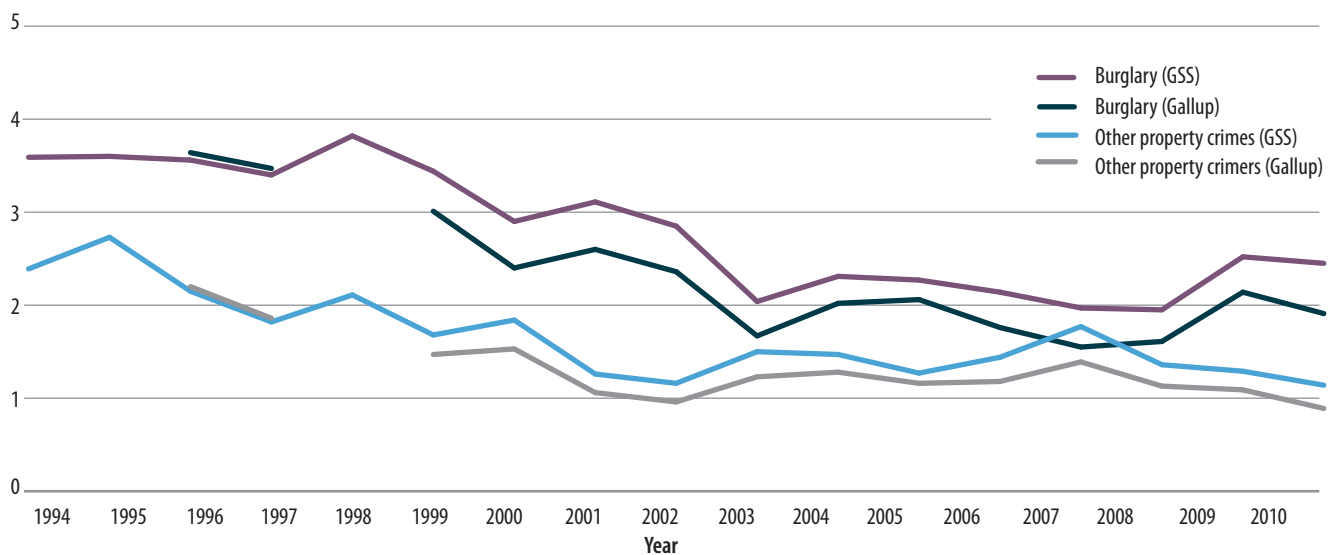
The National Opinion Research Center (NORC) has administered the GSS since 1972 to collect data on the demographics, behaviors, and attitudes

<sup>1</sup>See Cook, P.J., & Ludwig, J. (1997). *Guns in America: Results of a Comprehensive National Survey on Firearms Ownership and Use*. Washington, DC: Police Foundation; Centers for Disease Control and Prevention (2001–04). Behavioral Risk Factor Surveillance System Survey Data. Atlanta, GA: Centers for Disease Control and Prevention.

**FIGURE 3**

**Rate of burglaries or other property crimes involving firearm theft, by General Social Survey (GSS) and Gallup poll estimates of household gun ownership, 1994–2010**

Rate per 1,000 gun-owning households



Note: Data based on two-year rolling averages. Number of gun-owning households computed by applying the percentage of households with guns according to General Social Survey (GSS) and Gallup Organization to total number of households in NCVS. GSS collected data on household gun ownership in 1993 and 1994, and then every other year beginning with 1996. Gallup Organization produced estimates of households with a gun in the home or on the property in 1993, 1996, 1999, 2003–05, and 2007–10. In 1996, Gallup Organization produced percentage estimates of households with guns on the property multiple times during the year. For 1996, the average of the two estimates was used. For years in which the GSS or Gallup polls were not conducted, rate was based on the single year of data on household gun ownership. See appendix table 9 for standard errors.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 1993–2010; Gallup Organization, Guns, 1993–2010. Available at [www.gallup.com/poll/1645/Guns.aspx](http://www.gallup.com/poll/1645/Guns.aspx); National Opinion Research Center, General Social Survey, 1993–2010.

of the U.S. population. In 1993 and every other year from 1994 through 2010, the GSS included the question, “Do you happen to have in your home (IF HOUSE: or garage) any guns or revolvers?” According to the GSS, the percentage of households that reported having a gun in the home declined from 46% in 1993 to 32% in 2010.<sup>2</sup>

Figure 3 uses GSS data to present trends in the rate of burglaries and other property crimes involving firearm theft per 1,000 gun-owning households. To compute the denominator for the rate, the percentage of GSS households that owned guns was applied to the total number of NCVS households for the year. The rate was then computed using two-year rolling averages.

The GSS and NCVS standard errors were pooled to compute a standard error around the rate. Although the GSS shows a significant decline in the percentage of households that owned guns from 1994 through 2010, the differences in the rate of burglaries and other property crimes involving firearm theft per 1,000 households across the period did not test at the  $p < .1$  level using the pooled standard errors.

The GSS data were based on a full probability sample of persons age 18 or older living in noninstitutionalized arrangements in the U.S. Until 2004, the survey was administered to English-speaking persons only. Beginning in 2006, Spanish-speaking respondents were eligible. From 1993 to 2010, data on household gun ownership were collected from an average of about 1,500 respondents. For more information on the sampling and weighting of GSS data, see the GSS Codebook at [http://publicdata.norc.umd.edu/GSS/DOCUMENTS/BOOK/GSS\\_Codebook.pdf](http://publicdata.norc.umd.edu/GSS/DOCUMENTS/BOOK/GSS_Codebook.pdf).

<sup>2</sup>Smith, T.W., Marsden, P., Hout, M., & Kim, J. (2011). *General Social Surveys, 1972–2010* [machine-readable data file]. Chicago, IL: National Opinion Research Center.

## Gallup poll

Gallup produces a national public opinion poll that dates back to 1935. Gallup frequently conducts polls of persons in U.S. households to measure opinions on gun possession rights and gun laws as well as household gun ownership. From 1993 to 2010, Gallup conducted 13 polls in which respondents were asked, “Do you have a gun in your home? Do you have a gun anywhere else on your property such as in your garage, barn, shed, or in your car or truck?” From December 1993 to October 2010, Gallup polls showed a decline in the percentage of households with guns on the property, from 54% to 41%.<sup>3</sup>

Figure 3 also uses Gallup data to show trends in the rate of burglaries and other property crimes involving firearm theft per 1,000 gun-owning households. The process of computing the denominator for the rate was the same as used with the GSS; the percentage of Gallup households that owned guns was applied to the total number of NCVS households for the year. The rate was then computed using two-year rolling averages.

Gallup reports that survey results are accurate within a margin of error of  $\pm 4\%$ , so a conservative standard error of 2.04 was applied to all estimates. The Gallup and NCVS standard errors were pooled to compute a standard error around the rate. As with the rate computed using the GSS percentages from 1994 through 2010, the differences in the rate of burglaries and other property crimes involving firearm theft per 1,000 Gallup households that owned guns did not test at the  $p < .1$  level using the pooled standard errors.

The Gallup data were based on adults age 18 or older with a landline or cellular telephone who were selected for the poll through a process of random-digit

<sup>3</sup>Gallup poll, *Do you have a gun in your home? Do you have a gun anywhere else on your property such as in your garage, barn, shed or in your car or truck?* [COMBINED RESPONSES] 1991–2011. More information is available at [www.gallup.com/poll/1645/Guns.aspx](http://www.gallup.com/poll/1645/Guns.aspx).

dialing. When a sampled household was contacted on a landline phone, Gallup pollsters requested an interview with the person age 18 or older who had the most recent birthday. Any person reached on a cellular phone was interviewed directly. For a standard survey, Gallup used a sample of between 1,000 and 1,500 persons. For more information on the Gallup polling methodology, see “How are polls conducted?” at <http://www.gallup.com/poll/101872/How-does-Gallup-polling-work.aspx>.

## Gun stock

### Bureau of Alcohol, Tobacco, Firearms and Explosives

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) collects data on the number of firearms that are manufactured in, imported to, and exported from the United States each year. Measures of U.S. gun stock are sometimes computed by adding the number of manufactured guns to the number of imported guns and subtracting exported firearms to get a total for each year, and then summing across years to get a count of the total number of guns in circulation. In 2010, about 5.5 million guns were manufactured, about 2.8 million were imported, and about 240,000 were exported, giving a total of about 8.1 million new guns added to the existing gun stock in 2010.<sup>4</sup> Guns that were destroyed or otherwise removed from circulation were not taken into consideration in this count. Moreover, although the ATF counts exclude firearms manufactured for the U.S. military, they include firearms purchased by law enforcement agencies. Because of these limitations in using the ATF data to estimate the number of privately owned guns, the report does not include a rate of the number of stolen guns per 1,000 guns owned.

<sup>4</sup>United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives. (2012). *Firearms Commerce in the United States: Annual Statistical Update*. Available at <http://www.atf.gov/publications/firearms/050412-firearms-commerce-in-the-us-annual-statistical-update-2012.pdf>.

## Gun theft

### Federal Bureau of Investigation

Through the Uniform Crime Reporting (UCR) Program, the Federal Bureau of Investigation (FBI) collects limited data on firearm theft and recovery. A supplemental UCR reporting form, which is optional for UCR participating agencies, collected monthly data from state and local law enforcement agencies on the aggregate dollar value of items stolen, by type of stolen item. The supplemental form also collected aggregate data on the value of items recovered by police. In addition to collecting information on items stolen and recovered from household

burglaries and other property crimes, the supplemental form collected information on burglaries and other property crimes involving commercial establishments. From 2005 through 2010, out of the approximate 17,800 agencies that submitted UCR data annually, about 13,000 agencies submitted supplemental data that were eligible for inclusion in *Crime in the United States*.<sup>5</sup>

From 2005 through 2010, the FBI agencies that submitted supplemental data reported that an average of \$122 million worth of firearms was stolen each year. During the same period, an average of \$11 million worth of stolen firearms (or about

8.7% of the value of total stolen firearms) was recovered each year.<sup>6</sup> Because the NCVS estimates of monetary loss include the monetary value of any other items stolen along with firearms, the UCR and NCVS estimates of the monetary value of stolen firearms cannot be directly compared. The UCR data cannot be used to generate an estimate of the number of incidents that involved a gun theft because the value of different types of firearms varies and agencies only submit aggregate data on the total value of all firearms stolen during the reporting period.

<sup>6</sup>FBI, Uniform Crime Reporting Program, *Crime in the United States*, 2005–2010.

<sup>5</sup>For more information on the FBI's Uniform Crime Reporting Program, see <http://www.fbi.gov/about-us/cjis/ucr>. UCR supplemental data on the value of firearms stolen and recovered for each year are found in Table 24, Property Stolen and Recovered.

**APPENDIX TABLE 1**  
Standard errors for figure 1:  
Victimizations involving any theft and  
firearm theft, 1994–2010

Year	Any theft	Firearm theft
1994	590,249	36,591
1995	502,990	32,649
1996	468,347	29,489
1997	577,414	30,217
1998	592,407	30,383
1999	548,249	29,676
2000	521,475	26,295
2001	540,625	25,611
2002	254,400	24,793
2003	233,933	24,591
2004	236,801	27,290
2005	234,726	26,305
2006	199,490	23,654
2007	186,702	27,850
2008	180,638	28,112
2009	289,119	29,713
2010	331,249	25,503

**APPENDIX TABLE 2**  
Standard errors for table 1: Average annual victimizations involving the theft of at  
least one firearm, by type of crime, 2005–2010

Type of crime	Any theft	Firearm theft	
	Number	Number	Percent of any theft
Violent	67,818	8,603	1.6%
Rape or sexual assault	6,011	~	~
Robbery*	52,405	6,703	1.3
Personal larceny	25,421	~	~%
Property	319,335	25,897	0.2%
Burglary	94,077	16,318	0.7
Motor vehicle theft	46,548	2,889	0.4
Theft	286,858	15,167	0.1

\*Assaults involving theft are classified as robberies.

~Not applicable.

**APPENDIX TABLE 3**

Standard errors for figure 2:  
Completed burglaries and other  
property crimes involving the theft of  
at least one firearm, 1994–2010

Year	Burglary	Other property crimes
1994	0.6	0.1
1995	0.6	0.1
1996	0.6	0.1
1997	0.6	0.1
1998	0.7	0.1
1999	0.8	0.1
2000	0.7	0.1
2001	0.8	0.1
2002	0.8	0.1
2003	0.7	0.1
2004	0.8	0.1
2005	0.8	0.1
2006	0.7	0.1
2007	0.8	0.1
2008	0.8	0.1
2009	1.0	0.1
2010	0.9	0.1

**APPENDIX TABLE 4**

Standard errors for table 2: Average annual burglaries or other property crimes  
involving the theft of at least one firearm, by theft characteristic, 2005–2010

Theft characteristic	Burglary		Other property crimes	
	Number	Percent	Number	Percent
Number of firearms stolen	22,938	~%	16,531	~%
Victimizations by stolen item	16,318	~%	15,628	~%
Firearm only	8,059	3.2	10,467	5.9
Firearm and at least one other item	14,035	3.3	11,427	5.9
Victimizations by type of stolen firearm				
Handgun	10,674	3.7%	12,664	5.6%
Other firearm	9,812	3.6	8,738	5.5
Both	6,956	2.9	1,904	1.4
Victimizations by number of stolen firearms				
One	11,901	3.7%	13,640	5.0%
More than one	10,071	3.6	5,926	4.2
Unknown	4,091	1.8	4,425	3.2
~Not applicable.				

**APPENDIX TABLE 5**

Standard errors for table 3: Loss attributed to burglaries or other property crimes  
involving the theft of at least one firearm, by stolen item, 2005–2010

Stolen item	Burglary	Other property crimes
One firearm only and no other items		
Mean	\$1,218	\$1,261
Median	\$1,053	\$1,132
Average annual total	\$171,515	\$205,497
More than one firearm and no other items		
Mean	\$2,825	\$1,927
Median	\$1,491	\$1,534
Average annual total	\$205,244	\$117,730
One or more firearms and other items		
Mean	\$4,631	\$4,528
Median	\$2,899	\$2,934
Average annual total	...	...
...Not available.		

**APPENDIX TABLE 6**

Standard errors for table 4: Percent of burglaries or other property crimes involving theft reported to police, by theft characteristic, 2005–2010

Theft characteristic	Burglary		Other property crimes	
	Number	Percent reported to police	Number	Percent reported to police
Victimizations by stolen item	16,318	2.6%	15,628	5.1%
Firearm only	8,059	6.0	10,467	8.3
Firearm and at least one other item	14,035	2.8	11,427	5.8
Victimizations by type of stolen firearm				
Handgun	10,674	3.2%	12,664	5.6%
Other firearm	9,812	5.2	8,738	9.9
Both	6,956	4.1	1,904	45.2
Victimizations by number of stolen firearms				
One	11,901	3.8%	13,640	5.9%
More than one	10,071	3.5	5,926	11.5
Unknown	4,091	9.9	4,425	16.7
Victimizations involving other theft by loss	83,191	0.9%	264,047	0.5%
\$0–\$99	84,912	1.7	399,809	0.6
\$100–\$499	118,079	1.5	394,853	0.8
\$500–\$999	80,080	2.1	181,906	1.6
\$1,000 or more	125,828	1.1	234,504	1.1

**APPENDIX TABLE 7**

Standard errors for table 5: Average annual recovery of items stolen during burglaries or other property crimes, 2005–2010

	Burglary		Other property crimes	
	Number	Percent	Number	Percent
Number of stolen firearms	22,938	~%	16,531	~%
Recovered	5,070	2.9	3,781	6.1
Not recovered	20,212	5.3	15,289	9.4
Unknown	8,978	4.7	4,739	7.5
Victimizations involving a stolen firearm	16,317	~%	15,628	~%
All items recovered	3,313	1.5	3,634	2.7
Some items recovered	5,070	2.2	4,521	3.3
No items recovered	14,801	2.8	14,343	4.3
Unknown	2,585	1.2	1,520	1.1
Victimizations involving other stolen items	92,140	~%	293,782	~%
All items recovered	16,790	0.3	70,757	0.2
Some items recovered	16,190	0.3	51,566	0.2
No items recovered	86,447	0.5	267,959	0.4
Unknown	14,517	0.3	61,028	0.2

~Not applicable.

# APPENDIX TABLE 8

Standard errors for table 6: Characteristics of households that experienced burglary or other property crimes involving the theft at least one firearm, 2005–2010

Household characteristic	All households	Burglary		Other property crimes	
		Firearm theft	Other theft	Firearm theft	Other theft
<b>Household structure</b>	~%	~%	~%	~%	~%
Two or more adults					
Without children	0.2	3.7	0.8	5.9	0.5
With children	0.1	2.7	0.5	3.9	0.4
One male adult					
Without children	0.1	3.1	0.5	4.6	0.3
With children	0.0	1.6	0.2	1.9	0.1
One female adult					
Without children	0.2	2.0	0.5	3.0	0.3
With children	0.1	1.4	0.5	2.2	0.2
<b>Race and Hispanic origin</b>	~%	~%	~%	~%	~%
White*	0.2	3.2	0.8	4.9	0.5
Black/African American*	0.1	2.5	0.6	4.0	0.3
Hispanic/Latino	0.1	1.8	0.5	2.7	0.3
American Indian/Alaska Native*	0.0	1.0	0.2	1.2	0.1
Asian/Native Hawaiian/other Pacific Islander*	0.1	0.8	0.2	~	0.1
Two or more races*	0.0	0.8	0.2	1.4	0.1
<b>Household income</b>	~%	~%	~%	~%	~%
Less than \$25,000	0.2	3.0	0.7	4.8	0.4
\$25,000–\$49,999	0.2	3.0	0.7	5.1	0.4
\$50,000 or more	0.2	3.4	0.7	5.5	0.5
Not reported	0.2	3.4	0.7	4.8	0.4
<b>Location of residence</b>	~%	~%	~%	~%	~%
Urban	0.2	3.1	0.8	5.3	0.5
Suburban	0.2	3.7	0.8	5.9	0.5
Rural	0.2	3.5	0.6	4.8	0.3
<b>Region</b>	~%	~%	~%	~%	~%
Northeast	0.2	1.4	0.5	2.8!	0.3
Midwest	0.2	2.9	0.7	4.3	0.4
South	0.2	3.7	0.8	5.8	0.5
West	0.2	3.0	0.7	4.6	0.4

\*Excludes persons of Hispanic or Latino origin.

~Not applicable.

**APPENDIX TABLE 9**

Standard errors for figure 3: Rate of burglaries or other property crimes involving firearm theft, by General Social Survey (GSS) and Gallup poll estimates of household gun ownership, 1994–2010

Year	Rate per 1,000 gun-owning households			
	Burglary		Other property crimes	
	GSS	Gallup	GSS	Gallup
1994	0.5	0.5	0.7	0.7
1995	0.5	~	0.6	~
1996	0.5	0.5	0.6	0.6
1997	0.5	0.5	0.7	0.7
1998	0.5	~	0.7	~
1999	0.6	0.5	0.8	0.8
2000	0.6	0.6	0.8	0.7
2001	0.6	0.5	0.9	0.9
2002	0.6	0.5	0.9	0.9
2003	0.7	0.7	0.8	0.8
2004	0.7	0.6	0.9	0.8
2005	0.7	0.6	0.9	0.9
2006	0.7	0.7	0.8	0.8
2007	0.7	0.7	0.8	0.8
2008	0.7	0.6	0.8	0.8
2009	0.7	0.6	0.9	0.9
2010	0.6	0.6	1.0	1.0

Note: Computed by pooling variances of the NCVS estimates of number of households and GSS and Gallup estimates of percent of gun-owning households.

~Not applicable.





The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. James P. Lynch is the director.

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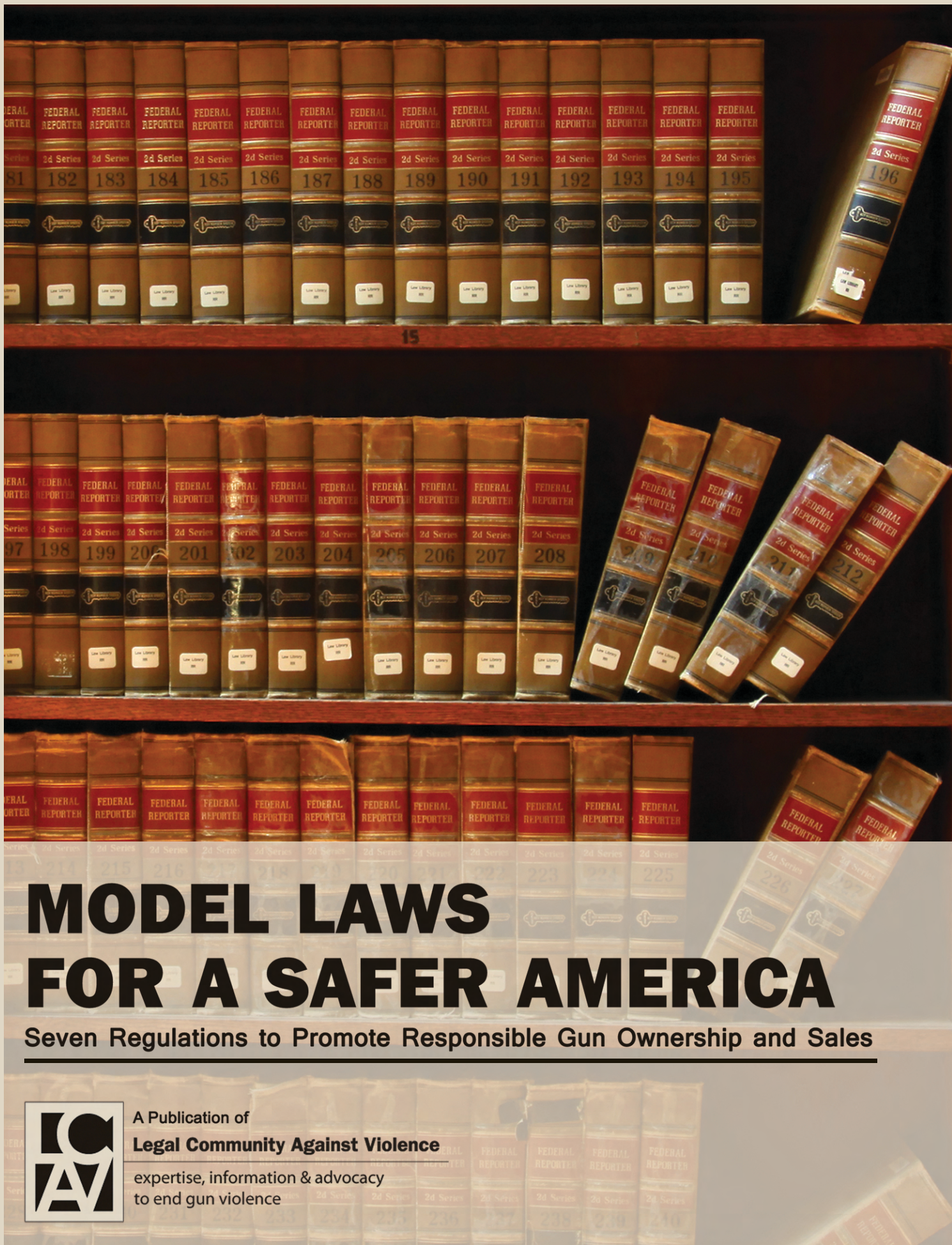
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# **EXHIBIT QQ**



15

# MODEL LAWS FOR A SAFER AMERICA

Seven Regulations to Promote Responsible Gun Ownership and Sales



A Publication of  
**Legal Community Against Violence**

expertise, information & advocacy  
to end gun violence

# **Model Laws for a Safer America**

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## I. Introduction

Legal Community Against Violence (LCAV) has published *Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales* to assist elected officials and activists seeking to address our nation's deadly epidemic of gun violence. As discussed below, although guns kill or injure more than 100,000 Americans every year, our federal gun laws are incredibly weak – weaker than those of any other industrialized nation. This publication provides model laws for state or local governments seeking to fill these deadly gaps in our federal regulatory system.

### A. America's Gun Violence Epidemic

In 2007, the most recent year for which statistics are available, more than 31,000 Americans died from firearm-related injuries<sup>1</sup> – an average of more than 85 deaths each day – and nearly 70,000 others were treated for non-fatal gunshot wounds in hospital emergency rooms.<sup>2</sup> On average, over 46 gun suicides were committed each day for the years 2001-2007.<sup>3</sup> During that period, almost 5,000 people died from unintentional shootings.<sup>4</sup> In 2007, guns were used to commit over 385,000 crimes, and nearly 70% of all murders that year were committed with a firearm.<sup>5</sup>

Americans own an estimated 270 million to 290 million guns.<sup>6</sup> Although the U.S. has less than 5% of the world's population, Americans possess 35% to 50% of all guns in civilian hands.<sup>7</sup> More than 30% of households in the U.S. have at least one gun, although household gun ownership has gradually trended downward since the late 1970s.<sup>8</sup> A recent survey found that U.S. gun ownership has dropped more than 40% over the past few decades – from a high of 54% in 1977 to a low of 32.3% in 2010.<sup>9</sup> Other surveys show that 48% of all individual gun owners, or 13% of the adult population, report owning four or more guns, and the 20% who owned the most guns possessed about 65% of the nation's privately-owned firearms.<sup>10</sup>

Gun violence burdens the American public with overwhelming medical, legal and societal costs. Medical costs alone related to gun violence have been estimated at \$2.3 billion annually, half of which are borne by American taxpayers.<sup>11</sup> When all direct and indirect medical, legal and societal costs are included, the estimated annual cost of gun violence in our nation amounts to \$100 billion.<sup>12</sup>

Despite these staggering statistics, U.S. gun laws are extremely weak. In fact, America's gun laws remain the weakest of all developed, and many developing, nations.<sup>13</sup> Federal law does not, for example:

- Impose background checks on all gun purchasers. Federal law only requires federally licensed gun dealers to conduct background checks, exempting private sellers (responsible for an estimated 40% of all gun sales). Because of this —private sale” loophole, criminals and other prohibited persons can easily buy guns in most states;
- Require that firearm owners be licensed or register their guns. Licensing laws help ensure that gun owners know how to safely operate and store a firearm, and are familiar with firearms laws; registration laws help law enforcement officials trace crime guns,



disarm persons prohibited from possessing guns, and return lost or stolen firearms to their lawful owners;

- Require firearms dealers or ammunition sellers to, among other things: conduct employee background checks, implement security requirements, obtain liability insurance, and refrain from operating in residential neighborhoods or near schools, daycare centers, parks or other sensitive areas;
- Obligate firearm owners to report to law enforcement if their guns are lost or stolen. Such laws help deter and prosecute criminals and gun traffickers who often falsely claim that crime guns traced to them were lost or stolen, and increase gun owner accountability;
- Limit the number of firearms that may be purchased at any one time, helping to prevent gun traffickers from buying guns in bulk and reselling them to prohibited purchasers; or
- Impose a waiting period, allowing sufficient time for the completion of a background check and provide a “cooling off” period to help prevent impulsive acts of violence.

The model laws in this publication address each of these dangerous limitations of federal law.

## **B. How to Use This Publication**

Model laws provide a starting point – a framework from which state or local legislation may be drafted, debated and, ultimately, adopted. A jurisdiction seeking to enact any of these model laws must integrate them with existing laws, and any jurisdiction considering firearms legislation should seek the advice of legal counsel. LCAV is available to provide assistance to any jurisdiction seeking to tailor a model law to its particular needs.

Each model law contains detailed findings regarding the need for, and benefits of, the specific law. Findings in support of a law are most effective, however, when they are specific and localized. Data should be added that is specific to the jurisdiction adopting the law, including data of particularly relevant incidents of gun violence, as well as general data from law enforcement, government, and the public health community.

Section II of this publication contains seven model laws which provide an essential framework for a state or local government seeking to reduce gun violence. Each of these models, in effect in some form in one or more jurisdictions in the U.S., regulates a crucial aspect of the sale or ownership of firearms and ammunition:

- **The Model Law Requiring Background Checks on All Gun Purchasers** requires that all gun sales be processed through a licensed firearms dealer, who must conduct a background check and create a record of the transfer. **This model law provides the foundation for the other models in this publication;**
- **The Model Law Requiring the Licensing of Firearm Owners** requires firearm owners to obtain a license, after safety training and testing, prior to the purchase of a firearm;

- **The Model Law Requiring the Registration of Firearms** requires firearm owners to register each firearm they own with law enforcement and to renew the registration(s) annually;
- **The Model Law Regulating Firearms Dealers and Ammunition Sellers** obligates firearms and ammunition sellers to obtain a license and fulfill other requirements designed to ensure that such businesses operate responsibly;
- **The Model Law Requiring the Reporting of Lost or Stolen Firearms** requires firearm owners to report to law enforcement if any of their firearms are lost or stolen;
- **The Model Law Imposing a Waiting Period Prior to the Sale of a Firearm** requires 10 days to elapse before a firearm purchaser may take physical possession of the gun;
- **The Model Law Limiting Firearm Purchases to One Per Person Every 90 Days** prohibits the purchase of more than one firearm per person within a 90-day period.<sup>14</sup>

Section III summarizes many of the legal issues presented by, and opposition arguments to, state and local firearms and ammunition laws.<sup>15</sup> Finally, the Appendix provides general findings regarding gun violence in America, as well as definitions, penalties and other provisions applicable to all the model laws.

### C. About LCAV

LCAV is a national law center formed in the wake of the July 1, 1993 assault weapon massacre at a law firm in downtown San Francisco. LCAV is proud to provide the legal expertise, information and advocacy that help community leaders advance effective, legally-defensible reforms. In addition to developing model laws and assisting in the drafting of firearms laws, LCAV:

- Tracks the latest developments in all state firearms legislation nationwide;
- Conducts legal and policy research and analysis;
- Testifies at public hearings in support of or in opposition to gun legislation;
- Monitors all Second Amendment litigation nationwide;
- Arranges for *pro bono* litigation assistance, for example, when a local government is sued following the adoption of a violence prevention ordinance; and
- Files *amicus curiae* (“friend of the court”) briefs in support of governmental entities and individuals in firearm-related litigation.

LCAV’s web site, [www.lcav.org](http://www.lcav.org), provides detailed summaries of federal and state gun laws, as well as summaries of local gun laws in specific states. The site offers an in-depth discussion of the Second Amendment to the U.S. Constitution and examines over 30 firearm-related policies.

LCAV is available to provide assistance to jurisdictions seeking to draft a law or tailor one of the model laws to its particular needs. For more information or assistance, please contact LCAV at (415) 433-2062, or visit [http://www.lcav.org/mail/request\\_assistance.asp](http://www.lcav.org/mail/request_assistance.asp).



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Other LCAV publications include:

- [\*\*Guns in Public Places: The Increasing Threat of Hidden Guns in America\*\*](#)
- [\*\*The 2010 Report: Recent Developments in Federal, State and Local Gun Laws\*\*](#)
- [\*\*Gun Laws Matter: A Comparison of State Firearms Laws and Statistics\*\*](#)
- [\*\*America Caught in the Crossfire: How Concealed Carry Laws Threaten Public Safety\*\*](#)
- [\*\*10 Myths About Gun Violence in America\*\*](#)
- [\*\*Gun Regulation and the Second Amendment\*\*](#)
- [\*\*Regulating Guns in America – An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws\*\*](#)

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<sup>1</sup> Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Injury Mortality Reports, 1999-2007*, [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html) (last visited April 18, 2011).

<sup>2</sup> Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Nonfatal Injury Reports*, <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html> (last visited April 18, 2011).

<sup>3</sup> *WISQARS Injury Mortality Reports, 1999-2007*, *supra* note 1.

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

<sup>5</sup> Bureau of Justice Statistics, U.S. Dep't of Justice, *Key Facts at a Glance: Crimes Committed with Firearms, 1973-2007*, <http://bjs.ojp.usdoj.gov/content/glance/tables/guncrimetab.cfm> (last updated June 29, 2011).

<sup>6</sup> Graduate Inst. of Int'l Studies, Geneva, *Small Arms Survey 2007: Guns and the City* at 39 (Aug. 2007); Aaron Karp, *Completing the Count: Civilian Firearms, Small Arms Survey 2007: Guns and the City* at Annexe 1, (Aug. 2007), at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/Small-Arms-Survey-2007-Chapter-02-annexe-1-EN.pdf>. Because the U.S. does not have a national firearm registration system, it is necessary to estimate the number of guns in the hands of private owners.

<sup>7</sup> See Garen Wintemute, *Inside Gun Shows: What Goes on When Everybody Thinks Nobody's Watching: Executive Summary* 1 (2009), available at <http://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGSexecsummweb.pdf> (noting that Americans owned an estimated 220 to 280 million guns in 2004, including at least 86 million handguns); and Graduate Inst. of Int'l Studies, Geneva, *supra* note 6, at 39 (stating that, globally, civilians own approximately 650 million firearms, with U.S. citizens owning 270 million guns).

<sup>8</sup> Tom W. Smith, Nat'l Opinion Research Ctr. at the Univ. of Chi., *Public Attitudes Towards the Regulation of Firearms*, Figure 2 (Apr. 2007), available at <http://www-news.uchicago.edu/releases/07/pdf/070410.guns.norc.pdf>; see also Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Dep't of Justice, National Institute of Justice Research in Brief 1 (May 1997), at <http://www.ojp.usdoj.gov/nij/pubs-sum/165476.htm>.

<sup>9</sup> Violence Policy Center, *A Shrinking Minority – The Continuing Decline of Gun Ownership in America* 2, (Apr. 2011) at <http://www.vpc.org/studies/ownership.pdf> (discussing results of the 2010 General Social Survey conducted by the National Opinion Research Center at the University of Chicago).

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<sup>10</sup> Lisa Hepburn et al., *The U.S. Gun Stock: Results from the 2004 National Firearms Survey*, 13 Inj. Prev. 15, 16 (2007); see also Philip J. Cook & Jens Ludwig, *supra* note 8, at 2 (finding only one-quarter of Americans actually own firearms, and that those with one gun often have several – 68% of handgun owners also owned at least one rifle or shotgun).

<sup>11</sup> Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, 282 JAMA 447 (Aug. 4, 1999).

<sup>12</sup> Philip J. Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

<sup>13</sup> Wendy Cukier & Victor Sidel, *The Global Gun Epidemic: From Saturday Night Specials to AK-47s* 131 (2006).

For in-depth firearm-related comparisons of the United States with the rest of the world, see Gun Policy.org, *United States – Gun Facts, Figures and the Law*, <http://www.gunpolicy.org/firearms/region/united-states>.

<sup>14</sup> For other model laws, including laws regulating assault weapons and large capacity ammunition magazines, laws regulating the carrying and possession of firearms in public places, and a law requiring that handguns be “personalized” (equipped with technology to prevent firing except by an authorized user), please visit LCAV’s website, [www.lcav.org](http://www.lcav.org).

<sup>15</sup> As discussed in that Section, not all local governments have the authority to adopt laws regulating firearms and ammunition. Most states limit the ability of local jurisdictions, to varying degrees, to legislate in this area. Local jurisdictions should consult with counsel to determine the extent of their regulatory authority.

## II. Model Laws

### A. Model Law Requiring Background Checks on All Gun Purchasers

This model law requires all gun sales to be conducted through a federally licensed firearms dealer, so that a background check can be conducted on the prospective purchaser and a record created of each sale. The model law is intended to close the gap in federal law known as the “private sale” loophole. That loophole allows persons other than licensed gun dealers to sell firearms without complying with requirements applicable to licensed gun dealers. By mandating that all firearm sales be processed through a licensed dealer, the model law helps ensure that those requirements, and any other conditions that state or local law may impose, are met before any sale occurs.

As set forth in the findings below, background checks have been extremely effective in blocking felons, domestic abusers, the mentally ill and other legally prohibited purchasers from obtaining firearms. Since 1994, when federal law began requiring dealers to conduct background checks, over 1.9 million criminals and other prohibited persons across the United States have been prohibited from buying guns. Unfortunately, federal law and the laws of most states do not require an *unlicensed* seller to conduct a background check on a prospective firearm purchaser. Such “private sales” account for about 40% of all guns transferred. Gun traffickers take advantage of this loophole and sell firearms to prohibited purchasers. Federal, state, and local laws also impose requirements on licensed dealers that are generally inapplicable to unlicensed sellers, such as record-keeping requirements, which help law enforcement trace firearms that are later misused, lost or stolen.

Currently, only a handful of states have closed the private sale loophole and require universal background checks, despite the fact that the American public overwhelmingly supports such laws. A nationwide poll conducted in January 2011, for example, found that 86% of Americans, including 81% of gun owners, favor laws requiring every gun buyer to pass a background check, regardless of whether the seller is a licensed firearms dealer.

Law enforcement organizations also strongly support laws requiring background checks for all gun sales. In a 2007 report, the International Association of Chiefs of Police explained that, because individuals who fail a background check can readily access guns via private sales, “guns are far too easily acquired by prohibited possessors, and too often end up being used in gun crime and gun violence.” The report concludes that —Congress, as well as state, local and tribal governments, should enact laws requiring that all gun sales and transfers proceed through” a federally licensed dealer.

**Laws requiring all firearm sales and transfers to be processed through a licensed dealer have the most potential to reduce gun-related deaths and injuries. They also help facilitate the enforcement of other strong gun laws. For this reason, the universal background checks model law provides the foundation for all other model laws in this publication.**

## Text of Model Law

### CHAPTER 1            REQUIRING BACKGROUND CHECKS ON ALL GUN PURCHASERS

- Sec. 1        Legislative findings, purpose and intent
- Sec. 2        Definitions
- Sec. 3        All firearm transfers to be conducted through a licensed dealer
- Sec. 4        Exceptions
- Sec. 5        Penalties
- Sec. 6        Severability

#### Sec. 1            Legislative findings, purpose and intent

*[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings particular to this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]*

The [Legislative Body]<sup>\*</sup> hereby finds and declares:

- (a) Federal law requires anyone ~~engage[d]~~ in the business” of selling firearms to obtain a federal firearms license.<sup>1</sup> Many individuals sell firearms without falling within the federal definition of ~~engaged in the business,~~” however.<sup>2</sup> It has been estimated that while 60% of all firearms sold in the U.S. are transferred by federally licensed dealers, the remaining 40% of guns are sold by unlicensed sellers.<sup>3</sup>
- (b) Federal law requires federally licensed firearms dealers, but not unlicensed sellers of firearms, to, among other things: (1) perform background checks on prospective firearm purchasers; and (2) maintain records of all firearm sales.<sup>4</sup>
- (c) Background checks are an extremely effective way to keep guns out of the hands of prohibited persons. Since the federal background check requirement was adopted in 1994, over 1.9 million criminals and other prohibited persons across the United States have been prohibited from buying guns.<sup>5</sup> In 2010 alone, 70,972 gun transfers were denied using the federal background check system.<sup>6</sup>
- (d) Private firearm sales are a significant public safety concern. The gap in federal law that allows unlicensed individuals to sell firearms without background checks or recordkeeping is known as the ~~private sale~~” loophole.<sup>7</sup> According to a November 2010 report from the U.S. Department of Justice, because of this loophole, ~~individuals prohibited by law from possessing guns can easily obtain them from private sellers and do so without any federal records of the transactions.~~<sup>8</sup>
- (e) The Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) found that during one 29-month period, unlicensed sellers were involved in about one-fifth of illegal trafficking

investigations and associated with nearly 23,000 trafficked guns.<sup>9</sup> Roughly 20% of gun trafficking investigations involve transfers by unlicensed sellers.<sup>10</sup>

(f) According to a 2010 report by Mayors Against Illegal Guns (a coalition of over 600 mayors that targets illegal guns nationwide),<sup>11</sup> states that do not require background checks for sales of handguns at gun shows are the source of crime guns recovered in other states at an average rate more than two and one-half times greater than states that do require such background checks.<sup>12</sup> None of the ten states that are most frequently the source of crime guns when population is taken into account have any universal background check or gun show background check requirement.<sup>13</sup>

(g) A June 2009 U.S. Government Accountability Office report detailing U.S. efforts to fight gun trafficking into Mexico found that U.S. government restrictions on collecting and reporting information on gun purchases, as well as the lack of background check requirements for private gun transfers, substantially contribute to the availability of U.S. firearms to Mexican cartels.<sup>14</sup> ATF also concluded that the increased incidence of gun trafficking into Mexico is influenced by a readily accessible source of guns originating primarily in the secondary market, at U.S. gun shows, flea markets and other private sales locations.<sup>15</sup>

(h) Universal background checks reduce illegal trafficking and treat all transfers equally, whether the purchaser is at a gun shop, a gun show, or buying from a neighbor or from anyone else. Universal background checks help ensure that all persons buying guns are legally eligible to do so.

(i) In a 2007 report, the International Association of Chiefs of Police (IACP) explained that, because individuals who fail a background check can easily access firearms through private sales, ~~guns~~ are far too easily acquired by prohibited possessors, and too often end up being used in gun crime and gun violence.” The report concluded that ~~Congress~~, as well as state, local and tribal governments, should enact laws requiring that all gun sales and transfers proceed through” a federally licensed dealer.<sup>16</sup>

(j) Laws requiring federally licensed dealers to record information about each sale or transfer of a firearm help law enforcement trace the owners of guns recovered in crimes, and remove guns from the hands of people who have been convicted of a crime or otherwise become ineligible to possess them.<sup>17</sup>

(k) The 2007 IACP report concluded that laws applying a record-keeping requirement to all firearm sales ~~allow~~ law enforcement to trace the gun to the last point of sale should it be criminally misused, lost or stolen.” According to the report, guns that are not sold or transferred through a licensed gun dealer ~~become~~ more difficult to trace if lost, stolen or criminally misused, making crimes involving them more difficult to solve.”<sup>18</sup>

(l) California,<sup>19</sup> Rhode Island<sup>20</sup> and the District of Columbia<sup>21</sup> have adopted universal background check laws that require licensed dealers or law enforcement agencies to conduct a background check on all prospective gun buyers. Connecticut,<sup>22</sup> Maryland<sup>23</sup> and Pennsylvania<sup>24</sup>

impose universal background checks on handgun purchasers. Colorado,<sup>25</sup> Illinois,<sup>26</sup> New York<sup>27</sup> and Oregon<sup>28</sup> require background checks with respect to all firearm sales at gun shows.

(m) Americans overwhelmingly support laws requiring background checks on all gun purchasers:

- A national survey conducted for Mayors Against Illegal Guns in January 2011 found that 86% of Americans – including 81% of gun owners – favor mandatory criminal background checks for all people purchasing guns.<sup>29</sup>
- A nationwide poll conducted in early 2008 found that 87% of Americans, including 83% of gun owners, favor requiring anyone who sells guns to conduct criminal background checks on prospective purchasers.<sup>30</sup>
- Polls conducted in five bellwether states (Arizona, Colorado, Indiana, Ohio and Virginia) in February 2011 found that more than 83% of respondents, including more than 75% of gun owners, in each of these states support laws requiring all gun purchasers to pass a background check.<sup>31</sup>

(n) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to require all firearm sales in [Jurisdiction] to be processed through a licensed firearms dealer, who will conduct a background check and create a record of each sale. The [Legislative Body] believes this law will protect public safety by helping to keep guns out of the hands of felons, domestic abusers, the mentally ill, and other prohibited persons, and by aiding law enforcement efforts to solve gun crimes.

## **Sec. 2            Definitions**

As used in this Chapter:

*[The definitions of commonly used terms, such as ~~–Firearm,~~ ~~–Law enforcement,~~ ~~–Licensed firearms dealer~~ and ~~–Person,~~ which are included in the Appendix, should be included in this section.]*

## **Sec. 3            All firearm transfers to be conducted through a licensed dealer**

(a) No person shall sell or otherwise transfer a firearm unless:

- (1) The person is a licensed firearms dealer;
- (2) The purchaser or other transferee is a licensed firearms dealer; or
- (3) The requirements of subsection (b) are met.

(b) Where neither party to a prospective firearms transaction is a licensed firearms dealer, the parties to the transaction shall complete the sale or other transfer through a licensed firearms dealer as follows:

- (1) The seller or other transferor shall deliver the firearm to the dealer, who shall retain possession of the firearm until all legal requirements for the sale or other transfer have been met, including compliance with any state or local waiting periods;
- (2) The dealer shall process the sale or other transfer as if he or she were the seller or other transferor. The dealer shall comply with all requirements of federal, state, and local law that would apply if he or she were the seller or other transferor of the firearm;
- (3) The dealer shall conduct a background check on the purchaser or other transferee in accordance with 18 U.S.C. § 922(t) and state and local law and, if the transaction is not prohibited, deliver the firearm to that person after all other legal requirements are met;
- (4) If the dealer cannot legally deliver the firearm to the purchaser or other transferee, the dealer shall conduct a background check on the seller or other transferor in accordance with 18 U.S.C. § 922(t), and state and local law, and, if the return is not prohibited, return the firearm to that person;
- (5) If the dealer cannot legally return the firearm to the seller or other transferor, the dealer shall deliver the firearm to [local law enforcement] within 24 hours; and
- (6) The dealer may require the purchaser or other transferee to pay a fee covering the administrative costs incurred by the dealer for facilitating the transfer of the firearm, plus applicable fees pursuant to federal, state, and local law.

#### **Sec. 4            Exceptions**

Section 3 does not apply to:

- (a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;
- (b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official transferring or receiving a firearm as required in the operation of his or her official duties;
- (c) A gunsmith who receives a firearm solely for the purposes of service or repair, or the return of the firearm to its owner by the gunsmith;
- (d) A common carrier, warehouseman, or other person engaged in the business of transportation or storage, to the extent that the receipt of any firearm is in the ordinary course of business and not for the personal use of any such person;

- (e) A person who is loaned a firearm solely for the purpose of shooting at targets, if the loan occurs on the premises of a properly licensed target facility, and the firearm is at all times kept within the premises of the target range;
- (f) A person who is under 18 years of age who is loaned a firearm for lawful hunting or sporting purposes or for any other lawful recreational activity while under the direct supervision and control of a responsible adult;
- (g) A person who is 18 years of age or older who is loaned a firearm while the person is accompanying the lawful owner and using the firearm for lawful hunting or sporting purposes or for any other lawful recreational activity;
- (h) A person who acquired the firearm by operation of law upon the death of the former owner of the firearm within the preceding [60] days. At the end of the 60-day period, the person must either have lawfully transferred the firearm or must have contacted the Department to notify the Department that he or she has possession of the firearm and intends to retain possession of the firearm, in compliance with all federal, state and local laws;<sup>32</sup> or
- (i) An adult family member of the lawful owner of the firearm if the owner resides with the family member but is not currently present in the residence, provided that the family member does not maintain control over the firearm for more than [14] consecutive days. This exception shall not apply if the owner or the family member knows or has reasonable cause to believe that federal, state, or local law prohibits the family member from purchasing or possessing firearms, or the owner knows or has reasonable cause to believe that the family member is likely to use the firearm for unlawful purposes.<sup>33</sup>

**For suggested language regarding Sections 5 – 6, Penalties and Severability, see the Appendix.**

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\* Where the words “~~Act/Ordinance~~,” “~~Jurisdiction~~,” “~~Legislative Body~~” or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>1</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>2</sup> The Gun Control Act of 1968 provides that persons “engaged in the business” of dealing in firearms must be licensed. Although Congress did not originally define the term “engaged in the business,” it did so in 1986 as part of the McClure-Volkmer Act. That Act defined the term “engaged in the business,” as applied to a firearms dealer, as “a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.” 18 U.S.C. § 921(a)(21)(C). Significantly, however, the term was defined to *exclude* a person who “makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.” *Id.* Some private sellers take advantage of this dangerous loophole and sell guns to convicted criminals, minors and other prohibited persons.

<sup>3</sup> Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Department of Justice, National Institute of Justice Research in Brief 6-7 (1997), available at <http://www.ncjrs.gov/pdffiles/165476.pdf>.

<sup>4</sup> 18 U.S.C. §§ 922(t)(1), 923(g).

<sup>5</sup> Michael Bowling et al., Bureau of Justice Statistics, U.S. Dep’t of Justice, *Background Checks for Firearm Transfers, 2009 - Statistical Tables*, tbl.1 (2010), available at <http://bjs.ojp.usdoj.gov/content/pub/html/bcft/2009/bcft09st.pdf>. These statistics cover the period March 1, 1994 – Dec. 31, 2009.



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<sup>6</sup> Criminal Justice Information Services Division, Federal Bureau of Investigation, U.S. Dep’t of Justice, *CJIS Annual Report 2010*, at 11 (2010), available at <http://www.fbi.gov/about-us/cjis/annual-report-2010>. These denials were out of 14 million NICS background checks in 2010. *Id.*

<sup>7</sup> Although the private sale loophole is frequently referred to as the “gun show” loophole (because of the particular problems associated with gun shows), it applies to all private firearm sales, regardless of where they occur.

<sup>8</sup> Evaluation and Inspection Division, Office of the Inspector General, U.S. Dep’t of Justice, *Review of ATF’s Project Gunrunner 10* (2010), available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

<sup>9</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, at xi (2000), available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/Following\\_the\\_Gun%202000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf).

<sup>10</sup> *Id.*

<sup>11</sup> Mayors Against Illegal Guns, *Coalition Members*, at <http://www.mayorsagainstillegalguns.org/html/members/members.shtml> (last visited July 12, 2011).

<sup>12</sup> Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking 15* (2010), available at <http://www.tracetheguns.org/report.pdf>.

<sup>13</sup> *Id.* at 6, 28.

<sup>14</sup> U.S. Gov’t Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 24-27 (2009), available at <http://www.gao.gov/new.items/d09709.pdf>.

<sup>15</sup> Statement Before the United States House of Representatives Committee on Foreign Affairs, Subcommittee on the Western Hemisphere by William Hoover, Assistant Dir. for Field Operations of the Bureau of Alcohol, Tobacco, Firearms and Explosives, ¶ 8 (Feb. 7, 2008), <http://foreignaffairs.house.gov/110/hoo020708.htm>.

<sup>16</sup> Int’l Ass’n of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (2007), available at <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87>.

<sup>17</sup> 18 U.S.C. § 923(g); 27 C.F.R. §§ 478.124, 478.125.

<sup>18</sup> IACP, *supra* note 16, at 14.

<sup>19</sup> Cal. Penal Code §§ 12072(d), 12082.

<sup>20</sup> In Rhode Island, the background check requirement does not apply to persons licensed to carry a concealed handgun. R.I. Gen. Laws §§ 11-47-35 to 11-47-35.2.

<sup>21</sup> D.C. Code Ann. §§ 7-2502.01, 7-2502.03, 7-2505.01, 7-2505.02.

<sup>22</sup> Conn. Gen. Stat. § 29-33(c).

<sup>23</sup> Md. Code Ann., Pub. Safety §§ 5-101(r), 5-124(a), 5-130(j).

<sup>24</sup> 18 Pa. Cons. Stat. §§ 6111(b), 6111(c), 6111(f)(1) – (2).

<sup>25</sup> Colo. Rev. Stat. §§ 12-26.1-101 – 12-26.1-108.

<sup>26</sup> 430 Ill. Comp. Stat. 65/3, 65/3.1.

<sup>27</sup> N.Y. Gen. Bus. Law §§ 895 – 897; N.Y. Penal Law § 400.00.

<sup>28</sup> Or. Rev. Stat. §§ 166.432 – 166.441.

<sup>29</sup> American Viewpoint and Momentum Analysis for Mayors Against Illegal Guns, *Results From A National Survey of 1003 Registered Voters* 6 (2011), [http://www.mayorsagainstillegalguns.org/downloads/pdf/maig\\_poll\\_01\\_18\\_2011.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_poll_01_18_2011.pdf).

<sup>30</sup> Greenberg Quinlan Rosner Research & The Tarrance Group for Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3, 6, April 10, 2008, [http://www.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf).

<sup>31</sup> Mayors Against Illegal Guns, *New Polls In Five Bellwether States Show Overwhelming Support To Fix Gun Background Check System*, Mayors Against Illegal Guns, March 2, 2011, <http://www.mayorsagainstillegalguns.org/html/media-center/pr020-11.shtml>.

<sup>32</sup> LCAV recommends that such compliance include, at a minimum, undergoing a background check to ensure the possessor is not prohibited by law from owning or possessing the firearm. The person taking possession of the firearm should also submit a report to the Department containing information about the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm.

<sup>33</sup> A jurisdiction may wish to consider including additional sections, before the penalties and severability sections, on the following topics:

- **Prohibited Purchasers:** Federal law prohibits certain persons, such as felons, domestic abusers, and the mentally ill, from purchasing or possessing firearms, and authorizes states to prohibit firearm possession by other persons. Jurisdictions adopting this type of model law may wish to include a section prohibiting

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additional classes of persons from purchasing firearms, such as those convicted of firearm-related violent misdemeanors or individuals with a history of drug or alcohol abuse.

- The Scope of the Background Check: While federal law requires federally licensed firearms dealers to conduct a background check on the purchaser prior to sale of a firearm, the few databases that federal law requires to be searched during that background check do not contain comprehensive information about persons prohibited from possessing firearms. As a result, a jurisdiction may wish to consider requiring dealers to contact the jurisdiction's law enforcement agency, who could conduct a more comprehensive background check on the purchaser prior to the sale of a firearm. States such as California, Illinois, New Jersey and Pennsylvania, among others, require dealers to contact state law enforcement for background check purposes.

