

# The 2010 Report

## Recent Developments in Federal, State and Local Gun Laws



**Legal Community Against Violence**

expertise, information & advocacy to end gun violence

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*The views expressed in this publication are those of Legal Community Against Violence.  
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## **I. Introduction**

### **A. About this Report**

Legal Community Against Violence (LCAV) is pleased to publish the *2010 Report: Recent Developments in Federal, State and Local Gun Laws*. Expanding upon our past *California Report* publications, the *2010 Report* provides legislators, government attorneys, law enforcement officials, gun violence prevention advocates and the general public with information regarding federal, state and local gun laws and policies.

As discussed below, 2010 has seen significant developments in the gun violence prevention arena. On June 28, 2010, the U.S. Supreme Court issued its historic decision in *McDonald v. Chicago*, extending the Court's controversial 2008 ruling in *District of Columbia v. Heller* – that the Second Amendment confers an individual right to possess a handgun in the home for the purpose of self-defense – to state and local governments. Although the *McDonald* decision likely will result in an avalanche of new litigation, LCAV believes that the overwhelming majority of these lawsuits will be unsuccessful. Policymakers should rest assured that nothing in the *McDonald* decision prevents them from adopting many types of reasonable laws to reduce gun violence.

The *2010 Report* discusses both the promising and unsettling federal legislation proposed in Congress, including proactive bills designed to curb illegal gun trafficking, and dangerous laws that will allow loaded guns in national parks and guns in luggage on Amtrak trains. State legislatures have also been both proactive – adopting laws to remove guns from the hands of domestic violence perpetrators and the mentally ill – and regressive – loosening safety measures in concealed handgun permit laws or removing permit requirements altogether.

The *2010 Report* reviews the latest gun violence, crime and ownership statistics, with a special focus on guns and suicide, and looks at what municipalities are doing in the regulatory sphere to stem gun violence. Finally, the *2010 Report* focuses on two critical areas of gun regulation – universal background checks and firearms dealer laws.

### **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 legal assistance to elected officials, government attorneys and activists promoting laws and policies to reduce gun violence. For more about our services, see *How LCAV Can Help*, at page 39.

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, and the van Löben Sels/RembeRock Foundation.

We hope you will find the *2010 Report* instructive, and will join LCAV in the fight against gun violence.

## **II. Gun Violence in America: Latest Statistics and Study Findings on the Epidemic**

### **A. Firearm-Related Deaths and Injuries**

Gun violence remains rampant throughout America. The toll this epidemic takes on our nation is almost incomprehensible:

- 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>
- Children and young people under age 25 constituted over 41% of all firearm deaths and non-fatal injuries in 2007 nationwide.<sup>3</sup> That year, guns killed more 15–24 year-olds than any other cause except motor vehicle accidents.<sup>4</sup>
- From 2001-2007, over 4,900 Americans died from unintentional shootings.<sup>5</sup>

### **B. Gun Crimes**

Guns continue to be the preferred tool of criminals nationwide. 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>6</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>7</sup> That year, 12,632 people were victims of firearm homicide – 68.8% of all homicides nationwide.<sup>8</sup>

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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 Aug. 12, 2010) (select cause "Firearm").

<sup>2</sup> Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *WISQARS Nonfatal Injury Reports*, <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html> (last visited Aug. 12, 2010) (select cause "Firearm," year "2007").

<sup>3</sup> Nat'l Ctr. for Injury Prevention & Control, *supra* note 1; Nat'l Ctr. for Injury Prevention & Control, *supra* note 2.

<sup>4</sup> Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *WISQARS Leading Causes of Death Reports, 1999-2007*, <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html> (last visited Aug. 12, 2010).

<sup>5</sup> Nat'l Ctr. for Injury Prevention & Control, *supra* note 1 (select intent "Unintentional," cause "Firearm," year "2001 to 2007").

<sup>6</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 visited July 29, 2010).

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

<sup>8</sup> Nat'l Ctr. for Injury Prevention & Control, *supra* note 1 (select intent "Homicide," cause "Firearm").