LCAV is available to assist with the drafting of these provisions upon request.

## **B. Model Law Requiring the Licensing of Firearm Owners**

This model law requires any person who purchases or possesses a firearm to obtain a license. The license will only be issued after the person has undergone hands-on safety training and passed performance-based tests showing that he or she knows how to safely load, unload, clean, store, and fire a gun. The person must also pass a written test demonstrating knowledge of relevant firearms laws. The written test must be repeated every three years, and the training course and performance-based test must be repeated every six years.

As discussed in the findings below, licensing laws help: 1) ensure that gun owners know how to safely use and store firearms, thereby reducing the number of unintentional shootings, firearm thefts, and incidents in which unauthorized persons, such as children and criminals, gain access to firearms; and 2) increase compliance with existing gun laws by requiring gun owners to demonstrate knowledge of those laws.

Although federal law does not require gun owners or purchasers to obtain a license, several states and a number of local jurisdictions have enacted licensing requirements. Public opinion polls show that Americans overwhelmingly support such laws. A nationwide poll conducted in May of 2001 found that 85% of respondents – including 73% of gun owners – favored laws requiring handgun purchasers to obtain a permit before buying a handgun. That poll also shows most Americans mistakenly believe that U.S. laws already require licensing of gun owners.

## Text of Model Law

### **CHAPTER 1           REQUIRING THE LICENSING OF FIREARM OWNERS**

<b>Sec. 1</b>	<b>Legislative findings, purpose and intent</b>
<b>Sec. 2</b>	<b>Definitions</b>
<b>Sec. 3</b>	<b>Firearm owner's license requirement</b>
<b>Sec. 4</b>	<b>Ammunition purchase, possession, delivery</b>
<b>Sec. 5</b>	<b>Exceptions</b>
<b>Sec. 6</b>	<b>Application for a license</b>
<b>Sec. 7</b>	<b>Safety training requirement</b>
<b>Sec. 8</b>	<b>Persons exempt from safety training</b>
<b>Sec. 9</b>	<b>Written safety testing requirement</b>
<b>Sec. 10</b>	<b>License approval, denial or revocation</b>
<b>Sec. 11</b>	<b>Features and use of firearm owner's licenses</b>
<b>Sec. 12</b>	<b>Appeal procedure</b>
<b>Sec. 13</b>	<b>Surrender and removal of firearms upon denial or revocation</b>
<b>Sec. 14</b>	<b>Duration and renewal</b>
<b>Sec. 15</b>	<b>Firearm license records</b>
<b>Sec. 16</b>	<b>Reporting requirements for license holders</b>
<b>Sec. 17</b>	<b>Administrative rules and regulations</b>
<b>Sec. 18</b>	<b>Penalties</b>
<b>Sec. 19</b>	<b>Severability</b>

#### **Sec. 1           Legislative findings, purpose and intent**

*[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]*

The [Legislative Body]<sup>\*</sup> hereby finds and declares:

(a) Between 1999 and 2007, over 6,500 people in the United States died from unintentional shootings, including 1,309 children and young people ages 0-18.<sup>1</sup> More than 15,000 persons in the United States are treated each year in hospital emergency rooms for unintentional gunshot wounds.<sup>2</sup>

(b) At least 500,000 firearms are stolen each year from residences across the United States.<sup>3</sup>

(c) Requiring gun owners to obtain a license after undergoing safety training and testing helps ensure that gun owners know how to safely use and store firearms, thereby reducing the

number of unintentional shootings, firearm thefts, and incidents in which unauthorized persons, such as children and criminals, gain access to firearms.

(d) Firearm licensing laws help increase compliance with existing firearms laws by requiring gun owners to demonstrate knowledge of those laws.

(e) Federal law does not require gun owners to obtain a license or undergo safety training or testing. Hawaii,<sup>4</sup> Illinois,<sup>5</sup> Massachusetts<sup>6</sup> and New Jersey<sup>7</sup> require licenses for all firearm purchasers or owners, while seven other states require a license only for handgun purchasers or owners.<sup>8</sup> A number of local jurisdictions, including New York City<sup>9</sup> and Chicago,<sup>10</sup> have also enacted licensing requirements.

(f) A September 2010 report by Mayors Against Illegal Guns (a coalition of over 600 mayors that targets illegal guns nationwide) analyzed the impact of a variety of state laws on gun trafficking, concluding that guns flow from states with weak gun laws into states with stronger gun laws. With respect to licensing laws, the report concluded that states that require purchase permits for all handgun sales are the sources of guns recovered from crimes in other states at less than one-third the rate of states that do not have such laws.<sup>11</sup>

(g) A 2001 study analyzing the firearm tracing data of crime guns recovered in 25 U.S. cities revealed that states with some form of both licensing and registration systems have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place.<sup>12</sup> This suggests that licensing and registration laws make it more difficult for criminals, juveniles and other prohibited purchasers to obtain guns.<sup>13</sup>

(h) Public opinion polls show that Americans overwhelmingly support licensing laws. A nationwide poll conducted in May of 2001 found that 85% of respondents – including 73% of gun owners – favored laws requiring handgun purchasers to obtain a permit before buying a handgun. That poll also found that 70% of the respondents mistakenly believe that U.S. laws already require the licensing of gun owners.<sup>14</sup>

(i) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to require firearm owners to obtain a license after undergoing safety training and testing and demonstrating knowledge of relevant firearm laws. The [Legislative Body] believes that this requirement will protect public safety and reduce gun deaths and injuries by helping to ensure that gun owners know how to safely store and use firearms, and will increase compliance with existing firearms laws by requiring gun owners to demonstrate knowledge of those laws.

## **Sec. 2            Definitions**

As used in this Chapter:

*[In addition to the terms defined below, the definitions of commonly used terms, such as –Ammunition,” –Department,” –Firearm,” –Law enforcement officer,” and –Person,” which are included in the Appendix, should be included in this section.]*

- (a) ~~–Applicant” or –firearm owner’s license applicant”~~ refers to a person who is seeking a firearm owner’s license, or renewal of such a license, pursuant to this Chapter.
- (b) ~~–License holder,” –holder,” or –licensee”~~ refer to a person who has been issued a firearm owner’s license pursuant to this Chapter.

### **Sec. 3            Firearm owner’s license requirement**

- (a) No person may purchase or possess a firearm within [Jurisdiction] unless he or she has been issued a firearm owner’s license.
- (b) Any person owning or possessing a firearm on the effective date of this Chapter shall apply for a license in accordance with this Chapter within [60] days of the effective date of this Chapter.
- (c) No person may deliver a firearm to any resident of [Jurisdiction] who does not present a valid firearm owner’s license.
- (d) A person delivering any firearm under this section must record the information for his or her files that is contained on the transferee’s firearm owner’s license.

### **Sec. 4            Ammunition purchase, possession, delivery**

- (a) No person shall purchase, or possess ammunition for a firearm without having first obtained a firearm owner’s license.
- (b) No person shall deliver ammunition to any resident of [Jurisdiction] who does not present a valid firearm owner’s license.
  - (1) For any in-person transactions, the purchaser must physically present the license to the seller.
  - (2) For any transactions that are not in-person, the purchaser must provide his or her unique license number issued by the Department to the seller demonstrating that he or she is a valid licensee, before the seller transfers the ammunition.<sup>15</sup>
- (c) A person delivering any ammunition under this section must record the information for his or her files that is contained on the transferee’s firearm owner’s license.

### **Sec. 5            Exceptions**

Sections 3 and 4 shall not apply to the purchase or possession of a firearm or ammunition by, or delivery of a firearm or ammunition to:

- (a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;

- (b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official, who is required to possess a firearm in the operation of his or her official duties;
- (c) Licensed firearms manufacturers, importers, or dealers, while engaged in the course and scope of their activities as licensees, provided that such persons are properly licensed under federal, state, and local law;
- (d) A gunsmith who is in possession of a firearm solely for the purposes of service or repair;
- (e) A common carrier, warehouseman, or other person engaged in the business of transporting or storing goods, to the extent that the possession or receipt of any firearm is in the ordinary course of business and not for the personal use of any such person;
- (f) A person who is under 18 years of age who is in possession of a firearm for lawful hunting or sporting purposes or for any other lawful recreational activity while under the direct supervision and control of the licensed owner of the firearm;
- (g) A person who is 18 years of age or older while the person is accompanying the licensed owner of the firearm and is using the firearm for lawful hunting or sporting purposes or for any other lawful recreational activity;
- (h) A new resident of [Jurisdiction] who has brought his or her firearm into the [Jurisdiction] within the preceding [60] days;
- (i) Nonresidents of [Jurisdiction] participating in lawful hunting or sporting activity or any other lawful recreational activity in [Jurisdiction], provided that their ownership or possession of a firearm for such purposes is lawful in the jurisdiction in which they reside, and that such weapon is transported in compliance with 18 U.S.C. § 926A;
- (j) A person being loaned a firearm solely for the purpose of shooting at targets, if the loan occurs on the premises of a properly licensed target facility, and the firearm is at all times kept within the premises of the target range;
- (k) A person who has acquired a firearm by operation of law upon the death of the former owner of the firearm within the preceding [60] days;
- (l) A person lawfully transporting a firearm through or into [Jurisdiction] in accordance with 18 U.S.C. § 926A; or
- (m) An adult family member of the licensee if the licensee resides with the family member but is not currently present in the residence, provided that the family member does not maintain control over the firearm for more than [14] consecutive days. This exception shall not apply if the licensee or the family member knows or has reasonable cause to believe that federal, state, or local law prohibits the family member from purchasing or possessing firearms, or the licensee

knows or has reasonable cause to believe that the family member is likely to use the firearm for unlawful purposes.

## **Sec. 6            Application for a license**

- (a) Any person who is required to obtain a firearm owner's license under this Chapter shall:
- (1) Appear in person at a time and place designated by the Department;
  - (2) Complete and submit to the Department an application, in writing, signed under penalty of perjury, on a form prescribed by the Department;
  - (3) Provide all relevant information requested to demonstrate compliance with this Chapter, including:
    - a. The applicant's full name and any other name by which the applicant has ever been known;
    - b. The home address and telephone number of the applicant;
    - c. The occupation, business address and business telephone number of the applicant;
    - d. The applicant's gender, race, height, weight, date of birth, place of birth, country of citizenship, social security number, and, if the applicant is not a U.S. citizen, alien or admission number;
    - e. A copy of the applicant's current driver's license or other government-issued identification card containing a photograph of the applicant;
    - f. Information concerning any denial or revocation of a license, permit or registration card pertaining to any firearm owned or possessed by the applicant;
    - g. The name of, and description of any instance in which, any court, board, commission or other lawful authority has done either of the following, including dates of commitment and release:
      - i. Determined that the applicant, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease, was a danger to himself or herself or others, lacked the mental capacity to contract or manage his or her own affairs, or was not guilty of a crime by reason of insanity or incompetent to stand trial; or
      - ii. Involuntarily committed the person to a mental institution (including the name and address of the institution);



- h. An affidavit signed by a certified firearms safety course instructor or authorized law enforcement officer stating that the applicant successfully completed a firearms safety training course and that the course fulfills the requirements of Sec. 7, and including the name, address, and telephone number of the instructor or officer, the name of the person taking the course, and the date(s) and place(s) of the course;
  - i. Proof that the applicant has successfully completed the written safety test described in Sec. 9;
  - j. Two identical color photographs of the applicant's face, frontal view, two inches square in size, taken within the 30 days immediately preceding the application, as specified in rules or regulations of the Department; and
  - k. Any additional information the Department deems necessary to process the application.
- (b) The Department may charge a fee to cover the administrative costs of the issuance of the license, as well as the administrative costs of issuing the written safety test under Sec. 9.<sup>16</sup>

## **Sec. 7            Safety training requirement**

An applicant for a firearm owner's license must, as a condition for issuance of a license, complete a firearms safety training course that fulfills the following requirements:

- (a) The firearms safety training course must be approved by the Department, and:
  - (1) Conducted by a firearms instructor certified pursuant to rules and regulations prescribed by the Department; or
  - (2) Offered by a state, county or municipal law enforcement agency.
- (b) The firearms safety training course must require, at a minimum, [10] hours of instruction on:
  - (1) The safe use of firearms, including proper loading, unloading, and firing, and the proper engaging and disengaging of common firearm safety mechanisms;
  - (2) Methods for safely storing and securing firearms and ammunition and preventing child access to firearms and ammunition;
  - (3) Proper firearm care and cleaning;
  - (4) Applicable federal, state, and local laws relating to the purchase, sale, possession, transportation, carrying, and storage of firearms;

- (5) State laws pertaining to the use of deadly force for self-defense; and
  - (6) Techniques for managing a violent confrontation, including conflict resolution.
- (c) During the firearms safety training course, the applicant must satisfactorily demonstrate to the course instructor that he or she knows how to safely use and store firearms. This demonstration must include the proper loading and unloading of the firearm, the proper engaging and disengaging of common firearm safety mechanisms, and the proper firing of the firearm. If the firearm has a detachable magazine, the demonstration must also include the proper removal and reattachment of the magazine and acknowledgement by the applicant that a round may remain in the chamber even though the magazine has been removed.
- (d) A law enforcement agency or firearms instructor conducting a firearm safety training course intending to fulfill the requirements of this section shall:
- (1) Make the course records for each applicant available to law enforcement upon request;
  - (2) Maintain all course records on students for a period of no less than [six] years from course completion date; and
  - (3) Permit no more than [40] students in the classroom portion of the course, and no more than [five] students in the range instruction portion of the course.
- (e) A law enforcement agency or firearms instructor conducting a firearm safety training course shall not give a grade of passing to an applicant who:
- (1) Refuses to follow the instructions of the firearms instructor or agency representative; or
  - (2) Despite appropriate instruction, handles a firearm in a manner that, in the judgment of the firearms instructor or agency representative, poses a danger to the applicant or to others.
- (f) The firearm owner's license applicant must receive from the instructor(s) who conducted the course a signed affidavit providing the name, address, and telephone number of the instructor, the name of the person taking the course and the date(s) and place(s) of the course, and attesting to the successful completion of the course by the applicant. The applicant must present this affidavit to the Department as proof of completion of each program requirement.

## **Sec. 8           Persons exempt from safety training**

- (a) Retired federal, state or local law enforcement officers or retired corrections officers who were required to own or possess a firearm while engaged in the operation of their official duties prior to retirement are exempt from Sec. 7.

(b) To obtain a firearm owner's license, an individual identified in section (a) must successfully complete the written test required in Sec. 9, and meet all other application requirements.

#### **Sec. 9 Written safety testing requirement**

Before a firearm owner's license will be issued, each applicant must successfully complete a written test, created and administered by the Department, demonstrating knowledge regarding the topics listed in Sec. 7(b).

#### **Sec. 10 License approval, denial or revocation**

(a) After consideration of an application for a license or for renewal of a license and all information obtained relative thereto, the Department shall either approve or deny the application and notify the applicant in writing of the decision, including the reason(s) for denial, and the appeal procedures under Sec. 12.

(b) The Department may grant or renew a firearm owner's license only if the applicant is in compliance with this Chapter and all other applicable federal, state and local laws relating to firearms and ammunition.

(c) The Department shall deny the issuance or renewal of a firearms owner's license, or shall revoke an existing license:

(1) For failure to meet any of the requirements of this Chapter, including the requirements for renewal pursuant to Sec. 14, or any other applicable federal, state, or local law relating to firearms or ammunition;

(2) For fraud or misrepresentation in securing a license;

(3) If the applicant is or becomes prohibited from purchasing or possessing a firearm under federal, state, or local law; or

(4) Upon the occurrence of any event or circumstance that would disqualify a licensee from being issued the original firearm owner's license.

#### **Sec. 11 Features and use of firearm owner's licenses**

(a) If the application for a firearm owner's license is approved, the Department shall issue to the licensee a firearm owner's license on a form prescribed by the Department containing the date of the issuance of the license, a unique license number, the licensee's name, residence address, date of birth, photograph, and such other personal information as may be required by the Department, and the date the license expires.

(b) The firearm owner's license shall not be transferable or assignable. The firearm owner's license shall be carried with the firearm if it is transported from the home by the holder. The holder shall exhibit the license to any law enforcement officer upon request.

## **Sec. 12 Appeal procedure**

(a) If an application for a firearm owner's license or renewal of a license is denied or a license is revoked, the Department shall inform the applicant or license holder in writing of the reasons for the denial or revocation, and of the appeal procedures under this section. Any applicant who believes that his or her application was wrongfully denied, or any holder of a license who believes that his or her license was wrongfully revoked may, within [30] days after receiving notice of the denial or revocation, file an appeal of the denial or revocation with the Department. The appeal must be made in writing, setting forth the specific grounds for the appeal.

(b) If the applicant or license holder submits a timely appeal, the [Head of the Department] shall set a time and place for the hearing and, based upon the evidence contained in the record of such hearing, either affirm or reverse the decision of the Department. The [Head of the Department] shall provide a written decision regarding the appeal. The action of the [Head of the Department] shall be subject to judicial review in accordance with the provisions of the [jurisdiction's law regarding judicial review].

(c) In the event that the decision to deny the application or revoke the license is affirmed, the decision to deny the application or revoke the license shall become final only after all time for judicial review of the decision of the [Head of the Department] has expired.

## **Sec. 13 Surrender and removal of firearms upon denial or revocation**

(a) When a decision not to renew a license or to revoke a firearm owner's license becomes final, the license holder must immediately surrender to the Department any firearms that he or she owns or possesses.

(b) If an applicant or license holder fails to surrender his or her firearms to the Department after he or she receives notice that the decision to revoke his or her license or deny his or her application for renewal has become final, the Department shall retrieve the firearms, if any, within [48] hours.

## **Sec. 14 Duration and renewal**

(a) A firearm owner's license shall expire automatically [three] years from the date of issuance. Except as stated in subsection (b), the license holder shall renew his or her license once every [three] years through completion of the requirements in Sec. 6 and successful completion of the written test required by Sec. 9.

(b) A license holder must repeat the safety training requirement in Sec. 7 once every [six] years.

(c) The Department shall mail renewal notices to each license holder at least [90] days prior to expiration of the license. The renewal notice shall state whether the person must complete the safety training requirement pursuant to subsection (b) for renewal of the license. Applications for renewal shall be received by the Department [60] days prior to the expiration of the current license.

(d) The Department shall follow the procedures of Sec. 10 in approving or denying the application for renewal of a license.

## **Sec. 15 Firearm license records**

The Department shall retain an accurate record of every application for a firearm owner's license, received and acted upon, together with all other information pertaining thereto on all applications issued or denied under the provisions of this Chapter. Such information shall be maintained in an accessible manner and available to law enforcement and the public upon request.<sup>17</sup>

## **Sec. 16 Reporting requirements for license holders**

A license holder shall report to the Department:

- (a) Within [48] hours of the time he or she discovered or should have discovered:
  - (1) The loss or theft of any firearm he or she owns or possesses;<sup>18</sup> or
  - (2) Any change in his or her status that would affect his or her eligibility to own or possess a firearm or firearm owner's license; and
- (b) Within [14] days of the occurrence of:
  - (1) Any change in the information appearing on the license that would not affect his or her eligibility for the license; or
  - (2) The time he or she knew or should have known of the loss, theft or destruction of the license.

**For suggested language regarding Sections 17 – 19, Administrative rules and regulations, Penalties, and Severability, see the Appendix.**

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\* Where the words ~~“Act/Ordinance,”~~ ~~“Jurisdiction,”~~ ~~“Legislative Body”~~ or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>1</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Injury Mortality Reports, 1999-2007* (2010), [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html).

<sup>2</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Nonfatal Injury Reports* (2010), <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>. See also Karen E. Gotsch

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et al., *Surveillance for Fatal and Nonfatal Firearm-Related Injuries – United States 1993-1998*, CDC Surveillance Summary, Apr. 13, 2001, at 2, available at <http://www.cdc.gov/mmwr/pdf/ss/ss5002.pdf>.

<sup>3</sup> Bureau of Alcohol, Tobacco & Firearms, U.S. Dep’t of Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* 41 (2000), available at

[http://www.mayorsagainstillegalguns.org/downloads/pdf/Following\\_the\\_Gun%202000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf).

<sup>4</sup> Haw. Rev. Stat. §§ 134-2, 134-13.

<sup>5</sup> 430 Ill. Comp. Stat. 65/1 – 65/15a.

<sup>6</sup> Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E, 131P.

<sup>7</sup> N.J. Stat. § 2C:58-3.

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

<sup>9</sup> City of New York Administrative Code §§ 10-303 *et seq.*, 10-131(a), (i); Rules of the City of New York Title 38, §§ 3-09, 5-01, 5-22, 5-25.

<sup>10</sup> Municipal Code of Chicago §§ 8-20-110 – 8-20-130.

<sup>11</sup> Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 17 (2010), available at <http://www.tracetheguns.org/report.pdf>. According to this report, states that require handgun purchase permits often require that a prospective gun buyer visit a law enforcement agency to obtain the permit – which may deter criminals and traffickers from applying. The report also suggests that the enhanced background checks these laws may impose on license applicants make it more difficult for gun traffickers to obtain firearms. *Id.*

<sup>12</sup> Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 *Inj. Prevention* 184, 188-89 (2001). The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

<sup>13</sup> Licensing laws are most effective when combined with laws requiring the registration of firearms. Please see the *LCAV Model Law Requiring the Registration of Firearms* for further information about such laws.

<sup>14</sup> Educational Fund to Stop Gun Violence, *Lake, Snell, Perry & Associates, Inc. Poll, (May 15-21, 2001)*, <http://www.commondreams.org/news2001/0612-05.htm>. A poll conducted in 2008 found that 68% of voters, including 60% of gun owners, support the licensing of gun owners. Penn, Schoen, & Berland Associates, Inc. for Brady Campaign to Prevent Gun Violence, *Post-Election Analysis: Sensible Gun Laws Builds Bridges not Burns [sic] Them to Moderates, McCain, and Even Gun Owners in Post-Heller World* (Nov. 18, 2008), available at <http://www.bradycampaign.org/xshare/pdf/memo-11-18-08.pdf>.

<sup>15</sup> This provision is designed to cover mail-order and internet sales of ammunition.

<sup>16</sup> LCAV recommends that a jurisdiction require all gun transfers to be conducted through a licensed dealer (see the *Model Law Requiring Background Checks on All Gun Purchasers*). A jurisdiction that chooses not to adopt a background check requirement might, at its option, consider requiring the applicant or license holder to undergo a background check prior to issuance or renewal of a license to ensure that person is not prohibited from purchasing or possessing a firearm under federal, state or local law.

<sup>17</sup> Note that such records should be maintained at the state level. If “Department” is defined in Sec. 2 as a local agency or official, the Department should retain original copies of these records, but should also be required to forward copies of these records to a state agency or official required to maintain a statewide database containing this information and to make all the information in that database available to law enforcement and the public.

<sup>18</sup> More comprehensive language requiring all firearm owners and persons in possession of a firearm to report the loss or theft of the firearm to law enforcement is presented in the *Model Law Requiring the Reporting of Lost or Stolen Firearms*.

## **C. Model Law Requiring the Registration of Firearms**

This model law requires any person who owns or possesses a firearm to register the firearm, *i.e.*, to record his or her ownership or possession of the firearm with a designated governmental agency, and to renew the registration annually after undergoing a background check. As discussed in the findings below, registration laws are an essential component of responsible gun policy because they: 1) help law enforcement to quickly trace firearms recovered at crime scenes; 2) discourage illegal firearm sales by creating accountability for gun owners; 3) protect police officers responding to an incident by providing them with information about whether firearms may be present at the scene; and 4) facilitate the return of lost or stolen firearms to their rightful owners. In addition, registration laws that require periodic renewal help ensure that gun owners who have fallen into a prohibited category (*e.g.*, by being convicted of a felony) aren't allowed to continue to possess or own firearms.

Federal law does not require firearm registration. Hawaii is currently the only state that requires the registration of all firearms. Six other states and several local governments require registration of some, but not all, firearms.

The American public strongly supports laws requiring gun registration. A nationwide poll conducted in January 2011, for example, found that 66% of respondents favor laws requiring every gun owner to register each gun he or she owns as part of a national gun registry. A 2008 poll found that 68% of voters, including 60% of gun owners, support the registration of guns. In fact, polling shows most Americans mistakenly believe that U.S. laws already require gun registration.

## Text of Model Law

### CHAPTER 1           REQUIRING THE REGISTRATION OF FIREARMS

- Sec. 1       Legislative findings, purpose and intent
- Sec. 2       Definitions
- Sec. 3       Firearm registration requirement
- Sec. 4       Ammunition purchase, possession, delivery
- Sec. 5       Exceptions
- Sec. 6       Application to register a firearm
- Sec. 7       Investigation by Department
- Sec. 8       Registration approval, denial or revocation
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                  application to register or renew or revocation of  
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- Sec. 12      Duration and renewal
- Sec. 13      Firearm registration records
- Sec. 14      Reporting requirements for registrants
- Sec. 15      Administrative rules and regulations
- Sec. 16      Penalties
- Sec. 17      Severability

#### **Sec. 1           Legislative findings, purpose and intent**

*[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community, and descriptions of particularly relevant incidents, should be added.]*

The [Legislative Body]\* hereby finds and declares:

- (a)       Firearm registration laws, which require individuals to record their ownership or possession of a firearm with a designated law enforcement agency, help law enforcement quickly and reliably ~~trace~~ (identify the source of) firearms recovered from crime scenes, and retrieve firearms from persons who have become legally prohibited from possessing them through criminal convictions or other prohibitions.
- (b)       Laws requiring the registration of firearms discourage illegal firearm sales by creating accountability for gun owners, and help law enforcement return lost or stolen firearms to their rightful owners.



- (c) Information generated by firearm registration systems helps protect law enforcement officers responding to an incident by providing them with information about whether firearms may be present at the scene and, if so, how many and what types.
- (d) Registration laws that require periodic renewal of the registration with an updated background check help ensure that gun owners and possessors who have fallen into a prohibited category (e.g., by being convicted of a felony) are not allowed to continue to possess or own firearms.
- (e) States with some form of both registration and licensing systems have greater success keeping firearms from being recovered in crimes than states without such systems in place.<sup>1</sup>
- (f) Federal law does not require firearm registration. In fact, federal law specifically prohibits the use of the National Instant Criminal Background Check System to create any national system of registration of firearms or firearm owners.<sup>2</sup>
- (g) Hawaii is currently the only state that requires the registration of all firearms.<sup>3</sup> Five other states require registration of some, but not all firearms.<sup>4</sup> Local jurisdictions that currently require the registration of some or all firearms include Washington, D.C.;<sup>5</sup> Chicago, Illinois;<sup>6</sup> New York, New York;<sup>7</sup> and Omaha, Nebraska.<sup>8</sup>
- (h) The American public strongly supports laws requiring gun registration. A nationwide survey conducted in January 2011, for example, found that 66% of respondents favor laws requiring every gun owner to register each gun he or she owns as part of a national gun registry.<sup>9</sup> A 2008 poll found that 68% of voters, including 60% of gun owners, support the registration of guns.<sup>10</sup> A poll conducted in May 2001 found that 70% of respondents mistakenly believe that a registration system already exists in the United States.<sup>11</sup>
- (i) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to enact a comprehensive system of firearm registration in [Jurisdiction]. The [Legislative Body] believes that a comprehensive system of firearm registration will, as outlined in these findings, increase public safety and help to reduce gun deaths and injuries by discouraging illegal gun sales and helping law enforcement solve gun crimes.

## **Sec. 2            Definitions**

As used in this Chapter:

*[In addition to the terms defined below, the definitions of commonly used terms, such as –Ammunition,” –Department,” –Firearm,” –Law enforcement officer,” and –Person,” which are included in the Appendix, should be included in this section.]*

- (a) –Applicant” means a person who is seeking the issuance or renewal of a registration card for a firearm that he or she owns, or possesses.

(b) ~~–Registrant~~” means a person who has been issued a registration card for a firearm that he or she owns, or possess.

(c) ~~–Seller~~” means any person selling or otherwise transferring a firearm, including a licensed firearms dealer or unlicensed gun seller.

### **Sec. 3 Firearm registration requirement**

(a) Every person in [Jurisdiction] must register each firearm he or she owns or possesses in accordance with this Chapter.

(b) Any person owning or possessing a firearm on the effective date of this Chapter shall apply to register the firearm in accordance with this Chapter within [60] days of the effective date thereof.

(c) No person<sup>12</sup> shall deliver a firearm, and no person shall receive or obtain a firearm, until all of the following have occurred:

(1) The buyer or transferee has completed an application to register the firearm in accordance with Sec. 6;

(2) The seller has verified that the prospective registrant is the person whose driver’s license or other government-issued identification card is contained in the application;

(3) The seller has transmitted the completed application to register the firearm to the Department in a manner prescribed by the Department; and

(4) The seller has provided a receipt for the application to the prospective registrant on a form to be prescribed by the Department.

(d) A person shall be deemed to have complied with Section 3(a) for a firearm if he or she produces a valid receipt indicating that he or she has applied to register that firearm in accordance with this Chapter and the application is pending.

### **Sec. 4 Ammunition purchase, possession, delivery**

(a) No person shall purchase or possess ammunition without having first obtained a registration card identifying a firearm suitable for use with that ammunition.

(b) No person shall deliver ammunition without having first verified that the ammunition purchaser possesses a registration card for a firearm that is suitable for use with that ammunition, or a receipt demonstrating that the person has applied to register a suitable firearm in accordance with this Chapter and the application is pending.<sup>13</sup>

## **Sec. 5            Exceptions**

Sections 3 and 4 shall not apply to the ownership, possession, or receipt of a firearm or ammunition by, or delivery of a firearm or ammunition to:

- (a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;
- (b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official, who is required to possess a firearm in the operation of his or her official duties;
- (c) Licensed firearms manufacturers, importers, or dealers, while engaged in the course and scope of their activities as licensees, provided that such persons are properly licensed under federal, state, and local law;
- (d) A gunsmith who is in possession of a firearm solely for the purposes of service or repair;
- (e) A common carrier, warehouseman, or other person engaged in the business of transporting or storing goods, to the extent that the possession or receipt of any firearm is in the ordinary course of business and not for the personal use of any such person;
- (f) A person who is under 18 years of age who is in possession of a firearm for lawful hunting or sporting purposes or for any other lawful recreational activity while under the direct supervision and control of the registrant;
- (g) A person who is 18 years of age or older who is in possession of a registered firearm while accompanying the registrant and using the firearm for lawful hunting or sporting purposes or for any other lawful recreational activity;
- (h) A new resident of [Jurisdiction] who has brought his or her firearm into the [Jurisdiction] within the preceding [60] days, or who produces a valid receipt indicating that he or she has applied to register the firearm within this time period and the application is pending;
- (i) Nonresidents of [Jurisdiction] participating in lawful hunting or sporting activity or other lawful recreational activity in [Jurisdiction], provided that their ownership or possession of a firearm for such purposes is lawful in the jurisdiction in which they reside, and that such weapon is transported in compliance with 18 U.S.C. § 926A;
- (j) A person being loaned a firearm solely for the purpose of shooting at targets, if the loan occurs on the premises of a properly licensed target facility, and the firearm is at all times kept within the premises of the target range;
- (k) A person who has acquired a firearm by operation of law upon the death of the former owner of the firearm within the preceding [60] days, or who produces a valid receipt indicating

that he or she has applied to register the firearm within this time period and the application is pending;

(l) A person lawfully transporting a firearm through [Jurisdiction] in accordance with 18 U.S.C. § 926A; or

(m) An adult family member of the registrant of the firearm if the registrant resides with the family member but is not currently present in the residence, provided that the family member does not maintain control over the firearm for more than [14] consecutive days. This exception shall not apply if the registrant or the family member knows or has reasonable cause to believe that federal, state, or local law prohibits the family member from purchasing or possessing firearms, or the registrant knows or has reasonable cause to believe that the family member is likely to use the firearm for unlawful purposes.

## **Sec. 6            Application to register a firearm**

(a) Any person who is required to register a firearm under this Chapter shall:

(1) For a newly purchased firearm:

- a. Obtain a registration application from the seller of the firearm to be registered; and
- b. Complete and submit to the firearm seller the application, in writing, signed under penalty of perjury, on a form prescribed by the Department.

(2) For a firearm that was lawfully owned or possessed on the effective date of this Chapter, was brought into [Jurisdiction] by a new resident, or was acquired by operation of law upon the death of the former owner:

- a. Appear in person at a time and place designated by the Department; and
- b. Complete and submit to the Department the application, in writing, signed under penalty of perjury, on a form prescribed by the Department.

(b) Any person who is required to register a firearm must provide the following information on a registration application created by the Department, which form shall include:

- (1) The applicant's full name and any other name by which the applicant has ever been known;
- (2) The home address and telephone number of the applicant;
- (3) The occupation, business address and telephone number of the applicant;

- (4) The applicant's gender, race, height, weight, date of birth, place of birth, country of citizenship, social security number, and, if the applicant is not a U.S. citizen, alien or admission number;
- (5) A copy of the applicant's current driver's license or other government-issued identification card containing a photograph of the applicant;
- (6) Information concerning any denial or revocation of a license, permit or registration card pertaining to any firearm owned or possessed by the applicant;
- (7) The make, model, manufacturer's name, caliber or gauge, and serial number, and any other distinguishing numbers of all firearms for which the applicant seeks to obtain a registration card;
- (8) The date the applicant acquired each firearm;
- (9) The name, address, and telephone number of the person from whom each firearm was obtained, and in the case of a firearms dealer, the dealer's license number;
- (10) The name of, and description of any instance in which, any court, board, commission or other lawful authority has done either of the following, including dates of commitment and release:
  - a. Determined that the applicant, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease, was a danger to himself or herself or others, lacked the mental capacity to contract or manage his or her own affairs, or was not guilty of a crime by reason of insanity or incompetent to stand trial; or
  - b. Involuntarily committed the person to a mental institution (including the name and address of the institution);
- (11) An authorization and release to obtain information relevant to the person's eligibility to register a firearm pursuant to this Chapter, from any source, that waives any right to confidentiality and requests the disclosure of such information to the Department for the sole purpose of determining the person's eligibility to register a firearm pursuant to this Chapter;
- (12) The applicant's right thumbprint;
- (13) Two identical color photographs of the applicant's face, frontal view, two inches square in size, taken within the 30 days immediately preceding the application, as specified in rules or regulations of the Department; and
- (14) Any additional information the Department deems necessary to process the application.

- (c) The Department may charge a fee to cover the administrative costs of the registration for each firearm.

## **Sec. 7 Investigation by Department**

- (a) The Department must complete a background check of any person who applies for:
- (1) A registration card for a firearm that was lawfully owned or possessed on the effective date of this Chapter, was brought into [Jurisdiction] by a new resident, or was acquired by operation of law upon the death of the former owner; or
  - (2) A renewal of a registration card unless, within [12] months of the date the renewal application is submitted, the applicant passed a background check conducted by the Department in connection with the applicant's acquisition of another firearm.
- (b) The background check required by subsection (a) shall include a search of:
- (1) The National Instant Criminal Background Check System of the Federal Bureau of Investigation;
  - (2) State and local criminal history record information files;
  - (3) Federal, state, and local records regarding wanted persons;
  - (4) Federal, state, and local records of domestic violence restraining and protective orders;
  - (5) Federal, state, and local records identifying persons who are unlawful users of or addicted to any controlled substance (as defined in section 802 of Title 21 of the United States Code);
  - (6) The files of [the jurisdiction's agency that maintains information relating to mental health and developmental disabilities]; and
  - (7) Any other available files of any federal, state, and local agency and other entity (private or public) in any jurisdiction likely to contain information relevant to whether the applicant is prohibited from purchasing or possessing a firearm under federal, state, or local law.
- (c) No registration card shall be issued or renewed if the applicant is prohibited from purchasing or possessing a firearm under federal, state, or local law.

## **Sec. 8 Registration approval, denial or revocation**

- (a) After consideration of an application for a registration card or for renewal of a registration card and all information obtained relative thereto, the Department shall either

approve or deny the application and notify the applicant in writing of the decision, including the reason(s) for denial, and the appeal procedures under Sec. 10.

(b) The Department may grant or renew a registration card only if the applicant is in compliance with this Chapter and all other applicable federal, state and local laws relating to firearms and ammunition.

(c) The Department shall deny the issuance or renewal of a registration card, or shall revoke an existing registration card:

(1) For failure to meet any of the requirements of this Chapter, including the requirements for renewal pursuant to Sec. 12, or any other applicable federal, state, or local law relating to firearms or ammunition;

(2) For fraud or misrepresentation in securing a registration card;

(3) If the applicant is or becomes prohibited from purchasing or possessing a firearm under federal, state, or local law; or

(4) Upon the occurrence of any event or circumstance that would disqualify the registrant from being issued the original registration card.

## **Sec. 9            Features and use of firearm registration cards**

(a) If the application to register a firearm is approved, the Department shall issue to the registrant a registration card on a form prescribed by the Department for each firearm listed on the application. Each registration card must contain the date of the registration, a unique registration number, the registrant's name, residence address, date of birth, photograph, the make, model, manufacturer's name, caliber or gauge and serial number of the firearm, the date the registration card expires, and such other personal information as may be required by the Department.

(b) The registration card shall not be transferable or assignable. The registration card shall be stored with the corresponding firearm in the registrant's home, and shall be carried with the firearm if it is transported outside of the home. The registrant shall exhibit the registration card to any law enforcement officer upon request.

## **Sec. 10          Appeal procedure**

(a) If an application to register a firearm or to renew a registration card is denied, or if a registration card is revoked, the Department shall inform the applicant or registrant in writing of the reasons for the denial or revocation, and of the appeal procedures under this section. Any applicant who believes that his or her application was wrongfully denied, or registrant who believes his or her registration was wrongfully revoked, may, within [30] days after receiving notice of the denial or revocation, file an appeal of the denial or revocation with the Department. The appeal must be made in writing, setting forth the specific grounds for the appeal.

(b) If the applicant or registrant submits a timely appeal, the [Head of the Department] shall set a time and place for the hearing and, based upon the evidence contained in the record of such hearing, either affirm or reverse the decision of the Department. The [Head of the Department] shall provide a written decision regarding the appeal. The action of the [Head of the Department] shall be subject to judicial review in accordance with the provisions of the [jurisdiction's laws regarding judicial review].

(c) In the event that the decision to deny the application or revoke the registration card is affirmed, the decision to deny the application or revoke the registration shall become final only after the time for judicial review of the decision of the [Head of the Department] has expired.

#### **Sec. 11 Surrender and removal of firearms upon denial of application to register or renew or revocation of registration card**

(a) When a decision to deny an application to register, to renew a registration card, or to revoke a registration card becomes final, the applicant or registrant must immediately surrender to the Department the firearm for which the applicant was denied registration or renewal or for which the registration card was revoked.

(b) If an applicant or registrant fails to surrender his or her firearm to the Department after he or she receives notice that the decision to deny an application to register, to renew or to revoke a registration card becomes final, the Department shall retrieve the firearm within [48] hours.

#### **Sec. 12 Duration and renewal**

(a) Registration cards shall expire automatically one year after the date of issuance. To apply for renewal of a registration card, the card holder shall complete an application for registration as described in Sec. 6.

(b) The Department shall mail renewal notices to each registrant at least [90] days prior to expiration of the registration card. Applications for renewal shall be received by the Department [60] days prior to the expiration of the current registration card.

(c) The renewal process for all registrants shall include a background check, as provided in Sec. 7.

(d) The Department shall follow the procedures of Sec. 8 in approving or denying the application for renewal.

#### **Sec. 13 Firearm registration records**

The Department shall retain an accurate record of each application for a registration card, received and acted upon, together with all other information pertaining thereto on all applications issued or denied under the provisions of this Chapter. Such information shall be maintained in an accessible manner and available to law enforcement and the public upon request.<sup>14</sup>



## Sec. 14 Reporting requirements for registrants

A registrant shall report to the Department:

- (a) Within [48] hours of the time he or she discovered or should have discovered:
  - (1) The loss or theft of any firearm he or she owns or possesses;<sup>15</sup> or
  - (2) Any change in his or her status that would affect his or her eligibility to own or possess a firearm or registration card; and
- (b) Within [14] days of the occurrence of:
  - (1) Any change in the information appearing on the registration card that would not affect his or her eligibility for the registration card; or
  - (2) The time he or she knew or should have known of the loss, theft or destruction of a registration card.

**For suggested language regarding Sections 15 – 17, Administrative rules and regulations, Penalties, and Severability, see the Appendix.**

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\* Where the words “~~Act/Ordinance~~,” “~~Jurisdiction~~,” “~~Legislative Body~~” or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>1</sup> Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 Inj. Prevention 184, 188-89 (2001). The study analyzed the firearm tracing data of crime guns recovered in 25 U.S. cities and revealed that states with some form of both registration and licensing systems have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place. The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

<sup>2</sup> 28 C.F.R. § 25.9(b)(3). Federal law requires only machine guns, machine gun attachments, short-barreled rifles, short-barreled shotguns, destructive devices and other unique, specified firearms to be registered. 26 U.S.C. §§ 5841, 5845.

<sup>3</sup> Haw. Rev. Stat. § 134-3.

<sup>4</sup> Cal. Penal Code §§ 12276, 12276.1, 12276.5, 12280, 12285(a) (assault weapons and 50 caliber rifles); Conn. Gen. Stat. Ann. § 53-202d(a) (assault weapons); Md. Code Ann., Crim. Law § 4-303 (assault weapons); N.J. Stat. Ann. §§ 2C:39-5f, 2C:58-12 (assault weapons); La. Rev. Stat. Ann. §§ 40:1781, 40:1783 (short-barreled rifles and shotguns and machine guns).

<sup>5</sup> D.C. Code §§ 7-2052.01 – 7-2502.06.

<sup>6</sup> Chicago, Ill., Code §§ 8-20-140 – 8-20-210.

<sup>7</sup> New York, N.Y., Admin. Code §§ 10-303, 10-304, 10-305(m).

<sup>8</sup> Omaha, Neb., Code §§ 20-251, 20-253 – 254.

<sup>9</sup> [American Viewpoint and Momentum Analysis for Mayors Against Illegal Guns, Results From A National Survey of 1003 Registered Voters](http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_poll_01_18_2011.pdf) (January 2011), at [http://www.mayorsagainstillegalguns.org/downloads/pdf/maig\\_poll\\_01\\_18\\_2011.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_poll_01_18_2011.pdf).

<sup>10</sup> Penn, Schoen, & Berland Associates, Inc. for Brady Campaign to Prevent Gun Violence, *Post-Election Analysis: Sensible Gun Laws Builds Bridges not Burns* [sic] *Them to Moderates, McCain, and Even Gun Owners in Post-Heller World* (Nov. 18, 2008), available at: <http://www.bradycampaign.org/xshare/pdf/memo-11-18-08.pdf>.

<sup>11</sup> Lake, Snell, Perry & Associates, Inc. Poll, *Educational Fund to Stop Gun Violence* (May 15-21, 2001), at <http://www.commondreams.org/news2001/0612-05.htm>.

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<sup>12</sup> LCAV recommends that jurisdictions require all firearm sales to be conducted through licensed dealers. If a jurisdiction chooses not to adopt such a requirement, the jurisdiction should, as part of its registration provision, require that a person obtaining a gun in a private sale submit to a background check prior to receiving a registration card under the provisions of Sec. 6(a)(1).

<sup>13</sup> A note regarding additional sections: A jurisdiction may seek to bolster its public safety laws by adopting additional provisions relevant to registration, including: 1) limiting the number of firearms that may be registered to a person; 2) limiting the locations where firearms may be carried or possessed; or 3) requiring the Department to provide firearm owners with information about the rights and responsibilities associated with owning a firearm, including information about the safe storage of firearms and ammunition and relevant firearms laws.

<sup>14</sup> LCAV recommends that such records be maintained at the state level. If “Department” is defined in Sec. 2 as a local agency or official, the Department should maintain its original copies of these records, but should also be required to forward copies of these records to a state agency or official required to maintain a statewide database containing this information and to make all the information in that database available to law enforcement and the public.

<sup>15</sup> Comprehensive language requiring all firearm owners and persons in possession of a firearm to report the loss or theft of the firearm to law enforcement is presented in LCAV’s *Model Law Requiring the Reporting of Lost or Stolen Firearms*.

## **D. Model Law Regulating Firearms Dealers and Ammunition Sellers**

This model law regulates firearms dealers and ammunition sellers. Among other things, the law requires anyone engaged in the business of selling firearms or ammunition to obtain a law enforcement permit, be located in a commercial area, perform background checks on employees, secure inventory to prevent thefts, obtain liability insurance, and maintain sales and acquisition logs. These and the other requirements in the model law will help law enforcement agencies enforce existing firearms and ammunition laws and encourage firearms dealers and ammunition sellers to operate responsibly.

As discussed in the findings below, federal regulation of firearms dealers and ammunition sellers is currently inadequate to protect public safety, and gun dealers are a major source of trafficked firearms. Although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF), ATF does not have the resources or authority to properly oversee the more than 60,000 firearms dealers, manufacturers, collectors, and others that it licenses. As a result, ATF inspects each licensee, on average, only once every 17 years.

Many state and local jurisdictions across the country have adopted laws regulating firearms dealers. The International Association of Chiefs of Police recommends that state and local governments enact their own dealer licensing requirements because they can respond to specific community concerns, and because state and local oversight of licensees helps reduce the number of corrupt dealers. In addition, a 2009 study found that cities in states that comprehensively regulate retail firearms dealers and cities where such businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities.

The American public overwhelmingly supports laws regulating firearms dealers. A nationwide poll conducted in March and April, 2008, found that:

- 91% of Americans favor requiring gun stores to perform background checks on employees;
- 86% of Americans favor requiring gun retailers to inspect their inventories every year to report stolen or missing guns;
- 88% of Americans favor requiring gun stores to keep all guns locked securely to prevent theft; and
- 74% of Americans favor requiring gun retailers to videotape all gun sales.

## Text of Model Law

### **CHAPTER 1            REGULATING FIREARMS DEALERS AND AMMUNITION SELLERS**

- Sec. 1        Legislative findings, purpose and intent**
- Sec. 2        Definitions**
- Sec. 3        Law enforcement permit**
- Sec. 4        Application for permit**
- Sec. 5        Investigation by Department and employee background checks**
- Sec. 6        Grounds for permit denial**
- Sec. 7        Issuance of law enforcement permit; duration**
- Sec. 8        Revocation of law enforcement permit**
- Sec. 9        Appeal procedure for denial of application for permit or renewal of permit or revocation**
- Sec. 10       Report of permit revocation to federal [and state] authorities**
- Sec. 11       Display of law enforcement permit**
- Sec. 12       Nonassignability**
- Sec. 13       Compliance by existing businesses**
- Sec. 14       Law enforcement inspections**
- Sec. 15       On-site security**
- Sec. 16       Liability insurance**
- Sec. 17       Location of business premises**
- Sec. 18       Warnings to consumers**
- Sec. 19       Duties upon sale, lease, or transfer**
- Sec. 20       Sales records and reporting**
- Sec. 21       Firearm acquisitions records and reporting**
- Sec. 22       Inventory reports**
- Sec. 23       Lost or stolen firearms reporting**
- Sec. 24       Restricted admittance of minors and other prohibited purchasers**
- Sec. 25       Civil liability**
- Sec. 26       Administrative rules and regulations**
- Sec. 27       Penalties**
- Sec. 28       Severability**

#### **Sec. 1            Legislative findings, purpose and intent**

*[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]*

The [Legislative Body]\* hereby finds and declares:

(a) Federal regulation of firearms dealers and ammunition sellers is currently inadequate to protect public safety. Although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF),<sup>1</sup> ATF does not have the resources or authority to properly oversee the more than 60,000 firearms dealers, manufacturers, collectors and others that it licenses.<sup>2</sup> ATF reported in 2007 that it inspects each licensee, on average, only once every 17 years.<sup>3</sup> Between 1975 and 2005, ATF revoked, on average, fewer than 20 federal firearms licenses per year.<sup>4</sup> The Office of the Inspector General has concluded that inspections by ATF are not fully effective for ensuring that licensees comply with federal firearms laws.<sup>5</sup>

(b) Federally-licensed firearm dealers (FFLs)<sup>6</sup> are a major source of trafficked firearms. In June of 2000, ATF issued a comprehensive report of firearms trafficking in this country. That report analyzed 1,530 trafficking investigations during the period July 1996 through December 1998, involving more than 84,000 diverted firearms.<sup>7</sup> ATF found that FFLs were associated with the largest number of trafficked guns – over 40,000 – and concluded that “FFLs’ access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law.”<sup>8</sup> In 1998, ATF found that 56% of randomly inspected dealers and 30% of pawnbrokers selling 50 or more guns had violated federal firearms law.<sup>9</sup> In addition, during fiscal year 2007, ATF found over 30,000 firearms missing from licensees’ inventories with no record of sale.<sup>10</sup>

(c) According to a 1998 ATF random sample of FFLs nationwide, 56% of all firearms dealers operated out of their homes, and 33% were located in businesses that are not usually associated with gun sales, such as funeral homes or auto parts stores.<sup>11</sup>

(d) ATF faces numerous obstacles that limit its ability to enforce the law; for example, ATF may conduct only one unannounced inspection of each FFL per year, the burden of proof for ATF’s prosecution and revocation of licenses is extremely high, serious violations of federal firearms law are classified as misdemeanors rather than felonies, and ATF has historically been grossly understaffed.<sup>12</sup>

(e) Federal law is silent regarding many important aspects of firearms dealers’ and ammunition sellers’ businesses. Among other things, federal law does not require these businesses to:

- (1) Implement security requirements (*e.g.*, install burglar alarms or surveillance cameras);
- (2) Conduct employee background checks;
- (3) Maintain adequate business liability insurance; or
- (4) Refrain from operating in residential neighborhoods or near schools, daycare centers or parks.<sup>13</sup>

(f) No federal law requires ammunition sellers to create or maintain records of ammunition sales, or requires persons who sell, loan or transfer ammunition to obtain a license.<sup>14</sup> A number of state and local jurisdictions have adopted such laws, however.<sup>15</sup>

(g) Federal law contemplates state and local regulation of firearms dealers by requiring dealers to comply with all state and local dealer laws as a condition for obtaining their federal licenses.<sup>16</sup> Currently, 17 states, the District of Columbia<sup>17</sup> and numerous local jurisdictions<sup>18</sup> require firearms dealers to obtain a license or permit. Few of these laws are comprehensive, however.

(h) The International Association of Chiefs of Police recommends that state and local governments impose their own licensing requirements on firearms dealers because they can respond to specific community concerns, and because state and local oversight of licensees helps reduce the number of corrupt dealers.<sup>19</sup>

(i) A September 2010 report by Mayors Against Illegal Guns (a coalition of over 600 mayors that targets illegal guns nationwide) concluded that routine inspections of gun dealers provide law enforcement with more opportunities to detect potential illegal gun activity, including improper recordkeeping by dealers whose gun inventories do not match their sales records. The report presented data showing that states that do not permit or require inspections of gun dealers are the sources of guns recovered from crimes in other states at a rate that is 50% greater than states that do have such inspections.<sup>20</sup>

(j) In August 1994, the American Bar Association enacted a resolution expressing support for legislation to increase the number of permitted yearly inspections of firearms dealers and require federally licensed dealers to, *inter alia*:

- (1) Maintain adequate business liability insurance;
- (2) Pay annual fees to cover the costs of investigating license applications; and
- (3) Require all employees to undergo background checks.<sup>21</sup>

(k) A 2009 study found that cities in states that comprehensively regulate retail firearms dealers and cities where these businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities.<sup>22</sup>

(l) Law enforcement agencies in jurisdictions that require ammunition sellers to keep records of their ammunition sales have cross-referenced this information with state-maintained information regarding persons prohibited from possessing firearms and ammunition. These law enforcement agencies have had great success in using this information to detect illegal possessors of firearms and ammunition.<sup>23</sup>

(m) The American public overwhelmingly supports the regulation of firearms dealers. A nationwide poll conducted in March and April 2008 found that:

- (1) 91% of Americans favor requiring gun stores to perform background checks on employees;
- (2) 86% of Americans favor requiring gun retailers to inspect their inventories every year to report stolen or missing guns;
- (3) 88% of Americans favor requiring gun stores to keep all guns locked securely to prevent theft; and
- (4) 74% of Americans favor requiring gun retailers to videotape all gun sales.<sup>24</sup>

(n) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to fill the gaps in existing laws regulating firearms dealers and ammunition sellers, so as to reduce the numbers of firearm deaths and injuries among the general public resulting from the irresponsible or criminal use of firearms and ammunition. The [Legislative Body] believes this law will help:

- (1) Ensure that firearms dealers and ammunition sellers will conduct their businesses in a responsible manner;
- (2) Detect and prevent illegal trafficking of firearms and ammunition by firearms dealers and ammunition sellers and their employees, by, among other things, ensuring that employees are eligible to possess guns and ammunition; and
- (3) Prevent the loss and theft of firearms and ammunition from firearms dealers and ammunition sellers.

## **Sec. 2 Definitions**

As used in this Chapter:

*[In addition to the terms defined below, the definitions of commonly used terms, such as ~~–Ammunition,~~ ~~–Department,~~ ~~–Firearm,~~ ~~–Law enforcement officer,~~ and ~~–Person,~~ which are included in the Appendix, should be included in this section.]*

- (a) ~~–Applicant~~ means any person who applies for a law enforcement permit, or the renewal of such a permit, to sell, lease, or transfer firearms or ammunition.
- (b) To ~~engage~~ in the business of selling, leasing, or otherwise transferring firearms or ammunition means to:
  - (1) Conduct a business selling, leasing or transferring firearms or ammunition;
  - (2) Hold one's self out as engaged in the business of selling, leasing or otherwise transferring firearms or ammunition; or
  - (3) Sell, lease or transfer firearms or ammunition in quantity, in series, or in individual transactions, or in any other manner indicative of trade.

- (c) ~~–Permittee~~” means any person engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition who has obtained a law enforcement permit to sell, lease, or transfer firearms or ammunition.

### **Sec. 3            Law enforcement permit**

It is unlawful for any person to engage in the business of selling, leasing, or otherwise transferring firearms or ammunition without a law enforcement permit, as required by this Chapter.

### **Sec. 4            Application for permit**

- (a) Any person who is required to obtain a law enforcement permit under this Chapter shall:

- (1) Appear in person at a time and place designated by the Department;
- (2) Complete and submit to the Department an application, in writing, signed under penalty of perjury, on a form prescribed by the Department;
- (3) Provide all relevant information requested to demonstrate compliance with this Chapter, including:
  - a. The applicant’s full name and any other name by which the applicant has ever been known;
  - b. The home address and telephone number of the applicant;
  - c. The occupation, business address and business telephone number of the applicant;
  - d. The license or permit numbers of all federal, state, or local licenses or permits held by the applicant that authorize the applicant to sell, lease, or otherwise transfer firearms or ammunition, if any;
  - e. Information relating to every other license or permit to sell, lease, transfer, purchase, or possess firearms or ammunition which was sought by the applicant from the federal government or from any state or subdivision of any state, including, but not limited to, the type of license or permit sought, the date of each application and whether it resulted in the issuance of the license or permit, and the date and circumstances of any revocation or suspension;
  - f. The address of the proposed location for which the permit is sought, if different than applicant’s business address;



- g. The business name, and the name of any corporation, partnership or other entity that has any ownership in, or control over, the business;
- h. The names, dates of birth, and addresses of all persons who will have access to or control of workplace firearms or ammunition, including but not limited to, the applicant's employees, agents, and supervisors, if any;
- i. Proof of a possessory interest in the property at which the proposed business will be conducted, as owner, lessee, or other legal occupant, and, if the applicant is not the owner of record of the real property upon which the applicant's business is to be located and conducted, the written consent of the owner of record of such real property to the applicant's proposed business;
- j. A floor plan of the proposed business which illustrates the applicant's compliance with security provisions, as outlined in Sec. 15 of this Chapter;
- k. Proof of compliance with all zoning laws for the operation of the business at the proposed location from the [the local planning/land use agency];
- l. Proof of compliance with all applicable federal, state and local licensing and other business laws;
- m. The applicant's agreement to indemnify, defend, and hold harmless the [Jurisdiction], its officers, agents, and employees from and against all claims, losses, costs, damages, and liabilities of any kind pursuant to the operation of the business, including attorneys fees, arising in any manner out of the negligence or intentional or willful misconduct of:
  - i. The applicant;
  - ii. The applicant's officers, employees, agents and/or supervisors; or
  - iii. If the business is a corporation, partnership or other entity, the officers, directors or partners of that entity;
- n. Certification of satisfaction of insurance requirements, for applicants applying for a permit to sell firearms;
- o. The date, location, and nature of all criminal convictions of the applicant, if any, in any jurisdiction in the United States; and

*[If the jurisdiction adopting this law is a state, it may wish to require local law enforcement to approve issuance of the permit, as follows:*

- p. Written approval from the local sheriff of the county or chief of police of the city in which the business is located, together with a statement of any

additional requirements or conditions the business must fulfill in order to comply with local law, including requirements or conditions imposed by the sheriff or chief at his or her discretion.]

- (b) The Department may charge a fee to cover the administrative costs of the issuance of the permit.

#### **Sec. 5 Investigation by Department and employee background checks**

(a) The Department shall conduct an investigation to determine, for the protection of public health and safety, whether the law enforcement permit may be issued or renewed. The Department shall require: 1) the applicant; and 2) all persons who will have access to or control of workplace firearms or ammunition, including but not limited to the applicant's employees, agents and/or supervisors, if any, to provide fingerprints, a recent photograph, a signed authorization for the release of pertinent records, and any additional information which the Department considers necessary to complete the investigation.

(b) Prior to issuance or renewal of the permit, the Department shall inspect the premises of the proposed business to ensure compliance with this Chapter.

(c) The Department may grant or renew a law enforcement permit if the applicant or permittee is in compliance with this Chapter and all other applicable federal, state, and local laws.

#### **Sec. 6 Grounds for permit denial**

(a) The Department shall deny the issuance or renewal of a law enforcement permit if the operation of the business would not or does not comply with federal, state or local law, or if the applicant or permittee:

- (1) Is under 21 years of age;
- (2) Is not licensed as required by all applicable federal, state, and local laws;<sup>25</sup>
- (3) Has made a false or misleading statement of a material fact or omission of a material fact in the application for a law enforcement permit, or in any other documents submitted to the Department pursuant to this Chapter. If a permit is denied on this ground, the applicant is prohibited from reapplying for a permit for a period of five years;
- (4) Has had a license or permit to sell, lease, transfer, purchase, or possess firearms or ammunition from the federal government or the government of any state or subdivision of any state revoked, suspended or denied for good cause within the preceding five years;
- (5) Is prohibited by any federal, state or local law from purchasing or possessing firearms or ammunition, or has been convicted of:

- a. An offense relating to the manufacture, sale, possession or use of a firearm or dangerous or deadly weapon or ammunition therefor;
- b. An offense involving the use of force or violence upon the person of another;
- c. An offense involving theft, fraud, dishonesty or deceit;
- d. Within the preceding [five] years, an offense involving the manufacture, sale, possession, or use of a controlled substance; or

(6) Is currently, or has been within the preceding five years, an unlawful user of or addicted to a controlled substance.

(b) Employees, agents or supervisors of the applicant or permittee may not have access to or control over workplace firearms or ammunition until the Department has conducted an investigation pursuant to Sec. 5(a), and verified that none of the conditions listed in Sec. 6(a)(1), (4), (5) or (6) exist, as applied to those employees, agents or supervisors. A new law enforcement investigation and background verification of such persons must be conducted each time the permittee renews his or her permit, or applies for a new permit. Except as provided in subsection (c), the Department shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the applicant or permittee allows any employee, agent or supervisor to have access to or control over workplace firearms or ammunition prior to the completion of the law enforcement investigation and background verification of those persons, or if those persons have not undergone the law enforcement investigation and background verification process within the last 365 days.

(c) Where an applicant is applying for a law enforcement permit to sell, lease or transfer firearms or ammunition within the first [90] days of the effective date of this Chapter, and where the applicant has an existing firearms dealer business which complies with all applicable federal, state and local laws, or is not a seller of firearms but is already engaged in the sale of ammunition:

(1) The applicant's current employees, agents, or supervisors may continue to have access to or control over workplace firearms and ammunition pending the completion of the Department's investigation and background verification; and

(2) Where one or more of the applicant's employees, agents, or supervisors are found to be in violation of the conditions listed in Sec. 6(a)(1), (4), (5) or (6), the applicant shall have [21] days from the mailing of written notification from the Department to verify that such persons have been removed or reassigned so that they no longer have access to or control of workplace firearms or ammunition. Failure of the applicant to comply with this subsection shall cause the Department to deny the application for a law enforcement permit.

## **Sec. 7            Issuance of law enforcement permit; duration**

- (a)     A law enforcement permit expires one year after the date of issuance. A permit may be renewed for additional one-year periods if the permittee submits a timely application for renewal, accompanied by a nonrefundable renewal fee established by [Legislative Body] resolution. Renewal of the permit is contingent upon the permittee's compliance with the terms and conditions of the original application and permit, as detailed in this Chapter, and any additional conditions arising from newly-adopted laws or determined by regulations created by the Department. Department personnel shall inspect the permitted business premises for compliance with this Chapter prior to renewal of the permit. The renewal application and the renewal fee must be received by the Department no later than [45] days before the expiration of the current permit.
- (b)     A decision regarding issuance or renewal of the law enforcement permit may be appealed in the manner provided in Sec. 9 of this Chapter.

## **Sec. 8            Revocation of law enforcement permit**

The Department may revoke the law enforcement permit of any person found to be in violation of any provision of this Chapter or any other applicable federal, state or local law.

## **Sec. 9            Appeal procedure for denial of application for permit or renewal of permit or revocation**

- (a)     In the event an application for a permit or renewal of a permit is denied or a permit is revoked, the Department shall inform the applicant or permittee in writing of the reasons for the denial or revocation. Any applicant who believes that his or her application was wrongfully denied, or permittee who believes his or her permit was wrongfully revoked may, within [30] days after receiving notice of the denial or revocation, file an appeal of the denial or revocation with the [Head of the Department]. The appeal must be made in writing, setting forth the specific grounds for the appeal.
- (b)     If the applicant or permittee submits a timely appeal, the [Head of the Department] shall set a time and place for the hearing and, based upon the evidence contained in the record of such hearing, either affirm or reverse the decision of the Department. The [Head of the Department] shall provide a written decision regarding the appeal. The action of the [Head of the Department] shall be subject to judicial review in accordance with the provisions of the [jurisdiction's law regarding administrative procedures].
- (c)     In the event the decision to deny the application or revoke the permit is affirmed, the decision to deny the application or revoke the permit shall become final after all time for judicial review of the decision of the [Head of the Department] has expired.

## **Sec. 10          Report of permit revocation to federal [and state] authorities**

In addition to any other penalty or remedy, the Department shall report any person or entity whose law enforcement permit is revoked pursuant to this Chapter to the Bureau of Alcohol,

Tobacco, Firearms & Explosives within the U.S. Department of Justice *[and to the relevant state agency, if the jurisdiction adopting this law is a local jurisdiction]*.

#### **Sec. 11            Display of law enforcement permit**

The law enforcement permit, or a certified copy of it, shall be displayed in a prominent place on the business premises where it can be easily seen by those entering the premises.

#### **Sec. 12            Nonassignability**

A law enforcement permit issued under this Chapter is not assignable. Any attempt to assign a law enforcement permit shall result in revocation of the permit.

#### **Sec. 13            Compliance by existing businesses**

A person engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition on the effective date of this Chapter shall, within [90] days of the effective date, comply with this Chapter. However, any person whose business is located in any location described in Sec. 17 of this Chapter may continue to sell, lease, or transfer firearms or ammunition for up to one year after the effective date of this Chapter. After the one-year period has expired, any such person is prohibited from selling, leasing or transferring firearms or ammunition in the named location.

#### **Sec. 14            Law enforcement inspections**

Permittees shall have their places of business open for inspection by federal, state, and local law enforcement during all hours of operation. The Department shall conduct an inspection of the business in connection with the initial issuance of a permit, and thereafter conduct an inspection in connection with each annual renewal of the permit. Permittees shall maintain all records, documents, firearms, and ammunition in a manner and place accessible for inspection by federal, state and local law enforcement.

#### **Sec. 15            On-site security**

- (a) All firearms and ammunition in the inventory of a permittee must be kept at the permitted business location.
- (b) If the proposed or current business location is to be used at least in part for the sale of firearms, all perimeter doorways, windows, and heating, ventilating, air-conditioning, and service openings shall be secured in a manner prescribed by the Department.
- (c) Any time a permitted business location is not open to the public, every firearm shall be stored in one of the following ways:

- (1) In a locked fireproof safe or vault in the licensee's business premises that meets Underwriters Laboratories Residential Security Container rating standards by a Nationally Recognized Testing Laboratory (NRTL);<sup>26</sup> or
- (2) Secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. No more than five firearms may be affixed to any one rod or cable at any time.
- (d) Any time a permitted business location is open to the public, all firearms shall be kept unloaded and all firearms and ammunition shall be kept inaccessible to the public, except in the immediate presence of and under the direct supervision of the permittee or his or her employees.
- (e) The permitted business location shall be secured by an alarm system that is installed and maintained by an alarm company operator properly licensed pursuant to state law. The alarm system must be monitored by a central station listed by Underwriters Laboratories, Inc., and covered by an active Underwriters Laboratories, Inc. alarm system certificate with a #3 extent of protection.<sup>27</sup>
- (f) The permitted business location shall be equipped with a video surveillance system sufficient to monitor the critical areas of the business premises, including, but not limited to, all places where firearms or ammunition are stored, handled, sold, transferred, or carried. The video surveillance system shall operate continuously, without interruption, whenever the permitted business location is open to the public. Whenever the permitted business location is not open to the public, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area. In addition, the sale or transfer of a firearm or ammunition shall be recorded by the video surveillance system in such a way that the facial features of the purchaser or transferee are clearly visible. The stored images shall be maintained at the permitted business location for a period not less than one year from the date of recordation and shall be made available for inspection by federal, state or local law enforcement upon request. The permittee shall post a sign in a conspicuous place at each entrance to the premises that states in block letters not less than one inch in height: THESE PREMISES ARE UNDER VIDEO SURVEILLANCE. YOUR IMAGE MAY BE RECORDED.
- (g) The Department may impose security requirements in addition to those listed in this section prior to issuance of the law enforcement permit. Failure to fully comply with the requirements of this section or additional security requirements imposed by the Department shall be sufficient cause for denial or revocation of the law enforcement permit by the Department.

## **Sec. 16      Liability insurance**

- (a) If the proposed or current business location is to be used for the sale of firearms, no law enforcement permit shall be issued or renewed unless there is in effect a policy of insurance in a form approved by the [Jurisdiction] and executed by an insurance company approved by the [Jurisdiction], insuring the applicant against liability for damage to property and for injury to, or death of, any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business. The policy shall

also name the [Jurisdiction] and its officers, employees and agents as additional insureds. The limits of liability shall not be less than \$1,000,000 for each incident of damage to property or incident of injury or death to a person; provided, however, that increased limits of liability may be required by the Department if deemed necessary.

(b) The policy of insurance shall contain an endorsement providing that the policy shall not be cancelled until written notice has been given to the Department and the jurisdiction at least 30 days prior to the time the cancellation becomes effective.

(c) Upon expiration of the policy of insurance, and if no additional insurance is obtained, the law enforcement permit is considered revoked without further notice.

#### **Sec. 17            Location of business premises**

(a) The business shall be carried on only in the building located at the street address shown on the permit. This requirement does not prohibit the permittee from participating in a gun show or event as defined under federal law<sup>28</sup> that is authorized by federal, state, or local law upon compliance with those laws.

(b) The business premises shall not be located in any district or area that is zoned for residential use, or within 1,500 feet of any school, pre-school, day-care facility, park, community center, place of worship, liquor store, bar, youth center, video arcade, amusement park (not including a temporary carnival or similar event), or residentially zoned district or area.

#### **Sec. 18            Warnings to consumers**

A permittee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height: CHILDREN ARE ATTRACTED TO AND CAN OPERATE FIREARMS THAT MAY CAUSE SEVERE INJURIES OR DEATH. PREVENT CHILD ACCESS BY ALWAYS KEEPING GUNS LOCKED AWAY AND UNLOADED WHEN NOT IN USE, WITH AMMUNITION STORED SEPARATELY.<sup>29</sup>

#### **Sec. 19            Duties upon sale, lease, or transfer**

(a) No permittee or agent, employee, or other person acting under the permittee's authority shall sell or otherwise transfer ownership of, or lease or loan any firearm or ammunition from the permittee's inventory until he or she has viewed the transferee's driver's license or other government-issued identification card that contains the transferee's signature, photograph and age.

(b) No permittee or agent, employee, or other person acting under the permittee's authority shall sell or otherwise transfer ownership of, or lease or loan any firearm or ammunition to any person the permittee or agent, employee, or other person acting under the permittee's authority knows or has reasonable cause to believe is prohibited by federal, state, or local law from purchasing or possessing the firearm or ammunition.

## **Sec. 20        Sales records and reporting**

(a) No permittee or agent, employee, or other person acting under the permittee's authority shall sell or otherwise transfer ownership of, or lease or loan any firearm or ammunition from the permittee's inventory without recording the following information on a paper or electronic form to be provided by the Department:

- (1) The date of the transaction;
- (2) The name, address, telephone number, and date of birth of the transferee;
- (3) The number of the transferee's current driver's license or other government-issued identification card containing a photograph of the transferee and the name of the governmental authority that issued it;
- (4) The make, model, caliber or gauge, and serial number of any firearm transferred, and the brand, type, caliber or gauge, and amount of any ammunition transferred;
- (5) The transferee's signature; and
- (6) The name of the permittee's agent or employee who processed the transaction.

(b) The permittee and any agent, employee, or other person acting under the permittee's authority shall also, at the time of purchase or transfer, obtain the right thumbprint of the transferee on the form described above.

(c) Within [24 hours] of a transfer, the permittee or any agents, employees, or other persons acting under the permittee's authority shall electronically transmit to the Department all of the information set forth on the form described above. The electronic transmittal shall be by a method, and in a format, approved by the Department. The Department shall maintain these records for at least [ten] years.

(d) The records created in accordance with this section must be permanently maintained on the business premises of the permittee and shall be made available for inspection by federal, state or local law enforcement upon request.

## **Sec. 21        Firearm acquisitions records and reporting**

(a) The permittee or an agent, employee, or other person acting under the permittee's authority shall record the following information regarding every firearm received or acquired for the permittee's inventory on a form to be provided by the Department:

- (1) The name of the permittee;
- (2) The particular make, model, caliber or gauge, and serial number of each firearm received or acquired;



(3) The date each firearm was received or acquired; and

(4) The name, address, and telephone number of the person from whom each firearm was received or acquired.

(b) Within [24 hours] of the receipt or acquisition of any firearm, the permittee and any agents, employees, or other persons acting under the permittee's authority shall electronically transmit to the Department all of the information set forth in paragraph (a). The electronic transmittal shall be by a method, and in a format, approved by the Department. The Department shall maintain these records for at least [ten] years.

(c) The records created in accordance with this section must be permanently maintained on the business premises of the permittee and shall be made available for inspection by federal, state or local law enforcement upon request.

## **Sec. 22        Inventory reports**

Within the first five business days of April and October of each year, the permittee shall cause a physical inventory to be taken that includes a listing of each firearm held by the permittee by make, model, caliber or gauge, and serial number, together with a listing of each firearm the permittee has sold since the last inventory period. In addition, the inventory shall include a listing of each firearm lost or stolen since the last inventory period. Immediately upon completion of the inventory, the permittee shall forward a copy of the inventory to the address specified by the Department, by such means as specified by the Department. The Department shall maintain a copy of the inventory for at least [ten] years. With each copy of the inventory, the permittee shall include an affidavit signed by an authorized agent or employee on behalf of the permittee under penalty of perjury stating that within the first five business days of that April or October, as the case may be, the signer personally confirmed the presence of the firearms reported on the inventory. The permittee shall maintain a copy of the inventory on the premises for which the law enforcement permit was issued for a period of not less than [five] years from the date of the inventory and shall make the copy available for inspection by federal, state, or local law enforcement upon request.

## **Sec. 23        Lost or stolen firearms reporting**

It is unlawful for any permittee to fail to report to the Department the theft or loss of a firearm or ammunition from the permittee's inventory within [48 hours] of the time he or she knew or reasonably should have known that the firearm or ammunition has been stolen or lost.<sup>30</sup>

## **Sec. 24        Restricted admittance of minors and other prohibited purchasers**

*[A jurisdiction may wish to alter the language below to coincide with the jurisdiction's laws regarding the minimum age to purchase or possess firearms. The language below was drafted with a jurisdiction in mind that imposes a minimum age of 21 for purchase or possession of handguns, and a minimum age of 18 for purchase or possession of other firearms.]*

(a) Where firearm sales activity is the primary business performed at the permitted business location, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow the following persons to enter into or remain on the premises unless accompanied by his or her parent or legal guardian:

(1) Any person under 21 years of age, if the permittee sells, keeps or displays handguns, provided that this provision shall not prevent a supervisory agent or employee who has the right to control activities at the business premises from keeping a single handgun on the business premises for purposes of lawful self-defense; or

(2) Any person under 18 years of age, if the permittee sells, keeps or displays only firearms other than handguns.

(b) Where firearm sales activity is the primary business performed at the permitted business location, the permittee and any of his or her agents, employees, or other persons acting under the permittee's authority shall be responsible for requiring clear evidence of age and identity of persons to prevent the entry of persons not permitted to enter the premises pursuant to subsection (a) by reason of age. Clear evidence of age and identity is defined as current driver's license or other government-issued identification card containing the bearer's signature, photograph and date of birth.

(c) The permittee shall post the following conspicuously at each entrance to the permitted business location in block letters not less than one inch in height:

(1) If the permittee sells, keeps or displays handguns, the sign shall state, ~~HANDGUNS ARE KEPT, DISPLAYED OR OFFERED FOR SALE ON THE PREMISES, AND PERSONS UNDER THE AGE OF 21 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN.~~"

(2) If the permittee sells, keeps or displays only firearms other than handguns, the sign shall state, ~~FIREARMS ARE KEPT, DISPLAYED OR OFFERED FOR SALE ON THE PREMISES, AND PERSONS UNDER THE AGE OF 18 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN.~~"

(d) Where firearm sales activity is the primary business performed at the permitted business location, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow any person to enter into or remain on the premises who the permittee or any of his or her agents, employees, or other persons acting under the permittee's authority knows or has reason to know is prohibited from possessing or purchasing firearms pursuant to federal, state, or local law.

## **Sec. 25 Civil liability**

(a) As provided in 15 U.S.C. § 7903(5)(A)(iii), any person or other entity with a permit under this Chapter who has knowingly violated any provision of a federal or state statute

applicable to the sale or marketing of a firearm shall be liable in a civil action to any person injured by such violation.<sup>31</sup>

(b) As provided in 15 U.S.C. § 7903(5)(A)(ii), any person or other entity with a permit under this Chapter who has violated any federal, state or local law shall be liable in a civil action to any person injured by such violation under the doctrine of negligence per se.<sup>32</sup>

(c) As provided in 15 U.S.C. § 7903(5)(A)(ii), any person or other entity who negligently entrusts a firearm or ammunition to another person shall be liable in a civil action to any person injured and for any and all damages resulting from the negligent entrustment.<sup>33</sup> For purposes of this provision, the term “negligent entrustment” shall have the meaning given in 15 U.S.C. § 7903(5)(B).

(d) The remedies set forth in this section are in addition to any other remedies provided for by law.

**For suggested language regarding Sections 26 – 28, Administrative rules and regulations, Penalties, and Severability, see the Appendix.**

\* Where the words “~~Act/Ordinance~~,” “~~Jurisdiction~~,” “~~Legislative Body~~” or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>1</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>2</sup> For licensee figures, see Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Dep’t of Justice, *Listing of Federal Firearms Licensees* (2011), <http://www.atf.gov/about/foia/ffl-list.html>.

<sup>3</sup> Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking* 18, (Dec. 2008), available at:

[www.mayorsagainstillegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf)

<sup>4</sup> Brady Center to Prevent Gun Violence, *Shady Dealings: Illegal Gun Trafficking From Licensed Gun Dealers* 23 (Jan. 2007), available at <http://www.bradycenter.org/xshare/pdf/reports/shady-dealings.pdf>. In 2006, ATF increased its total revocations to 131. *Id.*

<sup>5</sup> Office of the Inspector General, Evaluation and Inspections Division, U.S. Dep’t of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* i (July 2004), available at <http://www.usdoj.gov/oig/reports/ATF/e0405/exec.htm>.

<sup>6</sup> A Federal Firearms Licensee can be a manufacturer, importer, dealer or collector of firearms, among other classifications. Hereinafter in this model law, we refer only to firearms dealers, and thus use the abbreviated “FFL” to describe gun dealers.

<sup>7</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix (June 2000), available at

[http://www.mayorsagainstillegalguns.org/downloads/pdf/Following\\_the\\_Gun%202000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf).

<sup>8</sup> *Id.* at x.

<sup>9</sup> Brady Center to Prevent Gun Violence, “Trivial Violations”? *The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers* 1 (Sept. 2006), available at [www.bradycenter.org/xshare/pdf/reports/trivial-violations.pdf](http://www.bradycenter.org/xshare/pdf/reports/trivial-violations.pdf).

<sup>10</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *FFL Compliance Inspections Fact Sheet*, ¶ 4 (June 2008), <http://www.atf.gov/publications/factsheets/factsheet-ffl-compliance.html>.

<sup>11</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Commerce in Firearms in the United States* 16 (2000), available at [www.mayorsagainstillegalguns.org/downloads/pdf/Commerce\\_in\\_Firearms\\_2000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Commerce_in_Firearms_2000.pdf).

<sup>12</sup> Brady Center to Prevent Gun Violence, *supra* note 4, at 24-26.

<sup>13</sup> A number of state and local jurisdictions have adopted such laws, however. For a list of California jurisdictions with such laws, see Legal Community Against Violence, *LCAV Model Law Regulating Firearms Dealers and Ammunition Sellers (Local Governments in California)* 8-9 (2010), available at [http://www.lcav.org/publications-briefs/model\\_laws/LCAV\\_Model\\_Dealer\\_Ordinance\\_CA.pdf](http://www.lcav.org/publications-briefs/model_laws/LCAV_Model_Dealer_Ordinance_CA.pdf).

<sup>14</sup> The landmark federal Gun Control Act of 1968 (Pub. L. No. 90-618, 82 Stat. 1213) required, among other things, that all licensed ammunition manufacturers and dealers maintain ammunition sales logs. At the behest of the gun lobby, the Firearms Owners' Protection Act of 1986 repealed the ammunition sales recordkeeping provision.

<sup>15</sup> For a list of California jurisdictions with such laws, see Legal Community Against Violence, *supra* note 13, at 10-11.

<sup>16</sup> 18 U.S.C. § 923(d)(1)(F).

<sup>17</sup> Alabama (Ala. Code § 13A-11-78; handgun sales only), California (Cal. Penal Code § 12070(a)), Connecticut (Conn. Gen. Stat. § 29-28; handgun sales only), Delaware (Del. Code Ann. tit. 24, § 901), District of Columbia (D.C. Code § 7-2504.01(b)), Georgia (Ga. Code Ann. § 43-16-2; handgun sales only), Hawaii (Haw. Rev. Stat. § 134-31), Indiana (Ind. Code §§ 35-47-2-14 to 35-47-2-16; handgun sales only), Maryland (Md. Code Ann., Pub. Safety §§ 5-101, 5-106; handgun and assault weapon sales only), Massachusetts (Mass. Gen. Laws ch. 140, §§ 122, 128), New Hampshire (N.H. Rev. Stat. Ann. §§ 159:8, 159:10; handgun sales only), New Jersey (N.J. Stat. Ann. § 2C:58-2(a)), New York (N.Y. Penal Law §§ 265.00(9), 400.00(2); handgun and assault weapon sales only), Pennsylvania (18 Pa. Cons. Stat. § 6112), Rhode Island (R.I. Gen. Laws § 11-47-38; handgun sales only), South Carolina (S.C. Code Ann. § 23-31-130; handgun sales only), Washington (Wash. Rev. Code Ann. § 9A.11.10) and Wisconsin (Wis. Admin. Code Jus § 10.04; handgun sales only). For more information about existing state and local laws regulating firearm dealers and ammunition sellers, see Legal Community Against Violence, *Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws* 51-66, 149-161 (Feb. 2008), available at [http://www.lcav.org/publications-briefs/reports\\_analyses/RegGuns.entire.report.pdf](http://www.lcav.org/publications-briefs/reports_analyses/RegGuns.entire.report.pdf).

<sup>18</sup> Chicago (Chicago, Ill., Code §§ 8-20-140 – 8-20-210), Cleveland (Cleveland, Ohio, Code § 674.07; handgun sales only), Columbus (Columbus, Ohio, Code § 545.02), Hartford (Hartford, Conn., Code § 21-51; handgun sales only), Los Angeles (Los Angeles, Cal., Code ch. X, art. 3, div. 9, § 103.314), New York City (New York, N.Y. Admin. Code § 10-302), Omaha (Omaha, Neb., Code § 19-371), San Francisco (San Francisco, Cal., Police Code art. 9, § 613).

<sup>19</sup> Int'l Ass'n of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (Sept. 2007), available at <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=302>.

<sup>20</sup> Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 26-27 (Sept. 2010), available at <http://www.tracetheguns.org/report.pdf>.

<sup>21</sup> American Bar Association, *Item 10E*, Annual Meeting 1994, [http://www.americanbar.org/groups/criminal\\_justice/policy/index\\_aba\\_criminal\\_justice\\_policies\\_by\\_meeting.html#am9410e](http://www.americanbar.org/groups/criminal_justice/policy/index_aba_criminal_justice_policies_by_meeting.html#am9410e).

<sup>22</sup> Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, 86 J. Urb. Health 525 (July 2009).

<sup>23</sup> Both Los Angeles and Sacramento have seen direct law enforcement successes leading to illegal firearms and ammunition confiscations, and illegal possessor arrests and prosecutions, because of their ammunition sales recordkeeping and reporting ordinances. See, e.g., Sacramento, Cal., City Code, Chapters 5.64, 5.66; *Presentation: Ammunition Sales Record Study*, (Aug. 12, 2008) (Presentation by Rick Braziel, Sacramento Chief of Police, et al.), [http://sacramento.granicus.com/MetaViewer.php?view\\_id=8&clip\\_id=1590&meta\\_id=155275](http://sacramento.granicus.com/MetaViewer.php?view_id=8&clip_id=1590&meta_id=155275).

<sup>24</sup> Greenberg Quinlan Rosner Research and The Tarrance Group for Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3, 6, April 10, 2008, [http://www.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf).

<sup>25</sup> A jurisdiction may choose to replace this language with: “(2) Is not licensed as a firearms dealer under all applicable federal, state and local laws.” This option would prohibit the sale of ammunition by persons not engaged in the business of selling firearms, such as hardware and convenience stores.

<sup>26</sup> See <http://www.ul.com/> for more information about Underwriters Laboratories-approved residential security containers.

<sup>27</sup> Underwriters Laboratories, Inc. uses the term “extent of protection” to refer to the amount of alarm protection installed to protect a particular area, room or container. Systems with a #3 extent of protection include complete protection for all accessible openings, and partial motion and sound detection at certain other areas of the premises. For more information, see Central Station Alarm Association, *A Practical Guide to Central Station Burglar Alarm Systems* (3rd ed. 2005).

<sup>28</sup> 27 C.F.R. § 478.100(b).

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<sup>29</sup> A jurisdiction also may require firearms dealers and ammunition sellers to post warnings to consumers about particular features of the jurisdiction's law, such as those mandating: 1) the reporting of lost or stolen firearms; or 2) that all firearm transfers must be processed by a licensed dealer.

<sup>30</sup> Federal law requires federally licensed firearms dealers to report the loss or theft of a firearm to the U.S. Attorney General or local law enforcement within 48 hours of discovering the loss or theft. 18 U.S.C. § 923(g)(6). Because federal law gives dealers the option to notify the Attorney General rather than local law enforcement of a lost or stolen firearm, local law enforcement may not be made aware of the loss or theft. Federal law also does not require a dealer to notify state authorities of a lost or stolen firearm.

<sup>31</sup> Federal law grants firearms dealers and others immunity from certain civil lawsuits. 15 U.S.C. §§ 7901- 7903. However, federal law exempts from this immunity any action in which a seller of a firearm knowingly violated a state or federal statute applicable to the sale or marketing of a firearm where the violation was a proximate cause of the harm for which relief is sought. 15 U.S.C. § 7903(5)(A)(iii).

<sup>32</sup> The federal immunity law also exempts any action brought against a seller for negligence per se. 15 U.S.C. § 7903(5)(A)(ii).

<sup>33</sup> The federal immunity law additionally exempts any action brought against a seller for negligent entrustment. *Id.*

## **E. Model Law Requiring the Reporting of Lost or Stolen Firearms**

This model law requires the reporting of lost or stolen firearms. Under its provisions, a firearm owner who discovers or should have discovered that a firearm in his or her possession is missing must report the loss or theft to law enforcement within 48 hours. This requirement applies to any firearm owner who resides in the jurisdiction or whose firearm is lost or stolen in the jurisdiction.

Laws requiring the reporting of lost or stolen firearms are beneficial to law enforcement for several reasons. As discussed in the findings below, reporting laws: 1) help deter and prosecute gun traffickers and criminals who often falsely claim that a crime gun that has been traced to them was lost or stolen in order to hide their involvement in the crime; 2) help disarm persons ineligible to possess firearms by deterring a person who has fallen into a prohibited category from falsely claiming that his or her firearm was lost or stolen; and 3) help return lost or stolen firearms to their owners. Reporting laws also make gun owners more accountable for their weapons.

A September 2010 report by Mayors Against Illegal Guns (a coalition of over 600 mayors that targets illegal guns nationwide) analyzed the impact of a variety of state laws on interstate gun trafficking. That report found that states that do not require gun owners to report lost or stolen guns are the sources of crime guns recovered in other states at a rate more than two and a half times greater than states that do have lost or stolen reporting laws. A 2007 report by the International Association of Chiefs of Police concluded that early awareness by law enforcement of every lost and stolen gun would enhance their ability to recover those guns and reduce gun violence. The report recommends that state and local governments mandate reporting of lost or stolen firearms.

Federal law requires firearms dealers, but not firearm owners, to report the loss or theft of firearms. Laws requiring the reporting of lost or stolen firearms have been adopted in seven states and the District of Columbia, and in a number of local jurisdictions nationwide.

The American public overwhelmingly supports laws requiring the reporting of lost or stolen firearms. A 2011 survey found that 94% of those surveyed, including 94% of gun owners, favor such laws.

## Text of Model Law

### **CHAPTER 1            REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS**

<b>Sec. 1</b>	<b>Legislative findings, purpose and intent</b>
<b>Sec. 2</b>	<b>Definitions</b>
<b>Sec. 3</b>	<b>Duty to report the loss or theft of a firearm</b>
<b>Sec. 4</b>	<b>Exceptions</b>
<b>Sec. 5</b>	<b>False report of lost or stolen firearm</b>
<b>Sec. 6</b>	<b>Administrative rules and regulations</b>
<b>Sec. 7</b>	<b>Penalties</b>
<b>Sec. 8</b>	<b>Severability</b>

#### **Sec. 1            Legislative findings, purpose and intent**

*[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication.]*

The [Legislative Body]\* hereby finds and declares:

- (a) Federal law requires licensed firearms dealers, but not firearms owners, to report the loss or theft of firearms to law enforcement within 48 hours.<sup>1</sup>
- (b) Laws requiring the reporting of lost or stolen firearms are useful to law enforcement for several reasons. When a crime gun is traced by law enforcement to the last purchaser of record, that person may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it.
- (c) A December 2008 report by Mayors Against Illegal Guns concluded that lost or stolen firearm reporting laws “can help law enforcement more easily identify and prosecute gun traffickers.”<sup>2</sup> A September 2010 report by that organization presented data showing that states that do not require gun owners to report lost or stolen guns to police are the source of crime guns recovered in other states at a rate more than two and a half times greater than states that have lost or stolen reporting laws.<sup>3</sup>
- (d) Reporting laws help disarm persons prohibited from possessing firearms. When a person who legally owned a gun falls into a prohibited category, it is crucial for law enforcement to be able to remove the firearm from his or her possession. For example, a gun owner who is convicted of a felony or who becomes the subject of a domestic violence restraining order is not permitted under federal law to continue to possess firearms. However, when ordered to surrender a firearm by law enforcement or a judge, the owner may falsely claim it has been lost or stolen. Mandatory reporting laws provide a deterrent to this behavior.

- (e) Reporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene, and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner. In a 2007 report, the International Association of Chiefs of Police concluded that, ~~law~~ enforcement's early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence." The report recommends that state and local governments mandate reporting of lost or stolen firearms.<sup>4</sup>
- (f) At least 500,000 firearms are stolen each year from residences across the United States.<sup>5</sup>
- (g) The extreme danger firearms pose to public safety requires a heightened level of accountability on the part of individuals who choose to own firearms. Reporting laws make gun owners more accountable for their weapons.
- (h) Laws requiring the reporting of lost or stolen firearms have been adopted in jurisdictions throughout the country. Firearm owners are currently required to report lost or stolen firearms in seven states and the District of Columbia,<sup>6</sup> and in a number of local jurisdictions in California<sup>7</sup> and Pennsylvania,<sup>8</sup> as well as in certain other major cities, including Chicago, Illinois;<sup>9</sup> Hartford, Connecticut;<sup>10</sup> and New York, New York.<sup>11</sup>
- (i) The American public overwhelmingly supports laws requiring the reporting of lost or stolen firearms. A 2011 survey of public attitudes toward gun violence prevention measures found almost unanimous support for these laws: 94% of all people surveyed, including 94% of gun owners polled, favored reporting laws.<sup>12</sup>
- (j) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to require firearm owners to report to law enforcement if a firearm they own or possess is lost or stolen. The [Legislative Body] believes this requirement will help improve public safety by deterring gun trafficking, improving gun crime investigations, protecting gun owners from unwarranted accusations, and enabling law enforcement to disarm ineligible gun owners and return lost or stolen firearms to their owners.

## **Sec. 2            Definitions**

As used in this Chapter:

*[The definitions of commonly used terms, such as ~~Department~~, " ~~Firearm~~," ~~Law enforcement~~," and ~~Person~~," which are included in the Appendix should be included in this section.]*

## **Sec. 3            Duty to report the loss or theft of a firearm**

It is unlawful for any person to fail to report to the Department the theft or loss of a firearm he or she owns or possesses within forty-eight (48) hours<sup>13</sup> of the time he or she knew or reasonably should have known<sup>14</sup> that the firearm had been stolen or lost, if the person resides in [Jurisdiction].<sup>15</sup>



## Sec. 4 Exceptions

Section 3 shall not apply to the following persons:

- (a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties; or
- (b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official, who is required to possess a firearm in the operation of his or her official duties.

## Sec. 5 False report of lost or stolen firearm

It is unlawful for any person to report to the Department that a firearm has been lost or stolen, knowing the report to be false.

**For suggested language regarding Sections 6 – 8, Administrative rules and regulations, Penalties, and Severability, see the Appendix.**

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\*Where the words “~~Act/Ordinance]~~,” “~~Jurisdiction]~~,” “~~Legislative Body]~~” or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>1</sup> 18 U.S.C. § 923(g)(6).

<sup>2</sup> Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking* 14 (Dec. 2008), at

[http://www.mayorsagainstillegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf).

<sup>3</sup> Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 22-23 (Sept. 2010), at <http://www.tracetheguns.org/report.pdf>.

<sup>4</sup> International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 22 (Sept. 2007), at <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87>.

<sup>5</sup> Bureau of Alcohol, Tobacco & Firearms, U.S. Dep’t of Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* 41 (2000), available at

[http://www.mayorsagainstillegalguns.org/downloads/pdf/Following\\_the\\_Gun%202000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf).

<sup>6</sup> Conn. Gen. Stat. § 53-202g; Mass. Gen. Laws ch. 140, § 129C; Mich. Comp. Laws § 28.430 (theft only); N.J. Stat. Ann. § 2C:58-19; N.Y. Penal Law § 400.10; Ohio Rev. Code Ann. § 2923.20(A)(5), (B); R.I. Gen. Laws § 11-47-48.1; D.C. Code Ann. §§ 7-2502.08(a)(1).

<sup>7</sup> Los Angeles (Los Angeles, Cal., Code ch. V, art. 5, § 55.12), Oakland (Oakland, Cal. Code § 9.36.131) and San Francisco (San Francisco, Cal., Police Code art. 9, § 616) have lost or stolen gun reporting laws.

<sup>8</sup> See Mayors Against Illegal Guns, *Reporting Lost and Stolen Guns: Pennsylvania Mayors Advance Effort to Require Reporting of Lost and Stolen Guns*, at <http://www.mayorsagainstillegalguns.org/html/local/pa-lost-stolen.shtml>.

<sup>9</sup> Chicago, Ill., Code § 8-20-185(a)(1).

<sup>10</sup> Hartford, Conn., Code §§ 21-61 – 21-63.

<sup>11</sup> New York, N.Y., Rules tit. 38, §§ 3-09, 5-30.

<sup>12</sup> American Viewpoint/Momentum Analysis, *Momentum Analysis & American Viewpoint National Survey (for Mayors Against Illegal Guns)* (Jan. 14, 2011) at [http://www.mayorsagainstillegalguns.org/downloads/pdf/maig\\_poll\\_01\\_18\\_2011.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_poll_01_18_2011.pdf). See also Mayors Against Illegal Guns, *New Polls In Five Bellwether States Show Overwhelming Support To Fix Gun Background Check System*, (Mar. 2, 2011), at <http://www.mayorsagainstillegalguns.org/html/media-center/pr020-11.shtml> (showing similar results from polls in five bellwether states – Arizona, Colorado, Indiana, Ohio and Virginia); and Dr. Frank Luntz/Word Doctors for Mayors Against Illegal Guns, *America’s Gun Owners Support Common Sense Gun Laws* 13 (Dec. 2009) at [http://www.mayorsagainstillegalguns.org/downloads/pdf/luntz\\_poll\\_slides.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/luntz_poll_slides.pdf) (showing strong

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support for requiring gun owners to alert police if their guns are lost or stolen by NRA members (78%) and non-NRA member gun owners (88%)).

<sup>13</sup> Forty-eight hours is the reporting time period required of dealers by federal law. 18 U.S.C. § 923(g)(6).

<sup>14</sup> This model law uses an objective standard regarding the onset of the period within which the loss or theft of a firearm may be reported. In other words, a person is required to report the loss or theft of a firearm within 48 hours of the time he or she knew *or reasonably should have known* of such loss or theft. The alternative, a subjective standard, based on when the owner actually became aware of the loss or theft, would allow dishonest gun owners to thwart the law simply by claiming that they never knew the firearm was lost or stolen.

<sup>15</sup> A jurisdiction may wish to add the following optional provision to this model to decrease the likelihood that a gun owner will falsely claim that his or her gun was lost or stolen before the law went into effect: ~~It~~ is unlawful for any person to fail to report to the Department within one hundred twenty (120) days of the effective date of this law the theft or loss of a firearm he or she owned or possessed within the five years prior to the effective date of this law if the person resided in [Jurisdiction] at the time of the loss or theft, or the loss or theft occurred in [Jurisdiction], unless the firearm has been recovered.”

## **F. Model Law Imposing a Waiting Period Prior to the Sale of a Firearm**

This model law imposes a ten-day waiting period prior to the sale of a firearm. Laws imposing waiting periods require that a specified number of days elapse between the time a firearm is purchased and the time it is physically transferred to the purchaser. The purpose of a waiting period is to: 1) give law enforcement officials adequate time to perform a thorough background check; and 2) provide a “cooling off” period to help guard against impulsive acts of violence.

There is no federal waiting period. Federal law allows a dealer to transfer a firearm to a prospective purchaser as soon as he or she passes a background check. Moreover, if the FBI is unable to complete a background check within three business days, federal law allows the transfer to occur by default. As a result, thousands of firearms are transferred to ineligible persons each year. This model law addresses this problem by requiring a licensed firearms dealer to await law enforcement approval prior to the sale, so that law enforcement is able to complete a background check on the prospective purchaser regardless of whether the waiting period has elapsed.

As discussed in the findings below, the American public overwhelmingly supports laws imposing waiting periods. A nationwide poll conducted in June 2008 found that 86% of Americans favor such laws. Eleven states and the District of Columbia currently have waiting periods that apply to the purchase of some or all firearms.

This model is intended for use by a jurisdiction that requires all firearm sales to be conducted through a licensed firearms dealer. LCAV recommends that jurisdictions consider requiring all firearm sales to be processed through a licensed dealer, because federal law requires licensed dealers to conduct a background check on the purchaser and maintain a record of the transaction, but does not impose these requirements on private gun sellers. For more information, see LCAV’s Model Law Requiring Background Checks on All Gun Purchasers.

## Text of Model Law

### **CHAPTER 1            IMPOSING A WAITING PERIOD PRIOR TO THE SALE OF A FIREARM**

- Sec. 1        Legislative findings, purpose and intent**
- Sec. 2        Definitions**
- Sec. 3        Waiting period prior to firearm purchase**
- Sec. 4        Exceptions**
- Sec. 5        Administrative rules and regulations**
- Sec. 6        Penalties**
- Sec. 7        Severability**

#### **Sec. 1            Legislative findings, purpose and intent**

*[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]*

The [Legislative Body]<sup>\*</sup> hereby finds and declares:

- (a)        Laws imposing a waiting period prior to the sale of a firearm give law enforcement officials adequate time to perform a thorough background check on the prospective purchaser, and provide a “cooling off” period to help guard against impulsive acts of violence.
- (b)        There is no federal waiting period. Under federal law, a dealer may transfer a firearm to a prospective purchaser as soon as he or she passes a background check.<sup>1</sup> If the FBI is unable to complete a background check within three business days, the dealer may complete the transfer by default.<sup>2</sup>
- (c)        In 2007, the FBI was unable to complete a background check within three business days for over 134,000 firearm transactions, and the FBI later determined that at least 3,055 ineligible persons had been sold firearms by default within that year.<sup>3</sup> FBI investigations of prohibited purchasers who were allowed to buy firearms by default typically take 25 days to complete. As a result, the FBI has recommended extending the maximum time allowed for conducting background checks to allow more time to complete such checks and to reduce the number of prohibited purchasers who are able to purchase firearms by default.<sup>4</sup>
- (d)        Eleven states and the District of Columbia currently have waiting periods that apply to the purchase of some or all firearms. California,<sup>5</sup> Hawaii,<sup>6</sup> Illinois,<sup>7</sup> Rhode Island,<sup>8</sup> and the District of Columbia<sup>9</sup> impose a statutory waiting period on all firearm purchases. Both Maryland<sup>10</sup> and Minnesota<sup>11</sup> impose seven-day waiting periods on purchases of handguns and assault weapons. Florida,<sup>12</sup> Iowa,<sup>13</sup> New Jersey,<sup>14</sup> and Wisconsin<sup>15</sup> have waiting periods for handgun purchases only. Connecticut imposes a waiting period only for long gun purchases.<sup>16</sup>

These waiting periods vary in length from 24 hours (for long guns in Illinois) to 14 days (for a permit to purchase a firearm in Hawaii).

(e) The American public overwhelmingly supports laws imposing a waiting period prior to the sale of a firearm. A nationwide poll conducted in June 2008 found that 86% of Americans favor such laws.<sup>17</sup>

(f) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to impose a waiting period prior to sale of a firearm in [Jurisdiction]. The [Legislative Body] believes that a waiting period will help improve public safety by giving law enforcement sufficient time to conduct a background check on the prospective purchaser, and by eliminating opportunities for impulsive acts of violence.

## **Sec. 2 Definitions**

As used in this Chapter:

*[The definitions of commonly used terms, such as ~~Department~~, "Firearm," ~~Law enforcement~~, "Licensed dealer," ~~Person~~, which are included in the Appendix should be included in this section.]*

## **Sec. 3 Waiting period prior to firearm purchase**

No licensed firearms dealer shall deliver a firearm, and no person shall take possession of a firearm from a licensed dealer, until both of the following have occurred:

- (a) Ten (10) days have elapsed from the date the dealer initiated the National Instant Criminal Background Check System check of the purchaser as required by 18 U.S.C. § 922(t), after receiving a completed federal Firearms Transaction Record, Form 4473, from the purchaser; and
- (b) The dealer has received notice that the purchaser or transferee has passed all background checks required by federal, state and local law.<sup>18</sup>

## **Sec. 4 Exceptions**

Section 3 does not apply to:

- (a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;
- (b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official transferring firearms as required in the operation of his or her official duties;

- (c) Licensed firearms manufacturers, importers or dealers, while engaged in the course and scope of their activities as licensees, provided that the transfers are between licensees and all such licensees are properly licensed under federal, state and local law;
- (d) A gunsmith who receives a firearm for service or repair;
- (e) A properly licensed private security firm, or private security personnel, who acquire the firearms for use in the course and scope of employment; or
- (f) A common carrier, warehouseman, or other person engaged in the business of transporting or storing goods, to the extent that the possession or receipt of , or having on or about the person of any firearm is in the ordinary course of business and not for the personal use of any such person.

**For suggested language regarding Sections 5 – 7, Administrative rules and regulations, Penalties, and Severability, see the Appendix.**

\* Where the words “~~Act/Ordinance~~,” “~~Jurisdiction~~,” “~~Legislative Body~~” or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>1</sup> 18 U.S.C. § 922(t)(1).

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

<sup>3</sup> Criminal Justice Information Services Division of the Federal Bureau of Investigation, *National Instant Criminal Background Check System (NICS), Operations Report 12*, at [http://www.fbi.gov/about-us/cjis/nics/reports/2007-operations-report/ops\\_report\\_2007.pdf](http://www.fbi.gov/about-us/cjis/nics/reports/2007-operations-report/ops_report_2007.pdf).

<sup>4</sup> U.S. General Accounting Office, *Gun Control: Implementation of the National Instant Criminal Background Check System* 13 (Feb. 2000), at <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=g100064.pdf&directory=/diskb/wais/data/gao>.

<sup>5</sup> Cal. Penal Code §§ 12071(b)(3)(A), 12072(c)(1).

<sup>6</sup> Haw. Rev. Stat. §§ 134-2(e), 134-3(a).

<sup>7</sup> 720 Ill. Comp. Stat. 5/24-3(A)(g).

<sup>8</sup> R.I. Gen. Laws §§ 11-47-35, 11-47.35.1, 11-47-35.2.

<sup>9</sup> D.C. Code Ann. § 22-4508.

<sup>10</sup> Md. Code Ann., Pub. Safety §§ 5-123(a), 5-124(a).

<sup>11</sup> Minn. Stat. § 624.7132, subd. 4.

<sup>12</sup> Fla. Const. art. I, § 8(b); Fla. Stat. § 790.0655.

<sup>13</sup> Iowa Code § 724.20.

<sup>14</sup> N.J. Rev. Stat. §§ 2C:58-2a(5)(a), 2C:58-3i.

<sup>15</sup> Wis. Stat. § 175.35(2k)(d).

<sup>16</sup> Conn. Gen. Stat. § 29-37a.

<sup>17</sup> CNN/Opinion Research Corp. Poll, *Most Americans Say the Constitution Guarantees the Right to Own a Gun, Latest CNN/Opinion Research Corporation Poll Shows* (June 28, 2008), at [http://www.opinionresearch.com/fileSave/CNNPR\\_Gun\\_6\\_28\\_2008.pdf](http://www.opinionresearch.com/fileSave/CNNPR_Gun_6_28_2008.pdf).

<sup>18</sup> If a jurisdiction chooses not to require all gun sales to be processed through a dealer, but nevertheless wants all firearms sales to be subject to a ten-day waiting period, the jurisdiction should add the following provision:

No unlicensed firearms seller shall transfer a firearm to another person, through sale, lease, or other transfer, and no person shall acquire a firearm, until ten (10) days have elapsed from the date when the seller or transferor receives notice from the Department that the purchaser or transferee has successfully passed all background checks required by federal, state or local law. To facilitate the background check, the seller or transferor must submit to the Department a completed application or notice of intent to transfer a firearm, on a form prescribed by the Department.

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Appropriate exceptions, like those in LCAV's Model Law Requiring the Licensing of Firearm Owners, should be included in the revised law. LCAV is available to provide drafting assistance upon request.

## **G. Model Law Limiting Firearm Purchases to One Per Person Every 90 Days**

This model law prohibits the purchase of more than one firearm by the same individual within a 90-day period. As discussed in the findings below, studies show that firearms that are sold in multiple sales to the same individual are frequently used in crime. Laws restricting multiple purchases of firearms prevent gun traffickers from buying guns in bulk and reselling them to prohibited purchasers, thereby helping to reduce the number of guns entering the illegal market and stem the flow of firearms between states.

Although federal law does not limit the number of guns a person may purchase in any given time period, several state and local jurisdictions currently limit multiple purchases of firearms. Purchase limitations range from 30 days to 90 days, and usually apply only to handguns. LCAV's model is based on the law in New York City, which limits all firearm sales to one per person every 90 days.

The American public strongly supports laws limiting the number of guns that may be purchased at one time.