Firearm-related fatalities of law enforcement are on the rise. In 2009, shooting deaths of police officers increased 22% – from 40 in 2008 to 49 in 2009.<sup>9</sup> Guns were the number one cause of death for law enforcement officers in 2009.<sup>10</sup>

### C. Gun Ownership

Americans lead the world in civilian gun ownership – owning an estimated 270 million firearms.<sup>11</sup> Although the U.S. has less than 5% of the world’s population, Americans possess 35% to 50% of all firearms in civilian hands.<sup>12</sup> Gun ownership is becoming concentrated in fewer and fewer hands in this country, however, meaning a smaller number of Americans own a larger proportion of the nation’s firearms. One public health survey found that about 35% of households in the U.S. had at least one gun.<sup>13</sup> Other surveys have found that 48% of all individual gun owners, or 13% of the U.S. adult population, report owning four or more firearms, and the 20% of gun owners who owned the most guns possessed about 65% of the nation’s firearms.<sup>14</sup>

2009 saw a surge in gun sales, partly due to the erroneous perception that the Obama Administration was poised to adopt an array of stringent gun laws. That year, the FBI completed 14,405,775 National Instant Criminal Background Check System (NICS) background checks for gun sales nationally – 22% more than those completed in Fiscal Year 2008.<sup>15</sup> Moreover, federal tax revenue from firearm and ammunition sales collected for Fiscal Year 2009 increased 45% from the prior year.<sup>16</sup> The economic crisis driving

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<sup>9</sup> Nat’l Law Enforcement Officers Mem’l Fund, *Research Bulletin: Law Enforcement Officer Deaths: Final 2009 Report – A Tale of Two Trends: Overall Fatalities Fall, Fatal Shootings on the Rise* 2-3 (Apr. 2010), [http://www.nleomf.org/assets/pdfs/law\\_enforcement\\_officer\\_fatalities\\_2009\\_end\\_year\\_report\\_apr10.pdf](http://www.nleomf.org/assets/pdfs/law_enforcement_officer_fatalities_2009_end_year_report_apr10.pdf).

<sup>10</sup> *Id.*

<sup>11</sup> *Small Arms Survey 2007: Guns and the City*, Small Arms Survey (Graduate Inst. of Int’l & Dev. Studies, Geneva, Switz.), Aug. 2007, at 1, 39.

<sup>12</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/IGSexecsumweb.pdf> (noting that Americans owned an estimated 220 to 280 million guns in 2004, including at least 86 million handguns).

<sup>13</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-](http://www-news.uchicago.edu/releases/07/pdf/070410.guns.norc.pdf)

[news.uchicago.edu/releases/07/pdf/070410.guns.norc.pdf](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>14</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 13, 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>15</sup> U.S. Dep’t of Justice, Bureau of Justice Statistics, Criminal Justice Information Services Division, *CJIS Annual Report 2009* 38, at [http://www.fbi.gov/hq/cjis/cjis\\_annual\\_report2009.pdf](http://www.fbi.gov/hq/cjis/cjis_annual_report2009.pdf).

<sup>16</sup> Alcohol & Tobacco Tax & Trade Bureau, *Annual Report, Fiscal Year 2009* 2, 19, 24 (June 2010), available at <http://www.ttb.gov/foia/ttbar2009.pdf>. See also Catherine Rampell, *Gun Control as Economic Stimulus*, *N.Y. Times*, July 16, 2010, <http://economix.blogs.nytimes.com/2010/07/16/gun-control-as-economic-stimulus/?emc=eta1>.



mounting unemployment and fear of rising crime also fueled the increase in gun and ammunition purchases.<sup>17</sup>

Ironically, the surge in gun purchases coincided with an ammunition shortage in the U.S. in 2009.<sup>18</sup> Industry experts estimate that close to 12 billion rounds of ammunition were sold that year, up from average annual sales figures that lie somewhere between 7 billion and 10 billion.<sup>19</sup> Again, the unfounded fears of gun purchasers – fears stoked by the gun lobby – that Democrats and the President would make bullets more expensive or harder to obtain drove the spike in ammunition sales. Analysts observed, however, that earnings reports from gun manufacturers in late 2009 showed a decline in the demand for firearms and ammunition.<sup>20</sup> Other signs have pointed to a cooling off of the gun-buying frenzy, evidenced by decreases in gun transfer background checks.<sup>21</sup>

#### D. Guns and Suicide

Too often overlooked in the gun violence prevention/gun rights debate is the significant role guns play in suicide. Firearm suicides consistently outpace gun homicides and unintentional gun deaths each year in the U.S. In 2007, the most recent year for which statistics are available, firearms were used in 17,352 suicides, constituting 55% of all gun deaths.<sup>22</sup> Over 50% of all suicides are committed with a firearm.<sup>23</sup> On average, over 46 gun suicides were committed each day for the years 2001-2007.<sup>24</sup>

Access to firearms is a significant risk factor for suicide – states with higher rates of household gun ownership have higher rates of firearm suicide and overall suicides,<sup>25</sup> and a gun in the home is associated with an increased risk of suicide.<sup>26</sup> Firearms are so

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<sup>17</sup> See Alexandra Frean, *Gun Sales Shoot Up Amid America's Fear of Rising Crime and Terrorism*, Times (London), Nov. 16, 2009,

[http://business.timesonline.co.uk/tol/business/industry\\_sectors/engineering/article6917828.ece](http://business.timesonline.co.uk/tol/business/industry_sectors/engineering/article6917828.ece).

<sup>18</sup> David A. Farenthold & Fredrick Kunkle, *U.S. Sees Shortage of Ammunition*, Wash. Post, Nov. 3, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/02/AR2009110202712.html?wpisrc=newsletter>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> See, e.g., Garen Wintemute, *Inside Gun Shows: What Goes on When Everybody Thinks Nobody's Watching: Epilogue 6* (Mar. 2010), available at

<http://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGSepilogue3.pdf>; Ian Urbina, *Fearing Obama Agenda, States Push to Loosen Gun Laws*, N.Y. Times, Feb. 23, 2010, at A1, available at

<http://www.nytimes.com/2010/02/24/us/24guns.html> (noting that from November 2009 to January 2010, the number of background checks fell 12% compared with the same months a year earlier).

<sup>22</sup> Nat'l Ctr. for Injury Prevention & Control, *supra* note 1 (select intent "Suicide," cause "Firearm").

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Matthew Miller et al., *Household Firearm Ownership and Rates of Suicide Across the 50 United States*, 62 J. Trauma 1029, 1029-35 (Apr. 2007).

<sup>26</sup> See Matthew Miller & David Hemenway, *Guns and Suicide in the United States*, 359 New Eng. J. Med. 989, 989 (Sept. 2008) (noting that at least a dozen U.S. case-control studies in the peer-reviewed literature exist finding that a gun in the home is associated with an increased risk of suicide).

inherently lethal that suicide attempts using a firearm are usually successful<sup>27</sup> – nearly 85% of suicide attempts with a firearm are fatal.<sup>28</sup> Reducing access to guns helps deter suicides, most of which are impulsive acts, not methodically planned events.<sup>29</sup> Reducing access to guns is paramount when one considers that more than 90% of people who survive a suicide attempt do not ultimately commit suicide.<sup>30</sup>

The risk of suicide increases in homes where guns are kept loaded and/or unlocked.<sup>31</sup> More than 75% of guns used in suicide attempts and unintentional injuries of 0-19 year-olds were stored in the residence of the victim, a relative, or a friend.<sup>32</sup> Laws imposing criminal liability on gun owners for failing to secure firearms and ammunition from minors appear to be an effective method to deter youth suicides. Research on the association between youth-focused gun laws and suicides among young people found that child access prevention laws were associated with an 8.3% decrease in suicides by any method among 14-17 year olds.<sup>33</sup> Such laws reduced the risk of firearm suicide in this age group by 10.8%.<sup>34</sup> Indeed, restricting access to lethal means of committing suicide (e.g., a firearm, poison, a tall structure) is one of the few suicide-prevention policies with proven effectiveness.<sup>35</sup>

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<sup>27</sup> See Harvard Sch. of Pub. Health, *Means Matter: How?*, <http://www.hsph.harvard.edu/means-matter/basic-suicide-facts/how/index.html> (last visited Aug. 9, 2010) (noting that 52% of people use a firearm to complete suicide, more than every other method combined).

<sup>28</sup> Sara B. Vyrostek et al., *Surveillance for Fatal and Nonfatal Injuries – United States, 2001*, Morbidity and Mortality Weekly Report (Ctrs. for Disease Control and Prevention, Atlanta, Ga.), Sept. 3, 2004, at 1, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5307a1.htm>.