## Text of Model Law

### **CHAPTER 1            LIMITING FIREARM PURCHASES TO ONE PER PERSON EVERY 90 DAYS**

- Sec. 1        Legislative findings, purpose and intent**
- Sec. 2        Definitions**
- Sec. 3        Limit on firearm purchases**
- Sec. 4        Limit on firearm transfers**
- Sec. 5        Records of firearm transfers**
- Sec. 6        Exceptions**
- Sec. 7        Administrative rules and regulations**
- Sec. 8        Penalties**
- Sec. 9        Severability**

#### **Sec. 1            Legislative findings, purpose and intent**

*[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]*

The [Legislative Body]<sup>\*</sup> hereby finds and declares:

(a) Federal law does not limit the number of guns a person may buy in any given time period. Federal law does require federally licensed firearms dealers (FFLs) to report multiple sales of handguns to the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) and other specified law enforcement agencies, and defines “multiple sales” as the sale of two or more handguns by an FFL to a non-FFL within five consecutive business days.<sup>1</sup> The multiple sales reporting requirement was created to enable ATF to “monitor and deter illegal interstate commerce in pistols and revolvers by unlicensed persons.”<sup>2</sup> ATF and the other law enforcement agencies receiving the reports are not charged with any investigative duties regarding those sales, however.<sup>3</sup>

(b) Studies show that firearms sold in multiple sales to the same individual purchaser are frequently used in crime.<sup>4</sup> 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.<sup>5</sup> Crime gun trace data from 2000 showed that 20% of all retail handguns recovered in crime were purchased as part of a multiple sale.<sup>6</sup>

(c) A study of the sale and subsequent criminal use of handguns sold in Maryland in the 1990s revealed that handguns sold in multiple sales accounted for about a quarter of crime guns and were up to 64% more likely to be used in crime than handguns sold in single sales.<sup>7</sup>

(d) Jurisdictions with weaker firearms laws attract gun traffickers who make multiple purchases and resell those guns in jurisdictions with stronger firearms laws.<sup>8</sup>

(e) “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 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.<sup>9</sup>

(f) The American public strongly supports laws limiting the number of guns that may be purchased at one time. A national poll conducted for Mayors Against Illegal Guns in the spring of 2008 found that 65% of Americans favor limiting the number of handguns an individual is allowed to purchase to one gun per month.<sup>10</sup>

(g) California,<sup>11</sup> Maryland,<sup>12</sup> New Jersey,<sup>13</sup> Virginia,<sup>14</sup> the District of Columbia,<sup>15</sup> Chicago<sup>16</sup> and New York City<sup>17</sup> currently limit multiple purchases of firearms. In California, New Jersey, Virginia, the District of Columbia and Chicago, a person may buy only one handgun every 30 days. In Maryland, a person may buy only one handgun or assault weapon every 30 days. New York City limits all firearm purchases (not just handguns) to one per person every 90 days.

(h) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to limit the number of firearms that may be purchased at any one time, thereby: 1) helping to prevent gun traffickers from buying guns in bulk and reselling them to prohibited purchasers; 2) reducing the number of guns entering the illegal market; and 3) stemming the illegal flow of firearms between jurisdictions. The [Legislative Body] believes this law will help achieve these goals.

## **Sec. 2 Definitions**

As used in this Chapter:

*[The definitions of commonly used terms, such as “Department,” “Firearm,” “Law enforcement officer,” and “Person,” which are included in the Appendix should be included in this section.]*

## **Sec. 3 Limit on firearm purchases**

No person may purchase or otherwise acquire more than one firearm from any licensed firearms dealer within any 90-day period.

## **Sec. 4 Limit on firearm transfers**

(a) No licensed firearms dealer may transfer a firearm to any person who has purchased or acquired another firearm within the preceding 90-day period.

- (b) Any person transferring a firearm must request, and receive, approval for the sale or transfer from the Department in a manner prescribed by the Department.
- (c) Upon receiving a request for approval for the transfer of a firearm, the Department shall conduct a search of the records it maintains pursuant to Sec. 5.
- (d) The Department shall not approve the transfer of more than one firearm to the same person within any 90-day period.

## **Sec. 5           Records of firearm transfers**

- (a) Any person transferring a firearm shall immediately report the transfer of the firearm to the Department on a form prescribed by the Department.
- (b) The Department shall maintain records of transfers of firearms for at least [5] years.

## **Sec. 6           Exceptions**

- (a) Sections 3 and 4 shall not apply to:
  - (1) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;
  - (2) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official, who is required to possess a firearm in the operation of his or her official duties;
  - (3) Licensed firearms manufacturers, importers or dealers, while engaged in the course and scope of their activities as licensees, provided that the transfers are between licensees and all such licensees are properly licensed under federal, state and local law;
  - (4) A properly licensed private security firm, or private security personnel, who acquire the firearms for use in the course and scope of employment;
  - (5) A gunsmith acquiring firearms solely for the purposes of service or repair, or the lawful owner of the firearms retrieving the firearms back from such a gunsmith;
  - (6) A common carrier, warehouseman, or other person engaged in the business of transporting or storing goods, to the extent that the possession or receipt of any firearm is in the ordinary course of business, and not for the personal use of any such person;
  - (7) A person acquiring firearms by operation of law upon the death of the former owner of the firearms; or

(8) A person whose firearm was stolen or irretrievably lost and who considers it essential that the firearm be replaced immediately, if:

- a. The person provides the seller or transferor with a copy of an official police report describing the loss or theft of the firearm, if the jurisdiction requires reporting of lost or stolen firearms. The official police report must contain the name and address of the firearm owner, a description of the firearm, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law enforcement agency. If the jurisdiction does not require the reporting of lost or stolen firearms, the person must submit an affidavit or declaration that contains the same information that is required for the police report; and
- b. The loss or theft occurred within 90 days of the person's attempt to replace the firearm, as reflected by the date of loss or theft on the official police report or, if the jurisdiction does not require the reporting of lost or stolen firearms, the date noted on the affidavit or declaration.

(b) A firearms dealer who sells or transfers a firearm to a person listed in subsection (a) shall identify, on the report the dealer prepares for the Department pursuant to Sec. 5, the applicable exception from subsection (a).

**For suggested language regarding Sections 7 – 9, Administrative rules and regulations, Penalties, and Severability, see the Appendix.**

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\* Where the words “~~Act/Ordinance~~,” “~~Jurisdiction~~,” “~~Legislative Body~~” or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>1</sup> 18 U.S.C. § 923(g)(3)(A).

<sup>2</sup> U.S. General Accounting Office, *Federal Firearms Licensee Data – ATF's Compliance with Statutory Restrictions* 11 (Sept. 1996), available at <http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GGD-96-174/pdf/GAOREPORTS-GGD-96-174.pdf>.

<sup>3</sup> A November 2010 report from the U.S. Department of Justice found that long guns, rather than handguns, have become the weapons of choice for Mexican drug cartels, and gun traffickers frequently purchase long guns in multiple sales from FFLs. The report concluded that the lack of a federal reporting requirement for multiple sales of long guns has hindered ATF's ability to disrupt the flow of illegal firearms into Mexico, and recommended that multiple sales of long guns be reported. Office of the Inspector General, U.S. Dep't of Justice, *Review of ATF's Project Gunrunner* iv, 36-40 (Nov. 2010), at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>. In July 2011, such a regulation took effect requiring FFLs along the southwest border to report multiple sales of certain long guns. See, e.g., Office of Public Affairs, U.S. Dep't of Justice, *Statement of Deputy Attorney General James Cole Regarding Information Requests for Multiple Sales of Semi-Automatic Rifles with Detachable Magazines*, July 11, 2011, available at <http://www.justice.gov/opa/pr/2011/July/11-dag-900.html>.

<sup>4</sup> 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* 52 (July 2002), at: <http://www.atf.gov/publications/download/ycgii/2000/ycgii-report-2000-general-findings.pdf>; 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), at: <http://www.atf.gov/publications/download/ycgii/1999/ycgii-report-1999-general-findings.pdf>.

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

<sup>6</sup> *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) National Report*, *supra* note 4.

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<sup>7</sup> Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use*, Report to the National Institute of Justice 6, 83 (2007), at <http://www.ncjrs.gov/pdffiles1/nij/grants/221074.pdf>.

<sup>8</sup> Douglas S. Weil & Rebecca C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 JAMA 1759, 1759-60 (1996).

<sup>9</sup> 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). In 2004, the Virginia legislature adopted measures backed by the National Rifle Association that significantly weaken 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).

<sup>10</sup> Greenberg Quinlan Rosner Research & the Tarrance Group for the Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 6 (Apr. 10, 2008), at: [http://www.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf).

<sup>11</sup> Cal. Penal Code §§ 12072(a)(9)(A), 12072(c)(6).

<sup>12</sup> Md. Code Ann., Pub. Safety § 5-128.

<sup>13</sup> N.J. Stat. Ann. §§ 2C:58-2.a(7), 2C:58-3.i.

<sup>14</sup> Va. Code Ann. § 18.2-308.2:2(P).

<sup>15</sup> D.C. Code Ann. § 7-2502.03(e).

<sup>16</sup> Chicago, Ill. Code § 8-20-160.

<sup>17</sup> New York, N.Y. Admin. Code, § 10-302.1(a), (b).

### III. Legal Challenges & Other Opposition Arguments

#### A. Legal Challenges

##### 1. The Second Amendment

###### a. The *Heller* & *McDonald* Decisions

In June 2008, in *District of Columbia v. Heller*,<sup>1</sup> the U.S. Supreme Court held for the first time that the Second Amendment to the U.S. Constitution protects the right of responsible, law-abiding individuals to possess a handgun in the home for purposes of self-defense. In a 5-4 ruling, the Court struck down Washington, D.C.'s decades-old ban on handgun possession, and the District's requirement that firearms in the home be stored unloaded and disassembled and bound by a locking device (a requirement which had no exception for self-defense).

The Supreme Court also held, however, that the right conferred by the Second Amendment is not unlimited, and should not be understood as ~~a~~ right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."<sup>2</sup> The Court identified a non-exhaustive list of regulatory measures that it deemed ~~presumptively~~ "presumptively lawful" under the Second Amendment, including: 1) ~~longstanding~~ "longstanding prohibitions" on the possession of firearms by felons and the mentally ill; 2) laws forbidding firearm possession in sensitive places such as schools and government buildings; and 3) laws imposing conditions and qualifications on the commercial sale of firearms.<sup>3</sup> In addition, the Court declared that its analysis should not be read to suggest the invalidity of laws regulating the storage of firearms to prevent accidents, and concluded that the Second Amendment is also consistent with laws banning ~~dangerous and unusual weapons~~ "dangerous and unusual weapons" not in common use at the time, such as M-16 rifles and other firearms that are most useful in military service.<sup>4</sup>

In June 2010, the U.S. Supreme Court announced its decision in *McDonald v. City of Chicago*, holding in a 5-4 ruling that the Second Amendment applies to state and local governments in addition to the federal government.<sup>5</sup>

The Supreme Court in *McDonald* reiterated that the Second Amendment protects the right to possess a handgun in the home for purposes of self-defense, and that a wide variety of gun laws are constitutionally permissible. The Court repeated that ~~the~~ right to keep and bear arms is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," and listed again the presumptively lawful measures identified in *Heller*.<sup>6</sup>

###### b. Post-*Heller* Litigation

As expected, the U.S. Supreme Court's decision in *Heller* has resulted in a flood of lawsuits. Numerous criminal defendants have challenged their indictments and convictions for violating federal and state firearms laws, alleging that the criminal statutes violate the Second Amendment. A number of plaintiffs have also filed civil lawsuits challenging state or local governments' refusals to grant licenses to purchase or own firearms or to allow them to register firearms. However, these challenges have almost uniformly failed, and courts have held that

existing state and local laws similar to the model laws in this publication do not violate the Second Amendment.

Courts have rejected a number of challenges to firearms licensing and registration laws since the Supreme Court's decision in *Heller*. In *Heller v. District of Columbia (Heller II)*, the District Court for the District of Columbia addressed a Second Amendment challenge to the ordinances Washington, D.C. adopted in response to *Heller*. Those ordinances, like the model laws in this publication, require firearm owners to, among other things:

- Complete a firearm safety course;
- Demonstrate knowledge of the District's laws regarding firearms;
- Register all firearms they own; and
- Report lost or stolen firearms to law enforcement.

The ordinances also limit the number of handguns a person may register to one per month. The District Court rejected the plaintiffs' claims and upheld every aspect of the ordinances, holding that they are substantially related to the important governmental interest of promoting public safety. That opinion has been appealed to the D.C. Circuit Court of Appeals.<sup>7</sup>

The Seventh Circuit also addressed the constitutionality, under *Heller*, of an ordinance requiring the registration of all firearms in *Justice v. Town of Cicero*.<sup>8</sup> The Court held that the registration ordinance does not violate the Second Amendment, emphasizing that the ordinance merely regulates, but does not prohibit, gun possession in the jurisdiction.

Likewise, several courts have upheld New York's law requiring an individual to acquire a license to possess a handgun in the home. In *People v. Nivar*, for example, a New York Supreme Court judge rejected a criminal defendant's Second Amendment challenge to New York's licensing laws, concluding that, "on their face, [the licensing statutes] are constitutional and do not run afoul of *Heller*."<sup>9</sup>

Similarly, in *In re Dubov*, the plaintiff appealed the denial of his permit to purchase a handgun, but the court rejected his Second Amendment challenge to the New Jersey permitting statute. The court held that *Heller* had no impact on the case, pointing out that the Supreme Court's opinion in *Heller* had stated that it did not require invalidation of licensing statutes.<sup>10</sup>

Additional cases are pending in various lower courts throughout the country. For more in-depth information about post-*Heller* litigation, please visit LCAV's *Post-Heller Litigation Summary*, [http://www.lcav.org/content/post-heller\\_summary.pdf](http://www.lcav.org/content/post-heller_summary.pdf).

## **2. State Right to Bear Arms**

Most state constitutions recognize a right to bear arms. Many of these provisions specifically recognize an individual right to bear arms or have been interpreted by the courts to protect an

individual right. However, every state court that has considered a state right to bear arms challenge to a firearms law has determined that the right at issue is not absolute.<sup>11</sup>

Five states (California, Iowa, Maryland, Minnesota and New Jersey) and the District of Columbia have no right to bear arms provision.<sup>12</sup> Three additional states (Kansas, Massachusetts and New York<sup>13</sup>) have a right to bear arms only for militia service.

Nearly every state with an individual right to bear arms clause in its constitution, or a similar statutory provision, uses a reasonableness test to determine whether a state or local law violates this right.<sup>14</sup> When this test is applied, firearms regulations are generally upheld against state right to bear arms challenges. For instance, Article I, section 4 of the Constitution of the State of Ohio provides in part: “The people have the right to bear arms for their defense and security....” However, Ohio courts have repeatedly rejected Article I, section 4 challenges to firearms regulations such as those restricting certain classes of persons from possessing firearms, and requiring firearms dealers to be licensed and keep certain records.<sup>15</sup>

For more information about how courts have interpreted a particular state’s right to bear arms provision, see LCAV’s *Summary of State Right to Bear Arms Provisions*, [http://www.lcav.org/states/state\\_right\\_to\\_bear\\_arms.asp](http://www.lcav.org/states/state_right_to_bear_arms.asp).

### **3. Preemption and Local Authority to Regulate Firearms and Ammunition**

Local governments considering new firearm-related legislation must determine whether they have the authority to act in a particular area. In some cases, this authority has been preempted by the state.<sup>16</sup>

The most direct way preemption can occur is through express preemption. Regulatory authority is expressly preempted when a state provides explicit language in a statute or constitution that it intends to remove lower governmental authority to regulate a particular area.

Even when a law does not express intention to preempt an area of regulation, courts may find that there was an intention to do so. This is known as implied preemption. The most common indication of implied preemption is when a legislative scheme on a particular subject is so pervasive that it leaves no room for further regulation by a lower level of government.

States differ considerably in how and to what extent they preempt the regulation of firearms and ammunition by the local governments within their boundaries.

Most states have expressly preempted the broad area of firearms and ammunition legislation.<sup>17</sup> In the following states, however, local governments retain authority, in varying degrees, to regulate firearms and ammunition:

Connecticut	Illinois	New Jersey
California	Massachusetts	New York
Hawaii	Nebraska <sup>18</sup>	



Specific questions about whether a particular type of local regulation may be preempted in any given state involve an analysis of existing case law. Local jurisdictions should consult with counsel to determine the extent of their regulatory authority. LCAV is available to work with public officials and advocates on specific questions relating to their jurisdiction.

## **B. Other Opposition Arguments**

Although opponents of common sense gun laws usually focus on the Second Amendment and other legal arguments, they also frequently raise policy-based claims. Some of the policy arguments that are raised with respect to the model laws in this publication are discussed below. For more general information about common opposition arguments to gun violence prevention measures, and the facts that counter these arguments, see LCAV's *10 Myths About Gun Violence in America*, [http://www.lcav.org/publications-briefs/reports\\_analyses/Ten\\_Myths.pdf](http://www.lcav.org/publications-briefs/reports_analyses/Ten_Myths.pdf).

### **1. Laws Requiring Background Checks**

Opponents of laws requiring background checks on firearm purchasers typically claim that these laws unduly burden or inconvenience gun buyers. However, the burden imposed on law-abiding citizens by background checks is minimal when compared with the public safety benefits of such laws. As discussed in the model law findings, from the inception of the Brady Act on March 1, 1994, through December 31, 2009, over 1.9 million applicants were denied a firearm via a simple background check that demonstrated the person was a threat to society with a firearm in his or her hands.<sup>19</sup> The costs of gun violence to our nation – approximately \$100 billion each year<sup>20</sup> – also dramatically outweigh the “burden” of a simple background check on a prospective gun owner.

### **2. Registration Laws**

Opponents of laws requiring gun registration often claim that such laws will lead to government confiscation of privately-owned firearms by law-abiding citizens. There is simply no evidence to support such a claim, however. As discussed in the findings, the goal of registration laws is to help law enforcement:

- 1) Quickly trace firearms recovered at crime scenes;
- 2) Discourage illegal firearm sales by creating accountability for gun owners; and
- 3) Protect police officers responding to an incident by providing them with information about whether firearms may be present at the scene.

Such laws are not intended to deprive law-abiding citizens of their firearms.

Moreover, if registration laws really led to confiscation of lawfully-owned guns, such confiscation would have taken place in jurisdictions that already require gun owners to register all, or at least specific types of, their guns. In states like Hawaii, New Jersey, Maryland,

California, and cities including Washington, D.C., Chicago and Omaha, law-abiding gun owners are not being harassed or having guns taken from them.

Finally, this slippery slope argument is no longer legally tenable in the wake of the U.S. Supreme Court's decisions in *District of Columbia v. Heller* and *McDonald v. Chicago*, which recognize a limited individual right under the Second Amendment to possess a handgun in the home for self-defense.

### **3. Laws Regulating Firearms Dealers and Ammunition Sellers**

Opponents of laws regulating firearms dealers and ammunition sellers argue that these laws create undue burdens for such sellers, especially small businesses, by increasing the costs of doing business. The benefits to public safety of such laws, however, clearly outweigh the costs imposed on the gun industry.

Dealer regulations – from on-site security measures, to liability insurance and employee background checks – impose only modest costs on businesses. Most responsible dealers already utilize these measures and should welcome the elimination of competition from irresponsible dealers who present a danger to the public by failing to follow suit.

As discussed in the model law, research shows that firearms dealers are a major source of trafficked guns. The Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) comprehensive report of firearms trafficking in 2000 found that federal licensees were associated with over 40,000 illegally trafficked guns, concluding that "FFLs' access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law."<sup>21</sup> Licensing laws and other dealer regulations are an effective way to address this problem. A 2009 study found that cities in states that comprehensively regulate gun dealers and cities where these businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities.<sup>22</sup>

State and local governments across the country generally require the licensing of a host of retail trade and service businesses, including barbers, cosmetologists, tanning salons, restaurants and acupuncturists. It simply makes sense to similarly license and regulate sellers of deadly products like firearms and ammunition to protect public safety.

### **4. Laws Requiring the Reporting of Lost or Stolen Firearms**

Persons opposed to laws requiring the reporting of lost or stolen firearms sometimes argue that these laws will lead law enforcement to unfairly punish otherwise law-abiding gun owners who fail to report a weapon lost or stolen. As discussed in the model law, however, one of the goals of lost or stolen reporting laws is to deter gun trafficking, since some criminals claim that their firearms were lost or stolen to hide involvement in a crime when their guns are found at a crime scene. Prosecutorial discretion allows law enforcement officials to focus only on persons suspected of falsely claiming the loss or theft of a firearm, rather than persons who innocently fail to comply with the reporting requirement. Thus, it is unlikely that gun owners who make a good faith effort to comply, even outside the reporting time frame provided in the law, would be

prosecuted, and there is no evidence to suggest that an abuse of prosecutorial discretion has occurred in jurisdictions that have adopted such laws.

Opponents also argue that laws requiring the reporting of lost or stolen firearms unreasonably burden gun owners. However, laws that require the reporting of lost or stolen guns are no more burdensome than the laws in many states that require motorists to report serious automobile accidents. The highly lethal nature of firearms – like automobiles – justifies an increased level of responsibility on the part of the owner over that required for other, less dangerous products.

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<sup>1</sup> *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008).

<sup>2</sup> *Id.* at 2816.

<sup>3</sup> *Id.* at 2816-17, 2817 n. 26.

<sup>4</sup> *Id.* at 2817. Unfortunately, *Heller* did not determine the test or level of scrutiny that lower courts must use to determine whether a gun law violates the Second Amendment. Courts use varying levels of scrutiny to determine whether a particular law violates a constitutional right, and the specific level of scrutiny that applies depends on the right that is allegedly infringed, as well as the type of law at issue. Most laws are subject to a “rational basis” test, meaning that they are constitutional so long as they are rationally related to a legitimate government interest. Courts have identified other tests appropriate to review a statute’s constitutionality, notably: 1) “intermediate scrutiny,” which generally requires that: a) the asserted governmental interest be “important or substantial” or “significant”; and b) the fit between the challenged regulation and the proffered objective be reasonable, not perfect; and 2) “strict scrutiny,” which is the most stringent of the traditional tests and requires finding a law unconstitutional unless it is “narrowly tailored” to serve a “compelling” government interest.

<sup>5</sup> *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

<sup>6</sup> *Id.* at 3047. Although the Court in *McDonald* used the term “fundamental” to describe the right to bear arms under the Second Amendment, it again did not determine the level of scrutiny to be used to determine whether a gun law violates the Second Amendment. *See Id.* at 3036-3037, 3040-3042.

<sup>7</sup> 698 F. Supp. 2d 179 (D.D.C. 2010), on appeal as No. 10-7036 (D.C. Cir. Filed Apr. 2, 2010).

<sup>8</sup> 577 F.3d 768 (7th Cir. 2009).

<sup>9</sup> 915 N.Y.S.2d 801, 806 (N.Y. Supt. Ct. 2011). This holding is consistent with decisions by other state courts evaluating New York’s licensing laws. *See People v. Foster*, 915 N.Y.S.2d 449 (N.Y. Crim. Ct. 2010); *People v. Perkins*, 880 N.Y.S.2d 209 (N.Y. App. Div. 2009); *People v. Abdullah*, 870 N.Y.S.2d 886 (N.Y. Crim. Ct. 2008); *People v. Ferguson*, 873 N.Y.S.2d 513 (N.Y. Crim. Ct. 2008). *See Moreno v. New York City Police Dep’t*, 2011 U.S. Dist. LEXIS 76129 (S.D.N.Y. May 9, 2011) (“New York courts have found the regulations in P.L. §§ 265.00 and 400.00 to be constitutional and consistent with *Heller*...Accordingly, so long as Division’s denial of Moreno’s application comports with New York licensing laws - which regulate, but do not prohibit, firearm possession in the home — this Court finds that the denial is consistent with *Heller* and does not infringe upon Moreno’s Second Amendment rights.”).

<sup>10</sup> 410 N.J. Super. 190 (N.J. Sup. Ct. App. Div. 2009). A few lawsuits have been filed since *Heller* challenging laws similar to LCAV’s model law regulating gun dealers and ammunition sellers. For example, Chicago enacted an ordinance prohibiting the sale of firearms, and two lawsuits have been filed challenging that ordinance. *Benson v. Chicago*, No. 10-4184 (N.D. Ill., Filed July 6, 2010); *Second Amendment Arms v. Chicago*, No. 10-4257 (N.D. Ill., Filed Aug. 3, 2010). While the courts have not yet ruled in those two cases, *Heller* and *McDonald* described laws imposing conditions and qualifications on the commercial sale of firearms as “presumptively valid.”

<sup>11</sup> *See* Legal Community Against Violence, *State Right to Bear Arms Provisions*, [http://www.lcav.org/states/state\\_right\\_to\\_bear\\_arms.asp](http://www.lcav.org/states/state_right_to_bear_arms.asp).

<sup>12</sup> *Id.* The District of Columbia has no separate constitution and has not adopted any laws establishing a right to bear arms.

<sup>13</sup> *Id.* In New York, the state right to bear arms is conferred by statute, not by the state’s constitution. *See* N.Y. Civ. Rights Law art. 2, § 4.

<sup>14</sup> Legal Community Against Violence, *supra* note 11.

<sup>15</sup> Similarly, in *State v. Mendoza*, the Supreme Court of Hawaii rejected a challenge to Hawaii’s statute requiring a person to obtain a permit before acquiring a firearm under the state’s right to bear arms. 920 P.2d 357 (Haw. 1996). The court found that the state’s police power allows it to regulate the right in a reasonable manner, and that the

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permitting requirement was “rationally related to the legitimate government interest of ensuring that only those who are mature, law abiding, competent citizens possess firearms.” *Id.* at 368.

<sup>16</sup> This discussion focuses on state preemption of local laws. The federal government has the power to preempt state and local authority as well, but federal preemption is typically not a barrier to state and local gun laws. With limited exceptions, Congress has not expressly preempted the area of firearms or ammunition regulation. Moreover, courts have found that no comprehensive federal scheme exists in the area of firearms and ammunition regulation.

*Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 285 (E.D.N.Y. 1995), *aff’d*, 97 F.3d 681 (2d Cir. 1996) (rejecting federal preemption challenge to New York City’s assault weapon ban).

<sup>17</sup> The existence of such express preemption laws is not necessarily definitive in all states, however. Colorado enacted express preemption laws which were found by state courts to violate the “home rule” authority of local governments in that state. *City & County of Denver v. State*, No. 03-CV-3809 (Denver Dist. Ct. Nov. 5, 2004) (upholding Denver’s home rule authority to regulate open carrying of firearms, assault weapons and Saturday night specials despite state law expressly preempting regulation of firearms.), *aff’d*, 139 P.3d 635 (Colo. 2006); *contra City of Cleveland v. Ohio*, 128 Ohio St. 3d 135, 2010-Ohio-6318, 942 N.E.2d 370 (rejecting Cleveland’s home rule challenge to statute preempting local firearms laws). “Home rule” generally refers to local governments’ authority to self-regulate. Local governments in most states enjoy home rule power to varying degrees.

<sup>18</sup> In California and Nebraska, state law expressly preempts some areas of regulation. See Cal. Gov’t Code § 53071 (preempting registration or licensing of commercially manufactured firearms); Cal. Gov’t Code § 53071.5 (preempting regulation of the manufacture, sale or possession of imitation firearms); Cal. Penal Code § 12026(b) (prohibiting permit or license with respect to the purchase, ownership, possession or carrying of a handgun in a residence or place of business); and Neb. Rev. Stat. §§ 14-102, 15-255, 16-227, 17-556 (prohibiting local regulation of the carrying of handguns).

<sup>19</sup> Bureau of Justice Statistics, U.S. Dep’t of Justice, *Background Checks for Firearms Transfers, 2009—Statistical Tables* (Oct. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/html/bcft/2009/bcft09st.pdf>.

<sup>20</sup> Philip J. Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

<sup>21</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix, x (June 2000), available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/Following\\_the\\_Gun%202000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf).

<sup>22</sup> Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, 86 J. Urb. Health 525 (July 2009), available at [http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2704273/pdf/11524\\_2009\\_Article\\_9351.pdf](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2704273/pdf/11524_2009_Article_9351.pdf).

#### IV. Appendix – Generic Provisions

LCAV has drafted the following generic provisions to be used within the model laws presented in this publication.

##### Sec. \_\_\_\_ Findings

*[The findings below describe the problem of gun violence generally in the United States. A jurisdiction may choose to include these findings, in addition to local data and the findings at the beginning of the particular model law being adopted, in order to describe the toll that gun violence exacts throughout America.]*

The [Legislative Body] hereby finds and declares:

(a) Regarding gun violence in general:

(1) In 2007, the most recent year for which statistics are available, over 31,000 Americans died from firearm-related injuries – an average of more than 85 deaths each day<sup>1</sup> – and nearly 70,000 others were treated for non-fatal gunshot wounds.<sup>2</sup> On average, guns cause the death of over 20 young people (those 24 years of age and under) each day in the U.S.<sup>3</sup>

(2) Guns were used to commit over 385,000 crimes in the U.S. in 2007, and nearly 70% of all murders that year were committed with a firearm.<sup>4</sup> Records kept by the Federal Bureau of Investigation (FBI) show that in 2007, 190,514 robberies and 183,153 aggravated assaults were committed with firearms.<sup>5</sup> That year, 12,632 people were victims of firearm homicide – 68.8% of all homicides nationwide.<sup>6</sup>

(3) Medical costs related to gun violence are estimated at \$2.3 billion annually, half of which are borne by American taxpayers.<sup>7</sup> Once all the direct and indirect medical, legal and societal costs are factored together, the annual cost of gun violence in our nation amounts to \$100 billion.<sup>8</sup>

*[LCAV believes the model laws in this publication would be most effective if, as written, they were applied to all firearms. However, any of the model laws or specific sections of the model laws could be modified to apply to handguns only. For this reason, we have included the following findings addressing the specific dangers posed by handguns.]*

(b) Regarding handguns:

(1) An FBI report concluded that in 2009, over 70% of firearms murders were committed with handguns.<sup>9</sup>

(2) From 1993 to 2001, an average of 737,360 violent crimes were committed with handguns in the U.S. each year, making handguns seven times more likely to be used to commit violent crimes than other firearms.<sup>10</sup>

(3) Women face an especially high risk of handgun violence.<sup>11</sup> In 2008, 71% of female firearm homicide victims were killed with a handgun.<sup>12</sup>

(4) A California study found that in the first year after the purchase of a handgun, suicide was the leading cause of death among handgun purchasers.<sup>13</sup> In the first week after the purchase of a handgun, the firearm suicide rate among purchasers was 57 times as high as the adjusted rate in the general population.<sup>14</sup>

## Sec. \_\_\_\_ Definitions

As used in this Chapter:

(a) ~~“Ammunition”~~ means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, or cartridges, or projectiles capable of being fired from a firearm, but shall not include:

(1) Ammunition that can be used solely in antique firearms; or

(2) Blank cartridges.

(b) ~~“Department”~~ means the *[A jurisdiction should specify the particular law enforcement or administrative agency or official within the jurisdiction that shall be responsible for administering and enforcing the law. A local jurisdiction may wish to identify the local police department or the local Chief of Police or Sheriff, whereas a state may identify the Attorney General, State Police, Department of Public Safety, or other agency or official holding statewide authority to administer and enforce the jurisdiction’s weapons control laws. In some cases, a state may delegate particular powers and obligations of the —Department” under these models to a local agency or official.]*.

(c) ~~“Firearm”~~ means any weapon or device designed to be used as a weapon, which will, is designed to, or may readily be converted to expel a projectile or projectiles by the action of an explosive, explosion, or other means of combustion, or the frame or receiver of such a device, provided that the term ~~“firearm”~~ shall not include an ~~“antique firearm”~~ as defined in section 921(a)(16) of Title 18 of the United States Code, or a weapon that has been rendered permanently inoperable (incapable of being readily restored to a firing condition).

(d) ~~“Handgun”~~ means any firearm capable of being fired with one hand or designed to be fired with one hand; or any firearm having a barrel less than 16 inches or an overall length of less than 26 inches; or any pistol, revolver, or firearm capable of being concealed upon the person; or any combination of parts from which one of the above can be assembled.

(e) ~~“Law enforcement officer”~~ means any person employed by the United States, or a state, county, city, municipality, village, township, or other political subdivision as a police officer, peace officer, or in some like position involving the enforcement of the law and protection of the public interest.

(f) ~~“Licensed firearms dealer,” “licensed dealer,” or “dealer”~~ means a person who has a valid federal firearms dealer license, and all additional licenses required by state or local law to engage in the business of selling or transferring firearms.

(g) ~~“Person”~~ means any individual, corporation, company, association, firm, partnership, club, organization, society, joint stock company or other entity.

## **Sec. \_\_\_\_ Administrative rules and regulations**

The Department shall have the authority to promulgate rules and regulations for the implementation of this Chapter and to prescribe all forms and the information required thereon.

## **Sec. \_\_\_\_ Penalties**

*[Penalties for the violation of provisions of these laws may vary based on the law enforcement and policy needs of each jurisdiction. The language below makes each violation of any provision of these laws a misdemeanor. However, states may wish to consider making violations of these laws a felony. Some, but not all, local jurisdictions also have the authority to make a violation a felony or infraction. For example, a jurisdiction may wish to strengthen penalties for second and subsequent violations of a law by imposing higher fines and/or longer lengths for terms of imprisonment. Jurisdictions are encouraged to consult with law enforcement to develop appropriate penalties.]*

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment for a period not exceeding six months, or both. Such person shall be guilty of a separate offense for each and every day during any portion of which a violation of any provision of this Chapter is committed or continued by such person, and shall be punishable accordingly.

In addition to any other penalty or remedy, the Department shall report any violation of this Chapter by a licensed firearms dealer to the Bureau of Alcohol, Tobacco, Firearms & Explosives within the U.S. Department of Justice *[and to the relevant state agency, if the jurisdiction adopting this law is a local jurisdiction]*.

*[Optional: If the jurisdiction requires firearms dealers to obtain a license or permit, the following language may be added:* In addition to any other penalty or remedy, the Department shall have the authority, after notice and a hearing, to revoke the permit of any licensed firearms dealer found to be in violation of this Chapter.

## **Sec. \_\_\_\_ Severability clause**

If any section, subsection, sentence or clause of this Chapter is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Chapter or any part thereof. The [Legislative Body] hereby declares that it would have

adopted this Chapter notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

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<sup>1</sup> Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Injury Mortality Reports, 1999-2007*, (2010), at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html).

<sup>2</sup> Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Nonfatal Injury Reports* (2010), at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>.

<sup>3</sup> *WISQARS Injury Mortality Reports, 1999-2007*, *supra* note 1.

<sup>4</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Key Facts at a Glance: Crimes Committed with Firearms, 1973-2007*, at <http://bjs.ojp.usdoj.gov/content/glance/tables/guncrimetab.cfm>.

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

<sup>6</sup> *WISQARS Injury Mortality Reports, 1999-2007*, *supra* note 1.

<sup>7</sup> Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, 282 JAMA 447 (Aug. 4, 1999), at <http://jama.ama-assn.org/content/282/5/447.full.pdf+html>.

<sup>8</sup> Philip Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

<sup>9</sup> Criminal Justice Information Services Division, Federal Bureau of Investigation, *Crime in the United States 2009, Expanded Homicide Data Table 11*, at [http://www2.fbi.gov/ucr/cius2009/offenses/expanded\\_information/data/shrtable\\_11.html](http://www2.fbi.gov/ucr/cius2009/offenses/expanded_information/data/shrtable_11.html).

<sup>10</sup> Office of Justice Programs, U.S. Department of Justice, *Bureau of Justice Statistics Special Report, National Crime Victimization Survey, 1993-2001 -- Weapon Use and Violent Crime* 3 (Sept. 2003), at <http://bjs.ojp.usdoj.gov/content/pub/pdf/wuvc01.pdf>.

<sup>11</sup> Garen J. Wintemute et al., *Mortality among Recent Purchasers of Handguns*, 341 New Eng. J. Med. 1583, 1585 (Nov. 18, 1999).

<sup>12</sup> Violence Policy Center, *When Men Murder Women: An Analysis of 2008 Homicide Data* 7 (Sept. 2010), at <http://www.vpc.org/studies/wmmw2010.pdf>.

<sup>13</sup> Wintemute, *supra* note 11, at 1583-84.

<sup>14</sup> *Id.* at 1585.



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LCAV is able to provide legal expertise to communities nationwide through the support of our members. Show your commitment to gun violence prevention by becoming a member of LCAV.

As a member of LCAV you will receive the latest information on gun violence prevention and learn how you can get involved in our efforts. A current annual membership also includes free or discounted tickets to LCAV member receptions, events, and lectures, access to MCLE credits at LCAV educational events, and printed versions of informative LCAV publications like "Model Laws for A Safer America."

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**Legal Community Against Violence**

expertise, information & advocacy  
to end gun violence

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# **EXHIBIT RR**

# **2009 California Report**

**Recent Developments in  
Federal, State and Local Gun Laws**



A Publication of

**Legal Community Against Violence**

expertise, information & advocacy to end gun violence

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## **Recent Developments in Federal, State and Local Gun Laws**



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expertise, information & advocacy to end gun violence

*The views expressed in this publication are those of Legal Community Against Violence.  
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not be regarded as such.*

June 12, 2009

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## I. Introduction

### A. About this Report

Each year, Legal Community Against Violence (LCAV) publishes the *California Report* to provide state and local legislators, government attorneys, police chiefs, sheriffs, public health officials and gun violence prevention advocates with the latest developments in federal, state and local gun laws and policies. The *Report* also provides updated statistics regarding gun deaths, injuries and crimes, together with a discussion of important firearm-related litigation.

As discussed in this year's *Report*, many significant developments have occurred over the past year. The U.S. Supreme Court issued its historic decision in *District of Columbia v. Heller*, finding for the first time that the Second Amendment confers an individual right to possess firearms unrelated to service in a well-regulated state militia. As expected, that decision has spawned a flood of lawsuits challenging our nation's gun laws.

In addition, notwithstanding the election of President Barack Obama – whom many had hoped would help bring much-needed reform to federal gun policy – Congress has continued to adopt laws which thwart efforts to reduce gun violence, including a dangerous law to allow guns in national parks. Fortunately, the State of California and its political subdivisions continue to lead the nation in the adoption of common sense laws to reduce gun-related deaths and injuries.

### B. About LCAV

LCAV is a national law center formed in the wake of the July 1, 1993 assault weapon massacre at a law firm in downtown San Francisco. We provide free legal assistance to elected officials, government attorneys and activists working to promote laws and policies to reduce gun violence. LCAV is proud to provide the legal expertise, information and advocacy that help make it possible for community leaders to advance effective, legally defensible reforms. Specifically, we:

- Conduct legal and policy research and analysis;
- Assist in the drafting of firearms laws;
- Testify at public hearings regarding firearms laws;
- Arrange for *pro bono* litigation assistance, for example, when a local government is sued following the adoption of a violence prevention ordinance;
- File *amicus curiae* (“friend of the court”) briefs in support of governmental entities and individuals in firearm-related litigation;
- Develop model laws.

LCAV's web site, [www.lcav.org](http://www.lcav.org), provides detailed summaries of federal and state gun laws and summaries of local firearms laws in selected states. The site also provides an in-depth discussion of the Second Amendment and more than 30 firearm-related policies. In addition, the site includes model laws, case studies and links to *amicus* briefs we have filed.

LCAV also publishes reports, such as the 2008 Edition of *Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws*, to educate

community leaders about the issue of gun violence prevention. LCAV's publications are available on our web site.

LCAV is grateful to the donors and foundations whose encouragement and financial support enabled us to produce this report, in particular, The California Wellness Foundation, David Bohnett Foundation, The Wallace Alexander Gerbode Foundation, The Joyce Foundation, the Five Bridges Foundation, and the van Löben Sels/RembeRock Foundation.

We hope you find the *2009 California Report* informative. We look forward to the opportunity to work with you to reduce our nation's epidemic of gun violence.



## II. Gun Violence in America: Updated Statistics and Study Findings on the Epidemic

### A. Firearm-Related Deaths and Injuries

Gun violence continues unabated in the United States. In fact, high-profile mass shooting incidents spiked at an alarming rate in early 2009.<sup>1</sup> Law enforcement also continues to fall victim to gun violence: on March 21, a parolee wielding assault weapons gunned down four Oakland, California police officers before being shot and killed by police, while on April 4 in Pittsburgh, Pennsylvania, a gunman ambushed and shot three police officers to death.<sup>2</sup>

Most shootings in this country, however, occur quietly, with little or no media attention. The numbers are staggering:

- In 2006, the most recent year for which statistics are available, more than 30,000 Americans died from firearm-related injuries – an average of 82 deaths each day<sup>3</sup> – and more than 70,000 others were treated for non-fatal gunshot wounds in hospital emergency rooms.<sup>4</sup>
- In California, 3,253 people died from firearm-related injuries in 2006<sup>5</sup> and 4,305 others were treated for non-fatal gunshot wounds that year.<sup>6</sup>
- Children and young people up to 24 years of age constituted over 42% of all firearm deaths and non-fatal injuries in 2006 nationwide.<sup>7</sup> The number of children and teens in America killed by guns in 2006 would fill 128 public school classrooms of 25 students each.<sup>8</sup> That year, more 10 to 19-year-olds died from guns than from any other cause except motor vehicle accidents.<sup>9</sup>

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<sup>1</sup> March and April, 2009, were particularly violent months that saw shooting deaths: by a depressed gunman in Alabama who killed 10 people before taking his own life; by a gunman at a birthday party in Florida, who killed his estranged wife and three others before killing himself; by a gunman at a nursing home in Wilmington, North Carolina, who killed eight people; by a man in Santa Clara, California, who shot and killed five people, including his two children, and critically injured his wife before killing himself; by a gunman at an immigrant center in Binghamton, New York, who killed 13 people; by a man in Graham, Washington, who shot to death five of his children before committing suicide; and by a gunman in Middletown, Maryland, who killed his wife and their three children before fatally shooting himself. These are just some of the high-profile gun violence incidents so far this year.

<sup>2</sup> Richard Poplawski, the killer of the three Pittsburgh officers who was allegedly lying in wait to shoot them, had a history of violence and an irrational fear that the Obama administration was poised to ban all gun possession.

<sup>3</sup> U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Nat'l Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Injury Mortality Reports, 1999-2006* (2009), at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html) (last visited Apr. 30, 2009).

<sup>4</sup> U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, National Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Nonfatal Injury Reports* (2009), at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html> (last visited Apr. 30, 2009).

<sup>5</sup> California Dep't of Health Servs., Epidemiology & Prevention for Injury Control Branch (EPIC), EPICenter California Injury Data Online, *Fatal Injury Data Custom Data Tables* (2009), at [http://www.applications.dhs.ca.gov/epicdata/content/TB\\_fatal.htm](http://www.applications.dhs.ca.gov/epicdata/content/TB_fatal.htm) (last visited Apr. 30, 2009).

<sup>6</sup> California Dep't of Health Servs., Epidemiology & Prevention for Injury Control Branch (EPIC), EPICenter California Injury Data Online, *Nonfatal Injury Data Custom Data Tables* (2009), at [http://www.applications.dhs.ca.gov/epicdata/content/tb\\_nonfatal.htm](http://www.applications.dhs.ca.gov/epicdata/content/tb_nonfatal.htm) (last visited Apr. 30, 2009).

<sup>7</sup> *WISQARS Injury Mortality Reports, 1999-2006*, *supra* note 3; *WISQARS Nonfatal Injury Reports*, *supra* note 4.

<sup>8</sup> *WISQARS Injury Mortality Reports, 1999-2006*, *supra* note 3.

<sup>9</sup> Nat'l Center for Injury Prevention & Control, U.S. Centers for Disease Control & Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS) Leading Causes of Death Reports, 1999-2006* (2009), at <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>.

- On average, 46 gun suicides were committed each day for the years 1999-2006. During that time period, over 5,900 people in the United States died from unintentional shootings.<sup>10</sup>

## B. Gun Crimes

Due to their ready availability and lethality, guns are a criminal's weapon of choice in the U.S. Guns were used to commit nearly 389,000 crimes in 2006, and nearly 70% of all murders that year were committed with a firearm.<sup>11</sup>

Records kept by the Federal Bureau of Investigation show that 10,086 murders were committed with a firearm in 2007 – 68% of all murders nationwide.<sup>12</sup> In 2006, 188,804 robberies and 188,527 aggravated assaults were committed with firearms.<sup>13</sup>

In California, firearms were used in 72.4% of homicides in 2007 – 1,611 total homicides.<sup>14</sup> Handguns were used in 61.7% of gun homicides.<sup>15</sup> Firearms also were used in 64% of the robberies and 19.8% of the aggravated assaults committed in 2007.<sup>16</sup>

## C. Gun Ownership

The United States is drowning in guns. We own an estimated 270 million firearms – approximately 90 guns for every 100 people.<sup>17</sup> Gun ownership is becoming concentrated, however, in fewer hands: a survey of gun ownership levels in 1994 found that 25% of all adults (35% of U.S. households) owned a firearm of some kind, and only 16% of adults had one or more handguns.<sup>18</sup> A more recent survey found even lower rates of gun ownership, concluding that in 2006 only 21% of individuals and 35% of households had at least one gun.<sup>19</sup>

Gun purchases spiked over the last year, purportedly because some Americans feared that President Obama's election would lead to strict new laws limiting access to guns. In November, 2008, a record 1,529,635 background checks were performed on firearms sales, up 42% from the

<sup>10</sup> WISQARS Injury Mortality Reports, 1999-2006, *supra* note 3.

<sup>11</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Key Facts at a Glance: Crimes Committed with Firearms, 1973-2006*, at <http://www.ojp.usdoj.gov/bjs/glance/tables/guncrimetab.htm> (last visited Apr. 20, 2009).

<sup>12</sup> Federal Bureau of Investigation, U.S. Dep't of Justice, *Crime in the United States, 2007 Expanded Homicide Data Table 7, Murder Victims, by Weapon, 2003-2007*, available at [http://www.fbi.gov/ucr/cius2007/offenses/expanded\\_information/data/shrtable\\_07.html](http://www.fbi.gov/ucr/cius2007/offenses/expanded_information/data/shrtable_07.html) (last visited Apr. 20, 2009).

<sup>13</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Key Facts at a Glance: Crimes Committed with Firearms, 1973-2006*, at <http://www.ojp.usdoj.gov/bjs/glance/tables/guncrimetab.htm> (last visited Apr. 20, 2009).

<sup>14</sup> California Dep't of Justice, Criminal Justice Statistics Center, *Homicide in California 2007* (Dec. 2008) <http://ag.ca.gov/cjsc/publications/homicide/hm07/preface.pdf> (last visited Apr. 20, 2009).

<sup>15</sup> *Id.*

<sup>16</sup> California Dep't of Justice, Criminal Justice Statistics Center, *Crime in California 2007* (Dec. 2008), at <http://ag.ca.gov/cjsc/publications/candd/cd07/preface.pdf> (last visited Apr. 20, 2009).

<sup>17</sup> Graduate Inst. of Int'l Studies, Geneva, *Small Arms Survey 2007: Guns and the City* at 39 (Aug. 2007).

<sup>18</sup> Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, Nat'l Inst. of Justice, Research in Brief, May 1997, at 1-3, available at <http://www.ncjrs.gov/pdffiles/165476.pdf>.

<sup>19</sup> See Tom W. Smith, National Opinion Research Center at the University of Chicago, *Public Attitudes Towards the Regulation of Firearms*, at Figure 2 (Apr. 2007), available at <http://www-news.uchicago.edu/releases/07/pdf/070410.guns.norc.pdf>.

same period a year earlier, according to the Federal Bureau of Investigation.<sup>20</sup> A 24% year-over-year increase followed in December, with a similar increase in early 2009.<sup>21</sup>

#### D. Costs of Gun Violence

Gun violence imposes enormous costs – both direct and indirect – on our society. A 2007 study evaluated how violence-related injuries, including those inflicted by guns, adversely affect the health and welfare of all Americans through premature death, disability, medical costs, and lost productivity.<sup>22</sup> The study found that costs associated with deaths and non-fatal injuries total over \$70 billion.<sup>23</sup> Slightly over 50% of the total costs of injuries due to violence (both assault and self-inflicted injury) are associated with fatalities among males ages 15 to 44 years, a majority of which are inflicted by firearms.<sup>24</sup> The study acknowledges that it provides an incomplete picture of the overall toll that violence inflicts on victims and society because victims of violence experience significant, lasting negative consequences that extend beyond their immediate physical injuries and occur in the absence of physical injury.<sup>25</sup>

Earlier studies also demonstrate the enormous medical costs gun violence imposes on society. Medical costs related to gun violence have been estimated at \$2.3 billion annually, half of which are borne by American taxpayers.<sup>26</sup> Another study, using 1997 figures and factoring together all the direct and indirect medical, legal and societal costs, estimates that the annual cost of gun violence in our nation amounts to \$100 billion.<sup>27</sup>

The total cost of firearm-related murders and hospital admitted-firearm assaults in California in 2005 was \$841,377,000 – including lost taxes, medical care, emergency transport, police services, and criminal justice costs.<sup>28</sup>

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<sup>20</sup> Alex Roth, Paulo Prada & Corey Dade, *New Calls for Assault-Gun Ban*, Wall St. J., Mar. 13, 2009 at A4.

<sup>21</sup> *Id.*

<sup>22</sup> Phaedra S. Corso et al., *Medical Costs and Productivity Losses Due to Interpersonal and Self-Directed Violence in the United States*, 32 Am. J. Prev. Med. 474, 474-75 (June 2007) at [http://www.cdc.gov/ncipc/factsheets/images/Medical\\_Costs.pdf](http://www.cdc.gov/ncipc/factsheets/images/Medical_Costs.pdf). The study reviewed the lifetime medical costs and productivity losses associated with medically treated injuries due to interpersonal (assaults/homicides) and self-directed (suicides) violence occurring in the United States in 2000.

<sup>23</sup> *Id.* at 476. Violence-related injuries cost the U.S. \$5.6 billion in medical costs and \$64.8 billion in productivity losses. *Id.* at 478. The study found that total costs for interpersonal violence against males were highest for assault-related gunshot injuries, accounting for 52% of the total costs for males. *Id.* at 476. For overall self-inflicted injuries, total costs were highest for males with a self-inflicted gun injury, accounting for 54% of the total costs for males. *Id.* at 478.

<sup>24</sup> *Id.* at 479.

<sup>25</sup> *Id.* at 480.

<sup>26</sup> Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, 282 JAMA 447 (Aug. 4, 1999).

<sup>27</sup> Philip J. Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

<sup>28</sup> These figures denote the total costs to federal, state and local government for assaults with a firearm where the victim was admitted to the hospital, as well as murders committed with a firearm and do not take into consideration costs related to firearm suicides or unintentional shootings. *WISQARS Injury Mortality Reports, 1999-2006*, *supra* note 3; Public Services Research Institute, *National Crime Firearm Violence Costs and Costs for Illinois, Oregon, Utah, and California (Year 2005 Dollars)*, Calverton, MD: Pacific Institute for Research and Evaluation (2008), personal communication to Elliot Fineman (on file with the Brady Center to Prevent Gun Violence). According to this source, firearm murders in California incurred a total cost of \$819,513,000, while hospital-admitted firearm assaults accounted for \$21,864,000.

### III. Featured Topic: Effectiveness of Firearm-Related Laws

Contrary to the claims of the gun lobby, laws and policies designed to reduce gun deaths and injuries have been shown to be effective. For example, a 2009 review of U.S. gun death data by the Violence Policy Center found that states with high rates of gun ownership and weak firearm laws have the highest rates of gun death.<sup>29</sup> Conversely, the study found that states with strong gun laws and low rates of gun ownership had significantly lower rates of firearm-related death.<sup>30</sup>

Although additional research is needed to fully evaluate the efficacy of our gun laws, several other studies have found that common sense gun laws do work:<sup>31</sup>

**Brady Act/Background Checks** – Between March 1, 1994, and December 31, 2007, the Brady law<sup>32</sup> prevented more than 1.6 million prohibited persons (e.g., felons, juveniles, mentally ill persons) from acquiring guns.<sup>33</sup> In 2007, 136,000 prohibited persons were denied a gun transfer or permit, including 49,000 felons.<sup>34</sup> On average, 134 felons a day are turned away at gun stores because of this law.<sup>35</sup>

**Domestic Violence Gun Prohibitions** – 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.<sup>36</sup>

**Laws Restricting Multiple Sales/Purchases** – Virginia's law restricting multiple sales of handguns within a 30-day period was found to significantly reduce the number of crime guns traced to Virginia dealers.<sup>37</sup>

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<sup>29</sup> Press Release, Violence Policy Center, *States with Higher Gun Ownership and Weak Gun Laws Lead Nation in Gun Death* (May 6, 2009), at <http://www.vpc.org/press/0905gundeath.htm>. VPC defines states with “weak” gun laws as those that add little or nothing to federal restrictions and have permissive concealed carry laws allowing civilians to carry concealed handguns. States with “strong” gun laws were defined as those that add significant state regulation in addition to federal law, such as restricting access to particularly hazardous types of firearms (for example, assault weapons), setting minimum safety standards for firearms and/or requiring a permit to purchase a firearm, and have restrictive concealed carry laws.

<sup>30</sup> *Id.*

<sup>31</sup> Ammunition sales recordkeeping and reporting laws are also effective gun violence prevention tools. See our feature on ammunition sales recordkeeping in the California Local Governments Update, below.

<sup>32</sup> The Brady law (or “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. See 18 U.S.C. § 922(s).

<sup>33</sup> Bureau of Justice Statistics, U.S. Dep’t of Justice, *Background Checks for Firearm Transfers, 2007 - Statistical Tables*, at <http://ojp.usdoj.gov/bjs/pub/html/bcft/2007/bcft07st.pdf> (last visited Apr. 21, 2009).

<sup>34</sup> Bureau of Justice Statistics, U.S. Dep’t of Justice, *Background Checks for Firearm Transfers, 2007 - Statistical Tables, Table 5 – Number of applications, denials, and reasons for denials among all agencies conducting background checks during the permanent Brady period, 1999-2007*, at <http://ojp.usdoj.gov/bjs/pub/html/bcft/2007/bcft07st.pdf>.