<sup>29</sup> Miller & Hemenway, *supra* note 26, at 989 (noting that among those making near-lethal suicide attempts, 24% took less than five minutes between the decision to kill themselves and the actual attempt, and 70% took less than one hour) (citing O.R. Simon et al., *Characteristics of Impulsive Suicide Attempts and Attempters*, 32 *Suicide Life-Threatening Behav.* 49, 49 (2001)). See also Harvard Sch. of Pub. Health, *Means Matter: Impulsivity and Crises*, at <http://www.hsph.harvard.edu/means-matter/means-matter/impulsivity/index.html> (last visited Aug. 9, 2010).

<sup>30</sup> Miller & Hemenway, *supra* note 26, at 989 (noting also that suicide attempts involving drugs or cutting prove fatal much less often than attempts using guns).

<sup>31</sup> Matthew Miller & David Hemenway, *The Relationship Between Firearms and Suicide: A Review of the Literature*, 4 *Aggression & Violent Behavior* 59, 62-65 (1999) (summarizing the findings of multiple studies).

<sup>32</sup> David C. Grossman, Donald T. Reay & Stephanie A. Baker, *Self-inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of the Firearm*, 153 *Archives Pediatric & Adolescent Med.* 875, 875 (Aug. 1999), available at <http://archpedi.ama-assn.org/cgi/content/short/153/8/875>.

<sup>33</sup> Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 *JAMA* 594, 596-98 (Aug. 2004).

<sup>34</sup> *Id.*

<sup>35</sup> Miller & Hemenway, *supra* note 26, at 991 (citing J. John Mann et al., *Suicide Prevention Strategies: A Systematic Review*, 294 *JAMA* 2064, 2071 (2005) (noting that restricting access to lethal methods decreases suicides by those methods)).

## E. International/Comparative Issues

Although gun regulation is a controversial and divisive political issue in the U.S.,<sup>36</sup> where basic laws such as licensing and registration are vigorously opposed by the powerful gun lobby, strict gun laws are the norm in most countries.<sup>37</sup> Gun laws make sense and save lives. Consider that in 2008, when gun homicides claimed 9,484 Americans, a gun was the instrumentality in only 200 homicides in Canada, 39 homicides in England and Wales, and 35 homicides in Australia.<sup>38</sup>

Over the past year, while the U.S. has moved to constitutionally limit gun regulation (see discussion of *McDonald v. Chicago* in the Federal Update, *infra* at page 8), other nations are either taking significant steps to stem gun violence – Ireland’s ban on handguns in July 2009<sup>39</sup> – or considering such steps – Finland’s proposed ban on handguns.<sup>40</sup> Australia, which significantly regulated firearms in 1996, has seen firearm homicides drop from 26% of all homicides in 1989-1990 to 11% in 2007-2008.<sup>41</sup> Meanwhile, the spread of small arms is devastating nations, mainly in the developing world.<sup>42</sup>

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<sup>36</sup> The American public supports gun regulation: gun owners and non-gun owners polled support criminal background checks for all gun sales, dealer regulations and anti-trafficking measures. See, e.g., Robert Green & Matt Bechak, *Post-Election Analysis: Sensible Gun Laws Builds Bridges not Burns Them to Moderates, McCain, and Even Gun Owners in Post-Heller World* 1 (Nov. 2008), available at <http://www.bradycampaign.org/xshare/pdf/memo-11-18-08.pdf>; Frank Luntz, Word Doctors, *America’s Gun Owners Support Common Sense Gun Laws* 12 (Dec. 2009), available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/luntz\\_poll\\_slides.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/luntz_poll_slides.pdf).

<sup>37</sup> Wendy Cukier & Victor Sidel, *The Global Gun Epidemic: From Saturday Night Specials to AK-47s* 131 (2006).