<sup>35</sup> *Id.*

<sup>36</sup> 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).

<sup>37</sup> 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). The study found that 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. (In 2004, the Virginia legislature adopted National Rifle Association-backed amendments that significantly weakened this law by allowing concealed handgun permit holders and persons who purchase handguns through private sales to purchase more than one handgun per month. See Va. Code Ann. § 18.2-308.2:2(P)(2)).

**Licensing & Registration** – States with some form of both registration and licensing have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such laws.<sup>38</sup>

**Child Access Prevention Laws** – In 12 states where child access prevention laws had been in effect for at least one year, unintentional firearm deaths fell by 23% from 1990-94 among children under 15 years of age.<sup>39</sup> In addition:

- The practices of keeping firearms locked, unloaded, and storing ammunition in a locked location separate from the firearms serve as protective measures that reduce youth suicide and unintentional injury in homes with children and teenagers where guns are stored.<sup>40</sup>
- A study evaluating the association between youth-focused gun laws and suicides among youth found that child access prevention laws were associated with an 8.3% decrease in suicides among 14-17 year olds.<sup>41</sup>

**Junk Gun Regulation** – Following Maryland’s adoption of a ban on “junk guns,”<sup>42</sup> firearm homicides dropped by 8.6% in the state – an average of 40 lives saved per year – between 1990 and 1998.<sup>43</sup>

**Illegal Gun Trafficking** – Mayors Against Illegal Guns (MAIG)<sup>44</sup> released a comprehensive study on illegal firearms trafficking in December 2008. That study focused on the relationship between a state’s gun laws and the likelihood that the state would be a source of guns recovered in out-of-state crimes.<sup>45</sup> Among the study’s findings:

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<sup>38</sup> Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 *Inj. Prevention* 184, 188-89 (2001). The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

<sup>39</sup> Peter Cummings et al., *State Gun Safe Storage Laws and Child Mortality Due to Firearms*, 278 *JAMA* 1084, 1084 (Oct. 1997).

<sup>40</sup> David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 *JAMA* 707, 711-13 (Feb. 2005).

<sup>41</sup> Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws & Youth Suicides*, 292 *JAMA* 594, 596-98 (Aug. 2004).

<sup>42</sup> “Junk guns,” also known as “Saturday Night Specials,” are low-quality, easily concealable handguns made of inferior materials that are more likely to misfire or malfunction than other firearms. Many types of junk guns are disproportionately associated with criminal misuse. See, e.g., Garen Wintemute, *California’s Guns and Crime: New Evidence* 7-8, Violence Prevention Research Program, University of California, Davis (May 1997).

<sup>43</sup> Daniel W. Webster et al., *Effects of Maryland’s Law Banning “Saturday Night Special” Handguns on Homicides*, 155 *Am. J. Epidemiology* 406, 409-411 (Mar. 2002). Another study on Maryland’s ban showed that the law reduced the use of prohibited junk guns by criminals in Baltimore, finding that a junk gun prohibited in Maryland was more than twice as likely to be the subject of a law enforcement crime gun trace request in 15 other major U.S. cities combined than in Baltimore. Jon S. Vernick et al., *Effects of Maryland’s Law Banning Saturday Night Special Handguns on Crime Guns*, 5 *Inj. Prevention* 259, 261-263 (Dec. 1999).

<sup>44</sup> Mayors Against Illegal Guns is a national effort launched by New York Mayor Michael Bloomberg and Boston Mayor Thomas Menino in 2006, dedicated to making America’s cities safer by cracking down on illegal guns. In addition to supporting local, state and federal legislative efforts to target these firearms, the coalition opposes federal efforts to restrict cities’ access to gun trace data and restrict ATF’s efforts to combat illegal gun trafficking. The coalition also seeks to hold accountable irresponsible gun dealers who knowingly sell guns to straw purchasers, and supports the development and use of technologies that aid in the detection and tracing of illegal guns. Currently, over 340 mayors from more than 40 states are members of the coalition.

<sup>45</sup> Mayors Against Illegal Guns, *The Movement of Illegal Guns in America – The Link Between Gun Laws and Interstate Gun Trafficking* (Dec. 2008), at [http://www.mayorsagainstillegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf). The report looked at five key gun laws: 1) background checks on all handgun sales at gun shows; 2) purchase permits for all handgun sales; 3) mandatory reporting of lost or stolen firearms; 4) local control of firearms regulations; and 5) state inspections of gun dealers. *Id.* at 9-19.

- States that export crime guns at a high rate have a significantly higher rate of gun murders than states with low export rates.<sup>46</sup> Crime gun export rates measure the total number of traced guns that are purchased from gun dealers in one state but recovered in another, controlling for the population of the state where the gun was purchased. The crime gun export rate identifies which states are the largest per capita suppliers of guns recovered in out-of-state crimes;<sup>47</sup>
- States that export crime guns at a high rate have a significantly higher rate of fatal police shootings than states with low export rates;<sup>48</sup>
- States that supply crime guns at the highest rates have comparatively weak gun regulations, strongly suggesting that gun traffickers favor these states as sources for crime guns;<sup>49</sup>
- States that do not have a background check requirement for all handgun sales at gun shows have an average crime gun export rate that is more than two times the rate of states that require background checks for all handgun sales at such shows;<sup>50</sup>
- States that require purchase permits for all handgun sales export crime guns at less than one-third the rate of states that do not require permits;<sup>51</sup>
- States that require gun owners to report the loss or theft of their guns to law enforcement export crime guns at less than one-third the rate of states that do not require reporting;<sup>52</sup>
- States that do not require or permit inspections of gun dealers export crime guns at a rate that is 50% greater than the average export rate of states with these regulations;<sup>53</sup> and
- States that allow cities to adopt gun laws export guns that are used in out-of-state crimes at roughly one-fifth the rate of states that preempt local regulation of firearms.<sup>54</sup>

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<sup>46</sup> *Id.* at 25.

<sup>47</sup> *Id.* at 7.

<sup>48</sup> *Id.* at 26.

<sup>49</sup> *Id.* at 2-3.

<sup>50</sup> *Id.* at 10.

<sup>51</sup> *Id.* at 12-13.

<sup>52</sup> *Id.* at 14-15.

<sup>53</sup> *Id.* at 18-19.

<sup>54</sup> *Id.* at 16-17.



## IV. Federal Update

### A. Federal Gun Laws: The Weakest of All Industrialized Nations

Although some states have actively pursued common sense policies to reduce gun violence, most have not, leaving them subject to federal gun laws. Those laws, however, are incredibly weak. In fact, U.S. gun laws remain the weakest of all industrialized nations.<sup>55</sup> Not surprisingly, the U.S. has the highest rate of firearm deaths among 25 high-income nations,<sup>56</sup> and the overall firearm-related death rate among U.S. children under the age of 15 is nearly 12 times higher than that among children in 25 other industrialized nations *combined*.<sup>57</sup>

Our federal gun laws are completely inadequate. They do not, for example:

- Require background checks on all gun purchasers. The Brady Act only requires federally licensed gun dealers to conduct background checks, exempting private sellers (responsible for an estimated 40% of all gun sales).<sup>58</sup> Because of this “private sale” loophole, criminals and other prohibited persons can easily buy guns in most states.
- Regulate guns as a consumer product. Guns and ammunition are exempt from the Consumer Product Safety Act.<sup>59</sup> As a result, the federal government has authority to adopt health and safety standards for toy guns, but not for real guns.
- Require that handgun owners be licensed or that handguns be registered. Licensing laws help ensure that gun owners know how to safely use a firearm and are familiar with firearms laws; registration laws help law enforcement officials trace crime guns and return lost or stolen firearms to their lawful owners.
- Ban assault weapons or 50 caliber rifles (military-style firearms that combine long range, accuracy and massive power, and are readily available on the civilian market).<sup>60</sup> Congress allowed a ban on assault weapons to expire in 2004.
- Permit law enforcement to retain approved firearm purchaser records, instead of requiring these records to be destroyed within 24 hours.<sup>61</sup> Purchaser records are invaluable tools law enforcement can use to efficiently trace crime guns, quickly retrieve guns mistakenly sold to prohibited persons, and protect police responding to incidents where a firearm may be present.
- Limit the number of handguns that may be purchased at any one time, to prevent gun traffickers from buying guns in bulk and reselling them to prohibited purchasers.

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<sup>55</sup> Wendy Cukier & Victor Sidel, *The Global Gun Epidemic: From Saturday Night Specials to AK-47s* 131 (2006).

<sup>56</sup> *Id.* at 17.

<sup>57</sup> U.S. Dep’t of Health & Human Services, Centers for Disease Control & Prevention, Morbidity & Mortality Weekly Report, *Rates of Homicide, Suicide, and Firearm-Related Death Among Children – 26 Industrialized Countries* (Feb. 7, 1997).

<sup>58</sup> 18 U.S.C. § 922(s); Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Dep’t of Justice, National Institute of Justice Research in Brief 6-7 (May 1997).

<sup>59</sup> 15 U.S.C. §§ 2051, 2052(a)(1)(ii)(E).

<sup>60</sup> Fifty caliber rifles are treated as ordinary long guns under federal law and thus can be purchased by persons over age 18. Moreover, because of the private sale loophole, 50 caliber rifles can be easily purchased in most states by criminals and would-be terrorists.

<sup>61</sup> As discussed below, the 24-hour record destruction and crime gun trace data disclosure rules have been included in appropriations bills funding the Department of Justice every year since 2004. Prior to 2004, approved gun purchaser records were retained for 90 days, allowing ATF time to inspect dealer records to determine whether the dealer submitted accurate information about the purchaser. Disclosure of crime gun trace data is discussed further below in the Federal Update, beginning on page 13.

- Impose a waiting period, to allow sufficient time for the completion of a background check and provide a “cooling off” period to help prevent impulsive acts of violence.<sup>62</sup>
- Provide access to redress in the courts for victims of gun violence. In 2005, Congress granted unprecedented legal immunity to the gun industry, generally prohibiting civil lawsuits and administrative proceedings against manufacturers and sellers of firearms and ammunition, and requiring dismissal of most pending lawsuits against the industry.<sup>63</sup>

## **B. The Second Amendment: The *District of Columbia v. Heller* Decision and its Implications for U.S. Gun Policy**

### **1. *District of Columbia v. Heller***

*"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."*

On June 26, 2008, the U.S. Supreme Court issued its historic opinion in *District of Columbia v. Heller*,<sup>64</sup> ruling on the meaning and scope of the Second Amendment to the U.S. Constitution for the first time since 1939. In a narrow 5-4 ruling, the Court held that the Second Amendment confers an individual right to possess firearms unrelated to service in a well-regulated state militia. The Court struck down the District’s ban on handgun possession, finding that “the inherent right of self-defense has been central to the Second Amendment” and that handguns are “overwhelmingly chosen by American society” for self-defense in the home.<sup>65</sup> The Court also struck down the District’s requirement that firearms in the home be stored unloaded and disassembled or bound by a trigger lock or similar device, because the law contained no exception for self-defense.

The Supreme Court’s ruling in *Heller* represents a radical departure from the Court’s principal Second Amendment precedent, *United States v. Miller*.<sup>66</sup> In *Miller*, the Court stated in a unanimous decision that the “obvious purpose” of the Amendment was to “assure the continuation and render possible the effectiveness of” the state militia, and the Amendment “must be interpreted and applied with that end in view.”<sup>67</sup> Relying on *Miller*, hundreds of lower federal and state appellate courts had rejected Second Amendment challenges to U.S. gun laws over the last seven decades.<sup>68</sup>

Although the *Heller* decision established a new individual right to “keep and bear arms,” the opinion clearly found that the right is not unlimited, and should not be understood as “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”<sup>69</sup>

<sup>62</sup> Under existing federal law, most guns are immediately transferred to the purchaser after the completion of an instant background check. Moreover, if the background check has not been completed within three days, the dealer may transfer the gun by default without knowing whether the transfer is lawful. 18 U.S.C. § 922(t)(1).

<sup>63</sup> 15 U.S.C. §§ 7901-7903. Cases interpreting the federal immunity law are discussed at page 17, *infra*.

<sup>64</sup> *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

<sup>65</sup> *Id.* at 2817.

<sup>66</sup> 307 U.S. 174 (1939).

<sup>67</sup> *Id.* at 178.

<sup>68</sup> The *Heller* Court dismissed the *Miller* case as not “a thorough examination” of the Second Amendment, and limited *Miller* to the proposition that “the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.” *Heller*, *supra* note 64, at 2814.

<sup>69</sup> *Id.* at 2816.



The Court provided examples of gun laws that it deems “presumptively lawful” under the Second Amendment, including those which: 1) prohibit the possession of firearms by felons and the mentally ill; 2) forbid firearm possession in sensitive places such as schools and government buildings; and 3) impose conditions on the commercial sale of firearms.<sup>70</sup>

The Court also concluded that the Second Amendment is consistent with laws banning “dangerous and unusual weapons” not “in common use at the time,” such as M-16 rifles and other firearms that are most useful in military service.<sup>71</sup> Finally, the Court declared that its analysis should not be read to suggest “the invalidity of laws regulating the storage of firearms to prevent accidents.”<sup>72</sup>

Unfortunately, *Heller* provided no standard of review or test for legislators and lower courts to apply to determine whether a gun law violates the Second Amendment. The case also leaves unanswered whether the Second Amendment applies to the states, since Washington, D.C. is a federal enclave.<sup>73</sup> Subsequent litigation, discussed below, focuses on these unresolved issues.<sup>74</sup>

## 2. Post-*Heller* Litigation<sup>75</sup>

As expected, the Supreme Court’s decision in *District of Columbia v. Heller* has resulted in a flood of lawsuits. To date, at least 129 federal appellate and district court opinions have discussed the meaning of the Second Amendment under *Heller*. Numerous criminal defendants have challenged their indictments and convictions for violating federal and state firearms laws following *Heller*, alleging that the criminal statutes violate the Second Amendment. In all but a few cases, these challenges have failed.

Some courts have cited *Heller* in finding impermissible state action that would limit an individual’s right to possess firearms where that person is otherwise lawfully able to possess them. One federal district court, for example, struck down a statute that required the imposition of a pretrial bail condition prohibiting the defendant from possessing any firearms because the law did not require a particularized finding that the prohibition was reasonably necessary to secure the safety of the community.<sup>76</sup> Additionally, a Massachusetts state court found a state law that

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<sup>70</sup> *Id.* at 2816-17, 2817 n. 26. The Court makes clear that this list is not exhaustive.

<sup>71</sup> *Id.* at 2817.

<sup>72</sup> *Id.* at 2820.

<sup>73</sup> While the Court did not rule on whether the Second Amendment applies to state or local governments, the Court did note its earlier decisions holding that “the Second Amendment applies only to the Federal Government.” *Heller*, *supra* note 64, at 2813 n.23, citing *Miller v. Texas*, 153 U.S. 535, 538 (1894); *Presser v. Illinois*, 116 U.S. 252, 265 (1886); and *United States v. Cruikshank*, 92 U.S. 542 (1876).

<sup>74</sup> For more information about the *Heller* decision, please visit LCAV’s web site at <http://www.lcav.org/content/dc-vs-heller.asp>. LCAV was pleased to have had the opportunity to assist the District of Columbia in the *Heller* case by coordinating the filing of *amicus curiae* briefs. Nineteen *amicus* briefs, written on behalf of 188 *amici*, were filed in support of the District. Those briefs represent a wide variety of important voices, including law enforcement groups, public health advocates, law professors, historians, linguists, the American Bar Association, former U.S. Department of Justice officials and members of Congress. LCAV also filed its own *amicus* brief in *Heller*, joined by The United States Conference of Mayors and several major U.S. cities: Baltimore, Cleveland, Los Angeles, Milwaukee, New York City, Oakland, Philadelphia, Sacramento, San Francisco, Seattle and Trenton.

<sup>75</sup> This section provides a brief summary of post-*Heller* litigation. Please contact LCAV for more in-depth information about these cases.

<sup>76</sup> *United States v. Arzberger*, 592 F. Supp. 2d 590 (S.D.N.Y. 2008) (holding that because the Second Amendment protected an individual right to possess a firearm, it established a liberty interest protected by Fourteenth Amendment due process).

required all stored firearms to be secured by a trigger lock or kept in a locked container unconstitutional per *Heller*.<sup>77</sup>

The National Rifle Association and the Second Amendment Foundation have filed suits against a number of state and local jurisdictions, alleging that laws prohibiting the possession of handguns or otherwise regulating firearm ownership are unconstitutional. While several jurisdictions repealed handgun possession bans following the *Heller* decision, a number of states and municipalities continue to fight these suits.

On April 20, 2009, in one of the most significant post-*Heller* rulings, the Ninth Circuit Court of Appeals issued its much-anticipated decision in *Nordyke v. King*,<sup>78</sup> long-running litigation brought by a gun show promoter to challenge an Alameda County ordinance prohibiting the possession of firearms or ammunition on County-owned property. The court upheld the county ordinance, rejecting the Nordykes' Second Amendment claim on the grounds that an ordinance banning gun possession on County property does not meaningfully burden the right to possess a firearm in the home for self-defense. However, the Ninth Circuit became the first federal court to hold that the Second Amendment is incorporated through the Fourteenth Amendment to apply against state and local governments. Without incorporation – an issue left unresolved by *Heller* – the Second Amendment only limits the power of the federal government.

On June 2, 2009, in another significant post-*Heller* case, *NRA v. Chicago and Oak Park*,<sup>79</sup> the Seventh Circuit Court of Appeals held that the Second Amendment does *not* apply to state or local governments. In doing so, the Seventh Circuit affirmed the district court's dismissal of complaints filed by the National Rifle Association and Second Amendment Foundation alleging that the prohibitions on the possession of handguns adopted by these two Illinois cities violated the Second Amendment.

The Seventh Circuit determined that it was bound by a series of U.S. Supreme Court cases that uniformly held that the Second Amendment only applies to the federal government. The *Chicago and Oak Park* court emphasized that Supreme Court decisions may only be overruled by the Supreme Court itself, criticizing the Ninth Circuit's decision in *Nordyke v. King*, which held that the Second Amendment applies to state and local governments despite Ninth Circuit and Supreme Court rulings to the contrary. The day after the *Chicago and Oak Park* ruling, the National Rifle Association filed a petition for certiorari requesting that the U.S. Supreme Court review the decision.<sup>80</sup>

Finally, the Second Circuit Court of Appeals also addressed the issue of incorporation in a case involving a challenge to a state statute prohibiting the possession of a weapon called a nunchaku.<sup>81</sup> In upholding the statute, the Second Circuit stated it was “settled law” that the Second

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<sup>77</sup> *Commonwealth v. Bolduc*, No. 0825 CR 2026 (Mass. Dist. Ct. Feb. 19, 2009). It does not appear that the incorporation issue – whether the Second Amendment only applied against action by the federal government – was raised in this case.

<sup>78</sup> 563 F.3d 439 (9th Cir. 2009).

<sup>79</sup> Nos. 08-4241, 08-4243 & 08-4244, 2009 U.S. App. LEXIS 11721 (7<sup>th</sup> Cir. decided June 2, 2009).

<sup>80</sup> LCAV's *amicus curiae* brief in support of Chicago and Oak Park in the 7<sup>th</sup> Circuit can be viewed at [http://www.lcav.org/library/amicus\\_briefs/NRA\\_v\\_Chicago\\_Amicus\\_Brief.pdf](http://www.lcav.org/library/amicus_briefs/NRA_v_Chicago_Amicus_Brief.pdf).

<sup>81</sup> A nunchaku, commonly called “nunchucks,” is a weapon of Southeast Asian origin consisting of two sticks connected at their ends with a short chain or rope.

Amendment only applies to limit actions by the federal government, and that *Heller* “does not invalidate this longstanding principle.”<sup>82</sup>

For more in-depth information about post-*Heller* litigation, please visit LCAV’s website, [www.lcav.org](http://www.lcav.org).

## C. 2008 Legislation

### 1. Tiahrt Amendments

The Tiahrt Amendments<sup>83</sup> are annual riders attached to U.S. Department of Justice appropriations bills since 2003 that significantly restrict law enforcement’s ability to investigate gun crimes and prosecute unscrupulous gun dealers. The amendments currently:

- Prohibit the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from fully releasing firearm trace data for use by cities, states, law enforcement, researchers, litigants and members of the public;
- Require the FBI to destroy all approved gun purchaser records within 24 hours;
- Prohibit ATF from requiring gun dealers to submit inventories to law enforcement.<sup>84</sup>

**Restrictions on Crime Gun Trace Data** – The Tiahrt Amendments prohibit ATF from disclosing firearm trace data except to law enforcement in connection with and for use in a criminal investigation or prosecution, or to a federal agency for national security or intelligence purposes. As a result, law enforcement agencies are unable to access aggregated data to examine patterns of gun trafficking or identify gun dealers linked to large numbers of crime guns. In addition, the provision renders all gun trace data immune from legal process and inadmissible in non-ATF administrative proceedings or civil actions. ATF may, however, publish statistical information regarding firearms trafficking in aggregate form.

Tiahrt trace data restrictions bind the hands of law enforcement across the country investigating illegal firearms trafficking. For example, due to the Tiahrt restrictions, ATF refused a request by the California Department of Justice (CA DOJ) for data related to crime guns recovered in Mexico and traced back to firearms dealers in California, significantly hindering CA DOJ’s efforts to identify and investigate those dealers. Ironically, while federal law permits law enforcement agencies in Mexico to access ATF trace data, it currently does not allow law enforcement agencies in this country to do so.

The ATF restrictions on trace data are not limited to law enforcement: the Tiahrt Amendments also preclude disclosure of gun trace data to members of the public, including researchers and litigants in lawsuits against the gun industry. Prior to Tiahrt, these individuals were able to use

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<sup>82</sup> *Maloney v. Cuomo*, 554 F.3d 56, 58-59 (2d. Cir. 2009).

<sup>83</sup> The amendments are named for their original sponsor, U.S. Representative Todd Tiahrt (R-KS).

<sup>84</sup> Omnibus Appropriations Act 2009, Pub. L. No. 111–8, 123 Stat. 524 (2009). For detailed information on the issues posed by the Tiahrt Amendments, see the Tiahrt Amendments page of the Mayors Against Illegal Guns website, at <http://www.mayorsagainstillegalguns.org/html/federal/tiahrt.shtml>.

gun trace data in important analyses of the sources of crime guns. Because of Tiahrt, however, this critical source of information has evaporated.<sup>85</sup>

**Mandatory 24-Hour Destruction of Gun Purchaser Records** – The Tiahrt Amendments also require the FBI to destroy all approved gun purchaser records within 24 hours of approval. Records of completed firearm sales are invaluable tools for law enforcement, and are most useful when they are collected in a central database and retained permanently. In California, for example, handgun sales records are permanently retained in a CA DOJ database. As a result, law enforcement agencies in the state are able to quickly trace the ownership of handguns recovered in crime. Records regarding firearm ownership are also used to protect officers responding to incidents and to facilitate the relinquishment of firearms by persons who are convicted of a felony or otherwise become ineligible to possess guns.

**Prohibition on Gun Dealer Inventories** – In addition, the Tiahrt Amendments prohibit ATF from requiring gun dealers to submit inventories. Gun dealer inventories facilitate enforcement of the federal law requiring dealers to report the loss or theft of firearms and help law enforcement oversee the more than 50,000 firearms dealers nationwide. According to a 2008 analysis by the Brady Center to Prevent Gun Violence, more than 30,000 guns were “missing” from gun dealers in 2007.<sup>86</sup> Gun dealer inventories force gun dealers to keep control of their inventories and help prevent corrupt gun dealers from supplying the illegal market and then claiming that their firearms have simply disappeared.

The Firearms Information Use Act of 2008<sup>87</sup> was introduced on March 13, 2008, to repeal the crime gun trace data provisions of the Tiahrt Amendments, but no action was taken on the bill. On September 30, 2008, Congress adopted a continuing resolution for Fiscal Year 2009, which left in place the Tiahrt restrictions from the 2008 budget.<sup>88</sup>

## 2. Other Legislation

Several measures to reduce gun violence were introduced in 2008, but did not gain traction in Congress. Among these bills was legislation to prohibit federal firearms licensees from manufacturing, importing or transferring semiautomatic handguns manufactured or imported on or after January 1, 2010 unless they are capable of “microstamping.”<sup>89</sup> In addition, the Preserving Records of Terrorist & Criminal Transactions Act of 2008<sup>90</sup> would have required the retention of background check information for 180 days for approved purchasers and 10 years for approved purchasers whose names appear on terror watch lists.

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<sup>85</sup> Law enforcement organizations have expressed overwhelming opposition to these trace data restrictions: over 200 state and local law enforcement executives, 23 state/regional law enforcement associations, and 11 national law enforcement associations oppose the Tiahrt restrictions.

<sup>86</sup> Press Release, Brady Center to Prevent Gun Violence, *U.S. Gun Shops “Lost” More Than 30,000 Firearms Last Year* (June 17, 2008), at <http://www.bradycampaign.org/media/release.php?release=988>.

<sup>87</sup> S. 2769, 110<sup>th</sup> Cong. (2008).

<sup>88</sup> Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329 (2008).

<sup>89</sup> National Crime Gun Identification Act, H.R. 5266, 110<sup>th</sup> Cong. (2008). Microstamping technology involves the use of lasers to engrave microscopic markings of the make, model and serial number of a semiautomatic handgun on the firing pin and breech face through alphanumeric and geometric codes. When the handgun is discharged, these engravings are then stamped on a cartridge casing before the casing is ejected from the gun. Law enforcement can then use the cartridge casings recovered at crime scenes to identify the guns and the persons who fired them. California adopted a microstamping law in 2007.

<sup>90</sup> Preserving Records of Terrorist and Criminal Transactions Act of 2008, S. 2935, 110<sup>th</sup> Cong. (2008).

## D. 2009 Legislation

### 1. Allowing Loaded Guns in National Parks and Wildlife Refuges

In a concerted action that will significantly undermine public safety in this nation's national parks and wildlife refuges, in May 2009, Congress passed, and President Obama signed into law, the Credit Card Accountability, Responsibility and Disclosure Act of 2009. Unfortunately, this important consumer-related legislation contained a dangerous, completely non-germane amendment. The amendment, effective February 2010, will allow any person to possess any loaded, functional firearm in any unit of the National Park System or the National Wildlife Refuge System, provided the person is not otherwise prohibited by law from possessing the firearm, and the possession is in compliance with the law of the state in which the unit of the National Park System or the National Wildlife Refuge System is located.<sup>91</sup> This law addresses no identifiable public safety problem. Indeed, national parks and wildlife refuges have an extremely low crime rate relative to non-park/non-refuge areas across the country.

The impetus behind permitting loaded, accessible firearms in our nation's parks began in 2008 when the U.S. Department of the Interior (DOI) under the Bush Administration promulgated National Rifle Association (NRA)-backed regulations to permit the carrying of loaded, concealed firearms in national parks and wildlife refuges, reversing Reagan-era regulations that banned the carrying of loaded, accessible firearms in these federally-protected areas.<sup>92</sup> A broad coalition of knowledgeable public interest groups and park service officials – including active and retired park rangers and law enforcement and former National Park Service directors – vocally led the opposition against allowing loaded firearms of any kind within national parks. Despite significant public opposition to the rule changes, they briefly went into effect on January 9, 2009.<sup>93</sup>

A lawsuit challenging DOI's new regulations as violative of several federal laws was filed by the Brady Campaign to Prevent Gun Violence and the National Parks Conservation Association, among others,<sup>94</sup> leading the U.S. District Court for the District of Columbia to enjoin enforcement of the regulations and restore the prior rules applicable to national parks and wildlife refuges, again requiring that firearms be unloaded and secured when carried on federal lands.<sup>95</sup>

The new statute, regrettably, goes well beyond DOI's rule changes and permits possession of any lawful firearm, not just concealed guns. Furthermore, this new law raises troubling legal issues, e.g., what state law governs possession of a gun in a national park that straddles state boundaries.<sup>96</sup>

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<sup>91</sup> Credit Card Accountability, Responsibility and Disclosure Act of 2009, H.R. 627, 111<sup>th</sup> Cong. (2009).

<sup>92</sup> 48 Fed. Reg. 30,252 (June 30, 1983); 49 Fed. Reg. 18,444 (April 30, 1984).

<sup>93</sup> 36 C.F.R. § 2.4(h); 50 C.F.R. § 27.42(e). The final regulation is at 73 Fed. Reg. 74,966, 74,967 (Dec. 10, 2008). The revised regulations were designed to allow persons to possess and transport concealed, loaded firearms within a national park or wildlife refuge if the law in the state in which the national park or wildlife refuge is located allows the carrying of concealed firearms by persons properly licensed.

<sup>94</sup> *Brady Campaign to Prevent Gun Violence v. Salazar*, No. 08-2243 (CKK) & No. 09-013 (CKK), 2009 U.S. Dist. LEXIS 22077, (D.D.C. Mar. 19, 2009) at \*7-\*8, available at

[http://www.npca.org/keep\\_parks\\_safe/pdf/memorandum\\_opinion\\_loaded\\_concealed\\_guns.pdf](http://www.npca.org/keep_parks_safe/pdf/memorandum_opinion_loaded_concealed_guns.pdf).

<sup>95</sup> *Id.*

<sup>96</sup> LCAV submitted public comment to U.S. Department of the Interior on June 30, 2008, strongly opposing the rule changes. LCAV's comments are available at

[http://www.lcav.org/library/reports\\_analyses/LCAV\\_Comment.Loaded\\_Guns\\_in\\_National\\_Parks.06.30.08.pdf](http://www.lcav.org/library/reports_analyses/LCAV_Comment.Loaded_Guns_in_National_Parks.06.30.08.pdf).



## 2. Closing the Gun Show Loophole

On April 21, 2009, Senator Frank Lautenberg (D-NJ) introduced S. 843, the Gun Show Background Check Act of 2009, legislation designed to close the “gun show loophole,” a gap in federal law which allows unlicensed individuals to sell firearms at gun shows and other venues without conducting a background check on prospective purchasers.

S. 843 would require background checks on gun purchasers at events where 50 or more firearms are offered for sale. Gun show promoters would be required to register with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and all transactions would have to go through a federally-licensed firearms dealer at the show or event.

The gun show loophole is a serious public safety issue. ATF has found that 25% to 50% of gun show vendors are unlicensed.<sup>97</sup> ATF also reviewed over 1,500 of its investigations and concluded that gun shows are a “major trafficking channel,” associated with approximately 26,000 firearms diverted from legal to illegal commerce. Gun shows rank second to corrupt dealers as a source for illegally trafficked firearms.<sup>98</sup> From 2004 – 2006, ATF conducted 202 investigative operations at 195 gun shows, or roughly 3% of the gun shows held nationwide during this period. These operations resulted in 121 arrests and the seizure of 5,345 firearms.<sup>99</sup> More recent studies confirm that illegal gun trafficking occurs in states with little or no regulation of gun shows or gun transactions generally.<sup>100</sup>

A recent poll issued by Mayors Against Illegal Guns found that 87% of Americans – and 83% of gun owners – support requiring background checks for all firearm transfers at gun shows.<sup>101</sup>

## 3. The Ensign Amendment – Gutting Washington, D.C.’s Gun Laws

Washington, D.C. has some of the strongest gun violence prevention laws in the nation. Following the Supreme Court’s decision in *District of Columbia v. Heller*, which struck down on Second Amendment grounds the District’s ban on handgun possession and its requirement that firearms in the home be stored unloaded and disassembled or bound by a trigger lock or similar device,<sup>102</sup> the District repealed these laws to comply with the *Heller* decision. The District subsequently enacted a comprehensive series of gun laws to fill the gap left by the repealed provisions.

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<sup>97</sup> U.S. Dep’t of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Gun Shows: Brady Checks and Crime Gun Traces* 4 (Jan. 1999).

<sup>98</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* xi, 1, 12 (June 2000).

<sup>99</sup> Office of the Inspector General, U.S. Dep’t of Justice, *The Bureau of Alcohol, Tobacco, Firearms and Explosives’ Investigative Operations at Gun Shows* i, iv-v (June 2007).

<sup>100</sup> See, e.g., Garen J. Wintemute, *Gun Shows Across a Multistate American Gun Market: Observational Evidence of the Effects of Regulatory Policies*, 13 *Inj. Prevention* 150, 154-55 (2007); Mayors Against Illegal Guns, *The Movement of Illegal Guns in America – The Link Between Gun Laws and Interstate Gun Trafficking* 7, 10 (Dec. 2008), at [http://www.mayorsagainstillegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf). These studies are discussed in greater detail under the Effectiveness of Firearm-Related laws section, *supra*.

<sup>101</sup> Greenberg Quinlan Rosner Research and the Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3-4, Apr. 10, 2008, available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf).

<sup>102</sup> *Heller*, *supra* note 64, at 2817.

On February 26, 2009, the U.S. Senate passed the “District of Columbia House Voting Rights Act,” S. 160, which would grant the District a long-sought voting representative in Congress.<sup>103</sup> Unfortunately, senators vociferously opposed to the District’s strong gun laws added a detailed, National Rifle Association-backed amendment to S.160 (named for its sponsor, Senator John Ensign (R-NV)) in an attempt to repeal D.C. gun laws. The amended bill, if passed, would seriously threaten public safety and homeland security.

The amendment, entitled the “Second Amendment Enforcement Act,” would, *inter alia*: 1) legalize the possession of assault weapons and high-capacity ammunition magazines in the District; 2) completely repeal the District’s firearm registration system; 3) allow potentially dangerous individuals to purchase and own firearms, including any person who has been: a) convicted of a crime of violence within the last five years; b) convicted of multiple drug or alcohol-related offenses within last five years; or c) been voluntarily committed to a mental institution within the last five years; and 4) prevent the D.C. Council from enacting firearm-related legislation in the future. S. 160 is currently being considered in the House of Representatives.

#### 4. Tiahrt Amendments

During his campaign for President, Barack Obama had promised to remove the trace data restrictions of the Tiahrt Amendments from federal appropriations legislation. In 2009, the Obama Administration’s proposed budget for the Justice Department for Fiscal Year 2010 did eliminate the current provision prohibiting ATF from providing gun trace data to law enforcement except in connection with individual criminal investigations or prosecutions. However, new language in the proposed budget expressly prohibits any person from “knowingly and publicly” disclosing ATF gun trace data in his or her possession. Moreover, the President’s proposed budget leaves intact the remainder of the Tiahrt Amendments: 1) banning the dissemination of gun trace data beyond law enforcement; 2) banning ATF from requiring that gun dealers perform annual inventory audits; and 3) requiring that ATF destroy background check records for approved transfers within 24 hours of approval.

### **E. Federal Immunity Law Challenges**

The Protection of Lawful Commerce in Arms Act (PLCAA),<sup>104</sup> adopted by Congress in 2005, immunizes firearms manufacturers and sellers from civil lawsuits that seek injunctive or other relief arising from the unlawful misuse of firearms distributed in interstate commerce. The PLCAA mandates dismissal of lawsuits against the gun industry unless the claim falls within one of the statute’s narrow exceptions. Courts analyzing the PLCAA have focused on the applicability of the exception for lawsuits based on a “knowing violation of a state or federal statute applicable to the sale or marketing of firearms,” as well as the law’s constitutionality. The PLCAA does not protect gun manufacturers and sellers from liability in cases in which they “knowingly” violated state or federal laws concerning the marketing and sale of their products.<sup>105</sup>

The key rulings over the past year include:

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<sup>103</sup> District of Columbia House Voting Rights Act of 2009, S. 160, 111<sup>th</sup> Cong. (2009).

<sup>104</sup> 15 U.S.C. §§ 7901 - 7903.

<sup>105</sup> The PLCAA also provides an exception for certain product liability claims. 15 U.S.C. § 7903(5)(A)(v).

- *City of Gary v. Smith & Wesson Corp.*<sup>106</sup> In a landmark ruling on January 12, 2009, the Indiana Supreme Court allowed Gary, Indiana’s lawsuit against 16 gun manufacturers and six Indiana gun dealers to proceed to trial, denying a petition to transfer the case to the Indiana Supreme Court. The court affirmed the appeals court ruling that the case is not barred by the PLCAA. The gun industry defendants had claimed that the PLCAA shields them from liability for sales practices in violation of Indiana’s public nuisance statute that resulted in the funneling of guns into the criminal market.
- *Adames v. Sheahan.*<sup>107</sup> On March 13, 2009, the Illinois Supreme Court rejected plaintiffs’ claims alleging design defect, failure to warn and breach of the implied warranty of merchantability against firearm manufacturers for the unintentional shooting death of a boy, finding that the lawsuit was a “qualified civil liability action” under the PLCAA and did not fall within an exception that would save plaintiffs’ claims.<sup>108</sup>
- *City of New York v. Bob Moates' Sport Shop, Inc.*<sup>109</sup> On September 29, 2008, New York City’s settlement agreement for a public nuisance suit against an out-of-state firearm retailer for illegal trafficking was found not barred by the PLCAA, because the retailers’ knowing participation in the straw purchases violated federal and state laws involving the sale and marketing of guns.<sup>110</sup>
- *City of New York v. Beretta U.S.A. Corp.*<sup>111</sup> On March 9, 2009, in a decision effectively ending New York City’s nine-year lawsuit against the gun industry for diverting lawfully purchased firearms into illegal gun markets, the U.S. Supreme Court refused to consider the Second Circuit’s dismissal of this case on PLCAA grounds. The Second Circuit found that the PLCAA required dismissal because the statute upon which the city had predicated its claims, N.Y. Penal Law § 240.45, does not fall within the exception in the PLCAA that saves claims involving the sale or marketing of guns. The court found that Penal Law § 240.45 is a statute of general applicability that does not fall within the PLCAA’s predicate exception because it does not clearly regulate the firearms industry.<sup>112</sup>
- *Ileto v. Glock, Inc.*<sup>113</sup> On May 11, 2009, the Ninth Circuit held that the PLCAA requires dismissal of public nuisance and negligence claims by family members of shooting victims against firearms manufacturers, dealers and distributors of the guns used in the shootings. The Ninth Circuit concluded that, in adopting the PLCAA, Congress clearly intended to preempt common-law claims such as general tort theories of liability. The tort theories

<sup>106</sup> *Smith & Wesson Corp. v. City of Gary*, No. 45A05-0612-CV-754, 2008 Ind. App. LEXIS 8 (Ind. Ct. App. Jan. 9, 2008).

<sup>107</sup> *Adames v. Sheahan*, Docket Nos. 105789 & 105851 cons., 2009 Ill. LEXIS 310 (Ill. Mar. 19, 2009).

<sup>108</sup> The court also rejected plaintiffs’ claim that the PLCAA is unconstitutional under the Tenth Amendment to the United States Constitution, which reserved to the states or to the people those “powers not delegated to the United States by the Constitution, nor prohibited by it to the States.” U.S. Const., amend. X. *Id.* at \*56.

<sup>109</sup> 253 F.R.D. 237 (E.D.N.Y. Sept. 29, 2008).

<sup>110</sup> *Id.* at 243. See 15 U.S.C. § 7903(5)(A)(iii).

<sup>111</sup> 524 F.3d 384 (2d Cir. 2008).

<sup>112</sup> *Id.* at 404. The Second Circuit also affirmed the district court ruling that the PLCAA is a constitutional, permissible exercise of Congress’ commerce power, and does not violate the principles of separation of powers or the Tenth or First Amendments. *Id.* at 392-93.

<sup>113</sup> *Ileto v. Glock, Inc.*, No. 06-56872, No. 07-15403, No. 07-15404, 2009 U.S. App. LEXIS 10945 (9<sup>th</sup> Cir. May 11, 2009).



raised by plaintiffs, the court found, did not fall within the exception in the PLCAA because they do not specifically relate to firearms.<sup>114</sup>

## **F. 2008 Elections and the Obama Administration**

The 2008 elections contained positive developments for gun safety. Candidates that strongly support gun violence prevention won handily, while NRA-supported candidates opposed to violence prevention largely lost.<sup>115</sup> A report issued by the Brady Campaign to Prevent Gun Violence following the elections found “no evidence that any candidate, at any level, lost because of support for sensible gun laws. Supporters of common sense gun laws won in Senate, House and state races across the country,” demonstrating that “politicians do not risk electoral defeat if they cross the gun lobby.”<sup>116</sup>

Although the election of Barack Obama as President of the United States inspired hope of federal gun policy reform in those who support common sense gun laws, unfortunately those hopes have not yet been realized. In fact, the President has backed off of his previously expressed support for a federal assault weapon ban, and signed into law the Credit Card Accountability, Responsibility and Disclosure Act of 2009 which, as discussed above, contains a dangerous amendment that allows the possession of loaded, operable firearms in national parks and wildlife refuges. LCAV hopes that President Obama will reverse course and actively support federal gun policies that promote public safety in the coming years.

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<sup>114</sup> *Id.* at \*26. The court did not dismiss plaintiffs’ claims against defendant China North. Since the PLCAA preempts only actions brought against *federally licensed* manufacturers and sellers of firearms, and China North is not a federally licensed manufacturer or seller of firearms, the PLCAA does not preempt plaintiffs’ claims against the company. *Id.* at \*50. LCAV filed *amicus curiae* (“friend of the court”) briefs in the *Adames, New York v. Beretta* and *Ileto* cases. These *amicus* briefs are available to view on LCAV’s website, at [www.lcav.org](http://www.lcav.org).

<sup>115</sup> Brady Campaign to Prevent Gun Violence, *Guns & the 2008 Elections – Common Sense Gun Laws Won, the NRA Lost, & What it Means* (Nov. 6, 2008), at <http://www.bradycenter.org/xshare/pdf/reports/guns-2008election.pdf>.

<sup>116</sup> *Id.* at 3-4.

## V. California Update

### A. California's Gun Violence Prevention Laws: Leading the Nation

California is consistently at the forefront of gun policy reform and has enacted some of the strongest gun laws in the nation. Unlike most states, for example, California:

- Has closed the federal private sale loophole and requires background checks on all prospective gun purchasers.<sup>117</sup>
- Prohibits the manufacture and sale of handguns that have not passed certain safety tests.<sup>118</sup>
- Maintains handgun purchaser records.<sup>119</sup>
- Requires handgun purchasers to obtain a safety certificate after passing a written test and performing a safe handling demonstration.<sup>120</sup>
- Limits handgun sales to one per person per month.<sup>121</sup>
- Imposes a 10-day waiting period.<sup>122</sup>
- Requires that all firearms manufactured or sold in the state be accompanied by a trigger lock or other firearm safety device approved by the California Department of Justice.<sup>123</sup>
- Bans assault weapons and 50 caliber rifles.<sup>124</sup>
- Prohibits the sale of large capacity ammunition magazines (i.e., those capable of holding more than 10 rounds of ammunition).<sup>125</sup>

### B. 2008 Legislation

In 2008, California was poised to strengthen its gun laws by adopting several new, common sense bills. While two modest firearm-related bills were enacted in 2008, other important gun legislation passed by both houses of the California Legislature was, unfortunately, vetoed by Governor Schwarzenegger.

#### 1. Bills Signed Into Law

**AB 837 (Feuer) – Firearms: Prohibited Persons.** AB 837 (amending several sections of the California Business and Professions, Government, Health and Safety and Penal Codes) clarifies that whenever the California Department of Justice (DOJ) is authorized to conduct a background check on an individual to determine his or her eligibility to possess a firearm, DOJ must make that determination based on the eligibility requirements of state and federal law. This law will prevent

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<sup>117</sup> All gun sales must be processed by a licensed dealer. Cal. Penal Code § 12072(d).

<sup>118</sup> Cal. Penal Code § 12125 *et seq.*

<sup>119</sup> Cal. Penal Code § 11106(c)(1).

<sup>120</sup> Cal. Penal Code §§ 12071(b)(8)(B), 12800 *et seq.*

<sup>121</sup> Cal. Penal Code §§ 12072(a)(9)(A), 12072(c)(6).

<sup>122</sup> Cal. Penal Code §§ 12071(b)(3)(A), 12072(c)(1).

<sup>123</sup> Cal. Penal Code § 12088.1.

<sup>124</sup> Cal. Penal Code § 12280(a)(1).

<sup>125</sup> Cal. Penal Code § 12020(a)(2), (b). For a complete summary of California's firearm laws, visit the LCAV web site, <http://www.lcav.org/states/california.asp>.

DOJ from declaring a person eligible to possess a gun even though he or she would be disqualified under federal law.

**AB 352 (Solorio) – Display of Imitation Firearms in Public Schools.** AB 352 (amending Cal. Penal Code § 12556) includes public schools and public and private colleges and universities within the definition of “public place” for the offense of openly displaying or exposing an imitation firearm in a public place.

## 2. Vetoed Bills

**AB 2696 (Krekorian) – Background Check Records.** AB 2696 would have required the electronic transmission of mental health records to DOJ for use in background checks on prospective gun purchasers. These records are currently sent by mail, often in batches over a several month period, allowing certain mentally ill people to purchase firearms in the interim. Despite passage in both the Assembly and Senate, the Governor vetoed the bill, which was sponsored by LCAV.

**SB 1171 (Scott) – Carrying Loaded Firearms in Vehicles.** Under existing law, carrying a loaded firearm in a vehicle in an unincorporated area is only prohibited if the county bans the discharge of firearms. SB 1171 would have expanded the prohibition so that no loaded firearm could be carried in a vehicle in any public place, street or highway, regardless of a local discharge ban. SB 1171 was also vetoed by the Governor.

## 3. Other Proposed Legislation

**AB 2062 (De Leon) – Ammunition Sales.** AB 2062, co-sponsored by LCAV, would have established a comprehensive regulatory scheme for handgun ammunition sales. AB 2062 passed the Assembly, but stalled in the Senate. The bill was reintroduced in 2009 as AB 962. For a detailed description of AB 962, see the 2009 Legislation section, below.

**AB 334 (Levine) – Reporting Lost or Stolen Firearms.** AB 334 would have required new handgun owners to report the loss or theft of their handguns. The bill passed the Assembly, but was amended in the Senate to address a subject unrelated to firearms.

**AB 2235 (DeSaulnier) – “Owner-Authorized Handguns.”** AB 2235 would have required all newly manufactured or imported handguns in California to be “owner-authorized,” *i.e.*, designed to be fired only by the lawful owner or other authorized user, 18 months after DOJ determined that such handguns were available for retail sale. AB 2235 passed the Assembly, but was stymied in the Senate. This legislation was reintroduced in 2009 as SB 697, but will not be considered until early 2010. LCAV is a co-sponsor of the bill.

## C. 2009 Legislation

Several important gun violence prevention bills were introduced in 2009 and are currently progressing through the California Legislature. LCAV supports the following firearm-related legislation:

**AB 814 (Krekorian) – Firearm Relinquishment.** AB 814, sponsored by LCAV, would help get guns out of the hands of convicted criminals. Under existing law, persons who become prohibited from possessing firearms are advised, through a notice and form created by the California Department of Justice (DOJ), to transfer their firearms through a third party designee within 30 days. Existing law provides no mechanism, however, to ensure that these firearms are actually relinquished.

AB 814 would require a prohibited person to transfer his or her firearms to a designee who must sell the guns to a dealer, transfer them to a third party through a dealer, or relinquish them to local law enforcement. If the prohibited person is not in custody following conviction, the relinquishment process must be completed within five days of the date of conviction. If the person remains in custody, the process must be completed within 14 days. Furthermore, such persons must, within the relinquishment period, submit a form to local law enforcement stating: 1) whether or not they own any firearms to relinquish; and 2) if so, to whom any firearms were relinquished. AB 814 would help enforce state law prohibiting gun possession by certain convicted criminals and provide clear guidance to prohibited persons regarding their obligation to sell or surrender their guns. On June 3, 2009, AB 814 was approved by the Assembly in a 72-3 vote.

**AB 962 (De Leon) – Handgun Ammunition Sales.** Ammunition sales are almost completely unregulated under existing federal and state law, allowing convicted felons and other prohibited persons to easily buy and sell ammunition. AB 962, co-sponsored by LCAV, would establish a comprehensive regulatory scheme for handgun ammunition sales. Under the bill, any person who sells more than 50 rounds of handgun ammunition a month would be required to: 1) obtain a state license; 2) maintain ammunition purchaser records; and 3) store ammunition in a manner inaccessible to the public. AB 962 would also mandate that all sales be processed in face-to-face transactions with the purchaser providing “bona fide evidence” of his or her identity. In addition, the bill would prohibit persons subject to gang injunctions from possessing ammunition, and prohibit ammunition sales to any person the seller knows or has cause to believe is prohibited from possessing ammunition. AB 962 was approved by the Assembly on June 3, 2009.

**SB 697 (DeSaulnier) – Owner-Authorized Handguns.** SB 697, co-sponsored by LCAV, would require all newly manufactured or imported handguns in California to be “owner-authorized,” *i.e.*, designed to be fired only by the lawful owner or other authorized user, 18 months after DOJ determines that such handguns are available for retail sale. SB 697 will be considered in early 2010.

LCAV also supports the following 2009 bills:

- **AB 530 (Krekorian) – Unlawful Detainer (Controlled Substances and Firearms).** Would extend deadlines on pilot programs to enable cities to pursue unlawful detainer actions against persons arrested for illegal use or possession of firearms or controlled substances. AB 530 passed the Assembly by a 77-0 vote on May 18, 2009.
- **AB 532 (Lieu) – Search Warrants.** Would authorize a court to issue a search warrant to seize a firearm from a person detained for examination of his or her mental condition or arrested in connection with a domestic violence incident. AB 532 was approved by the Assembly 75-0 on May 18, 2009.

- **AB 668 (Lieu) – Gun-Free School Zones.** Would extend the limits of a school zone and clarify exceptions to prohibition on firearm possession on school property. On June 2, 2009, AB 668 was approved by the Assembly 76-0.
- **AB 789 (De Leon) – Search Warrants.** Would authorize a court to issue a search warrant to seize a firearm from a person subject to a domestic violence protective order. AB 789 was approved by the Assembly in a 78-0 vote on May 28, 2009.
- **AB 1498 (De Leon) – Prohibited Persons.** Would add additional misdemeanors to the list of crimes disqualifying a person from possessing firearms for ten years following conviction. AB 1498 has been held under submission in the Assembly appropriations committee.
- **SB 41 (Lowenthal) – Firearm Transfer Reporting.** Would require a dealer to provide a copy of the record of sale to every purchaser of a firearm and require both dealer and purchaser to sign to acknowledge delivery of a purchased handgun. Would also clarify law related to law enforcement custody of firearms and DOJ purchaser recordkeeping. SB 41 passed the Senate on June 1, 2009.
- **SB 449 (Padilla) – Secondhand Dealer Reporting.** Would require secondhand dealers (e.g., pawnbrokers) to daily report each firearm he or she received to DOJ instead of reporting to local law enforcement and enable DOJ to use the reports to identify lost or stolen firearms. On May 14, 2009, SB 449 was approved by the Senate in a 38-0 vote.
- **SB 585 (Leno) – Cow Palace Firearm Sales.** Would allow no more than five events per year on Cow Palace property (a facility used for gun shows near San Francisco) at which guns or ammunition are sold, beginning January 1, 2010, and prohibit the holding of more events in any year than the previous year. The Senate approved SB 585 on June 3, 2009.
- **SB 746 (DeSaulnier) – Gun Safety Board.** Would impose a \$25 fee on the sale or transfer of firearms to fund the creation of a Gun Safety Board to develop strategies to reduce gun violence. SB 746 will be considered in early 2010.

LCAV has opposed the following firearm-related bills:

**AB 357 (Knight) – License to Carry Concealed Firearm.** AB 357 would amend state concealed handgun licensing laws to remove the requirement that an applicant establish “good cause” to receive a license and would require a county sheriff or municipal police chief to issue a license to any individual who meets the other license requirements. By converting California from a “may issue” state into a “shall issue” state, AB 357 would eliminate the important discretion that local law enforcement agencies have in the issuance of concealed handgun licenses, and increase the chances that everyday disputes would escalate into public shootouts. AB 357 failed passage in the Assembly Public Safety Committee on April 21, 2009, but may be reconsidered in early 2010.

**AB 1167 (Nielsen) – Concealed Firearm Licenses: Reciprocity.** AB 1167 would amend state law to provide that a valid permit or license to carry a concealed handgun issued in another state or

political subdivision would be recognized as valid in California. The bill would require DOJ to enter into reciprocity agreements with all other states and maintain a list of states with which it has established reciprocity. Unlike California, many states do not require licensees to undergo additional background checks in order to renew their licenses. By forcing California to open the floodgates to the carrying of concealed firearms by licensees from other states, AB 1167 would place public safety in serious jeopardy. While an April 21 hearing on the bill in the Assembly Public Safety Committee was cancelled at the request of the author, the legislation may be reheard in early 2010.

**AB 979 (Berryhill) – Hunting or Fishing (Local Regulation).** AB 979 would preempt local regulation of hunting and fishing and could, therefore, interfere with existing and future local bans on the discharge of guns and other reasonable local public safety measures. On June 2, 2009, AB 979 was approved by the Assembly.

## VI. California Local Governments Update

California cities and counties have pioneered legislative efforts to reduce gun violence. Since the mid-1990s, local governments in California have adopted over 300 innovative firearm ordinances.<sup>126</sup> Significantly, this local regulatory activity has provided a catalyst for the enactment of several new state laws, including those to: 1) prohibit the manufacture and sale of “junk guns;” 2) require firearms dealers to equip all firearms with child-safety locks; 3) prohibit the sale of large-capacity ammunition magazines; 4) limit handgun purchases to one per person per month; and 5) prohibit the manufacture and sale of 50 caliber rifles. Each of these laws was modeled after local ordinances adopted since 1995.

### A. Local Authority to Regulate Firearms

Opponents of local gun laws often argue that cities and counties have no authority to regulate firearms or ammunition, *i.e.*, that state law preempts such regulations. The courts generally have been hesitant, however, to strike down local gun laws in California on this basis.

The California Legislature has expressed an explicit intent to preempt local firearms regulations in three discrete areas: 1) licensing or registration of commercially manufactured firearms;<sup>127</sup> 2) licensing or permitting with respect to the purchase, ownership, possession or carrying of a concealable firearm in the home or place of business;<sup>128</sup> and 3) the manufacture, sale or possession of “imitation firearms.”<sup>129</sup>

The courts have held that local governments have a great deal of authority to regulate firearms outside of these preempted areas. *See, e.g., California Rifle and Pistol Association, Inc. v. City of West Hollywood* (1998) 66 Cal. App. 4<sup>th</sup> 1302 (upholding a ban on the sale of “junk guns”),<sup>130</sup> *Suter v. City of Lafayette* (1997) 57 Cal. App. 4<sup>th</sup> 1109 (upholding an ordinance regulating firearms dealers),<sup>131</sup> *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal. 4<sup>th</sup> 853 (upholding a ban on the sale of firearms and ammunition on county-owned property), and *Nordyke v. King* (2002) 27 Cal. 4<sup>th</sup> 875 (upholding a ban on the possession of firearms and ammunition on county-owned property).

In *Doe v. City and County of San Francisco* (1982) 136 Cal. App. 3d 509, in contrast, the Court of Appeal held that Government Code Section 53071 and Penal Code Section 12026 expressly preempted a local ordinance banning the possession of handguns in San Francisco. Because the ordinance contained an exception for concealed weapons licensees, the court found that it had the effect of creating a new class of persons who would be required to obtain a license in order to

<sup>126</sup> See Prevent Handgun Violence Against Kids & Legal Community Against Violence, *Communities on the Move 2000: How California Communities are Addressing the Epidemic of Handgun Violence* (2000) at: [http://www.lcav.org/library/surveys\\_local\\_orcs/com2000\\_pdf.pdf](http://www.lcav.org/library/surveys_local_orcs/com2000_pdf.pdf).

<sup>127</sup> Cal. Gov’t Code § 53071.

<sup>128</sup> Cal. Penal Code § 12026.

<sup>129</sup> Cal. Gov’t Code § 53071.5.

<sup>130</sup> West Hollywood was the first California city to ban the sale of these dangerous firearms. LCAV’s survey of local gun laws indicates that as of May 31, 2000, 55 cities and counties had followed West Hollywood’s lead.

<sup>131</sup> The Lafayette ordinance required dealers to sell trigger locks and obtain liability insurance and prohibited dealers from operating in residential areas and admitting minors unless accompanied by an adult. The court held that one ordinance provision – which imposed security requirements for firearms dealer premises – was preempted by a state statute which imposed similar, yet less stringent requirements. State law now allows local governments to impose security requirements that are more strict than state law. See Cal. Penal Code § 12071(b)(15).

possess a handgun in their home or place of business. The court also stated that even if it were to find no “licensing” requirement in the ordinance, it would still conclude that Penal Code Section 12026 impliedly preempted the ordinance on the ground that the statute occupies the field of residential handgun possession. The court found nothing in state law to suggest, however, that the Legislature intended to prevent local governments from regulating all aspects of gun possession.

In 2008, the Court of Appeal followed the reasoning of *Doe in Fiscal v. City and County of San Francisco* (2008) 158 Cal. App. 4th 895, holding that state law preempted Proposition H, a voter-approved ordinance to ban handgun possession by San Francisco residents and prohibit the sale of all firearms and ammunition in the city.

## **B. Validating the Constitutionality of Local Gun Laws Under the Second Amendment: *Nordyke v. King***

As noted in the discussion of the *Nordyke v. King* litigation in the Federal Update, on April 20, 2009, the Ninth Circuit Court of Appeals held that Alameda County’s ban on the possession of firearms or ammunition on county-owned property passes muster under the Second Amendment.<sup>132</sup> The ordinance, adopted in 1999, has been the subject of years of litigation, every ruling favoring the county’s ability to regulate its property to promote public health and safety by contributing to the reduction of gunshot fatalities and injuries in the county.<sup>133</sup>

The Ninth Circuit decision, discussed below, is of national importance because it is one of the first circuit court decisions to interpret the U.S. Supreme Court’s ruling in *District of Columbia v. Heller*.

### **1. Alameda County’s Ordinance Does Not Meaningfully Burden the Right to Possess Firearms in the Home for Self-Defense**

The *Nordyke* plaintiffs argued that the County’s ordinance indirectly burdened the right to bear arms for self-defense purposes by effectively eliminating gun shows and making it “more difficult to purchase guns.”<sup>134</sup> Noting that *Heller* had not outlined a standard of review for laws implicating the Second Amendment, the court stated that “*Heller* tells us that the Second Amendment’s guarantee revolves around armed self-defense. If laws make such self-defense impossible in the most crucial place — the home — by rendering firearms useless, then they violate the Constitution.”<sup>135</sup> The court found that “although the Second Amendment...protects a right to keep and bear arms for individual self-defense, it does not contain an entitlement to bring guns onto government property.”<sup>136</sup> As a result, the court concluded that “the Ordinance does not meaningfully impede the ability of individuals to defend themselves in their homes with usable firearms.”<sup>137</sup>

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<sup>132</sup> *Nordyke v. King*, 563 F.3d 439, 460 (9<sup>th</sup> Cir. 2009) (interpreting the Second Amendment pursuant to *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008)).

<sup>133</sup> Alameda County, Cal. Code § 9.12.120(A).

<sup>134</sup> *Nordyke*, *supra* note 132, at 458.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 459.

<sup>137</sup> *Id.* at 460.



## 2. Alameda County's Ordinance Regulates Possession in Sensitive Places

The Ninth Circuit agreed with the County that *Heller* gave particular approval to laws prohibiting the possession of firearms in sensitive places such as schools and government buildings. Although *Heller* did not articulate a definition of a “sensitive place,” the *Nordyke* court observed that both schools and government buildings shared the common characteristics of being “important to government functioning” and being places where possession of firearms could harm “great numbers of defenseless people.”<sup>138</sup> Therefore, although the County’s ordinance prohibited possession in parks, recreational areas, historic sites, parking lots and the County fairground, it was not overbroad. Rather, these locations were “gathering places where high numbers of people might congregate.”<sup>139</sup>

### C. Types of Local Ordinances to Reduce Gun Violence

#### 1. A History of Cutting-Edge Regulations

Recognizing that they bear primary responsibility for public health and safety, elected officials in communities throughout California continue to enact a variety of progressive ordinances to fill gaps in state and federal law, including those which:

- Require firearms dealers to:
  - Obtain a local license
  - Operate away from residential neighborhoods and other “sensitive” areas, e.g., schools, playgrounds and places of worship
  - Conduct employee background checks
  - Obtain liability insurance
  - Prohibit unaccompanied minors from entering the dealers’ premises where firearm sales is the primary business performed
  - Provide the results of twice-yearly inventory inspections to local law enforcement;
- Prohibit the sale or possession of firearms on publicly-owned property (this type of ordinance has had the effect of ending gun shows at some public facilities, such as county fairgrounds);
- Require gun owners to notify law enforcement when their weapons are lost or stolen;
- Require ammunition vendors to obtain a local license and maintain ammunition purchaser records (discussed in greater detail below);
- Prohibit the possession of high capacity ammunition magazines, and the sale and possession of 50 caliber cartridges;
- Write letters to gun purchasers during the 10-day waiting period, advising them of their obligations as gun owners.

LCAV is pleased to provide *pro bono* assistance to local governments seeking to adopt or defend ordinances to reduce gun violence statewide. For more information about the types of ordinances currently in effect in California’s cities and counties, see the California Local Ordinance Summary page of LCAV’s web site at [www.lcav.org/states/callocalord.asp](http://www.lcav.org/states/callocalord.asp).

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<sup>138</sup> *Id.* at 459.

<sup>139</sup> *Id.* at 460. The Ninth Circuit also sided with the County on plaintiffs’ other claims, holding that the ordinance does not violate the First Amendment as applied to plaintiffs (*Id.* at 463), and dismissing plaintiffs’ claim that the ordinance’s exceptions for firearm possession in theatrical productions violated equal protection (*Id.* at 464).

## 2. Featured Local Regulation: Ammunition Sales Recordkeeping

Ammunition sales recordkeeping and reporting laws provide valuable information to law enforcement. Law enforcement agencies in jurisdictions that require ammunition sellers to keep records of their sales have been able to detect illegal possessors of firearms and ammunition by cross-referencing the information in these records with California Department of Justice-maintained information regarding persons prohibited from such possession. Local jurisdictions in California that have adopted ammunition sales recordkeeping and reporting laws – most notably Los Angeles and Sacramento – have had demonstrated success in using such records to identify and prosecute illegal gun and ammunition purchasers. More than a dozen local jurisdictions across the state currently require sellers to maintain records of ammunition sales.<sup>140</sup>

### a. The Los Angeles Experience

In May, 1995, Los Angeles adopted an ammunition sales recordkeeping and reporting ordinance.<sup>141</sup> That ordinance requires any person engaged in the retail sale of ammunition to: 1) record the identity and other pertinent information of an ammunition purchaser, including the purchaser's signature and right thumbprint;<sup>142</sup> and 2) retain such records for a minimum period of two years.

A two-month study of the Los Angeles ordinance found that prohibited purchasers accounted for nearly 3% of all ammunition purchasers over the study period, acquiring roughly 10,000 rounds of ammunition illegally.<sup>143</sup>

The Los Angeles ordinance has helped law enforcement prosecute persons who illegally possess firearms and ammunition. The ordinance has led to 30 investigations, 15 search warrants, nine arrests, and the confiscation of 24 handguns, 12 shotguns, and nine rifles that were illegally possessed between 2004 and the first half of 2006, as well as 39 investigations in 2007, and at least 24 investigations in 2008.<sup>144</sup>

### b. The Sacramento Experience

In 2007, Sacramento adopted its own ammunition sales recordkeeping and reporting ordinance. Its provisions are substantially similar to those in the Los Angeles ordinance, except the Sacramento law also requires electronic transmission of records from ammunition sellers to the Sacramento Police Department ("SPD") within five calendar days of an ammunition transfer.<sup>145</sup> In Sacramento, as in Los Angeles, sellers of firearm ammunition also must be licensed.<sup>146</sup>

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<sup>140</sup> Beverly Hills, Contra Costa County, Hayward, Inglewood, Los Angeles, Marin County, Oakland, Pomona, Sacramento, San Anselmo, San Francisco, Santa Ana, Santa Monica, Tiburon and West Hollywood are jurisdictions that require firearms dealers and other ammunition sellers to record ammunition sales.

<sup>141</sup> Los Angeles, Cal. Code, Chap. V, Art. 5, § 55.11.

<sup>142</sup> The thumbprint provision was added in June, 1998.

<sup>143</sup> George E. Tita et al., *The Criminal Purchase of Firearm Ammunition*, 12 Inj. Prevention 308, 308 (2006).

<sup>144</sup> LCAV obtained these numbers from Lieutenant Steve Nielsen of the Los Angeles Police Department's Gun Unit in May 2007 and May 2008.

<sup>145</sup> Sacramento, Cal. Code Chapter 5.66.

<sup>146</sup> Sacramento, Cal. Code § 5.64.020. Los Angeles adopted its vendor licensing provision in 2008. Los Angeles, Cal. Code, Chap. X, Art. 3, Div. 9, § 103.314.1.

Sacramento's Chief of Police reported to the City Council on August 12, 2008, regarding the outcomes of the ordinance one year after its passage. The Chief's report concluded that the ammunition sales recordkeeping and reporting system has been a resounding success. Specifically, the Chief's report found that:

- The SPD and allied agencies use the information gathered as a result of the ordinance in criminal investigations regularly;
- These requirements have allowed the SPD to electronically check the legal firearms rights status of transferees; and
- The electronic system for transfer of purchaser information has proven to be secure, effective and reliable.<sup>147</sup>

The report found that between January 16 and December 31, 2008, the Sacramento ordinance led to the identification of 156 prohibited persons who had purchased ammunition, 124 of whom had prior felony convictions, 48 search warrants and 26 additional probation or parole searches. The ordinance led to 109 felony charges, 10 federal court indictments, 37 felony convictions and 17 misdemeanor convictions. Based on the information gathered under the ordinance, law enforcement seized a total of 84 firearms, including seven assault weapons, and thousands of rounds of ammunition.<sup>148</sup>

Importantly, the Chief's report specifically found that the ordinance does not prevent nor delay the transfer of ammunition at the point of sale, and that the cooperation and compliance of ammunition vendors in Sacramento has been very strong.<sup>149</sup> The SPD estimates that the recordkeeping requirement only adds two minutes to a transaction, significantly less time than if the customers traveled outside of the jurisdiction to purchase ammunition.

Ammunition purchaser recordkeeping is a key component of state bill AB 962, discussed above under 2009 Legislation.

#### **D. Regional Regulatory Approaches: Association of Bay Area Governments**

Regional partnerships among cities and counties to adopt uniform regulatory policies to reduce gun violence are particularly effective. The Association of Bay Area Governments (ABAG), a comprehensive planning agency of local governments in the San Francisco Bay Area composed of nine counties and 101 cities, is now focusing on the issue of gun violence.

LCAV is assisting ABAG in its regional efforts, and has prepared model laws for ABAG's Youth Gun Violence Task Force. Those model laws:

- Regulate Firearms Dealers and Ammunition Sellers;

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<sup>147</sup> Sacramento, Cal., Code, Chapters 5.64, 5.66; Sacramento Chief of Police Rick Brazier *et al.*, *Report to Council, Ammunition Sales Records Study* (Aug. 12, 2008), available at:

[http://sacramento.granicus.com/MetaViewer.php?view\\_id=8&clip\\_id=1590&meta\\_id=155275](http://sacramento.granicus.com/MetaViewer.php?view_id=8&clip_id=1590&meta_id=155275).

<sup>148</sup> These statistics were obtained from Captain Jim Maccoun, Office of Technical Services, Sacramento Police Department on January 27, 2009. For the statistics for the period between January 16 and June 29, 2008, see *id.*

<sup>149</sup> *Id.*

- Require the Reporting of Lost or Stolen Firearms;
- Prohibit the Possession of Large Capacity Ammunition Magazines;
- Urge Law Enforcement to Send Letters to Prospective Handgun Purchasers;
- Urge Law Enforcement to Obtain and Utilize DOJ Information Regarding Prohibited Armed Persons.

## VII. Other State Legislation

This year, LCAV began tracking legislation in all fifty states and the District of Columbia. This project provides national, state and local gun violence prevention groups, researchers and elected officials with a comprehensive overview of legislative trends as well as in-depth information regarding over 1,000 specific bills. LCAV regularly prepares bill charts and summaries of all bills currently pending at a given time. The summaries describe trends and highlight particular bills of interest, while the charts contain detailed bill information.

As of May 14, 2009, state legislation had been enacted strengthening firearms regulation in several policy areas. Laws aimed at keeping firearms out of the hands of domestic violence perpetrators were enacted in Arkansas and North Dakota. Moreover, Virginia enacted a law strengthening regulation of ammunition purchasers, and Washington adopted a law broadening restrictions on firearms purchases by the mentally ill and requires that relevant mental health records be forwarded to the National Instant Criminal Background Check System.<sup>150</sup> In addition, Arkansas enacted a law imposing standards for imitation firearms, and Kansas and Utah laws add to the list of individuals prohibited from purchasing firearms.

On the defensive front, six states have rejected dangerous “Guns on Campus” legislation, while another two states have rejected “Guns in the Workplace” legislation (three states have recently passed these types of laws, however). The gun lobby still has not achieved adoption of any “Guns on Campus” legislation in any state. Many bills strengthening regulation of firearms have passed one or both legislative houses and many more have been introduced and are awaiting action.

For more information about LCAV’s state legislative tracking, contact Senior Staff Attorney Laura Cutilletta at (415) 433-2062, ext. 307, or at [lcutilletta@lcav.org](mailto:lcutilletta@lcav.org).

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<sup>150</sup> The National Instant Criminal Background Check System, or NICS, implemented as part of the federal Brady Act, is used to check the backgrounds of prospective purchasers of both handguns and long guns, and for persons who redeem a pawned firearm. 18 U.S.C. § 922(t).

## **Join LCAV's Membership Program Today**

Legal Community Against Violence is only as strong as the people who stand behind the LCAV mission. Four years ago, we launched a national membership program to unite the gun violence prevention community and broaden our base of support, in both financial and human terms. Since then, more than 700 people have joined LCAV. And while most of our members are attorneys, a growing number are professionals from a wide range of industries.

LCAV welcomes all who support our work to prevent gun violence. Members receive a range of benefits including: regular LCAV communications; invitations to educational events on critical issues in the gun violence prevention movement; participation in forming regional LCAV chapters to connect locally with LCAV members; and more. Members who wish to become more involved in LCAV's work may inquire with us about opportunities for pro bono work or participating in member committees.

Membership dollars are now a sustaining force behind LCAV's ambitious agenda. Please help make an immediate difference by joining or renewing your membership for the 2009 year.

**Legal Community Against Violence  
encourages your interest and support.**

**To request assistance, become a member,  
or for more information,  
please visit [www.lcav.org](http://www.lcav.org)  
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A Publication of

**Legal Community Against Violence**

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**expertise, information & advocacy to end gun violence**

# **EXHIBIT SS**

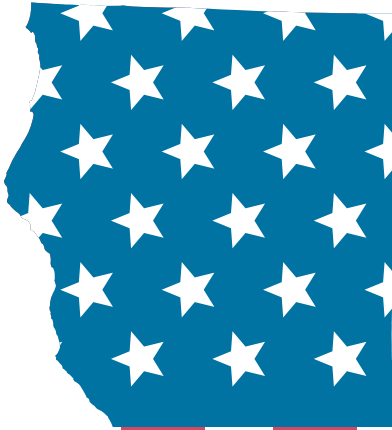


# California General

## Election

## Tuesday

## November 8, 2016



Polls Are Open From 7:00 a.m. to 8:00 p.m. on Election Day!

### ★ ★ ★ ★ ★ OFFICIAL VOTER INFORMATION GUIDE ★ ★ ★ ★ ★



#### Certificate of Correctness

I, Alex Padilla, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 8, 2016, and that this guide has been correctly prepared in accordance with the law. Witness my hand and the Great Seal of the State in Sacramento, California, this 15th day of August, 2016.



Alex Padilla, Secretary of State

PROPOSITION **FIREARMS. AMMUNITION SALES.**  
**63** INITIATIVE STATUTE.

63

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

- Requires individuals to pass a background check and obtain Department of Justice authorization to purchase ammunition.
- Prohibits possession of large-capacity ammunition magazines, and requires their disposal, as specified.
- Requires most ammunition sales be made through licensed ammunition vendors and reported to Department of Justice.
- Requires lost or stolen firearms and ammunition be reported to law enforcement.
- Prohibits persons convicted of stealing a firearm from possessing firearms.
- Establishes new procedures for enforcing laws prohibiting firearm possession.
- Requires Department of Justice to provide information about prohibited persons to federal

National Instant Criminal Background Check System.

**SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:**

- Increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually, related to a new court process for removing firearms from prohibited persons after they are convicted.
- Potential increase in state costs, not likely to exceed the millions of dollars annually, related to regulating ammunition sales. These costs would likely be offset by fee revenues.
- Potential net increase in state and local correctional costs, not likely to exceed the low millions of dollars annually, related to changes in firearm and ammunition penalties.

ANALYSIS BY THE LEGISLATIVE ANALYST

**BACKGROUND**

**Restrictions on Firearm and Ammunition Possession**

Under federal and state law, certain individuals are not allowed to have firearms. These "prohibited persons" include individuals (1) convicted of felonies and some misdemeanors (such as assault or battery), (2) found by a court to be a danger to themselves or others due to mental illness, and (3) with a restraining order against them. In California, individuals who are not allowed to have firearms are also not allowed to have ammunition.

**Regulation of Firearm Sales**

Both federal and state law include various regulations related to firearm sales, including the licensing of firearm dealers. Such regulations include:

- **Background Checks.** Under federal law, firearm dealers must request background checks of individuals seeking to buy firearms from the National Instant Criminal Background

Check System (NICS). The NICS searches a number of federal databases to ensure that the buyer is not a prohibited person. As allowed by federal law, California processes all background check requests from firearm dealers in the state directly by using NICS and various state databases.

- **Removal of Firearms From Prohibited Persons.** The California Department of Justice (DOJ) maintains a database of individuals who have legally bought or registered a firearm with the state. DOJ agents use this information to remove firearms from individuals who are no longer allowed to have firearms.
- **Other Regulations.** Other state regulations related to firearms include: limits on the type of firearms that can be bought, a ten-day waiting period before a dealer may give a firearm to a buyer, and requirements for recording and reporting firearm sales.

Fees charged to firearm dealers and buyers generally offset the state's costs to regulate firearm sales.

**ANALYSIS BY THE LEGISLATIVE ANALYST**

CONTINUED

**Regulation of Ammunition Sales**

Prior to this year, the state did not regulate ammunition sales in the same manner as firearms. In July 2016, the state enacted legislation to increase the regulation of ammunition sales. Such regulations include:

- **Licenses to Sell Ammunition.** Beginning January 2018, individuals and businesses will be required to obtain a one-year license from DOJ to sell ammunition. Certain individuals and businesses would not be required to obtain a license, such as licensed hunters selling less than 50 rounds of ammunition per month to another licensed hunter while on a hunting trip. In order to obtain a license, ammunition dealers will need to demonstrate that they are not prohibited persons. In addition, certain entities will be able to automatically receive an ammunition license, such as firearm dealers licensed by both the state and federal government and firearm wholesalers. A vendor who fails to comply with ammunition sale requirements three times would have their ammunition dealer's license permanently revoked. DOJ could charge a fee to individuals and businesses seeking a license to sell ammunition to support its administrative and enforcement costs.
- **DOJ Approval to Buy Ammunition.** Beginning July 2019, ammunition dealers will be required to check with DOJ at the time of purchase that individuals seeking to buy ammunition are not prohibited persons. This requirement would not apply to some individuals, such as persons permitted to carry concealed weapons. In addition, ammunition dealers will generally be required to collect and report information—such as the date of the sale, the buyers' identification information, and the type of ammunition purchased—to DOJ for storage in a database for two years. Failure to comply with these requirements is a misdemeanor (punishable by a fine and/or imprisonment in county jail). DOJ could generally charge an individual seeking to purchase ammunition a fee of up to \$1 per

transaction to support its administrative and enforcement costs. DOJ could adjust this fee cap annually for inflation.

- **Other Regulations.** Beginning January 2018, state law generally will require that most ammunition sales (including Internet and out-of-state sales) take place through a licensed ammunition dealer. In addition, beginning July 2019, most California residents will be prohibited from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer. Failure to comply with these requirements is a misdemeanor.

**Status of Recent Legislation**

As discussed above, the state recently enacted legislation to increase the regulation of ammunition sales. The state also recently enacted legislation to further limit the ownership of large-capacity magazines and to create a penalty for filing a false lost or stolen firearm report to law enforcement. These laws will take effect unless they are placed before the voters as referenda. If that occurs, voters will determine whether the laws take effect.

**PROPOSAL**

Proposition 63 (1) changes state regulation of ammunition sales, (2) creates a new court process to ensure the removal of firearms from prohibited persons after they are convicted of a felony or certain misdemeanors, and (3) implements various other provisions. Additionally, Proposition 63 states that the Legislature can change its provisions if such changes are "consistent with and further the intent" of the measure. Such changes can only be made if 55 percent of the members of each house of the Legislature passes them and the bill is enacted into law.

**Changes to State Regulation of Ammunition Sales**

Proposition 63 includes various regulations related to the sale of ammunition. Some of the regulations would replace existing law with similar provisions. However, other regulations proposed by Proposition 63 are different, as discussed below.

## ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

**Requirements to Buy Ammunition.** Proposition 63 includes various requirements for individuals seeking to buy ammunition and for DOJ to regulate such purchases. Specifically, the measure:

- Requires individuals to obtain a four-year permit from DOJ to buy ammunition and for ammunition dealers to check with DOJ that individuals buying ammunition have such permits.
- Requires DOJ to revoke permits from individuals who become prohibited.
- Allows DOJ to charge each person applying for a four-year permit a fee of up to \$50 to support its various administrative and enforcement costs related to ammunition sales.

The state, however, enacted legislation in July 2016 to replace the above provisions with alternative ones if Proposition 63 is approved by the voters. (This legislation was enacted pursuant to the provision of Proposition 63 allowing for changes that are “consistent with and further the intent” of the proposition, as described earlier.) Specifically, under the legislation: (1) ammunition dealers would be required to check with DOJ that individuals seeking to buy ammunition are not prohibited persons at the time of purchase and (2) DOJ could generally charge such individuals up to \$1 per transaction. These provisions are similar to current law. Fewer individuals, however, would be exempt from this check than under current law. For example, individuals permitted to carry concealed weapons would be subject to this check.

**Licenses to Sell Ammunition.** Similar to current law, Proposition 63 requires individuals and businesses to obtain a one-year license from DOJ to sell ammunition. However, the measure changes the types of individuals and businesses that would be exempt from obtaining a license. For example, the measure generally exempts individuals and businesses that sell a small number of rounds of ammunition from the requirement to get a license. The measure also makes various changes in the penalties for failure to follow ammunition sale requirements. For example, it establishes a new criminal penalty—specifically, a misdemeanor—for failing to follow vendor licensing requirements.

**Other Ammunition Requirements.** This measure prohibits most California residents from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer beginning in January 2018—a year and a half earlier than under current law. Additionally, failure to comply with this requirement would change from a misdemeanor to an infraction (punishable by a fine) for the first offense and either an infraction or a misdemeanor for any additional offense. The measure also requires DOJ to store certain ammunition sales information in a database indefinitely, rather than for two years.

## Creates New Court Process for Removal of Firearms

This measure creates a new court process to ensure that individuals convicted of offenses that prohibit them from owning firearms do not continue to have them. Beginning in 2018, the measure requires courts to inform offenders upon conviction that they must (1) turn over their firearms to local law enforcement, (2) sell the firearms to a licensed firearm dealer, or (3) give the firearms to a licensed firearm dealer for storage. The measure also requires courts to assign probation officers to report on what offenders have done with their firearms. If the court finds that there is probable cause that an offender still has firearms, it must order that the firearms be removed. Finally, local governments or state agencies could charge a fee to reimburse them for certain costs in implementing the measure (such as those related to the removal or storage of firearms).

## Implements Other Provisions

**Reporting Requirements.** The measure includes a number of reporting requirements related to firearms and ammunition. For example, the measure requires that ammunition dealers report the loss or theft of ammunition within 48 hours. It also requires that most individuals report the loss or theft of firearms within five days to local law enforcement. An individual who does not make such a report within five days would be guilty of an infraction for the first two violations. Additional violations would be a misdemeanor. This measure

**ANALYSIS BY THE LEGISLATIVE ANALYST**

CONTINUED

also reduces the penalty for an individual who knowingly submits a false report to local law enforcement from a misdemeanor to an infraction and eliminates the prohibition from owning firearms for ten years for such an individual. This measure also requires DOJ to submit the name, date of birth, and physical description of any newly prohibited person to NICS.

**Large-Capacity Magazines.** Since 2000, state law has generally banned individuals from obtaining large-capacity magazines (defined as those holding more than ten rounds of ammunition). The law, however, allowed individuals who had large-capacity magazines before 2000 to keep them for their own use. Beginning July 2017, recently enacted law will prohibit most of these individuals from possessing these magazines. Individuals who do not comply are guilty of an infraction. However, there are various individuals who will be exempt from this requirement—such as an individual who owns a firearm (obtained before 2000) that can only be used with a large-capacity magazine. Proposition 63 eliminates several of these exemptions, as well as increases the maximum penalty for possessing large-capacity magazines. Specifically, individuals who possess such magazines after July 2017 would be guilty of an infraction or a misdemeanor.

**Penalty for Theft of Firearms.** Under current state law, the penalty for theft of firearms worth \$950 or less is generally a misdemeanor punishable by up to one year in county jail. Under this measure, such a crime would be a felony and could be punishable by up to three years in state prison. Additionally, individuals previously convicted of a misdemeanor for the theft of a firearm would be prohibited from owning firearms for ten years. Currently, there is no such prohibition for a misdemeanor conviction for theft of firearms.

**FISCAL EFFECTS**

**Increased Court and Law Enforcement Costs.** The new court process for removing firearms from prohibited persons after they are convicted would result in increased workload for the state and local governments. For example, state courts and county probation departments would have some increased

workload to determine whether prohibited persons have firearms and whether they have surrendered them. In addition, state and local law enforcement would have new workload related to removing firearms from offenders who fail to surrender them as part of the new court process. They could also have increased costs related to the storage or return of firearms. Some of the increased law enforcement costs related to the removal, storage, or return of firearms would be offset to the extent that local governments and state agencies charge and collect fees for these activities, as allowed by this measure. The total magnitude of these state and local costs **could be in the tens of millions of dollars annually.** Actual costs would depend on how this measure was implemented.

**Potential Increased State Regulatory Costs.** On balance, the measure's changes to the regulation of ammunition sales could increase state costs. For example, more individuals or businesses would likely be subject to state ammunition requirements under the measure. The actual fiscal effect of the changes would depend on how they are implemented and how individuals respond to them. We estimate that the potential increase in state costs would not likely exceed the millions of dollars annually. These costs would likely be offset by the various fees authorized by the measure and existing state law.

**Potential Net Increased Correctional Costs.** This measure makes various changes to penalties related to firearms and ammunition. While some changes reduce penalties for certain offenses, other changes increase penalties for certain offenses. On net, these changes could result in increased correctional costs to state and local governments, such as to house individuals in prison and jail. The magnitude of such costs would depend primarily on the number of violations and how the measure is enforced. The potential net increase in correctional costs would **likely not exceed the low millions of dollars annually.**

Visit <http://www.sos.ca.gov/measure-contributions> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> to access the committee's top 10 contributors.



## ★ ARGUMENT IN FAVOR OF PROPOSITION 63 ★

### PROPOSITION 63 WILL KEEP US SAFER BY REDUCING GUN VIOLENCE

Police in Dallas doing their job . . . A nightclub in Orlando . . . An office holiday party in San Bernardino . . . A church in Charleston . . . A movie theater in Aurora . . . An elementary school in Newtown . . .

*What's next? How many more people need to die from gun violence before we take bold action to save lives?*

More than 300 Americans are shot each day, more than 80 of them fatally.

More than 1 million Americans were killed or seriously injured by guns from 2004–2014.

ENOUGH!

*It's time to take action to keep guns and ammo out of the wrong hands.*

Proposition 63—the Safety for All Act—will save lives by closing loopholes to prevent dangerous criminals, domestic abusers, and the dangerously mentally ill from obtaining and using deadly weapons.

PROPOSITION 63 WILL:

- Remove illegal guns from our communities by ensuring that dangerous criminals and domestic abusers sell or transfer their firearms after they're convicted.
- Require any business that sells ammunition to report if their ammunition is lost or stolen.
- Require people to notify law enforcement if their guns are lost or stolen, before the weapons end up in the wrong hands.
- Ensure people convicted of gun theft are ineligible to own guns.
- Strengthen our background check systems and ensure that California law enforcement shares data about dangerous people with the FBI.

*Proposition 63 keeps guns and ammo out of the wrong hands, while protecting the rights of law-abiding*

*Californians to own guns for self-defense, hunting, and recreation.*

Right now, thousands of dangerous felons remain illegally armed because we don't ensure that people convicted of violent crimes actually relinquish their guns after conviction. The Department of Justice identified more than 17,000 felons and other dangerous people with more than 34,000 guns, including more than 1,400 assault weapons.

*Passing Proposition 63 will represent a historic and unprecedented step forward for gun safety.*

LEADERS FROM ACROSS CALIFORNIA SUPPORT PROPOSITION 63, INCLUDING:

• Lieutenant Governor Gavin Newsom • U.S. Senator Dianne Feinstein • Law Center to Prevent Gun Violence • California Democratic Party • California Secretary of State Alex Padilla • Speaker Emeritus of the Assembly John Pérez • Sheriff Vicki Hennessy, San Francisco • Former Police Chief Ken James, Emeryville • SEIU • League of Women Voters of California • California Young Democrats • California Federation of Teachers • San Francisco Board of Education • Equality California • Courage Campaign • California American College of Physicians • California American College of Emergency Physicians • Southern California Public Health Association • Clergy and Laity United for Economic Justice • Coalition Against Gun Violence • Rabbis Against Gun Violence • States United to Prevent Gun Violence • Stop Handgun Violence • Stop Our Shootings • Women Against Gun Violence • Youth Alive!

To learn more please visit [www.SafetyforAll.com](http://www.SafetyforAll.com).

**GAVIN NEWSOM**, Lieutenant Governor of California

**DIANNE FEINSTEIN**, United States Senator

**ROBYN THOMAS**, Executive Director  
Law Center to Prevent Gun Violence

## ★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 63 ★

*Terrorists don't follow the law!*

Gavin Newsom refuses to acknowledge that the Orlando and San Bernardino attacks were ISIS inspired Islamic radicalism. It is the same ideology that motivated the 9/11 terror attacks that killed 2,996 innocents.

Exploiting terrorist attacks to push sweeping laws affecting law-abiding peoples' civil liberties is misleading, wrong, and dangerous.

None of the proposed laws would prevent terrorist attacks. The reality is terrorists can always find the means to wreak havoc, a box cutter in a plane on 9/11, a homemade bomb in Boston, or a truck in Nice, France. Terrorists and criminals get weapons from the black market, make them, or steal them from law-abiding citizens.

Everyone agrees that preventing weapons from falling into the wrong hands is crucial. We all share the concern about the growing trends of terrorism and radicalization.

*But, Prop. 63 is NOT the answer.*

Spending tens of millions of taxpayer dollars year after year on useless lists of everyone who buys and sells

ammunition diverts critical resources and focus away from effective anti-terrorism efforts, leaving the public more vulnerable to attack and *LESS SAFE*.

*There's a reason law enforcement overwhelmingly opposes Prop. 63.*

The public interest would be better served if these resources were used to educate more Californians about what they can do to protect their families and communities from terrorist attacks or to further train law enforcement to do so.

*Stop this dangerous abuse of public resources.*

Vote NO on Prop. 63!

**ALON STIVI**, President

Direct Measures International, Inc.

**WILLIAM "BILLY" BIRDZELL**, U.S. Special Operations  
Command Anti-Terrorism Instructor

**RICHARD GRENNELL**, Longest serving U.S. Spokesman at  
the United Nations

## ★ ARGUMENT AGAINST PROPOSITION 63 ★

Prop. 63 is overwhelmingly opposed by the law enforcement community and civil rights groups because it will burden law abiding citizens without keeping violent criminals and terrorists from accessing firearms and ammunition.

The California State Sheriffs' Association, Association of Deputy District Attorneys for Los Angeles County, California Correctional Peace Officers Association, California Fish & Game Wardens' Association, California Reserve Peace Officers Association, and numerous other law enforcement and civic groups, representing tens of thousands of public safety professionals throughout California, are united in their opposition to this ineffective, burdensome, and costly proposal.

Prop. 63 would divert scarce law enforcement resources away from local law enforcement and overburden an already overcrowded court system with the enforcement of flawed laws that will turn harmless, law-abiding citizens into criminals. In fact, New York recently abandoned its enforcement of a similar proposal after it was passed, finding that it was impossible to implement and effectively maintain.

Doing what actually works to keep the public safe is the highest priority of law enforcement professionals who dedicate their lives to protecting Californians. Unfortunately, Prop. 63 will not make anyone safer. To the contrary, by directing resources away from measures that are truly effective at preventing the criminal element from acquiring guns and ammunition, it would make us all less safe. The immense public resources that Prop. 63

would waste should be used to hire more officers and to target, investigate, and prosecute dangerous individuals and terrorists.

After closely analyzing the language of Prop. 63, the law enforcement community found many problems in the details. Due to strict limitations on the Legislature's ability to amend voter-enacted propositions, most of these problems will be difficult or impossible for the Legislature to fix if Prop. 63 passes, saddling California with the burdens and costs of this flawed proposal forever.

By going around the Legislature, this initiative limits public safety professionals in developing future legislation that would truly promote public safety. California taxpayers should not waste hundreds of millions of their dollars on ineffective laws that have no value to law enforcement and will harm public safety by diverting resources away from effective law enforcement activities that are critical to public safety.

Please visit [WWW.WHERESMYAMMO.COM](http://WWW.WHERESMYAMMO.COM) for more information.

PLEASE VOTE NO ON PROP. 63.

**DONNY YOUNGBLOOD**, President  
California State Sheriffs' Association

**KEVIN BERNZOTT**, Chief Executive Officer  
California Reserve Peace Officers Association

**TIFFANY CHEUVRONT**, Principal Officer  
Coalition for Civil Liberties

63

## ★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 63 ★

As law enforcement and public safety officials, we're not surprised that groups such as the NRA and its affiliates oppose Proposition 63. Make no mistake, the so-called "Coalition for Civil Liberties" is actually an NRA front group.

The gun lobby often claims we should focus on enforcing existing gun laws, and that's exactly what this initiative does—*Prop. 63 closes loopholes and helps enforce existing laws to keep guns and ammo out of the wrong hands.*

For example, Prop. 63 *ensures dangerous convicts prohibited from owning weapons follow the law and get rid of their firearms.* Law enforcement professionals have found that felons and dangerous people currently possess thousands of guns illegally—so closing this loophole will save lives.

Prop. 63 also *requires reporting lost and stolen firearms*, to help police shut down gun trafficking rings and locate caches of illegal weapons. Prop. 63 will help police recover stolen guns before they're used in crimes and return them to their lawful owners.

Prop. 63 also *improves background check systems* so that law enforcement can prevent people banned from owning weapons—such as violent felons—from buying guns and ammo.

And Prop. 63 clarifies existing law so that any gun theft is a felony, *ensuring that people who steal guns can't own guns.* That's another common-sense reform to save lives overwhelmingly supported by law enforcement professionals.

*Prop. 63 will close loopholes in our existing laws and prevent dangerous criminals, domestic abusers, and the dangerously mentally ill from obtaining and using deadly weapons.*

**NANCY O'MALLEY**, District Attorney  
Alameda County

**JEFF ROSEN**, District Attorney  
Santa Clara County

**VICKI HENNESSY**, Sheriff  
San Francisco

# **EXHIBIT TT**



How voters get information

## Final report

# Recommendations for voter guides in California

October 10, 2014

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This project is supported by a generous grant from the **James Irvine Foundation** as part of the **Future of California Elections**. Our project on how voters get information is in collaboration This project is supported by a generous grant from the **James Irvine Foundation** as part of the **Future of California Elections**. Our project on how voters get information is in collaboration with **League of Women Voters of California Education Fund**.

Visit the project website for more information: [civicdesign.org/projects/how-voters-get-information/](http://civicdesign.org/projects/how-voters-get-information/)

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# Recommendations for voter guides in California

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California voters receive information from both their local county elections office and from the Secretary of State's office. These booklets and their contents are mandated by the State of California, to ensure that voters have official, accurate, and non-partisan information about how to vote and the candidates and questions they will see on their ballot.

Our goal is to improve the quality of voter education materials and make recommendations for effective, engaging voter guides. We wanted to learn how to give the right kind of information to voters at the right time, in the right way. While the problem of participation and engagement is larger than voter information, we can make voter information more effective, more inviting, and more useful.

We gathered information from many sources to create our recommendations. Throughout the project, we talked with and heard from election officials, community groups, advocacy organizations, and good government groups to test our ideas and make sure we understood their views and priorities. But we also collected data, feedback, and ideas about voter guides from research sessions with 100 voters and potential voters.

The result is the recommendations in this report. The recommendations suggest that in addition to some general requirements for clear, active information that is presented from a voter-centered perspective, voters need:

- the right information
- organized in the right way
- presented so it is easy to read and understand
- and personalized for them.

Voters—especially new voters—want information that will help them:

- understand their choices about how, when, and where to vote
- learn about what is on the ballot for each election, so they can make decisions
- identify non-partisan, official information they can trust.

We have provided cross-references to the guidelines in the **Field Guides to Ensuring Voter Intent** because this provides additional research evidence to support the recommendations.

## General insights

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There's an extensive network of interconnecting information available to voters in any given election. Some of it will motivate people to take part. Some of it exists to help voters make informed decisions. There are many information challenges for voters throughout the engagement spectrum.

People who are **not voting** need to connect to the community, through

- civics literacy
- demystifying the act and logistics of voting
- justifying the value of voting
- plain language
- in-language materials

People who are **voting sometimes** need to connect daily life to issues and candidates, through

- simple and clear information about candidates and issues
- options for voting

**Avid voters** need to connect to the democratic process. Make sure they have

- complete information
- information about working the polls
- encouragement to be role models

### County voter guides are information and education devices

The evidence from this project suggests that we should consider the official voter guide an information device, not an engagement device. Getting a voter guide in the mail is probably not going to change a non-voter's mind on its own. However, it may be the one non-partisan source of information that many people see. Non-voters mentioned seeing the pamphlets sent to family members and friends.

The voter guide can be a tipping point, if people can be encouraged to take the first step and read it. Several participants ended usability test sessions by saying that they had learned a lot.

"The whole time I've been ignoring this book, and it had all this information inside. Now that I'm reading it, it makes me feel more confident" (Bilingual and low literacy participant W18)

“[This is] stuff I hadn't thought about or paid much attention to... Voter rights, measures. I might try to do more research. More interested in voting now.”  
(Young non-voter D15)

One of the challenges of designing the voter guide is that it has to serve a wide audience with two broadly different goals:

- Experienced voters want quick access to confirm the when and where of voting, and then to go directly to information about the current election, especially the ballot measures.
- New or infrequent voters have more needs for general education about how to participate in an election, in addition to needing details about what is on the ballot.

Both groups want to be able to get the information they need quickly and easily.

## New and infrequent voters don't know where to start

We started all of the research sessions by asking participants what questions they had now or remember from a recent election. Knowing their questions tells us what people are likely to look for in the voter guide – and how they will phrase the question.

New and non-voters had few questions, simply because they didn't know enough about voting to even know where to start asking questions. Their first questions, when they could articulate them at all, were about who to vote for, why they should vote, and the impact on their own lives of their choices. These are not questions that the voter guide can answer directly. County voter guides include a sample ballot, candidate information, and information about measures, but new, inexperienced, and infrequent voters would have to make huge inferences to map that information to their very basic *who*, *why*, and *what* questions.

Until people start to make sense of why they want to participate, the details can be confusing. It takes a lot of energy and desire to take the information apart to form the kind of meaning our participants seemed to be looking for.

Generally, our participants had very few questions. In fact, 20% could not think of any questions to ask at all and the average number of questions was just 3. Most of their questions were broad topics rather than detailed or specific questions. This was true for both experienced and new voters.

## Number of questions asked in the usability sessions

# of questions asked	# of participants (out of 45)	
No questions	9	■■■■■■■■■■■■■■■
1 question	4	■■■■■
2-3 questions	15	■■■■■■■■■■■■■■■■■■■■■
3-4 questions	6	■■■■■■■■■
5 questions	8	■■■■■■■■■
6 or more	3	■■■■■

## Voters want to know what is on the ballot

Almost all voters' questions start with what they will vote for—the candidates and measures or propositions on the ballot. Then they turn to the questions about how to vote, starting with basic “when and where” questions. For some voters who started with no questions, questions emerged as they paged through the prototype guide.

Field Guide Vol. 05—Communicating with Voters, No. 05: Answer voters' top questions first.

Field Guide Vol. 07—Websites, No. 03: Answer the question: ‘What’s on the ballot’.

## Questions asked in the usability sessions

Question	# Asking	Variations of the question
What’s on the ballot?	39	<ul style="list-style-type: none"> <li>• What’s on the ballot?</li> <li>• Who do I support or vote for?</li> <li>• Who is running?</li> <li>• Who will I be voting for?</li> <li>• Who are the candidates?</li> <li>• Who supports the candidates?</li> <li>• What are the candidates’ positions on [specific issue]?</li> <li>• What are the ballot measures?</li> <li>• What are the pros and cons for the measures?</li> <li>• Does this measure mean a tax increase?</li> <li>• How does the official guide compare to the TV ads?</li> <li>• Who is in office right now?</li> </ul>

Question	# Asking	Variations of the question
Where do I go vote?	23	<ul style="list-style-type: none"> <li>• What are the voting hours and locations?</li> <li>• Is it near my house?</li> <li>• Do I have to vote in my ZIP code?</li> <li>• When is the next election?</li> </ul>
How do I vote (mark a ballot)?	17	<ul style="list-style-type: none"> <li>• Have I voted correctly?</li> <li>• What happens if I make a mistake?</li> <li>• How long does it take?</li> </ul>
What happens at the polling place?	13	<ul style="list-style-type: none"> <li>• What are your rights when you vote?</li> <li>• Do I need to show ID to vote?</li> </ul>
What are my options for voting?	12	<ul style="list-style-type: none"> <li>• How do I vote if not on Election Day?</li> <li>• What is early voting?</li> </ul>
How do I vote by mail?	11	<ul style="list-style-type: none"> <li>• Deadline for vote-by-mail?</li> <li>• When is my vote-by-mail ballot due?</li> <li>• What happens if I don't get my vote-by-mail ballot in the mail?</li> </ul>
Registration questions	5	<ul style="list-style-type: none"> <li>• Am I registered to vote right now?</li> <li>• How do I register to vote?</li> </ul>
Why vote	2	<ul style="list-style-type: none"> <li>• How important is it? Does it make a difference?</li> <li>• How does your vote help?</li> </ul>
No interest	2	<ul style="list-style-type: none"> <li>• I'm not very interested in politics</li> </ul>

## The civic literacy gap: voters need more than even the best guide can deliver

Sessions with non-voters, new voters, and infrequent voters were different from those with regular voters and those who showed stronger elections knowledge in several ways.

Even with a simplified guide, success still depends heavily on civic literacy and understanding the basic concepts in an election. Participant after participant in both rounds of research stumbled over aspects of elections from terminology to a basic understanding of the process.

### They need definitions and descriptions

The importance of using plain language to bridge the civic literacy gap cannot be overstated. Our participants did not understand important terms that are key to understanding elections—sometimes not understanding how



they are applied in elections, but often not knowing the word itself. The result was skipping or misunderstanding sections of the guide. These terms included:

- primary
- endorsement
- rebuttal
- early voting
- split your vote
- redistricting
- polls

They needed hints to help them interpret the information, such as descriptions of the offices: What do they do? It is part of local, state or national government? How will the winner of the contest impact my life?

And, they struggled to understand the source of the information, particularly in the measures, where there are so many different voices, from the ballot summary to advocates for and against the measure, the official analysis, and the text of the measure itself. For example, the San Francisco guide has a helpful glossary of terms used in ballot measures, but it would be better for the material to be written in plain language or have definitions on the same page where the term is used.

**Voters interpret election-specific terms literally**

New voters do not have any historical context to help them interpret election jargon, so they interpret it literally. Terms like “Top Two Primary” and “Early Voting” were especially confusing.

Early voting, for example, is confusing when someone has a mental model of an election as a single day. More confusingly, it overlaps with both vote-by-mail (also done before Election Day) and voting at the polls (going to a specific place to vote). When you add the idea that you can drop off your vote-by-mail ballot at the polls on Election Day, the whole mental construct collapses.

**Overlap among options for voting**

Voting option	Before Election Day	On Election Day
Vote by mail	Yes – from home	Yes – drop off your ballot
Early voting	Yes – in person	No
Vote at the polls	No	Yes – in person

The options for voting beyond doing it at the polls on Election Day rely on a level of civic literacy that most of the voters in our study lacked. Thus, the advantages of offerings for convenience voting are lost.

Voters need help understanding elections and how they work  
Participants asked many questions that revealed gaps in their knowledge about the mechanics of how to vote. Each of these questions suggests information that could go in the voter guide, but could also go in a “welcome packet” for new voters, or in voter engagement flyers.

Some of the details of elections they didn’t know:

- you don’t need an ID to vote in CA
- you do need to register to vote
- you must register in advance to be allowed to vote
- your employer is required to give you time off to vote
- you don’t have to vote on everything on the ballot
- you can get help from a poll worker
- you can’t vote after Election Day
- you don’t have to have an appointment to vote, but if you can vote in the middle of the morning or afternoon, you won’t have to stand in line
- registering to vote doesn’t sign you up for jury duty
- election materials are available in some languages in some places

### Voters need tips on how to use the guide

They also need the guide to be self-teaching, suggesting ways to prepare to vote, using the guide more effectively.

For example:

- Experienced voters knew that the ballot in the guide is a sample and that they could mark it in advance and take it to the polls as a guide for marking the real ballot.
- Newer voters did not expect to see the pro-and-con statements about measures and would use them more now that they know they are there.

## About this project

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This project explored how voters (including new voters, registered non-voters, infrequent voters, and potential voters) find information about elections, and what works — and doesn't work — about their current sources.

We wanted to learn:

- what sources of information voters use to learn about elections
- what questions they ask, and how they ask those questions
- what they find confusing about elections terminology and materials

### Research approach and methodology

We used a qualitative approach focused on observing users to understand whether and *why* a design (such as a voter information pamphlet or a website) works, or in what ways it does not. Our methods included:

- information-gathering interviews
- open-ended (ethnographic) interviews
- usability testing

Qualitative research typically uses smaller numbers of participants than surveys or other quantitative research. However, with two rounds of research sessions with voters, along with interviews with stakeholders across the state, our results come from a strong research base. We believe these methods allowed us to reach what we call the “point of least astonishment” and have produced meaningful results for this project.

### Phases of the work

The project included several phases of work:

**Stakeholder input.** We worked with state and county election officials, community advocacy and good government groups.

- At the beginning of the project, we interviewed 25 people to get their input on the questions voters ask, and how they answer them.
- During the project, we conducted three workshops to gather feedback on our progress and gather additional input from a wide range of people with experience in voter information.

**Research with voters and non-voters.** We conducted two sets of research interviews with a wide range of voters, potential voters, and infrequent voters around the state.

- We conducted short research sessions with 53 people, collecting their preferences for what types of information they wanted, and what channels and formats worked best for them. These interviews took place in Oakland, San Jose, Los Angeles, and Modesto.
- We designed a prototype voter guide and worked with it in 45 research sessions where we asked people to find answers to their questions about elections and talk to us about the experience of using the guide. These sessions took place in Los Angeles County, Modesto and Berkeley. Participants included new citizens, people with low literacy, people with disabilities, and people who spoke Spanish and Chinese.

Details about the participants in our research and the materials we used in the sessions are online at <http://civicdesign.org>.

**Landscape analysis.** We collected and analyzed the current voter guides to get a sense of the range of information and how it is presented to voters in California.

- Early in the project, we looked for good examples we could use as a springboard for our work in a convenience sample of guides from 2010 to 2013.
- Later, we collect and analyzed guides from all 58 counties for the June 2014 Primary Election.

See what we learned in this landscape analysis in “The current voter guides,” starting on page 13.

## The current voter guides

Before we dive into recommendations for change, we want to take a moment to acknowledge how much of current practice is meeting voter needs. There is substantial, useful information in the guides that voters of all levels of participation in our study appreciated.

As part of this project, we collected voter guides for the June 2014 primary from all 58 counties, plus the state guide. We reviewed each and cataloged their contents. This cataloging activity gave us a way to get an overview of how consistent the current voter guides are, and to give some perspective on the scale of the change in these recommendations.

### Most counties provided basic information in their guides

Overall, the county guides are relatively consistent in providing the basic information for an election. For example, almost all of them include “nuts and bolts” details like dates, hours, sample ballots, candidate statements, as well as other legally required information like party endorsements and information about top-two primaries.

### Nearly one-third of counties did not include key information

We know from interviews with election officials that the choice of what additional material to include is both a practical and financial decision, based on filling pages in the booklet format. Even allowing for this practicality and differences in election administration, there were some surprising gaps, with some guides (up to a third of them) missing information like:

- accessibility information for voters with disabilities
- the address of the polling place or an indication of where to find it (especially for online pdf files)
- deadlines for voting by mail
- information about language support at the polls

### Larger counties had longer guides

We were also concerned with the length of the booklet, in light of the strong evidence from many sources that voters feel that preparing for an election can be an overwhelming task. The number of pages is one of the factors that figures into the “20-second test.” If recipients get a large document in the mail, they’re less likely to even flip through it, regardless of how compelling the cover might be.

The number of pages in the cataloged guides correlated to the size of the county population, with larger counties and areas with greater population

density having more pages. Does this suggest that voters in larger counties need more information, or that larger counties have larger budgets to add more information in their guides – or something else? That’s a question for another study.