<sup>38</sup> Federal Bureau of Investigation, U.S. Dep’t of Justice, *Crime in the United States, 2008, Expanded Homicide Data Table 8, Murder Victims by Weapon, 2004-2008* (2009), at [http://www.fbi.gov/ucr/cius2008/offenses/expanded\\_information/data/shrtable\\_08.html](http://www.fbi.gov/ucr/cius2008/offenses/expanded_information/data/shrtable_08.html); *Australian Crime: Facts and Figures*, 2009 *Austl. Inst. Criminology* 14, 17 (2010), available at [http://www.aic.gov.au/documents/6/8/E/%7B68ED8713-19FB-42A7-92C0-02767AB5B497%7Dfacts09\\_001.pdf](http://www.aic.gov.au/documents/6/8/E/%7B68ED8713-19FB-42A7-92C0-02767AB5B497%7Dfacts09_001.pdf); Statistics Can., *Homicides by Method*, <http://www40.statcan.gc.ca/101/cst01/legal01-eng.htm> (last visited Aug. 5, 2010); Home Office Statistical Bulletin, *Homicides, Firearm Offences and Intimate Violence 2008/09*, at 39 (Kevin Smith et al. eds., 2010), available at <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb0110.pdf>.

<sup>39</sup> Int’l Action Network on Small Arms, *Ireland is Second Country in Europe to Ban Handguns*, July 24, 2009, at [http://www.iansa.org/regions/europe/ireland\\_handgun\\_ban09.htm](http://www.iansa.org/regions/europe/ireland_handgun_ban09.htm) (last visited July 15, 2010).

<sup>40</sup> Matti Huuhtanen, *Finns Propose Ban on Handguns After Shootings*, Assoc. Press, Feb. 17, 2010, <http://abcnews.go.com/print?id=9860164> (reporting that Finland ranks fifth globally in civilian gun ownership per capita, behind the U.S., Yemen, Switzerland and Serbia, and that, in addition to a ban on semiautomatic handguns, a Finnish government commission proposed that the minimum age of handgun ownership be raised from age 15 to age 20 and that gun permits require at least two years’ proof of shooting practice).

<sup>41</sup> *Austl. Inst. Criminology*, *supra* note 38, at 19.

<sup>42</sup> *Small Arms Survey 2009: Shadows of War*, Small Arms Surv. (Graduate Inst. of Int’l & Dev. Studies, Geneva, Switz.), July 2009, at 12, available at [http://www.smallarmssurvey.org/files/sas/publications/year\\_b\\_pdf/2009/CH01-Transfers.pdf](http://www.smallarmssurvey.org/files/sas/publications/year_b_pdf/2009/CH01-Transfers.pdf) (finding that the U.S., as one of the world’s top exporters of small arms, bears responsibility for a significant segment of the small arms trade: between 2000 and 2006, the U.S. exported around 22% of the world’s small arms, light weapons and ammunition).

Beyond endangering public health and safety at home, our nation's lax gun laws adversely impact our neighbors, leading to escalating gun violence in Mexico and increasing gun trafficking into Canada.<sup>43</sup> The situation in Mexico is especially disconcerting. According to data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), approximately 87% of firearms seized by Mexican authorities and traced over Fiscal Years 2004-2008 originated in the U.S.<sup>44</sup> Further estimates finding the U.S. as the overwhelming source of illegal guns in Mexico are even higher: around 90% to 95% of guns seized in drug crimes in Mexico originate in the U.S.<sup>45</sup>

Since Mexico's laws regarding the possession of guns by civilians are strict,<sup>46</sup> the Mexican drug cartels obtain the firearms that fuel drug-related violence legally – and easily – in the U.S. A June 2009 U.S. Government Accountability Office (GAO) report detailing U.S. efforts to fight firearms trafficking into Mexico found that U.S. government restrictions on collecting and reporting information on gun purchases, lack of background check requirements for private gun transfers, and limits on reporting requirements for multiple gun sales were leading factors demonstrating how readily available U.S. firearms are to Mexican cartels.<sup>47</sup> Even ATF admits that the increased incidence of gun trafficking into Mexico from the U.S. 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>48</sup>

While national security experts in the Mexican and U.S. governments have much work to do to stem drug trade violence, Congress and border state legislatures could adopt laws to help stop gun trafficking to Mexico by closing the private sale loophole (which allows unlicensed persons to sell guns without conducting background checks),<sup>49</sup> banning

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<sup>43</sup> Garen J. Wintemute, *Gun Shows Across a Multistate American Gun Market: Observational Evidence of the Effects of Regulatory Policies*, 13 *Inj. Prevention* 150, 150 (2007), available at

<http://injuryprevention.bmj.com/content/13/3/150.full.pdf+html> (finding that nearly 80% of Mexico's illegal guns and most recovered crime guns in major Canadian cities are imported illegally from the U.S.).