Number of pages in current voter guides

# of pages	# of guides	
4-12	9	■■■■■■■■■
16 - 20	20	■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■
24-28	15	■■■■■■■■■■■■■■■■■■■
More	14	■■■■■■■■■■■■■■■■■

Average length by county size

Average # of pages	County sizes	Population range
22	Tiny and small	< 100,000
22	Medium and large	100,000-800,000
13	Super sized	> 800,000

## Views from experts

In interviews with stakeholders, we expected to hear specific issues related to each person's role, but they also shared some broad themes.

### Voting seems like a big deal

We make a big deal about elections and we ask a lot of voters. It can feel like a complicated process. Long ballots in California can make preparing for an election feel like a test. Even active, engaged voters can be overwhelmed.

### It can be hard to find easy answers to routine questions

Voters call election offices and other support phone banks for routine questions that should be easy to answer: addresses of polling places, missing vote-by-mail ballots, and whether the voter is registered and eligible to vote.

### It's hard to do outreach to people you don't know about

Much of the official information about elections is only sent to registered voters. So, elections outreach often focuses on voter registration. But it may be that the real barrier to greater participation and engagement is that outreach does not address the meaning and value of being a voter effectively.

### You need many different channels to meet voters where they are

This is both a question of knowing trends in different communities and allowing voters some personal preferences about how they get information. This need is a challenge for election officials with limited resources.

### Voters can receive both too much information and too little

The information can be too simple or in too much depth. Or arrive too early or too late. We call this the "Goldilocks problem." It is a challenge, because it's not just a problem of getting the right information to the right person. Any one person can have seemingly contradictory preferences.

### It is hard to know what works

Both advocates and election officials want a better picture of what activities and materials have an impact – or don't. The data is hard to collect, and harder to interpret, so they often rely on indirect or anecdotal evidence. A more subtle part of this theme is the degree to which your role in elections affects your viewpoint. An elections office gets different types of questions than an advocate's phone bank does. Your relationship with voters changes what kinds of things they will tell you.

## Official guides vs. those by advocates

The stakeholder interviews at the start of this project suggested that we might find information that would help advocacy and good-government groups write their own voter guides, whether they took positions on issues and candidates or not.

Most of our guidelines and recommendations apply to any voter information. But advocacy groups have an opportunity to include information that might not be possible in an official voter guide.

Participants in our research were keenly aware of the literature from campaigns. They are less clear on voter guides from advocacy groups, even when they value the opinions in materials from advocates. Many said that they didn't believe there was such a thing as neutral or unbiased non-partisan information. They said they picked groups who had supplied them with good information in the past, that matched their own beliefs.

We heard from advocacy groups that they often start developing their materials based on the information created by the various state offices, simplifying from there. This could also apply to county measures, how-to-vote information, and details such as candidate endorsements.

Advocate groups can use the official information to help voters, especially new voters or those who are less-frequent voters understand their participation better, by:

- creating a bridge between new voters and the official information, teaching them how to read and use it
- filling in gaps in what an official guide will or can say.

A few specific communication elements that this research suggested as important are:

- making connections to community values
- creating culturally specific graphic illustrations of the voting process
- teaching tips for how to prepare to vote, including how to sort out conflicting opinions and how to use the sample ballot
- connecting the impact of measures to specific communities
- highlighting ways in which accessible voting options can help new voters and others vote more effectively in addition to language access.



## Insights from research with voters

Many of the things we learned were more-or-less expected, confirming a large body of the knowledge of other groups and researchers, and our prior experience. But when as we listened and watched, we found some surprising attitudes, behaviors, and preferences that have contributed to our recommendations. Many of them suggest content that would make the voter guides more informative, or ways to rethink existing content to make it more useful to voters.



### Visual layouts and illustrations help reinforce meaning


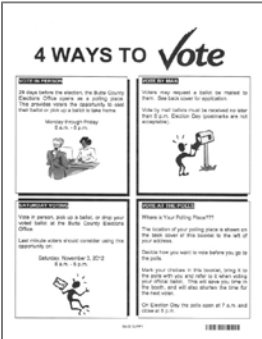

In the first round of user research we asked participants to select, from a book of samples, pages they would want in their own voter guide.

The five pages participants chose most often all used visual layout effectively. The chosen pages were effective because the layout made the content easy to skim and scan, and signaled clearly what the information was about.

We also found that many participants recognized the cover of the California voter guide, from the Secretary of State's office, because the design is consistent from election to election.

#### Top 5 pages in the first round of research

Pages	Description
	The <b>Quick Reference Guide to measures</b> in the California State Voter Guide has clear formatting that makes it easy to identify the type of information available for each measure, and short chunks of text. All infrequent voters liked this page. (36 of 53 chose this page)
	The <b>Candidates Overview</b> in an Oakland Easy Voter Guide also made it easy to see what type of information was available and to quickly scan the page. In this page of candidates for a local school board election, participants valued the photographs saying they gave a sense of the people behind the words. (35 of 53 chose this page)

Pages	Description
	<p>A page showing the <b>election dates in a calendar format</b> was very attractive. People’s faces often lit up when they saw it.</p> <p>Participants said it would serve as a reminder and valued the dramatic identification of Election Day with a star.</p> <p>(34 of 53 chose this page)</p>
	<p>All of the pages showing <b>different ways to vote</b> on a single page were popular. One with four options in a tidy layout was particularly well liked. Participants pointed to the clear options and illustrations.</p> <p>Almost all the students chose this page.</p> <p>(32 of 53 chose this page)</p>
	<p>Participants wanted visual <b>instructions for how to vote</b>. There were some differences in how much information they wanted, but the page most often selected was the one that looked the most complete, even though they also said the page was dense and even crowded.</p> <p>Newer voters pointed to the step-by-step top line of instructions.</p> <p>(30 of 53 chose this page)</p>

## Voters have a strong desire for more information, in plain language

As part of the usability testing, we asked participants to compare two versions of some common pages: information about candidates, rules, and measures. They overwhelmingly preferred the simpler, plainer version, no matter how little or how much text was available.

Based on earlier research, we expected that participants in the usability test would suggest removing some of the wordier information in the sections on ballot measures, such as the long candidate statements or the full text of the measure.


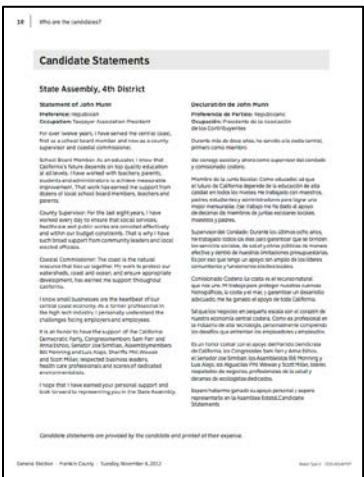
In support of this view, participants said that they wanted shorter booklets that were easier to read.

“It looks like a novel. It should be 3 pages.”  
(Spanish-speaking non-voter W2)

To explore this more deeply, we asked two “forced choice” questions at the end of the usability test sessions:

- Choosing between the shorter, structured candidate presentations and the longer paragraph-based candidate paid statements.
- Choosing which sections of information about a measure they wanted.

## Choosing between short overview and deeper information

Pages	Description
	<p>Candidates overview, with very short summary text in structured sections.</p>
	<p>Candidates' statements, in long form, each filling 1 column.</p>

Contrary to what we had expected, in those choices, they said that they wanted more information, not less, even if they might not read it. Their rationale was that if they were particularly interested in a candidate or measure, they would want as much information as possible.

“A big book means more information. It's not a tiny thing.” (Infrequent voter W9)

#### Candidate information preferred by voters

Candidate Information	# Choosing (n=44)	Reasons: comments from participants
Short, structured table	28 (64%)	<ul style="list-style-type: none"><li>• Simpler. Takes time to read.</li><li>• Clear headings. More space. Less of a pitch and more facts.</li><li>• Definitely! Just want to focus on the priorities, not so much about who they are.</li><li>• Less words, more info per page. Good layout vs. blocks of text.</li><li>• Easy to read. Names and information are separated so you can read each one.</li></ul>
Paragraph statements	12 (27%)	<ul style="list-style-type: none"><li>• Has all the information, [together, continuous]. It's people-oriented.</li><li>• It's more like a newspaper review, not just an outline.</li></ul>
Want both	4 (9%)	<ul style="list-style-type: none"><li>• I want both...the more I know the better.</li></ul>

## Information about ballot measures to include in the voter guide

Measure information	# Choosing (n=40)	Reasons: comments from participants
All the sections	29 (73%)	<ul style="list-style-type: none"><li>• Gave you two sides. What they want to do and why.</li><li>• Not many people will look at it, but if it's in the book more might.</li><li>• Put the extra info in the back, so you have a way to answer your questions.</li><li>• It's good to have choices about what to read. Full text is important so you can compare it to the arguments.</li><li>• But no names and no rebuttals. It's longer, but I would want the background information. Keep the analysis and the full text, but I wouldn't read it.</li></ul>
Summary only	10 (25%)	<ul style="list-style-type: none"><li>• Simple. People who are reviewing the long form probably already have made their decision.</li><li>• [Summary] is good because if I don't want to read, I can just ignore all that, but other people can go to the detail. Should add photos to make it more appealing—related to the measure. Not only words on the paper. Graphs and charts "for the elderly." [All the text] makes you dizzy.</li><li>• I can look up the rest of this stuff online.</li></ul>

## Inexperienced voters look for the polling place on the front cover

One of the more discouraging problems was watching participants fail to find the address of their polling place because it was on the back cover. Participants simply did not understand why it is not on the front cover and inside the book.

When they got to the back cover, there were several addresses, making the polling place less obvious on some designs.

We understand the limitations of the printing technology, but this problem was severe enough that it must be addressed:

- Experienced voters learn to look on the back cover, but new and infrequent voters do not.
- A good notice in places where the information might be expected—on the front cover, in the page on voting at the polls—helps, but does not solve the problem.
- A more attention-getting presentation on the back cover helps, but only if voters look at that page. The back cover is the equivalent of the mailing envelope and is quickly dismissed.

## Voters want a roadmap to the booklet and the elections process

It might seem like overkill to use one page of a 24-page booklet for a table of contents, but in all of our research, participants wanted, liked, and used them when they were available.

In our prototype, the table of contents acted as a roadmap to help them understand the scope of the information in the booklet. Many used the table of contents to flip through the book and stay oriented, coming back to it for each new thing they wanted to find. Without it, they often got lost in the details.

Useful. Lets you know where to go, so no extra reading.” (Regular voter D21)

Fast, simple, to the point (Non-voter W8)

This confirms prior research on voter education materials and websites.

## Information about party endorsements was confusing

The legally required information about party endorsements and campaign finance was either ignored or puzzled over.

The prototype used a table to present party endorsements. Participants were attracted to the simple visual display and minimal words.

“So this is who is SPONSORING the candidates. This could make it faster to make a decision [match who you like]. Charts are good.” (Student non-voter W5)

But they also had a lot of questions:

- What does “endorsement” mean?
- Who are all the other names besides Republican and Democrat?
- Which candidates will be on the ballot?

- How much money do the candidates get from the parties?
- How can one candidate be for two parties?
- Why are you telling me this?

“They are agreeing to put their statements in the ballot. Sort of like advertising these candidates.”  
(Non-voter D4)

Seems like because these candidates had a party endorsement, it seems like it's biased. Unfairly advantaged. Take it out. (Infrequent voter D5)

“Not necessary. Letting you know what party they are affiliated with. It's covered elsewhere. You get this in the mail from the parties.” (Young, regular voter D21)

They had an equally large number of questions about the spending limits statement and what it means. They wanted this information more closely connected to the candidate statements.

Spending limits are a good topic, but how does this work? What limits? How much? How does it affect them? (Student non-voter W5)

Information about primaries was by far the most troubling content in the guide. What a disaster. We tested two versions of the explanation of the Top-Two Primary: the long version from the state guide, and a short version based on the newly redesigned Los Angeles guide. Neither worked.

There were many reasons:

- Many voters do not understand what a “primary” is.
- Because they don’t understand primaries, they don’t see what is different about a top-two primary.
- They don’t want the history, they just want to know how things work now.
- They don’t have a strong party affiliation (or don’t understand what this means).
- They don't think the Top Two Primary makes sense, so struggle to understand why it might work the way it does.

I need help with different kinds of elections. What’s the difference? (Infrequent young Asian voter D9)

“I’m not familiar [with Top Two Primary]. Is there another election between the primary and the general election? (Regular voter D6)

“Why would two people from the same party run against each other?” (Young non-voter W16)

“Very confusing - what’s new about it? What’s the old way, what’s the new way?” (Registered new citizen non-voter W12)

## The Voter Bill of Rights can provide useful information

The Voter Bill of Rights was surprisingly popular in both the interviews and the usability testing, especially among non-voters, infrequent voters and new voters. Many of these participants stopped to read it completely and carefully. They often suggested that it be moved to the front of the book – inside the front cover, or right after the table of contents.

Yes. Let us know our rights. People are ashamed to ask. (Regular voter who teaches others W22)

They also found it hard to read, and asked questions about what it said.

“These are things I need to know...but some of them are confusing.” (Bilingual and low literacy participant W18)

More regular (and educated) voters tended to skip it, saying that they knew the information or that people *should* know it.

Our recommended plain language version of the Voter Bill of Rights is on the website.

## New voters were confused by the sample ballot in the voter guides

We were surprised at the number of people who did not recognize the sample ballot easily. They thought:

- it was just a duplicate set of instructions for how to vote (because the top of the ballot was instructions)
- it was a list of the candidates (for informational purposes)
- the timing marks were just decoration



- the Spanish translations were not necessary (because the rest of the book was not bilingual)

The way the sample ballot—which we suggest calling a “practice ballot”—is displayed can make a difference in how useful it is.

## Pictures of candidates

We’ve always stayed away from photos of candidates. But the structured layout with photos from the Oakland Easy Voter Guide tested so well that we tried the same structure without pictures.

Participants still liked the structured layout. But they also asked for pictures sometimes so they could look for candidates of a specific ethnicity, but also just to help identify this as a page of information *about people*.

“There should be photos. I want to see the pictures, so I can look for Asian candidates.” (Regular voter, Taiwanese Asian, W7)

“I want an image, not just text. I didn't realize I was reading about a person at first.” (Non-voter, W18)

“Not clear - these people are running for office?” (Non-voter, D14)

Is it time to reconsider? Perhaps.

Despite the historical, technical and process reasons why voter guides don’t include candidate photos now, it may be time to think about what value they can add. Feedback from advocacy groups on this topic was mixed, however. There is a larger discussion needed on this topic.

## Guidelines and recommendations

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If we were to give one guiding principle for improving voter guides, it would be to *focus on answering voters' questions in language they can easily understand*.

We can't overemphasize that doing this well requires both a voter-centered perspective and plain language. Too much of the current voter information is written from the perspective of the elections office. That is, it explains the process of elections organized in the concepts and terminology of election insiders, rather than turning it around to explain how to participate in elections from the perspective of a voter.

We understand that many counties work with vendors to create and design voter guides. We recommend that vendors be invited to training and workshops related to these recommendations, and that county election departments collaborate with their vendors to implement changes.

The guidelines for improving voter guides are organized in 5 groups, based on the needs of the broad California voter audience.

Include the right information at the appropriate level of detail **(page 27)**  
What information to include and how to break it into meaningful chunks (content strategy).

Organize information for progressive disclosure **(page 32)**  
How to structure the voter guide to help readers find their way to the information they need (information architecture).

Present information so it is easy to read and understand **(page 36)**  
How to use type, fonts and images to help voters read accurately (information design).

Personalize information for the voter **(page 40)**  
Clear identification of when the information is generic, and when it is the exact details for the voter (personalization).

Close civic literacy gaps through structure and content **(page 43)**  
What information helps voters learn and understand the process. (domain literacy)

### **Additional ideas (page 46)**

We end with some ideas that this research supports, but that require larger changes in elections processes or further research and consultation for us to recommend them without reservation.


## Include the right information at the appropriate level of detail

The first decision in designing a voter guide is determining what information it should include. Next, you must decide how to write that information so that voters can grab the details they need off the page easily and accurately. The information must answer voters' questions meaningfully, identified correctly and written for easy reading.

### ✓ Organize information by activity or task

Voters need all of the information for each voting task grouped together. In our testing it was much more effective to have all of the information about each way to vote in one place, instead of listing dates, locations, and instructions separately, which we saw several examples of in the guides for the June Primary, and in earlier guides in our collection.

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**How to vote by mail**


**You can vote by mail before Election Day**

To vote by mail, you have to request a ballot. Then you can mark the ballot and send it back or drop it off at any polling place.


**How to get your vote-by-mail ballot**

You can request a vote-by-mail ballot starting on **October 7**.  
You must request a vote-by-mail ballot by **October 29**.

You can:

 Go to [www.franklinvotes.org](http://www.franklinvotes.org) and request a vote-by-mail ballot.

-OR-

 Send a letter with your signature that includes your address and where to send the vote-by-mail ballot:


**Registrar-Recorder/County Clerk**  
**4321 Franklin Avenue, Franklin, CA 99999**

After you apply to vote by mail, you will receive your ballot within ten business days.

**How to return your vote-by-mail ballot**

Place your ballot in the official envelope, following the instructions on the vote-by-mail packet. Your ballot must be at the Elections Office or a polling place by 8pm on Election Day, November 6, to be counted.

You can:

 Send it by mail to:

The instructions for how to vote by mail include both how to get your ballot, and how to return it, putting both steps (unique to vote by mail) on one page.

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Field Guide Vol. 07-Websites, No. 04: Group navigation to answer voters' questions.

Field Guide Vol. 06-Voter Education Booklets, No. 05: Don't make voting look complicated.

### ✓ Make the cover a useful part of the guide

The guide starts with the cover. For regular voters, it might be all they need along with the ballot contents; for others, it signals what's inside. The cover should include:

- The county name and seal (or other official insignia)
- The name or type of the election
- The date of Election Day and times the polls are open
- Polling place information

It should either list, or mention

- How to contact the election office
- Languages offered



#### Franklin County Voter Information Guide

**General Election**  
**Tuesday, November 6, 2012**  
 Polls open from 7am to 8pm

You are registered to vote in Franklin County, California.



Registered voter name:  
 Your Name



Is this polling place accessible:  
 Yes



Your polling place address:  
 1234 Terrace Avenue  
 Suite 201  
 Franklin, CA 99939



Languages available:  
 English, español, ■

This cover layout puts both information about the election and personalized information for the voter on the cover.

Field Guide Vol. 05–Communicating with Voters, No. 07: Make additional languages easy to find.

Field Guide Vol. 05–Communicating with Voters, No. 09: Show who is responsible for the information.

Field Guide Vol. 05–Communicating with Voters, No. 10: Put a date on it.

Field Guide 6–Voter Education Booklets, No. 01: Use space on the cover for useful information.

Field Guide 6–Voter Education Booklets, No. 02: Be specific about dates and deadlines.

Field Guide 6–Voter Education Booklets, No. 03: Provide real contact information, not just a website.

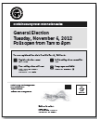
- ✓ Connect the county and state guides so voters know where to find information

Voters should not have to sort out the different official sources of election information. The two guides are based on government structure that is difficult for many voters to understand. In the end, they vote on one ballot.

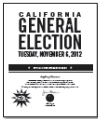
Both guides should mention the existence of the other so voters can learn the relationship between these two booklets and can look for both of them. In the county guide, we suggest an image of the state guide on the cover and in the section introducing ballot information.

## What’s on the ballot for this election?

You will receive two voter information guides for this election:



**Franklin County Guide (*this guide*)**  
Local and county races and measures are in this guide.



**California State Guide**  
U.S. national races, and state races and state propositions are in the guide from the state.

Putting the images of the two voter guides side by side helps voters understand that there are two booklets, and recognize them when they arrive.

Field Guide Vol. 07-Websites, No. 02: Connect your website to other government sites.

- ✓ Write headings as questions or active instructions
- Questions, quasi-questions, and instructions all make it easier for readers to connect the information to the actions they will take. Pick a style of headings and use it consistently.

Heading style	Example	Why it works
Question	What is the last day to request a vote-by-mail ballot?	Suggests a question that voters ask
Quasi-question	How to request a vote-by-mail ballot	Suggests the answer the section contains
Instruction	Request a vote-by-mail ballot by October 29	Provides the answer, making the question implicit

All of these heading styles are better than a noun string (like “Vote-by-Mail Ballots”) that announces the topic, but does not offer any hints about what kinds of information will be covered. These heading styles help readers get information and meaning at a glance.

Good headings help voters understand what the page or section will tell them and lets them *recognize* the questions they need answered, rather than forcing them to *recall* the question and then match it to a topic.

Only two of the June 2014 Primary voter guides included a table of contents but it was one of the most heavily used pages in our prototypes. Participants used it to get a sense of what was in the guide, and continued to refer to it as they looked for information.

Field Guide 6–Voter Education Booklets, No. 07: 1 topic: 1 heading.

Field Guide 6–Voter Education Booklets, No. 08: Write headings as questions.

Field Guide Vol. 07–Election Websites, No. 10: Help voters see at a glance what each chunk of information is about.

### ✓ Use plain language

All of the basic plain language guidelines help make information easier to read. They include:

- Write short sentences.
- Use short, simple, everyday words.
- Write in the active voice, where the person doing the action comes before the verb.
- Write in the positive.
- Keep paragraphs short.
- Separate paragraphs by a space, so that each one stands out on the page.
- Start each instruction or topic on a new line.

It is especially important to use easy-to-understand terminology in headings (both the title of the page, and any headings within the content). Voters can miss important information if they skip a section because they don't understand what the headings mean, or how to differentiate the different options for voting that the sections describe.

Field Guide Vol. 07-Websites, No. 06: Write links that use words voters use and that help voters know where they will end up.

Field Guide Vol. 07-Websites, No. 09: Use words that voters use in links headings, and graphics.

### ✓ Write for low literacy and people reading English as a second language

Plain language is even more important for people who do not read English well, for whatever reason.

The National Assessment of Adult Literacy suggests that 44% of Americans read at basic or below basic level. This means that they can perform everyday reading activities, but have difficulty with complex information or interpreting the implications of what they read, especially quantitative information (such as tax rates).

In addition to general literacy, voters may read poorly because of cognitive disabilities, disabilities like dyslexia that affect reading, or because English is not their first language.

Information written in plain language is also easier to translate.

✓ Define elections terms

Sometimes elections terminology is unavoidable, but it must be defined—in plain language—for voters.

Some terminology can be made easier by considering plain language in writing laws and regulations. If the language starts out voter-centric, it won't need as much explanation.

It might also be helpful to develop a glossary of plain language election vocabulary with consistent definitions that could be used in all county voter guides. Such a glossary developed in plain English could be the basis of similar, consistent translations of vocabulary and definitions.

# Organize information for progressive disclosure

Navigating even a short voter guide can be difficult for voters who are not familiar with elections.

- ✓ Make it easy to find both information about the ballot and about how, when, and where to vote  
Voters have two different starting points as they read a voter guide: learning about the contests and measures on the ballot or learning about the process of voting. They should be in different sections rather than intermixed. The opening page or table of contents must show these two types of information clearly.
  - Experienced voters often want to skip directly to the ballot, and are annoyed at flipping through general information.
  - New voters need to see the different *types* of information available.

## What’s in this guide?

### 3 ways to vote

- Voter Bill of Rights
- How to vote by mail
- How to vote early in person
- How to vote in person at the polls
- Accessibility and language voting assistance

### What’s on the ballot for this election?

- Who are the candidates?
- Paid candidate statements
- Local ballot measures: E
- Local ballot measures: F
- Practice ballot

The headings in the recommended table of contents are:

### What’s in this guide?

#### 3 ways to vote

- Voter Bill of Rights
- How to vote early in person
- How to vote by mail
- How to vote in person at the polls
- Accessibility and language assistance

#### What’s on the ballot for this election?

- Who are the candidates?
- Paid candidate statements
- Local ballot measure: A
- Local ballot measure: B
- Practice ballot

Field Guide 6–Voter Education Booklets, No. 10: Include information on how to vote



✓ **Include a table of contents**

A table of contents acts as a roadmap for a voter guide. It gives a quick indicator of the topics and scope of the guide. It helps readers determine whether their questions will be answered and in what depth.

Use questions, quasi-questions or instructions as headings.

Field Guide 6–Voter Education Booklets, No. 04: Start with a roadmap.

Field Guide Vol. 07–Websites, No. 05: Help visitors know what site they are on and what will be covered there.

✓ **Start with the overview or key details, then link to more details or exceptions**

It is easy to discourage new voters by overloading them with the complexity of elections. Focusing on exceptions and unusual circumstances confuses voters. People with unusual situations often are aware that they are an exception and will seek out the details they need when links to it are clearly visible.

Explain the most common information needs first. Then, provide options for more information:

- Place information about exceptions or variations after the basic information in clearly identified sections.
- Have a reference to a different page in the guide.
- Show how to find the information on the web or by phone.

The technique of building from key facts to full information is called *progressive disclosure*. It lets voters decide whether they need (or want) the additional information. Progressive disclosure is sometimes called the “bite, snack, meal” approach.

The key is to present only the minimum information needed for the voter to take the next step, starting with quick overview information and leading to one or more levels of detail. This approach makes it easy for readers to skim and scan, while making more detail available if the person wants it.

For example, information about voting in person might be displayed as a bite on the cover, as a snack on a summary page, and then as the full meal on a page of its own.

The table below shows a bite-snack-meal approach to telling voters how to vote at the polls.

Level	Where in the guide	Example
Bite	Cover	General Election Tuesday November 4, 2014 Polls are open from 7am to 8pm
Snack	Three ways to vote page	<p><b>Vote in person at the polls</b></p> <p>Polls are open on Election Day: November 6, from 7am to 8pm</p> <p>The location of your polling place is printed on the front cover of this guide.</p> <p>Or, you can look up your polling place:</p> <ul style="list-style-type: none"> <li>• On the web: <a href="http://www.franklinvotes.org">www.franklinvotes.org</a></li> <li>• Using the automated phone service: 1-222-555-1216</li> </ul> <p>For more details, see Page 6. For information about accessible voting, see Page 8.</p>
Meal	Detailed instruction on page 6	<p><b>How to vote in person at the polls</b></p> <p>(Instructions on the voting process and how to mark the ballot.)</p>

Field Guide Vol. 05–Communicating with Voters, No. 03 Help voters move among media easily to get more information or take action.

Field Guide Vol. 05–Communicating with Voters, No. 04: Show off your social media connections (but don't rely on them).

### ✓ Make each page a clear topic

When two different topics are combined on a single page, people often miss some of the information. This is particularly true for low literacy or limited English proficiency readers, who tend to skip to the next page or section when they get confused.

Having one topic per page makes it easier to scan through the booklet for specific topics.

As an example, many participants missed the detailed contact information when it was below the table of contents.

Field Guide Vol. 06– Voter Education Booklets, No. 06: 1 page: 1 topic (really).

- ✓ Use visual elements to make sections easy to see  
When readers move through a document, whether page-by-page, or flipping through, the design can signal where they are and how the information in one section is different from another.

A clear visual hierarchy showing what is most important on each page is helpful to show that there is a new topic. Running headers also communicate a change from one section to the next, while at the same time tying sections together across pages.

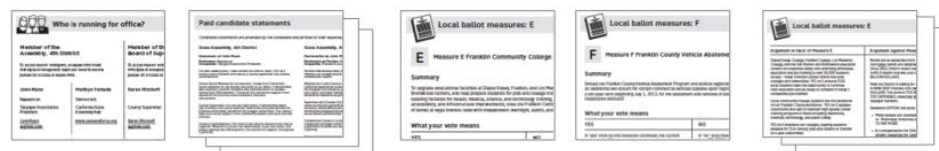
Using labeled or blank blocks on the outer page edges can also help readers find their way through a guide. These “thumb tabs” or “thumb indexes” are spaced evenly along the right hand pages for each new section. (Note: If you’re printing on a regular, office or desktop printer, the printer won’t be able to make the tab block go all the way to the edge of the paper. But if you’re having your document printed by a commercial printer, the printer can trim the pages to accomplish the tabbed effect.)

- ✓ Organize the booklet to help voters see both overview and details  
Don’t let voters get lost in the details when there are many candidates or measures.

There are two ways you can arrange these pages, depending on how many pages you have of each kind of information.

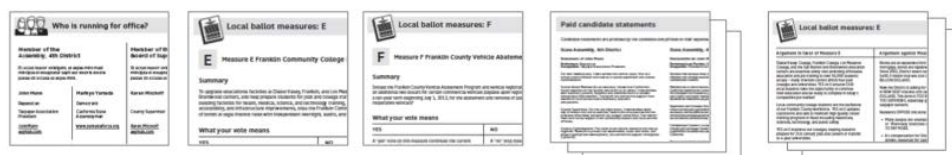
### 1. Candidates, then measures

All candidate information, followed by all measure information, with overviews followed by detail pages in both sections. This arrangement is useful when there are just a few candidates and measures on the ballot.



### 2. Overview, then details

All of the overview pages first, followed by all the detail pages. This arrangement is useful when there is a long ballot with many candidates and measures.



## Present information so it is easy to read and understand

The presentation of the information is as important as how clearly it is written. Good presentation signals the type of content and makes it more inviting and easier to read.

### ✓ Make the text big enough

There's a reason we don't like *fine print*. Pages with small, tightly packed spaces are difficult to read. Participants were more likely to read sections in larger type, and were also more accurate when they read. They noticed when text was larger, and complained when some pages had smaller text.

Make the text size at least 12 points.

If a topic won't fit on one page, you can:

- Rewrite to cut the number of words.
- Split the topic into two pages.

Field Guide 1–Ballots, No. 03: Use big enough type.


### ✓ Design the pages for visual orientation and differentiation

Make sure each page has a clear identity to help readers know where they are in the content.

- Have a clear, easy-to-read, heading for each page.
- Use running headings to connect parts of a section or a topic that covers multiple pages.

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12


 Local ballot measures: E

**E**

Measure E Franklin Community College District

**Summary**  
To upgrade educational facilities at Diablo Valley, Franklin, and Los Medanos Colleges, and the San Ramon and Brentwood centers, and help prepare students for jobs and college transfer by modernizing classrooms and labs, building facilities for health, medical, science, and technology training, and implementing earthquake safety, accessibility, and infrastructure improvements, shall the Franklin Community College District issue \$450 million of bonds at legal interest rates with independent oversight, audits, and all funds spent on local sites?

13

 Local ballot measures: E

Argument in favor of Measure E	Argument against Measure E
Diablo Valley College, Franklin College, Los Medanos College, and the San Ramon and Brentwood education centers are essential safety nets providing affordable education and job training to over 50,000 students locally—many of whom cannot afford four year colleges and universities. YES on E ensures our local students have the opportunity to continue their education and be ready to compete in today's competitive job market.	Bonds are an expensive form of debt. As with a home mortgage, bonds are repaid with interest, over time. Since 2002, District voters have approved bonds totaling \$450.5 million that will cost taxpayers OVER ONE BILLION DOLLARS. Now the District is asking for \$450 million in NEW DEBT that will cost taxpayers ANOTHER BILLION DOLLARS. This bond is TOO BIG and TOO EXPENSIVE, especially given today's tightened budget.

The running head on these pages helps voters see that both pages are information about Measure E.

- Create a design for the opening page of a section that looks different, like a chapter heading in a book.

### 3 ways to vote



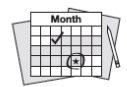
#### Vote by mail

Request a vote-by-mail ballot by **October 29**.

Return it by mail, drop it off at one of the secure ballot drop-off locations, or deliver it on **November 6** to any polling place.

Vote-by-mail ballots must be received at the elections office or a polling place by 8pm on **November 6**.

For more details, [see Page 4](#).



#### Vote early in person

You may vote early at the elections office, or at the voting centers listed on page 5.

**October 7 until November 5  
Monday – Friday, 8am to 5pm**

Franklin County Elections Department  
4321 Franklin Avenue  
Franklin, CA

For more details, [see Page 5](#).



#### Vote at the polls in person

Polls are open on Election Day:  
**November 6, from 7am to 8pm**

The location of your polling place is printed on the back cover of this guide.

Or, you can look up your polling place:

- On the web: [www.franklinvotes.org](http://www.franklinvotes.org)
- Using the automated phone service: 1-222-555-1216

For more details, [see Page 6](#).

### What's on the ballot for this election?

You will receive two voter information guides for this election:



#### Franklin County Guide (this guide)

Local and county races and measures are in this guide.

**Offices (see pages 12–15)**

Member of the State Assembly  
Member of the Board of Supervisors

**Local Measures (see pages 16–22)**

E. Community College District Bond  
F. Renewal of the Abandoned Vehicle  
Attestment Program



#### California State Guide

U.S. national races, and state races and state propositions are in the guide from the state.

**Offices**

President and Vice President  
United States Senator

**State Propositions**

30 Temporary Taxes to Fund Education, Guaranteed  
Local Public Safety Funding, Initiative Constitutional  
Amendment.

31 State Budget, State and Local Government,  
Initiative Constitutional Amendment and Statute.

32 Political Contributions by Payroll Deduction,  
Contributions to Candidates, Initiative Statute.

33 Auto Insurance Companies, Prices Based on Driver's  
History of Insurance Coverage, Initiative Statute.

34 Death Penalty, Initiative Statute.

35 Human Trafficking, Penalties, Initiative Statute.

36 Three Strikes Law, Repeat Felony Offenders,  
Penalties, Initiative Statute.

37 Genetically Engineered Foods, Labeling,  
Initiative Statute.

38 Tax to Fund Education and Early Childhood  
Programs, Initiative Statute.

39 Tax Treatment for Multistate Businesses,  
Clean Energy and Energy Efficiency Funding,  
Initiative Statute.

40 Redistricting, State Senate Districts, Referendum.

The pages that open these two main sections of the voter guide have a different heading style that breaks the running head, so these pages have a distinct look.

Field Guide Vol. 06– Voter Education Booklets, No. 09: Make sure that important information stands out.

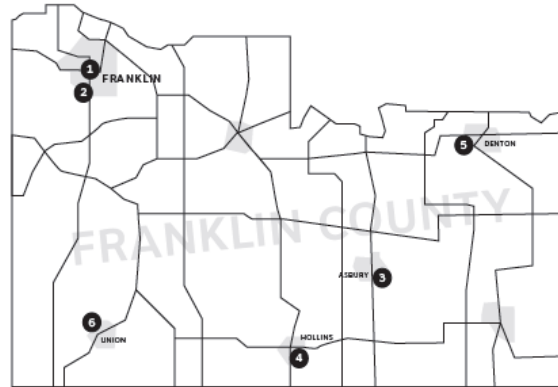
#### ✓ Make the information visual

Visual elements help guide readers through the content. Although images and icons are useful, be sure they communicate precisely, and that they are relevant to the topic and content (not decorative). Low literacy readers interpret them literally, not as a general sign or metaphor.

- Use the layout to communicate the meaning. Candidates, measures, and dates are different, and they should all look different.
- Icons or other images signal the type of content next to them.
- Show events over time with visual storytelling, using cartoons or simple illustrations.

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Early voting locations:



Early voting locations can be shown on a map, to emphasize that they are in different parts of the county.

You can:



Go to [www.franklinvotes.org](http://www.franklinvotes.org) and request a v

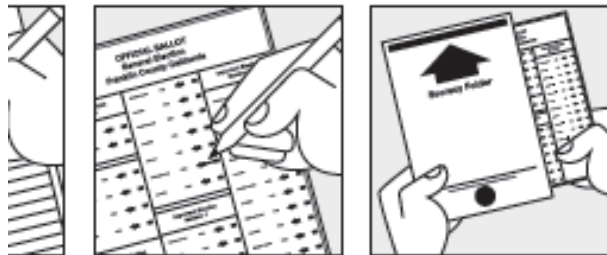
-OR-



Send a letter with your signature that includes and where to send the vote-by-mail ballot:

Registrar-Recorder/County Clerk  
4321 Franklin Avenue, Franklin, CA 9999

Icons for ways to communicate with the elections office help make it clear that these are choices a voter can select from.



2. Mark ballot

3. Place ballot in secrecy folder.

A sequence of actions is shown with numbered steps in separate cartoon frames.

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✓ Be consistent

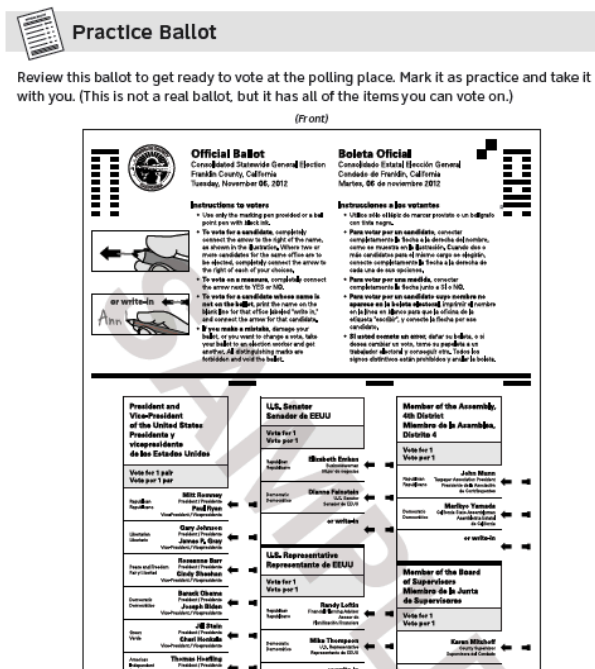
All of the presentation elements make up a design vocabulary, which should be used as consistently as textual labels.

Some examples of presentation elements are:

- Headings
- References to more information on another page or in another format.
- Contact methods (phone, web, mail)
- Web addresses

- ✓ Present sample ballots so voters understand what they are. Showing a ballot in the guide is invaluable to answering the questions voters have. Even if voters look at nothing else in the guide, by flipping to the sample ballot they can immediately see who the candidates are for which offices, whether there are measures and propositions and what they say, and get basic instructions about how to mark the ballot.

- Use an image of the ballot specifically for the registered voter, if possible.
- If the ballot is not personalized, say so on the page with the ballot image.
- Shrink the image a bit and add a heading that identifies it as a sample ballot.
- Include a suggestion that it be used for practice and as a reminder at the polls.
- If the instructions on the sample ballot are clear and easy to follow, rely on them as a way to include “how to vote” information, focus on the overall voting process in the instructions for voting in person.
- If the legislated ballot instructions could be better, include instructions for voting elsewhere in the guide.
- Put the sample ballot toward the end of the booklet.



The text at the top of the page reads:

### Practice Ballot

Review this ballot to get ready to vote at the polling place. Mark it as practice and take it with you. (This is not a real ballot, but it has all of the items you can vote on.)

(Note: We did not address how to provide a sample ballot for an electronic voting system or ballot-marking device.)

## Personalize information for the voter

New voters, infrequent voters, and people with low English proficiency cannot always distinguish between general information and information that is specific to them. This is most important for polling place information and sample ballots. Many participants in our study did not realize that a sample ballot could be personalized to their address.

- ✓ Be clear when information is for the whole county and when it is personalized

Many participants could not tell if the entire guide was personalized, or only part of it.

In some cases, they drew incorrect conclusions about how to vote because they mistakenly assumed that the information was personalized. For example, they assumed that a map showing a location marked with a star was *their* polling place.

- ✓ Make the availability of languages visible in all versions  
People who read another language recognize it easily. Links to election information in other languages should be easy to find on the cover and on any appropriate pages, *in those languages*.

Field Guide Vol. 05—Communicating with Voters, No. 07: Make additional languages easy to find.

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### At the polling place



To check polling place accessibility, look for the wheelchair icon on the back cover of this pamphlet. If your polling place does not meet the guidelines, call 1-222-555-1212 for alternative methods of voting.

Ballots are available in Spanish and Chinese.

Las boletas están disponibles en chino e inglés.

选票是西班牙语和英语。

Repeating information in additional languages helps ensure that voters are aware of their options.

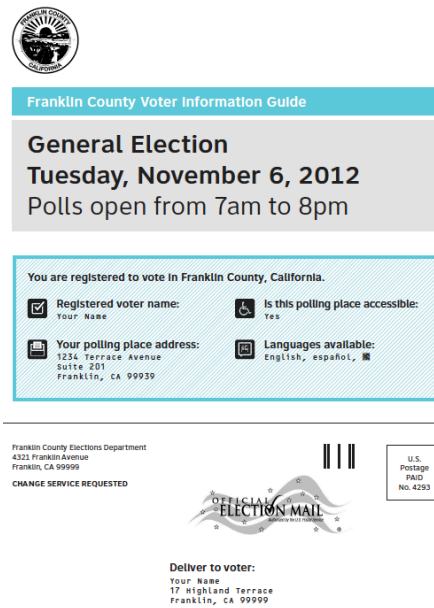
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- ✓ Put the polling place on the front cover

The cover of a voter guide does not have to be treated like the cover of a book. Rather, for a voter guide, the front cover should hold key information: date and type of election, who published the guide, languages that materials are available in, and the address of the polling place.



Though polling place addresses typically are printed on the back cover of guides, findings from usability testing suggest that the polling place information belongs with the other crucial information about elections.



We designed the cover with the personalized address information on the front. This puts it where voters can see it, while working with mail addressing technology.

- ✓ Be clear when the sample ballot is an exact sample, and when it's just "similar"

This confusion affects voters' view of the sample ballot and information about candidates and measures. It doesn't occur to most voters that their actual ballot could be different from their neighbor's.

Labeling the sample ballot as authoritative (or not) helps voters know what to expect. For example, many participants told us they used the sample ballot as practice for voting.

Some vote-by-mail voters may be confused when they receive a sample ballot in the mail. Include information about when real ballots will arrive, and that the ballot they will receive will be a translated version if they requested one.

This is especially important for new voters, low-literacy voters, and voters speaking English as a second language. Ballots are not a comfortable or familiar format for them to read. They told us that they hoped it would be the same as in the polling place so they wouldn't get lost or miss anything as they transcribed their votes onto the ballot there.

✓ **Make any update or registration form look official**

In the interviews, people complained that the poll worker form we used did not look “official” and said that they looked for something like a county seal, or the election mail insignia to tell them that the form was “real.”

In the usability testing, the prototype included an update form (based on Santa Clara) that was designed to be a tear-off postcard. Its appearance worked better, but exposed another problem: having personal information like date of birth visible on a postcard.

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**Mary Cuevo**  
Registrar of Voters



**Registrar of Voters**  
Franklin County



Voters looked for county seals and postal insignias as indications that this is official information.

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Participants also wanted the form to show them what their current option “settings” are, so they would know whether they needed to make any changes. For example, “You are registered to vote,” and “You have signed up to vote by mail in every election.”

## Close civic literacy gaps through structure and content

Voters recognize county guides as the authoritative source of objective information. You can use that to close the gaps between what they come to elections knowing and what they need to know to take part.

- ✓ Add a “signature” so voters know the source  
From the opening letter from the clerk or election director, to statements from candidates, to arguments for and against, voters noticed and appreciated seeing the source of the information.

Including information about individuals and committees who provided information for the guide helps voters know what comes from the official source – the election department – and what doesn’t.

- Include names and titles
- Show the organization or affiliation of the person
- Including status can be helpful

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Your vote counts!



Mary Cuevo  
Registrar of Voters

### Tax rate statement for Measure E

Dated: February 26, 2014.

Helen Benjamin, Chancellor  
Franklin Community College District

An election will be held in the Franklin Community College District  
the sale of up to \$450,000,000 in bonds of the District

Information can be “signed” in appropriate ways.

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- ✓ Tell voters their rights  
New voters, non-voters, and infrequent voters surprised us by carefully reading and asking questions about the Voter Bill of Rights we included. They learned about the process as well as their rights when they read it. Though it is not required, participants in our study got so much value out of this information that we urge counties to include it. We include a proposed, plain language version online at <http://civicdesign.org>. Include it at the beginning of the guide.  
  
Include links or cross references to more detailed information about how to use these rights.

- ✓ **Make it easy to learn about and compare candidates**  
When voters ask, “Who is running?” they need information beyond name and party affiliation. They compare and contrast candidates, using information that the candidates provide as well as statements and endorsements from other sources. Voters in our study appreciated having a way to quickly see and compare candidates, with the option of getting more information about them.
  - Include a structured summary of all of the candidates, with links to their campaign website or social media page.
  - Urge candidates to provide paid statements in English and additional languages.
  - Show that the candidates, not the election department, provided this information, and that they paid to have it included in the guide.
  - Add party endorsements (when relevant) to the structured summary listing rather than showing endorsements on a separate page.

While we are not ready to recommend that photos of candidates be on ballots, it may be time to test including them in county voter guides. We suggest this with some hesitation, though, recognizing that including candidate photos introduces additional steps and costs to the production of guides. However, non-voters and infrequent voters responded very positively to pages that had candidate photos. We think this positive reaction came both from the clear signal the photos gave that the section was about people (rather than measures). The photos also seemed to help participants relate to candidates and associate candidate priorities with individuals.

- ✓ **Help voters know how ballot measures will affect them**  
Summaries and statements for and against were helpful to voters in our study, and they surprised us by reviewing analyses about the impacts of changes measures would bring if they passed.

Ideally, the original text of measures would be in plain language.

Regardless, summaries should be short (between 50 and 300 words), and must be in plain language. There is little point in having the summaries if voters don’t understand them. A structure that seems to be helpful explains the current situation and what would change if the measure passed.

Describe in a useful way what it means to vote Yes or vote No (or For or Against). This helps voters see how the measure affects them.

- Show who provided pro / con statements in a list at the end of the summary of the measure.
- Create a simplified table format for tax rate implications and include that on the summary page.

- Introduce pro / con statements with a one-page summary for each measure. (You can ask providers of statements to give you a 1-sentence summary to include here.)
- Write counsel and financial analysis in plain language (perhaps using the state office's plain language guidelines).
- Place all of the summary pages first, with a page references to the arguments, analyses, and full text following the summaries.

When the full text of ballot measures is in a guide, include a key or a legend to help voters understand what they are looking at. For example, if text is struck through or underlined, include a description at the top of each measure.

- ✓ **Include explanations of the type of election**  
Even educated, avid voters in our study weren't always clear about what happens in which kinds of elections.

Describing the California top-two primary was especially problematic.

Explain the type of election and where it fits into the larger election cycle. For example, explain the purpose of a primary election (to narrow the number of candidates), and what will happen next (the two candidates who get the most votes will move on to a general election).

All types of elections need some explanation.

We strongly recommend that you test the explanation with voters to ensure that the published version works well for voters with low literacy and low English proficiency, as well as low civic literacy.

## Ideas that require changes in elections processes

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### Simplify the service design of elections

The practice of “service design” covers all of the touch points that a user, customer, member –or in our case, a voter – has with the institution providing the service. For elections the idea of service design stretches across the experience someone has, from the first time they hear an election is coming up to the effects on their lives when a candidate is elected or a measure becomes law.

Ironically, by offering more convenience for voters (often at the expense of making administering elections more complex), the supposedly simple act of casting a vote has gotten more and more complicated, with too many steps. As we’ve discussed in several places, this complexity can confuse voters, making it less likely that they will participate.

#### Vote by mail

Take vote-by-mail, for example:

- Very few participants understood the steps for vote-by mail (register → request → return).
- Participants thought that they were VBM because they got something in the mail (which was probably the sample ballot).

Can we simplify this in some bold way? For example, what would it take to create a system in which everyone is sent a “real” ballot, which they can use to vote by mail or drop off at a polling place, but that still allows them to vote at a polling place without provisional voting.

At a minimum we should make it easier to mark a sample ballot at home and either use it to vote or easily transfer the votes to an official ballot at the polling place.

#### Registration

Separating out registration from actually voting is weird for younger voters. Same-day voter registration or automatic voter registration would solve a lot of issues, especially for people who move a lot. Some participants thought they had voted when, after they described what they had done, it seems likely that they had only registered to vote (or signed a petition).

#### Vote centers

Neighborhood polling places are important, but the ability to vote at any polling place would help tentative voters and those whose schedules are not regular or easily predictable.

## Universal access to accessible voting systems

Many of the accessible voting features would be helpful to people with low literacy or who speak a language other than English.

- audio ballots, especially when combined with a visual presentation
- larger print
- the error correction capabilities of an electronic ballot-marking device

## Make voter guides available to everyone

We do not think that a voter guide alone will turn a non-voter into a voter. But we heard examples of how they can be a tipping point when family members and friends see guides arrive for registered voters.

- Should the voter guide go to all households, rather than just to registered voters?
- Is there a way to include information about voter registration without confusing people who are already registered and getting duplicate registrations?

## Require text on ballots or in voter guides to be in plain language

It is common in election reform to require specific wording for instructions or other information to be included on the ballot. For example, information about top two primary elections must appear, as specified in statute, on the ballot face and in voter guides. Though the intent might have been to explain a concept or a change to voters, this wording is not plain and clear, so it is not helpful to voters.

## Untested ideas

We have a number of ideas that we did not test, but which the research suggests could be valuable.





- Have a standard way to show other sources of information on each page, especially links directly to the specific web page. Use a QR code as the “icon” for “ the Web.”
- Include a short description of local offices to help voters put candidate information in context.
- Add a short summary of the pro/con to the measure summary page, to make this page stand alone. It would put the ballot language, yes/no explanations, and a signed pro/con summary on a single page.

What your vote means	
YES	NO
A “yes” vote on this measure authorizes the issuance of the bonds and the levy of taxes as estimated in the Tax Rate Statement to repay the bonds. Fifty-five percent (55%) of those voting on the ballot measure must approve the measure for it to pass.	A “no” vote on this measure disapproves the issuance of the bonds and the levy of taxes.
For and against Measure E	
FOR	AGAINST
YES on E updates classrooms and labs to maintain high quality career training programs in fields including healthcare, sciences, technology, and public safety.  <b>Linda Best,</b> Fmr. CEO, East Bay Leadership Council (Retired)  <b>J. Dale Hudson,</b> Former Chair, Franklin Community College District Independent Citizens’ Oversight Committee  <b>Cynthia Egan,</b> 2013 Franklin County Teacher of the Year (San Ramon Valley USD)  <b>Jim Russey,</b>	This bond is too large, this debt is too expensive, especially given today’s taxpayer burdens. We cannot afford to pay more.  <b>Alex Aliferis,</b> Executive Director, Franklin Taxpayers Association

This summary would be written as part of the arguments for and against.

- Make some wording changes to simplify the language.
  - Label the sample ballot as a “Practice Ballot.”
  - Label the different ways to vote in more unambiguous ways, especially differentiating “Voting Early in Person” and “Voting in Person on Election Day.”
  - Change “Voter Bill of Rights” to “Your Rights as a Voter.”
  - Be clear about “What You are Voting On”
- Require laws that change voting procedures to include testing of whether voters understand the new procedure and its name.
- Break the guide into two books: the main book is the sample ballot and information about candidates and measures. A smaller booklet has all of the “how to vote” information, and is bound into the main book inside the front cover, so both types of information are visible when the book is opened.



What's in this guide?	
What's on the ballot for this election?	7
Sample ballot	8
Who are the candidates?	12
Paid candidate statements	13
<b>3 ways to vote</b>	
 How to vote by mail	1
 How to vote early in person	3
 How to vote in person on Election Day	4
 Accessible voting	6
Language assistance	7

The smaller booklet on how to vote would be standard information, updated for correct dates and locations for each election.

- Explore and test voter information published on websites and smartphone apps.
- Combine multiple languages into one voter guide, testing presentation and layout for optimal ease of finding, reading, and comprehending by voters with a range of reading skills.
- Investigate the number and combination of languages that can effectively be included on the same paper ballot or voter guide.

## Appendix: Details about the research

### Demographic data on the study participants

We had a total of 98 participants in our research.

Pew Age Cohort	Birth Years	Age in 2014	Number in Study	Percentage
Silent	1928 to 1945	69+	5	5%
Boomers	1946 to 1964	50 to 68	12	12%
Gen X	1965 to 1980	34 to 49	28	29%
Millennial	1978 to 1989	24 to 33	28	29%
Student	1990 +	18 to 23	25	26%
Voting Cohort	Last voted in		Number in Study	Percentage
Regular voters	2013		23	23%
Presidential voters	2012		21	21%
Infrequent voters	2011 or before		24	24%
Non-voters	Don't know or never voted		29	30%
Gender	California total %		Number in Study	Percentage
Male	49.8%		48	49%
Female	50.2%		50	51%
Race/Ethnicity	California Total %		Number in Study	Percentage
Hispanic (all)	38%		38	39%
Asian (all)	13%		18	18%
Black (all)	6%		12	12%
White	40%		17	17%
Mixed/Other			13	13%
Registration	California Total %		Number in Study	
Yes	72.69%		71	72%
No			25	26%
Don't know			2	2%

## Locations where we conducted research

We conducted interviews and usability test sessions in a range of situations and geographic locations across California.