<sup>44</sup> U.S. Gov't Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 3, 15 (June 2009), available at <http://www.gao.gov/products/GAO-09-709>.

<sup>45</sup> Spencer S. Hsu, *U.S.-Mexico Task Force Seeks Renewed Ban on Assault Weapons*, *Wash. Post*, Nov. 13, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/12/AR2009111211331.html> (reporting statements from Mexican officials finding that 90% of guns seized in drug crimes in Mexico and submitted for tracing to ATF originate in the U.S., including most assault rifles); Alicia A. Caldwell, *ATF: Most Illegal Guns in Mexico Come from U.S.*, *Assoc. Press*, Aug. 11, 2008, [http://www.usatoday.com/news/washington/2008-08-11-mexico-guns\\_N.htm](http://www.usatoday.com/news/washington/2008-08-11-mexico-guns_N.htm) (providing statement from ATF that nearly all illegal guns seized in Mexico – 90 to 95 percent – originally come from the U.S.).

<sup>46</sup> See, e.g., Brady Ctr. to Prevent Gun Violence, *Exporting Gun Violence: How Our Weak Gun Laws Arm Criminals in Mexico and America* 7 (Mar. 2009), available at <http://www.bradycenter.org/xshare/pdf/reports/exporting-gun-violence.pdf>.

<sup>47</sup> U.S. Gov't Accountability Office, *supra* note 44, at 24-28.

<sup>48</sup> William Hoover, ATF Assistant Dir. for Field Operations, *Statement Before the United States House of Representatives Committee on Foreign Affairs, Subcommittee on the Western Hemisphere* (Feb. 7, 2008), available at <http://foreignaffairs.house.gov/110/hoo020708.htm>.

<sup>49</sup> The private sale loophole is discussed further in the Federal Update section, *infra* at page 10, and the Policy Focus section, *infra* at page 33.

assault weapons,<sup>50</sup> and strengthening enforcement against “straw purchasers” (*i.e.*, persons with a clean background who purchase firearms specifically on behalf of convicted felons, juveniles or other prohibited purchasers).

### III. Federal Update

#### A. The Second Amendment

##### 1. The *McDonald* and *Heller* Decisions

On June 28, 2010, the U.S. Supreme Court announced its highly-anticipated decision in *McDonald v. Chicago*, holding in a 5-4 ruling that the Second Amendment to the U.S. Constitution restricts the actions of state and local governments.<sup>51</sup> In doing so, the Court reversed a Seventh Circuit Court of Appeals decision that affirmed the dismissal of Second Amendment challenges to handgun bans in Chicago and Oak Park, Illinois.<sup>52</sup>

The Supreme Court did not reach the issue of whether the Second Amendment applies against the states in *District of Columbia v. Heller*, the 2008 decision holding for the first time that the Second Amendment guarantees an individual right to possess a firearm in the home for self-defense, because that case involved only the laws of the District of Columbia, which is a federal enclave.<sup>53</sup>

As it held in *Heller*, the Court reiterated in *McDonald* that the Second Amendment only protects a right to possess a firearm in the home for self-defense, and that a wide variety of gun laws are constitutionally permissible. The *McDonald* Court stated that:

It is important to keep in mind that *Heller*, while striking down a law that prohibited the possession of handguns in the home, recognized 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.” We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as “prohibitions on the possession of firearms by felons and the mentally ill,” “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or

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<sup>50</sup> See, e.g., U.S. Gov’t Accountability Office, *supra* note 44, at 17-18 (finding that since the federal ban on assault weapons expired in 2004, these high-caliber, high-powered firearms are increasingly being recovered in crimes in Mexico, and that around 25% of the firearms seized in Mexico and traced in Fiscal Year 2008 were high-powered, such as AK and AR-15 type semiautomatic rifles, which fire ammunition that can pierce the armor often used by Mexican police).

<sup>51</sup> *McDonald v. Chicago*, 130 S. Ct. 3020, 3026 (2010). See generally Legal Cmty. Against Violence, *McDonald v. Chicago* (2010), <http://www.lcav.org/content/McDonald-v-Chicago.asp> (for more information on the *McDonald* decision); Legal Cmty. Against Violence, *The Second Amendment* (2010), [http://www.lcav.org/content/secondamend\\_index.asp](http://www.lcav.org/content/secondamend_index.asp) (for additional details on the Second Amendment).

<sup>52</sup> *Id.*

<sup>53</sup> *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008). See generally Legal Cmty. Against Violence, *District of Columbia v. Heller* (2010), <http://www.lcav.org/content/dc-vs-heller.asp> (for more details about the *Heller* decision).



laws imposing conditions and qualifications on the commercial sale of arms.” We repeat those assurances here. Despite municipal respondents’ doomsday proclamations, incorporation does not imperil every law regulating firearms.<sup>54</sup>

LCAV anticipates that the *McDonald* decision will result in a substantial increase in the volume of Second Amendment litigation already clogging the nation’s courts, despite the fact that most, if not all, state and local firearms laws do not prevent a law-abiding citizen from possessing a firearm in the home for self-defense, and thus would satisfy the holdings in *Heller* and *McDonald*. It is also likely that the gun lobby will continue to employ the threat of litigation to obstruct state and local efforts to enact common sense gun violence prevention measures.

While *McDonald* eliminates a narrow area of gun regulation, the decision allows a broad range of reasonable, legally-sound gun violence prevention laws.<sup>55</sup> In the wake of the *Heller* decision, for example, the District of Columbia adopted comprehensive gun laws.<sup>56</sup> A federal court rejected a Second Amendment challenge to many of those laws in March 2010, including a ban on assault weapons and high capacity ammunition magazines, a one-handgun-a-month law, and the requirement that gun owners report lost or stolen guns, indicating that many gun laws remain consistent with the Amendment.<sup>57</sup>

## 2. Other Second Amendment Litigation

LCAV tracks post-*Heller* litigation involving Second Amendment challenges to federal, state and local gun laws. The bulk of these challenges have involved unsuccessful attempts by criminal defendants to challenge their indictments or convictions under a wide spectrum of firearm regulations.<sup>58</sup> Courts have found that the Second Amendment is consistent with federal statutes prohibiting firearm possession by persons convicted of felonies and domestic violence misdemeanors, and state and local laws banning assault weapons and prohibiting the unlicensed carrying of concealed weapons.<sup>59</sup>

The *Heller* decision also resulted in the initiation of a flood of civil lawsuits.<sup>60</sup> As of July 2010, there were at least 20 ongoing suits against state and local governments and the District of Columbia, including two challenges to the firearms ordinance adopted by the

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<sup>54</sup> *McDonald*, 130 S. Ct. at 3047 (quoting *Heller*, 128 S. Ct. at 2816). See also *Heller*, 128 S. Ct. at 2817, 2820 (noting 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; also declaring that its analysis should not be read to suggest “the invalidity of laws regulating the storage of firearms to prevent accidents.”).

<sup>55</sup> See *McDonald*, 130 S. Ct. at 3047.

<sup>56</sup> See, e.g., *Heller v. District of Columbia*, 698 F.Supp.2d 179 (D.D.C. 2010).

<sup>57</sup> *Id.*

<sup>58</sup> See generally Legal Cmty. Against Violence, *Summary of Second Amendment Case Law – Federal Appellate Cases* (2010), <http://www.lcav.org/content/SecondAmendFedCases.asp> (discussing federal case law since *District of Columbia v. Heller* was decided that raises challenges under the Second Amendment).

<sup>59</sup> *Id.*

<sup>60</sup> See Legal Cmty. Against Violence, *Post-Heller Litigation Summary* (2010), [http://www.lcav.org/content/post-heller\\_summary.pdf](http://www.lcav.org/content/post-heller_summary.pdf) (last updated July 19, 2010).