### **Oakland**

Laney College

Fruitvale and Temescal neighborhoods

### **Berkeley**

Ed Roberts Campus

West Branch, Berkeley Public Library

### **San Jose**

Dr. Martin Luther King, Jr. Library

Billy DeFrank Lesbian and Gay Community Center

### **Modesto**

Stanislaus County Public Library

Maddux Youth Center

### **Los Angeles**

85C Bakery Café, Cerritos

St John the Baptist Church, Baldwin Park

Center for Asian Americans United for Self Empowerment (CAUSE), Pasadena

Focus Plaza, San Gabriel Square

Los Angeles County Registrar-Recorder/County Clerk, Norwalk

## Portraits of voters

With an  $n$  of 98, it wasn't easy to keep individual voters in mind as we analyzed the data, designed prototype voter guides, and developed recommendations. To help us visualize the people in our study, we created composites of types of voters. Those "portraits" are below.

<b>Alejandra</b> <i>"No one in my family votes"</i> Age 18 (Student) Voting Status Non-voter Attitudes Not yet a voter Language Bilingual Civics Literacy Low  Alejandra lives with her big extended family in the Central Valley. She just graduated from high school and works more than full time at her family's restaurant. She's still thinking about what she wants to do next. No one in her family is interested in politics, but she thinks that some of her cousins might vote.	<b>Kim</b> <i>"The right to vote should be honored"</i> Age 33 (Millennial) Voting Status Regular voter Attitudes Dutiful voter Language Bilingual Civics Literacy Good  Kim's parents moved to California when she was a baby. They are proud that she has now graduated as a registered nurse. She started voting because her parents and friends pushed her into it, but now she feels it's her duty to vote. She also helps her parents with things like voting. Last election, she had a problem trying to help her mother vote. Her county didn't have ballots in their language and her mother was confused about how to mark the ballot.
<b>Justin</b> <i>"I guess I'll vote...if I get to it."</i> Age 22 (Student) Voting Status Presidential voter Attitudes Forming habits Language English Civics Literacy Ambient  Justin is a student at UC Berkeley. Although he started out well, he's finding college study hard, especially with his ADHD and the distractions from all his friends. He's registered to vote (his Mom made sure of that), but he's a bit hesitant. When he thinks about voting, he wants to have his say, but when he looks at the voter guide, it looks a lot like studying for a class.	<b>Steve</b> <i>"I'm part of the process!"</i> Age 45 (GenX) Voting Status Regular voter Attitudes Political voter Language English + some Spanish Civics Literacy High  Steve first got involved with a campaign when a neighbor ran for the local school board. It was a lot of fun, but even more it made him feel more like part of the whole city. He'd been a (mostly) regular voter, but now he's really focused on local government. For his current candidate, he's used his IT skills to create an app so they can see what neighborhoods they have covered.

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**Rakheem***"I vote when I have an opinion"*

Age	38 (GenX)
Voting Status	Infrequent voter
Attitudes	Issues voter
Language	English
Civics Knowledge	Ambient

Rakheem runs a successful printing business. Two issues have motivated him to vote: supporting the first black president and gay rights. His grandmother's stories about the first time she was allowed to vote made a big impression on him as a teenager. Though he was all fired up about the Presidential election, and knows the propositions are important, he rarely takes the time to read them before an election. He skims them as he marks his ballot. Sometimes he just doesn't return his vote-by-mail ballot in time.

**Rosa***"Voting is the right thing to do"*

Age	72 (Silent)
Voting Status	Presidential voter
Attitudes	Dutiful voter
Language	English
Civics Knowledge	Good

Rosa is a retired teacher. Her husband died last year. She has always been an avid voter, not missing even local elections. Now she has cancer and the treatment leaves her fatigued. She has good and bad days. She'd like to go to the polls, but worries about how she will feel on Election Day.

---

**Ari***"Of course I vote... everyone should"*

Age	52 (Boomer)
Voting Status	Regular Voter
Attitudes	Avid voter
Language	English
Civics Knowledge	High

Ari never thought much about voting. It was just something you did. Her parents voted and she assumed that everyone in her family would vote. Her parents always talked about their work in the civil rights movement, and she marched against the Vietnam War. Although she's not really active now, she still thinks of herself as involved in the local and national politics she follows carefully. Even with all her attention, she can feel unprepared for voting.

---

**Mr. & Mrs. Li***"It's hard to know what to do"*

Age	57 and 59 (Boomer)
Voting Status	Infrequent voter
Attitudes	Tentative voter
Language	Chinese, LEP
Civics Knowledge	Low

Mr. and Mrs. Li moved to California in the 1980s with their young children and the family became citizens a few years ago. They registered to vote, but their lives are so busy that actually getting to the polls can take a back seat to other things. The measures often confuse them. Mrs. Li doesn't like to vote if she doesn't have an opinion. And Mr. Li doesn't understand why he has to vote if that "electoral committee" really elects the president.

## Appendix: Tools and resources

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All of the material from this project is online:

<http://centerforcivicdesign.org/projects/how-voters-get-information/>

### **Our report and recommendations**

- This report
- The recommendations and guidelines in a separate document
- Sample voter guide pages illustrating the recommendations

### **Preliminary reports and presentations**

- Reports on the stakeholder interviews: Views from experts in voter education and outreach on barriers and challenges
- A preliminary report on the first interviews with voters and non-voters
- Workshop reports and presentation materials.
- The voter guide collections and analysis reports

### **Research protocol materials**

- Demographic questionnaire
- Session scripts
- Sample pages and prototypes tested

### **Additional examples and resources**

- A plain language version of the Voter Bill of Rights showing how it can be made easier to read
- Examples of icons and illustrations used in our prototypes.

## Project credits

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Many people contributed to this work. We are grateful for the support and help of Catherine Hazelton of the James Irvine Foundation, Astrid Garcia, Stefanie Jimenez, and Doug Chapin from the Future of California Elections (FOCE), and Melissa Breach and Jennifer Pae from the League of Women Voters of California Education Fund.

Perhaps our most important participants are the 100 people we worked with in our research sessions around the state. They are anonymous, but we hope that their voices are represented clearly in this report.

Many members of the Future of California Elections project and others involved in elections attended workshops or lent us time for interviews.

### **Election officials**

- Cathy Darling Allen (Shasta County)
- Jill Fox & Barbara Carr (San Francisco)
- Neal Kelley (Orange County)
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- Gail Pellerin (Santa Cruz County)
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- Tanzila Ahmed, Deanna Kitamura, Eugene Lee, and Nathanel Lowe (Asian Americans Advancing Justice – Los Angeles)
- Kim Alexander (California Voter Foundation)
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- Michelle Romero (The Greenlining Institute)
- Bo Sivanunsakul (Thai Community Development Center)
- Sabrina Smith (California Calls)
- Susan Stuart Clark (Common Knowledge)
- Ernie Ting (Smart Voter)

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- Kathy Souza & Mony Flores-Bauer (League of Women Voters of California, Voter Service Directors)

### **And... people who helped with research arrangements or hosted sessions**

#### Translators

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- Modesto Parks & Recreation Staff
- NALEO / Ofelia Media, Alberto Avalos
- St. John the Baptist Church

### **The project team**

- Dana Chisnell
- Whitney Quesenbery
- Drew Davies and Josh Schwieger, Oxide Design
- Ethan Newby
- Rachel Goddard
- Sandy Olson





# **EXHIBIT UU**



**Dean C. Logan**

Los Angeles County

Registrar-Recorder/County Clerk

# Official Sample Ballot

## General Election

November 8, 2016

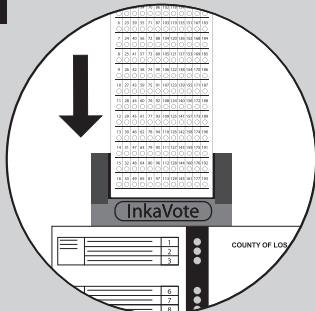
**Polls open at 7 am and close at 8 pm**



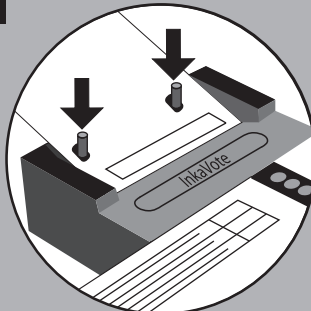
# Voting instructions

## How to vote at your polling place on Election Day

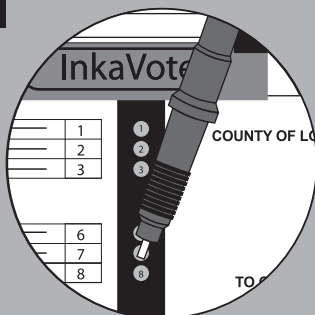
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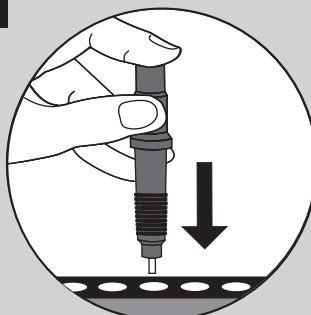
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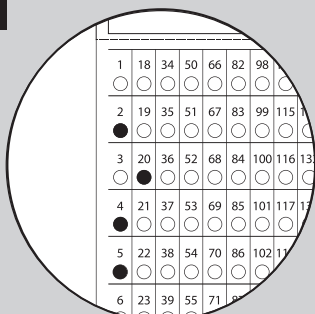
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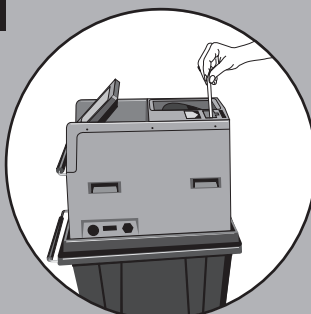
4



5



6





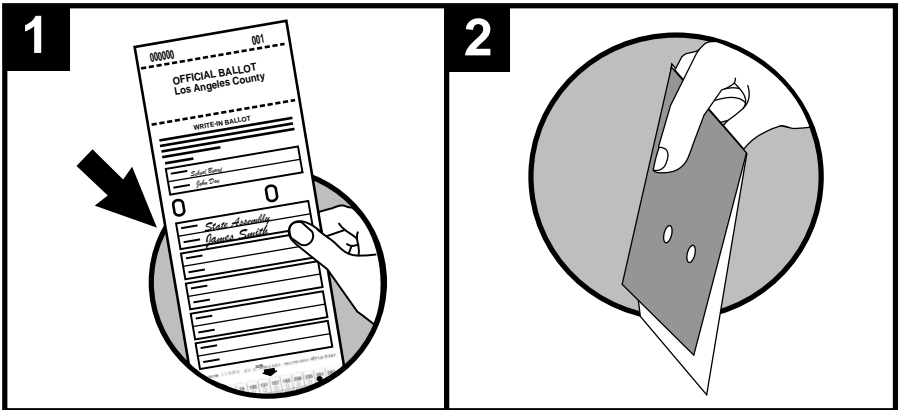
# Voting for write-in candidates

## How to vote for a person not listed on the ballot

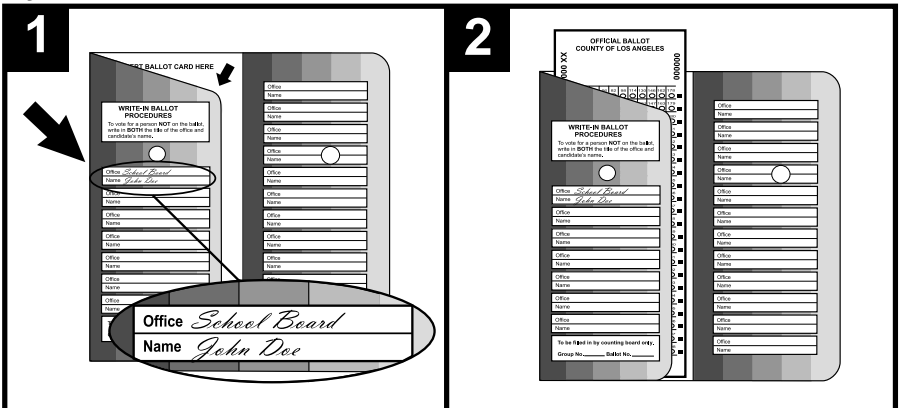
Write the name and office of the official write-in candidate in the “write-in” portion of the ballot. Write-in votes are only applicable for party-nominated and local offices appearing on the General Election ballot. A list of “Qualified Write-in Candidates” is available 11 days before the election at [lavote.net](http://lavote.net). See a pollworker for a list of qualified candidates.

You may not write-in a candidate and vote for a candidate on the ballot for the same office.

## At the polling place



## By mail



Note: Write-in votes are not allowed for the voter-nominated offices in the General Election.



# Information for voters

## Offices on the ballot

November 8, 2016 marks the date for the General Election. This election, the ballot will include the contest for United States President, contests for Congress (Senate and House), state legislative offices (Senate and Assembly) and various local offices. The ballot also includes statewide and local measures. Presidential General Elections only occur every four years. Review your Sample Ballot and visit **lavote.net** to make sure you are ready for Election Day!

### **Party-nominated offices:**

President and Vice President

### **Voter-nominated offices:**

United States Senator

United States Representative

State Senator

State Assembly member

### **Local offices:**

County Board of Supervisors

Superior Court Judge

Local districts or city contests

## Important notice

The Voter-Nominated offices no longer allow write-in candidates on the General Election ballot. Only the top two vote-getters from the Primary Election move on to the General Election.



## Early voting

### Why should you vote early?

- Avoid the long lines on Election Day!
- No need to rush on Election Day to get to your polling place.
- No need to worry about sending your Vote by Mail ballot on time.

The Registrar-Recorder/County Clerk is offering early voting at specified locations leading up to the November 8, 2016 General Election.

Beginning October 11th any voter that would like to vote early can visit the Department's Headquarters located at 12400 Imperial Highway in Norwalk to request and cast a ballot.

The Department will also offer additional early voting sites on the two weekends leading up to Election Day starting October 29th at several locations throughout Los Angeles County.

For additional information on the early voting program including a listing of locations, dates and hours of operation, please visit **lavote.net**.



# Vote By Mail Ballot drop-off locations

The Registrar-Recorder/County Clerk is providing Vote By Mail drop-off locations for the November 8, 2016 General Election.

Beginning October 11th any voter who receives a Vote By Mail ballot may drop-off their voted ballot at one of many convenient locations throughout Los Angeles County.

For details on the program and a listing of ballot drop-off locations, please visit **[lavote.net](http://lavote.net)**.





# Voter Bill of Rights

**You have the following rights:**

- 1. The right to vote if you are a registered voter.** You are eligible to vote if you are:
  - a U.S. citizen living in California
  - registered where you currently live
  - at least 18 years old
  - not in prison or on parole for a felony

- 2. The right to vote if you are a registered voter even if your name is not on the list.**

You will vote using a provisional ballot. Your vote will be counted if elections officials determine that you are eligible to vote.

- 3. The right to vote if you are still in line when the polls close.**

- 4. The right to cast a secret ballot** without anyone bothering you or telling you how to vote.

- 5. The right to get a new ballot if you have made a mistake**, if you have not already cast your ballot. You can:

**Ask an elections official at a polling place for a new ballot; or**

**Exchange your vote by mail ballot** for a new one at an elections office, or at your polling place; or

**Vote using a provisional ballot**, if you do not have your original vote by mail ballot.

- 6. The right to get help casting your ballot** from anyone you choose, except from your employer or union representative.


- 7. The right to drop off your completed vote by mail ballot at any polling place** in the county where you are registered to vote.

- 8. The right to get election materials in a language other than English** if enough people in your voting precinct speak that language.

- 9. The right to ask questions to elections officials about election procedures** and watch the election process. If the person you ask cannot answer your questions, they must send you to the right person for an answer. If you are disruptive, they can stop answering you.

- 10. The right to report any illegal or fraudulent election activity** to an elections official or the Secretary of State's office.

 On the web at [www.sos.ca.gov](http://www.sos.ca.gov)

 By phone at **(800) 345-VOTE (8683)**

 By email at [elections@sos.ca.gov](mailto:elections@sos.ca.gov)

**If you believe you have been denied any of these rights**, call the Secretary of State's confidential toll-free Voter Hotline at **(800) 345-VOTE (8683)**.



## Translated election material

### 1-800-815-2666 option 3

- Call to receive translated election materials.
- Llame para recibir material electoral traducido.
- 請致電索取已翻譯的選舉資料。
- 번역된 선거 자료를 받으시려면 전화하십시오.
- Hãy gọi điện thoại để nhận những tài liệu bầu cử đã được phiên dịch.
- Tumawag lang po upang makatanggap ng mga materyales na nakasalin para sa halalan.
- 翻訳された選挙資料を受け取るにはお電話ください。
- ติดต่อเพื่อรับเอกสารการเลือกตั้งที่แปลแล้ว
- សូមទូរស័ព្ទមកដើម្បីទទួលបានសម្ភារៈការបោះឆ្នោតដែលបានបកប្រែ។
- अनुवादित चुनाव सामग्री प्राप्त करने के लिए कॉल करें.

The Federal Voting Rights Act requires voter information, including a sample ballot booklet containing a Vote By Mail application be available in English as well as Spanish, Chinese, Korean, Vietnamese, Tagalog/Filipino, Japanese, Thai, Khmer and Hindi.



# Apply to vote by mail

## One-time Vote By Mail

You can request a ballot by mail starting 29 days before the election. Apply by doing one of the following:

- Visit **lavote.net** and submit your request online.
- Tear off and mail back the application on the back cover page of this booklet.
- Send a letter signed by the voter that includes the voter's residence address and where to send the Vote By Mail ballot:  
Registrar-Recorder/County Clerk  
P.O. Box 30450, Los Angeles, CA 90030-0450.
- You can also apply by calling (800) 815-2666 option 2.

## Permanent Vote By Mail

You can request a ballot to be mailed to you automatically every time there is an election. This is called Permanent Vote By Mail status. California law allows a voter to declare that they want to automatically vote by mail every election.

You can download an application at **lavote.net** or just check the box on the Vote By Mail application on the back cover of this booklet.

**Application to Vote By Mail**

☒ I want to be a permanent Vote By Mail voter. You will automatically receive a ballot and vote by mail every election.

X \_\_\_\_\_

000 \_\_\_\_\_

OFFICIAL ELECTION MAIL

↓ ♿

☒ I want to be a permanent Vote By Mail voter. You will automatically receive a ballot and vote by mail every election.

## Party-Nominated Offices

The party label accompanying the name of a candidate for party-nominated office on the general election ballot means that the candidate is the official nominee of the party shown.

## Write-in Candidates

A voter is entitled to cast a vote for a qualified write-in candidate for any Party-Nominated office. The list of qualified write-in candidates is posted at [lavote.net](http://lavote.net) 11 days prior to election day. The list is also available at the polling places.

## PRESIDENT AND VICE PRESIDENT

Vote for One Party	<b>GARY JOHNSON</b> , for President	Libertarian	<b>9</b> ➔ ○
	<b>BILL WELD</b> , for Vice President		
	<b>JILL STEIN</b> , for President	Green	<b>11</b> ➔ ○
	<b>AJAMU BARAKA</b> , for Vice President		
	<b>HILLARY CLINTON</b> , for President	Democratic	<b>13</b> ➔ ○
	<b>TIM KAINE</b> , for Vice President		
	<b>GLORIA ESTELA LA RIVA</b> , for President	Peace and Freedom	<b>15</b> ➔ ○
	<b>DENNIS J. BANKS</b> , for Vice President		
	<b>DONALD J. TRUMP</b> , for President	Republican, American Independent	<b>17</b> ➔ ○
	<b>MICHAEL R. PENCE</b> , for Vice President		

PLEASE NOTE: The order in which candidates' names appear on the ballot is determined by a random drawing of 26 letters of the alphabet. Additionally, candidates for federal, most state and some local offices change positions, or "rotate". This prevents a specific candidate's name from always appearing first, or last, on all ballots.

CONTINUE VOTING ON NEXT PAGE



## Voter-Nominated Offices

All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot.

## Write-in Candidates

Pursuant to Elections Code 8606, write-in votes are not authorized for Voter-Nominated offices at the General Election.

### UNITED STATES SENATOR

Vote for One	<b>LORETTA L. SANCHEZ</b> United States Congresswoman	Party Preference: Democratic	<b>36</b> ➡ <input type="radio"/>
	<b>KAMALA D. HARRIS</b> Attorney General of California	Party Preference: Democratic	<b>37</b> ➡ <input type="radio"/>

### UNITED STATES REPRESENTATIVE

33rd District Vote for One	<b>KENNETH W. WRIGHT</b> Physician and Surgeon	Party Preference: Republican	<b>40</b> ➡ <input type="radio"/>
	<b>TED W. LIEU</b> Congressman/Military Officer	Party Preference: Democratic	<b>41</b> ➡ <input type="radio"/>

### STATE SENATOR

27th District Vote for One	<b>STEVE FAZIO</b> Independent Small Businessman	Party Preference: Republican	<b>44</b> ➡ <input type="radio"/>
	<b>HENRY STERN</b> Educator/Environmental Attorney	Party Preference: Democratic	<b>45</b> ➡ <input type="radio"/>

### MEMBER OF THE STATE ASSEMBLY

45th District Vote for One	<b>MATT DABABNEH</b> Assemblymember	Party Preference: Democratic	<b>48</b> ➡ <input type="radio"/>
	<b>JERRY KOWAL</b> Business Executive	Party Preference: Republican	<b>49</b> ➡ <input type="radio"/>

CONTINUE VOTING ON NEXT PAGE



## Nonpartisan Offices

All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot.

## Write-in Candidates

A voter is entitled to cast a vote for a qualified write-in candidate for any nonpartisan office. The list of qualified write-in candidates is posted at [lavote.net](http://lavote.net) 11 days prior to election day. The list is also available at the polling places.

## JUDICIAL

### JUDGE OF THE SUPERIOR COURT

Office No. 11 Vote for One	STEVEN SCHREINER Gang Homicide Prosecutor	62 ➡ <input type="radio"/>
	DEBRA R. ARCHULETA Violent Crimes Prosecutor	63 ➡ <input type="radio"/>
Office No. 42 Vote for One	EFRAIN MATTHEW ACEVES Child Molestation Prosecutor	65 ➡ <input type="radio"/>
	ALICIA MOLINA Attorney At Law	66 ➡ <input type="radio"/>
Office No. 84 Vote for One	JAVIER PEREZ Supervising Criminal Prosecutor	68 ➡ <input type="radio"/>
	SUSAN JUNG TOWNSEND Criminal Fraud Prosecutor	69 ➡ <input type="radio"/>
Office No. 158 Vote for One	KIM L. NGUYEN Deputy Attorney General	71 ➡ <input type="radio"/>
	DAVID A. BERGER Violent Crimes Prosecutor	72 ➡ <input type="radio"/>

CONTINUE VOTING ON NEXT PAGE



## STATE MEASURES

<b>51</b>	<b>SCHOOL BONDS. FUNDING FOR K-12 SCHOOL AND COMMUNITY COLLEGE FACILITIES. INITIATIVE STATUTE.</b> Authorizes \$9 billion in general obligation bonds for new construction and modernization of K-12 public school facilities; charter schools and vocational education facilities; and California Community Colleges facilities. Fiscal Impact: State costs of about \$17.6 billion to pay off both the principal (\$9 billion) and interest (\$8.6 billion) on the bonds. Payments of about \$500 million per year for 35 years.	<b>80</b> YES ➡ <input type="radio"/>
		<b>81</b> NO ➡ <input type="radio"/>
<b>52</b>	<b>MEDI-CAL HOSPITAL FEE PROGRAM. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.</b> Extends indefinitely an existing statute that imposes fees on hospitals to fund Medi-Cal health care services, care for uninsured patients, and children's health coverage. Fiscal Impact: Uncertain fiscal effect, ranging from relatively little impact to annual state General Fund savings of around \$1 billion and increased funding for public hospitals in the low hundreds of millions of dollars annually.	<b>84</b> YES ➡ <input type="radio"/>
		<b>85</b> NO ➡ <input type="radio"/>
<b>53</b>	<b>REVENUE BONDS. STATEWIDE VOTER APPROVAL. INITIATIVE CONSTITUTIONAL AMENDMENT.</b> Requires statewide voter approval before any revenue bonds can be issued or sold by the state for certain projects if the bond amount exceeds \$2 billion. Fiscal Impact: State and local fiscal effects are unknown and would depend on which projects are affected by the measure and what actions government agencies and voters take in response to the measure's voting requirement.	<b>88</b> YES ➡ <input type="radio"/>
		<b>89</b> NO ➡ <input type="radio"/>
<b>54</b>	<b>LEGISLATURE. LEGISLATION AND PROCEEDINGS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.</b> Prohibits Legislature from passing any bill unless published on Internet for 72 hours before vote. Requires Legislature to record its proceedings and post on Internet. Authorizes use of recordings. Fiscal Impact: One-time costs of \$1 million to \$2 million and ongoing costs of about \$1 million annually to record legislative meetings and make videos of those meetings available on the Internet.	<b>91</b> YES ➡ <input type="radio"/>
		<b>92</b> NO ➡ <input type="radio"/>
<b>55</b>	<b>TAX EXTENSION TO FUND EDUCATION AND HEALTHCARE. INITIATIVE CONSTITUTIONAL AMENDMENT.</b> Extends by twelve years the temporary personal income tax increases enacted in 2012 on earnings over \$250,000, with revenues allocated to K-12 schools, California Community Colleges, and, in certain years, healthcare. Fiscal Impact: Increased state revenues—\$4 billion to \$9 billion annually from 2019-2030—depending on economy and stock market. Increased funding for schools, community colleges, health care for low-income people, budget reserves, and debt payments.	<b>95</b> YES ➡ <input type="radio"/>
		<b>96</b> NO ➡ <input type="radio"/>

CONTINUE VOTING ON NEXT PAGE



## STATE MEASURES

<b>56</b>	<b>CIGARETTE TAX TO FUND HEALTHCARE, TOBACCO USE PREVENTION, RESEARCH, AND LAW ENFORCEMENT. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.</b> Increases cigarette	<b>106</b> YES ➡ <input type="radio"/>
	tax by \$2.00 per pack, with equivalent increase on other tobacco products and electronic cigarettes containing nicotine. Fiscal Impact: Additional net state revenue of \$1 billion to \$1.4 billion in 2017-18, with potentially lower revenues in future years. Revenues would be used primarily to augment spending on health care for low-income Californians.	<b>107</b> NO ➡ <input type="radio"/>
<b>57</b>	<b>CRIMINAL SENTENCES. PAROLE. JUVENILE CRIMINAL PROCEEDINGS AND SENTENCING. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.</b> Allows parole consideration for	<b>110</b> YES ➡ <input type="radio"/>
	nonviolent felons. Authorizes sentence credits for rehabilitation, good behavior, and education. Provides juvenile court judge decides whether juvenile will be prosecuted as adult. Fiscal Impact: Net state savings likely in the tens of millions of dollars annually, depending on implementation. Net county costs of likely a few million dollars annually.	<b>111</b> NO ➡ <input type="radio"/>
<b>58</b>	<b>ENGLISH PROFICIENCY. MULTILINGUAL EDUCATION. INITIATIVE STATUTE.</b> Preserves requirement that public schools ensure	<b>114</b> YES ➡ <input type="radio"/>
	students obtain English language proficiency. Requires school districts to solicit parent/community input in developing language acquisition programs. Requires instruction to ensure English acquisition as rapidly and effectively as possible. Authorizes school districts to establish dual-language immersion programs for both native and non-native English speakers. Fiscal Impact: No notable fiscal effect on school districts or state government.	<b>115</b> NO ➡ <input type="radio"/>
<b>59</b>	<b>CORPORATIONS. POLITICAL SPENDING. FEDERAL CONSTITUTIONAL PROTECTIONS. LEGISLATIVE ADVISORY QUESTION.</b> Asks whether California's elected officials should use	<b>118</b> YES ➡ <input type="radio"/>
	their authority to propose and ratify an amendment to the federal Constitution overturning the United States Supreme Court decision in Citizens United v. Federal Election Commission. Citizens United ruled that laws placing certain limits on political spending by corporations and unions are unconstitutional. Fiscal Impact: No direct fiscal effect on state or local governments.	<b>119</b> NO ➡ <input type="radio"/>

Shall California's elected officials use all of their constitutional authority, including, but not limited to, proposing and ratifying one or more amendments to the United States Constitution, to overturn Citizens United v. Federal Election Commission (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that corporations should not have the same constitutional rights as human beings?

CONTINUE VOTING ON NEXT PAGE





## STATE MEASURES

<b>60</b>	<b>ADULT FILMS. CONDOMS. HEALTH REQUIREMENTS. INITIATIVE STATUTE.</b> Requires adult film performers to use condoms during filming of sexual intercourse. Requires producers to pay for performer vaccinations, testing, and medical examinations. Requires producers to post condom requirement at film sites. Fiscal Impact: Likely reduction of state and local tax revenues of several million dollars annually. Increased state spending that could exceed \$1 million annually on regulation, partially offset by new fees.	<b>132 YES</b> <input type="radio"/> <b>133 NO</b> <input type="radio"/>
<b>61</b>	<b>STATE PRESCRIPTION DRUG PURCHASES. PRICING STANDARDS. INITIATIVE STATUTE.</b> Prohibits state from buying any prescription drug from a drug manufacturer at price over lowest price paid for the drug by United States Department of Veterans Affairs. Exempts managed care programs funded through Medi-Cal. Fiscal Impact: Potential for state savings of an unknown amount depending on (1) how the measure's implementation challenges are addressed and (2) the responses of drug manufacturers regarding the provision and pricing of their drugs.	<b>136 YES</b> <input type="radio"/> <b>137 NO</b> <input type="radio"/>
<b>62</b>	<b>DEATH PENALTY. INITIATIVE STATUTE.</b> Repeals death penalty and replaces it with life imprisonment without possibility of parole. Applies retroactively to existing death sentences. Increases the portion of life inmates' wages that may be applied to victim restitution. Fiscal Impact: Net ongoing reduction in state and county criminal justice costs of around \$150 million annually within a few years, although the impact could vary by tens of millions of dollars depending on various factors.	<b>140 YES</b> <input type="radio"/> <b>141 NO</b> <input type="radio"/>
<b>63</b>	<b>FIREARMS. AMMUNITION SALES. INITIATIVE STATUTE.</b> Requires background check and Department of Justice authorization to purchase ammunition. Prohibits possession of large-capacity ammunition magazines. Establishes procedures for enforcing laws prohibiting firearm possession by specified persons. Requires Department of Justice's participation in federal National Instant Criminal Background Check System. Fiscal Impact: Increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually, related to a new court process for removing firearms from prohibited persons after they are convicted.	<b>144 YES</b> <input type="radio"/> <b>145 NO</b> <input type="radio"/>
<b>64</b>	<b>MARIJUANA LEGALIZATION. INITIATIVE STATUTE.</b> Legalizes marijuana under state law, for use by adults 21 or older. Imposes state taxes on sales and cultivation. Provides for industry licensing and establishes standards for marijuana products. Allows local regulation and taxation. Fiscal Impact: Additional tax revenues ranging from high hundreds of millions of dollars to over \$1 billion annually, mostly dedicated to specific purposes. Reduced criminal justice costs of tens of millions of dollars annually.	<b>148 YES</b> <input type="radio"/> <b>149 NO</b> <input type="radio"/>
<b>65</b>	<b>CARRYOUT BAGS. CHARGES. INITIATIVE STATUTE.</b> Redirects money collected by grocery and certain other retail stores through mandated sale of carryout bags. Requires stores to deposit bag sale proceeds into a special fund to support specified environmental projects. Fiscal Impact: Potential state revenue of several tens of millions of dollars annually under certain circumstances, with the monies used to support certain environmental programs.	<b>152 YES</b> <input type="radio"/> <b>153 NO</b> <input type="radio"/>

CONTINUE VOTING ON NEXT PAGE



## STATE MEASURES

66

**DEATH PENALTY. PROCEDURES. INITIATIVE STATUTE.** Changes procedures governing state court challenges to death sentences.

Designates superior court for initial petitions and limits successive petitions. Requires appointed attorneys who take noncapital appeals to accept death penalty appeals. Exempts prison officials from existing regulation process for developing execution methods. Fiscal Impact: Unknown ongoing impact on state court costs for processing legal challenges to death sentences. Potential prison savings in the tens of millions of dollars annually.

158 YES ➡ ☐159 NO ➡ ☐

67

**BAN ON SINGLE-USE PLASTIC BAGS. REFERENDUM.** A "Yes" vote approves, and a "No" vote rejects, a statute that prohibits grocery and other stores from providing customers single-use

plastic or paper carryout bags but permits sale of recycled paper bags and reusable bags. Fiscal Impact: Relatively small fiscal effects on state and local governments, including a minor increase in state administrative costs and possible minor local government savings from reduced litter and waste management costs.

162 YES ➡ ☐163 NO ➡ ☐

## COUNTY MEASURES

A

**Safe, Clean Neighborhood Parks, Open Space, Beaches, Rivers Protection, and Water Conservation Measure.** To replace expiring

local funding for safe, clean neighborhood/city/county parks; increase safe playgrounds, reduce gang activity; keep neighborhood recreation/senior centers, drinking water safe; protect beaches, rivers, water resources, remaining natural areas/open space; shall 1.5 cents be levied annually per square foot of improved property in Los Angeles County, with bond authority, requiring citizen oversight, independent audits, and funds used locally?

168 YES ➡ ☐169 NO ➡ ☐

### LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

M

**Los Angeles County Traffic Improvement Plan.** To improve freeway traffic flow/safety; repair potholes/sidewalks; repave local streets; earthquake retrofit bridges; synchronize signals; keep

senior/disabled/student fares affordable; expand rail/subway/bus systems; improve job/school/airport connections; and create jobs; shall voters authorize a Los Angeles County Traffic Improvement Plan through a ½ ¢ sales tax and continue the existing ½ ¢ traffic relief tax until voters decide to end it, with independent audits/oversight and funds controlled locally?

173 YES ➡ ☐174 NO ➡ ☐

CONTINUE VOTING ON NEXT PAGE



**SCHOOL****LOS ANGELES COMMUNITY COLLEGE DISTRICT SPECIAL ELECTION****CC****LOS ANGELES COMMUNITY COLLEGE DISTRICT AFFORDABLE  
EDUCATION/JOB TRAINING/CLASSROOM SAFETY MEASURE.**To repair local community colleges/prepare students/veterans for  
jobs/university transfer by upgrading vocational/career education for veterans,**184** YES ➡ ☐**185** NO ➡ ☐firefighters, paramedics nurses/police, removing lead paint/asbestos, upgrading campus safety/security  
systems, technology, handicapped accessibility/earthquake safety, repairing deteriorating gas, water/sewer  
lines, acquiring, constructing, repairing facilities, sites/equipment, shall Los Angeles Community College  
District issue \$3,300,000,000 in bonds at legal rates, requiring independent audits, citizen oversight, all funds  
used locally?**CITY****CALABASAS CITY SPECIAL MUNICIPAL ELECTION****F**Shall the Ordinance No. 2016-333 approving changing the  
existing Zoning from Planned Development - Residential**191** YES ➡ ☐Multifamily (20) - Open Space Development Restricted - Scenic  
Corridor to Commercial Retail - Residential Multifamily (20) - Open Space**192** NO ➡ ☐Development Restricted - Scenic Corridor - Development Plan to accommodate: 67 Single-Family Detached  
Homes and two Affordable Duplexes; a 72,872 square-foot, three-story hotel; and preservation of  
approximately 61.0 acres as Permanent Open Space on a 77-acre property at 4790 Las Virgenes Road,  
Calabasas be approved?**END OF BALLOT**

# **EXHIBIT VV**

**OFFICIAL BALLOT**  
**NOVEMBER 8, 2016**  
**CONSOLIDATED GENERAL ELECTION**  
**SAN LUIS OBISPO COUNTY, CALIFORNIA**

**BT 1**

**INSTRUCTIONS TO VOTERS:**

To vote, fill in the oval like this: ☐ **Vote both sides of the card.**

To vote for the candidate of your choice, fill in the OVAL next to the candidate's name. Do not vote for more than the number of candidates allowed (e.g. Vote for no more than Two). To vote for a qualified write-in candidate, write in the candidate's full name on the Write-In line and fill in the OVAL next to it. To vote on a measure, fill in the OVAL next to the word "Yes" or the word "No". If you tear, deface or wrongly mark this ballot, return it to the Elections Official and get another.

**PARTY-NOMINATED OFFICES**

The party label accompanying the name of a candidate for party-nominated office on the general election ballot means that the candidate is the official nominee of the party shown.

**PRESIDENT OF THE UNITED STATES**

Vote for One Party

- |   |                                     |
|---|-------------------------------------|
| <input type="radio"/> <b>GARY JOHNSON</b><br>For President          | LIBERTARIAN                         |
| <input type="radio"/> <b>BILL WELD</b><br>For Vice-President        |                                     |
| <input type="radio"/> <b>JILL STEIN</b><br>For President            | GREEN                               |
| <input type="radio"/> <b>AJAMU BARAKA</b><br>For Vice-President     |                                     |
| <input type="radio"/> <b>HILLARY CLINTON</b><br>For President       | DEMOCRATIC                          |
| <input type="radio"/> <b>TIM KAINE</b><br>For Vice-President        |                                     |
| <input type="radio"/> <b>GLORIA ESTELA LA RIVA</b><br>For President | PEACE<br>AND FREEDOM                |
| <input type="radio"/> <b>DENNIS J. BANKS</b><br>For Vice-President  |                                     |
| <input type="radio"/> <b>DONALD J. TRUMP</b><br>For President       | REPUBLICAN,<br>AMERICAN INDEPENDENT |
| <input type="radio"/> <b>MICHAEL R. PENCE</b><br>For Vice-President |                                     |

Write-in

**VOTER-NOMINATED AND  
NONPARTISAN OFFICES**

All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated or nonpartisan office. The party preference, if any, designated by a candidate for a voter-nominated office is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate. The party preference, if any, of a candidate for a nonpartisan office does not appear on the ballot.

**UNITED STATES SENATOR**

**UNITED STATES SENATOR**

Vote for One

- |   |
|---|
| <input type="radio"/> <b>LORETTA L. SANCHEZ</b><br>Party Preference: Democratic<br>United States Congresswoman  |
| <input type="radio"/> <b>KAMALA D. HARRIS</b><br>Party Preference: Democratic<br>Attorney General of California |

**UNITED STATES REPRESENTATIVE**

**UNITED STATES REPRESENTATIVE  
24th District**

Vote for One

- |  |
|--|
| <input type="radio"/> <b>SALUD CARBAJAL</b><br>Party Preference: Democratic<br>Santa Barbara County Supervisor |
| <input type="radio"/> <b>JUSTIN DONALD FAREED</b><br>Party Preference: Republican<br>Small Businessman/Rancher |

**STATE SENATOR**

**STATE SENATOR  
17th District**

Vote for One

- |   |
|---|
| <input type="radio"/> <b>BILL MONNING</b><br>Party Preference: Democratic<br>California State Senator |
| <input type="radio"/> <b>PALMER KAIN</b><br>Party Preference: Republican<br>Community Volunteer       |

**MEMBER OF THE STATE  
ASSEMBLY**

**MEMBER OF THE STATE  
ASSEMBLY**

**35th District**

Vote for One

- |  |
|--|
| <input type="radio"/> <b>JORDAN CUNNINGHAM</b><br>Party Preference: Republican<br>Businessman/School Trustee |
| <input type="radio"/> <b>DAWN ORTIZ-LEGG</b><br>Party Preference: Democratic<br>Small Business Owner         |

**SCHOOL**

**COAST UNIFIED SCHOOL DISTRICT**

**GOVERNING BOARD MEMBER**

Four Year Term

Vote for no more than Three

- |   |
|---|
| <input type="radio"/> <b>SAMUEL SHALHOUB</b><br>Teacher/Guitarist/Performer |
| <input type="radio"/> <b>TIFFANY SILVA</b><br>Appointed Incumbent           |
| <input type="radio"/> <b>EILEEN ROACH</b><br>Computer Programmer/Parent     |
| <input type="radio"/> <b>DENNIS H. RIGHTMER</b><br>Retired Educator         |
| <input type="radio"/> <b>ERIC G. ENDERSBY</b><br>Harbor Master              |
| <input type="radio"/> <b>Write-in</b>                                       |
| <input type="radio"/> <b>Write-in</b>                                       |
| <input type="radio"/> <b>Write-in</b>                                       |

**GOVERNING BOARD MEMBER**

Two Year Term

Vote for One

- |   |
|---|
| <input type="radio"/> <b>ELIZABETH WEATHERLY</b><br>Educator/Parent |
| <input type="radio"/> <b>LEE MCFARLAND</b><br>Appointed Incumbent   |
| <input type="radio"/> <b>Write-in</b>                               |

<b>CAYUCOS ELEMENTARY SCHOOL DISTRICT</b>		<b>PROPOSITION 53</b> <b>REVENUE BONDS. STATEWIDE VOTER APPROVAL. INITIATIVE CONSTITUTIONAL AMENDMENT.</b> Requires statewide voter approval before any revenue bonds can be issued or sold by the state for certain projects if the bond amount exceeds \$2 billion. Fiscal Impact: State and local fiscal effects are unknown and would depend on which projects are affected by the measure and what actions government agencies and voters take in response to the measure's voting requirement.	<b>PROPOSITION 57</b> <b>CRIMINAL SENTENCES. PAROLE. JUVENILE CRIMINAL PROCEEDINGS AND SENTENCING. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.</b> Allows parole consideration for nonviolent felons. Authorizes sentence credits for rehabilitation, good behavior, and education. Provides juvenile court judge decides whether juvenile will be prosecuted as adult. Fiscal Impact: Net state savings likely in the tens of millions of dollars annually, depending on implementation. Net county costs of likely a few million dollars annually.
<b>GOVERNING BOARD MEMBER</b> Vote for no more than Two		<input type="radio"/> YES <input type="radio"/> NO	<input type="radio"/> YES <input type="radio"/> NO
<input type="radio"/> <b>VAL WRIGHT</b> Educator <input type="radio"/> <b>SHERRY PECKHOON SIM</b> Real Estate Broker <input type="radio"/> <b>STEVE GEIL</b> Retired Businessman <input type="radio"/> <b>SUSAN H. BROWNELL</b> Homemaker/Investor <input type="radio"/> Write-in <input type="radio"/> Write-in		<b>PROPOSITION 54</b> <b>LEGISLATURE. LEGISLATION AND PROCEEDINGS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.</b> Prohibits Legislature from passing any bill unless published on Internet for 72 hours before vote. Requires Legislature to record its proceedings and post on Internet. Authorizes use of recordings. Fiscal Impact: One-time costs of \$1 million to \$2 million and ongoing costs of about \$1 million annually to record legislative meetings and make videos of those meetings available on the Internet.	<b>PROPOSITION 58</b> <b>ENGLISH PROFICIENCY. MULTILINGUAL EDUCATION. INITIATIVE STATUTE.</b> Preserves requirement that public schools ensure students obtain English language proficiency. Requires school districts to solicit parent/community input in developing language acquisition programs. Requires instruction to ensure English acquisition as rapidly and effectively as possible. Authorizes school districts to establish dual-language immersion programs for both native and non-native English speakers. Fiscal Impact: No notable fiscal effect on school districts or state government.
<b>DISTRICT</b>		<input type="radio"/> YES <input type="radio"/> NO	<input type="radio"/> YES <input type="radio"/> NO
<b>CAYUCOS FIRE PROTECTION DISTRICT</b>		<b>PROPOSITION 55</b> <b>TAX EXTENSION TO FUND EDUCATION AND HEALTHCARE. INITIATIVE CONSTITUTIONAL AMENDMENT.</b> Extends by twelve years the temporary personal income tax increases enacted in 2012 on earnings over \$250,000, with revenues allocated to K-12 schools, California Community Colleges, and, in certain years, healthcare. Fiscal Impact: Increased state revenues - \$4 billion to \$9 billion annually from 2019-2030 - depending on economy and stock market. Increased funding for schools, community colleges, health care for low-income people, budget reserves, and debt payments.	<input type="radio"/> YES <input type="radio"/> NO
<b>DIRECTOR</b> Vote for no more than Two		<input type="radio"/> YES <input type="radio"/> NO	<b>PROPOSITION 59</b> <b>CORPORATIONS. POLITICAL SPENDING. FEDERAL CONSTITUTIONAL PROTECTIONS. LEGISLATIVE ADVISORY QUESTION.</b> Asks whether California's elected officials should use their authority to propose and ratify an amendment to the federal Constitution overturning the United States Supreme Court decision in <i>Citizens United v. Federal Election Commission</i> . <i>Citizens United</i> ruled that laws placing certain limits on political spending by corporations and unions are unconstitutional. Fiscal Impact: No direct fiscal effect on state or local governments.
<input type="radio"/> <b>CHRISTOPHER H. POPE</b> Businessman <input type="radio"/> <b>CHERYL CONWAY</b> Retired Manager <input type="radio"/> <b>STEVE BEIGHTLER</b> Retired Firefighter <input type="radio"/> Write-in <input type="radio"/> Write-in		<input type="radio"/> YES <input type="radio"/> NO	Shall California's elected officials use all of their constitutional authority, including, but not limited to, proposing and ratifying one or more amendments to the United States Constitution, to overturn <i>Citizens United v. Federal Election Commission</i> (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that corporations should not have the same constitutional rights as human beings? <input type="radio"/> YES <input type="radio"/> NO
<b>MEASURES SUBMITTED TO THE VOTERS</b>		<b>PROPOSITION 56</b> <b>CIGARETTE TAX TO FUND HEALTHCARE, TOBACCO USE PREVENTION, RESEARCH, AND LAW ENFORCEMENT. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.</b> Increases cigarette tax by \$2.00 per pack, with equivalent increase on other tobacco products and electronic cigarettes containing nicotine. Fiscal Impact: Additional net state revenue of \$1 billion to \$1.4 billion in 2017-18, with potentially lower revenues in future years. Revenues would be used primarily to augment spending on health care for low-income Californians.	
<b>STATE</b>		<input type="radio"/> YES <input type="radio"/> NO	
<b>PROPOSITION 51</b> <b>SCHOOL BONDS. FUNDING FOR K-12 SCHOOL AND COMMUNITY COLLEGE FACILITIES. INITIATIVE STATUTE.</b> Authorizes \$9 billion in general obligation bonds for new construction and modernization of K-12 public school facilities; charter schools and vocational education facilities; and California Community Colleges facilities. Fiscal Impact: State costs of about \$17.6 billion to pay off both the principal (\$9 billion) and interest (\$8.6 billion) on the bonds. Payments of about \$500 million per year for 35 years.		<input type="radio"/> YES <input type="radio"/> NO	
<b>PROPOSITION 52</b> <b>MEDI-CAL HOSPITAL FEE PROGRAM. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.</b> Extends indefinitely an existing statute that imposes fees on hospitals to fund Medi-Cal health care services, care for uninsured patients, and children's health coverage. Fiscal Impact: Uncertain fiscal effect, ranging from relatively little impact to annual state General Fund savings of around \$1 billion and increased funding for public hospitals in the low hundreds of millions of dollars annually.		<input type="radio"/> YES <input type="radio"/> NO	

**OFFICIAL BALLOT**  
**NOVEMBER 8, 2016**  
**CONSOLIDATED GENERAL ELECTION**  
**SAN LUIS OBISPO COUNTY, CALIFORNIA**

**BT 1B**

**INSTRUCTIONS TO VOTERS:**

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MEASURES SUBMITTED TO THE VOTERS	
STATE	
<b>PROPOSITION 60</b> <b>ADULT FILMS. CONDOMS. HEALTH REQUIREMENTS. INITIATIVE STATUTE.</b> Requires adult film performers to use condoms during filming of sexual intercourse. Requires producers to pay for performer vaccinations, testing, and medical examinations. Requires producers to post condom requirement at film sites. Fiscal Impact: Likely reduction of state and local tax revenues of several million dollars annually. Increased state spending that could exceed \$1 million annually on regulation, partially offset by new fees. <input type="radio"/> YES <input type="radio"/> NO	<b>PROPOSITION 63</b> <b>FIREARMS. AMMUNITION SALES. INITIATIVE STATUTE.</b> Requires background check and Department of Justice authorization to purchase ammunition. Prohibits possession of large-capacity ammunition magazines. Establishes procedures for enforcing laws prohibiting firearm possession by specified persons. Requires Department of Justice's participation in federal National Instant Criminal Background Check System. Fiscal Impact: Increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually, related to a new court process for removing firearms from prohibited persons after they are convicted. <input type="radio"/> YES <input type="radio"/> NO
<b>PROPOSITION 61</b> <b>STATE PRESCRIPTION DRUG PURCHASES. PRICING STANDARDS. INITIATIVE STATUTE.</b> Prohibits state from buying any prescription drug from a drug manufacturer at price over lowest price paid for the drug by United States Department of Veterans Affairs. Exempts managed care programs funded through Medi-Cal. Fiscal Impact: Potential for state savings of an unknown amount depending on (1) how the measure's implementation challenges are addressed and (2) the responses of drug manufacturers regarding the provision and pricing of their drugs. <input type="radio"/> YES <input type="radio"/> NO	<b>PROPOSITION 64</b> <b>MARIJUANA LEGALIZATION. INITIATIVE STATUTE.</b> Legalizes marijuana under state law, for use by adults 21 or older. Imposes state taxes on sales and cultivation. Provides for industry licensing and establishes standards for marijuana products. Allows local regulation and taxation. Fiscal Impact: Additional tax revenues ranging from high hundreds of millions of dollars to over \$1 billion annually, mostly dedicated to specific purposes. Reduced criminal justice costs of tens of millions of dollars annually. <input type="radio"/> YES <input type="radio"/> NO
<b>PROPOSITION 62</b> <b>DEATH PENALTY. INITIATIVE STATUTE.</b> Repeals death penalty and replaces it with life imprisonment without possibility of parole. Applies retroactively to existing death sentences. Increases the portion of life inmates' wages that may be applied to victim restitution. Fiscal Impact: Net ongoing reduction in state and county criminal justice costs of around \$150 million annually within a few years, although the impact could vary by tens of millions of dollars depending on various factors. <input type="radio"/> YES <input type="radio"/> NO	<b>PROPOSITION 65</b> <b>CARRYOUT BAGS. CHARGES. INITIATIVE STATUTE.</b> Redirects money collected by grocery and certain other retail stores through mandated sale of carryout bags. Requires stores to deposit bag sale proceeds into a special fund to support specified environmental projects. Fiscal Impact: Potential state revenue of several tens of millions of dollars annually under certain circumstances, with the monies used to support certain environmental programs. <input type="radio"/> YES <input type="radio"/> NO
	<b>PROPOSITION 66</b> <b>DEATH PENALTY. PROCEDURES. INITIATIVE STATUTE.</b> Changes procedures governing state court challenges to death sentences. Designates superior court for initial petitions and limits successive petitions. Requires appointed attorneys who take noncapital appeals to accept death penalty appeals. Exempts prison officials from existing regulation process for developing execution methods. Fiscal Impact: Unknown ongoing impact on state court costs for processing legal challenges to death sentences. Potential prison savings in the tens of millions of dollars annually. <input type="radio"/> YES <input type="radio"/> NO
	<b>PROPOSITION 67</b> <b>BAN ON SINGLE-USE PLASTIC BAGS. REFERENDUM.</b> A "Yes" vote approves, and a "No" vote rejects, a statute that prohibits grocery and other stores from providing customers single-use plastic or paper carryout bags but permits sale of recycled paper bags and reusable bags. Fiscal Impact: Relatively small fiscal effects on state and local governments, including a minor increase in state administrative costs and possible minor local government savings from reduced litter and waste management costs. <input type="radio"/> YES <input type="radio"/> NO
	<b>COUNTY</b>
	<b>MEASURE J-16</b> To improve our region's transportation system by: Fixing potholes, repaving local streets, relieving traffic congestion; Improving street, highway and bridge safety; Making bike and transit improvements within and between communities; Increasing senior, veterans, disabled and student transit; and Providing safe routes to school. Shall San Luis Obispo County voters enact a half cent transportation sales tax, providing \$25,000,000 annually for nine (9) years, requiring independent citizens' oversight, where all funds stay local and cannot be taken by the State? <input type="radio"/> YES <input type="radio"/> NO

**PROOF OF SERVICE  
STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

I, Tiffany M. Harbor, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On June 11, 2020, I served the foregoing document(s) described as

**DECLARATION OF ANNA M. BARVIR IN SUPPORT OF PLAINTIFFS' OPPOSITION  
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

on the interested parties in this action by placing

☐ the original  
☒ a true and correct copy

thereof by the following means, addressed as follows:

Roderick M. Thompson  
[rthompson@fbm.com](mailto:rthompson@fbm.com)  
James Allison  
[jallison@fbm.com](mailto:jallison@fbm.com)  
Farella Braun + Martel LLP  
235 Montgomery Street, 17th Floor  
San Francisco, CA 94104  
*Attorneys for Defendants/Respondents*

Hannah Shearer  
[hshearer@giffords.org](mailto:hshearer@giffords.org)  
Hannah Friedman  
[hfriedman@giffords.org](mailto:hfriedman@giffords.org)  
Giffords Law Center to Prevent Gun Violence  
268 Bush Street #555  
San Francisco, CA 94104

  X   (BY ELECTRONIC TRANSMISSION) As follows: I served a true and correct copy by electronic transmission via One Legal. Said transmission was reported and completed without error.

  X   (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 11, 2020, at Long Beach, California.

s/ Tiffany M. Harbor  
Tiffany M. Harbor