City of Chicago following *McDonald*, as well as lawsuits against discretionary concealed firearms licensing laws in California and New York, California’s unsafe handgun ban, Georgia’s law prohibiting guns in places of worship, and North Carolina’s law prohibiting the carrying of firearms during states of emergency.<sup>61</sup> A number of suits were stayed pending the *McDonald* decision, but will proceed following the Supreme Court’s holding that the Second Amendment applies to state and local governments.<sup>62</sup>

Significant questions about the scope and application of the Second Amendment remain unresolved following *Heller* and *McDonald*, questions with which post-*Heller* courts continue to struggle. For example, although both cases discussed a non-exhaustive list of “presumptively lawful” firearms regulations, neither provided guidance as to what qualities would make a law fall within that category. Moreover, in both *Heller* and *McDonald*, the Supreme Court did not articulate how courts should evaluate challenges to firearms statutes beyond its “presumptively lawful” list, and lower courts have split over how to proceed in these cases. As a result, policymakers and the public are left unsure whether a proposed or existing gun regulation will pass muster under the Second Amendment, and extensive litigation over the constitutionality of gun laws and reach of the Amendment will ensue.

LCAV is tracking Second Amendment litigation and is available to assist state and local governments facing Second Amendment challenges to firearms laws. For detailed information about post-*Heller* decisions, please read LCAV’s regularly-updated *Post-Heller Litigation Summary*, at [http://www.lcav.org/content/post-heller\\_summary.pdf](http://www.lcav.org/content/post-heller_summary.pdf).

## **B. 2009-2010 Federal Firearms Legislation**

### **1. Legislation to Improve Public Safety**

#### **a. Closing the Gun Show Loophole**

Under federal law, licensed dealers (Federal Firearms Licensees, or FFLs) and private (*i.e.*, unlicensed) sellers may sell firearms at gun shows and elsewhere across the country.<sup>63</sup> While FFLs must conduct a background check on a prospective gun purchaser and record sales transaction information for those buyers that pass a background check, private sellers are not subject to these requirements.<sup>64</sup> The “private sale loophole”<sup>65</sup> –

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> 18 U.S.C. § 921(a)(21)(C).

<sup>64</sup> *Id.* See also U.S. Dep’t of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of Treasury, *Gun Shows: Brady Checks and Crime Gun Traces* 4 (Jan. 1999), available at <http://www.atf.gov/publications/download/treas/treas-gun-shows-brady-checks-and-crime-gun-traces.pdf> (estimating that 25% to 50% of gun show sellers are private sellers).

<sup>65</sup> For further discussion on closing the private sale loophole, see the Policy Focus section, *infra* at page 33.

also referred to as the “gun show loophole” since private sales often occur at gun shows – enables criminals and other prohibited persons to avoid federal law and access firearms.<sup>66</sup>

To close this dangerous loophole, Senator Frank Lautenberg (D-NJ) has introduced the “Gun Show Background Check Act of 2009,” which would impose obligations on both gun show promoters and licensed dealers that transfer guns to unlicensed persons at a gun show.<sup>67</sup> The bill would prohibit any unlicensed gun show vendor from transferring any firearm directly to another unlicensed person; the firearm must be transferred through an FFL. The FFL would be required to submit certain information regarding the transaction to the U.S. Attorney General within 10 days following the transfer.<sup>68</sup>

Prior to any gun show, the show promoter or organizer would be required to register with the Attorney General and pay a registration fee. This legislation would grant the Attorney General authority to enter the place of business of any gun show promoter, or any place where a gun show is being held, to examine the records of FFLs conducting business at a gun show.<sup>69</sup>

A similar bill, the “Gun Show Loophole Closing Act of 2009,” has been introduced in the House by Representative Michael Castle (R-DE).<sup>70</sup> H.R. 2324 would impose duties on operators of gun shows that are not part of the Lautenberg legislation, requiring that an operator be age 21 or older, not be prohibited from transporting, shipping or receiving firearms by any of the federal prohibited categories and, prior to any gun show, register with and pay a fee to the Attorney General. This bill would also prohibit an unlicensed seller from transferring guns to any other unlicensed seller; an FFL must conduct a background check and record the transaction prior to any gun transfer.<sup>71</sup>

## **b. Reducing Illegal Gun Trafficking**

New York Representative Carolyn McCarthy and New York Senator Kirsten Gillibrand have introduced identical bills to crack down on illegal gun trafficking. The “Gun Trafficking Prevention Act of 2009” would impose criminal penalties on persons who knowingly transfer or transport two or more firearms in a manner that would violate any federal, state or local law punishable by a term of imprisonment exceeding one year.<sup>72</sup> The bills would impose other penalties on corrupt gun dealers who violate specific provisions of federal law, including sentencing enhancements and license suspension, and strengthen penalties for recordkeeping violations. The bills aim to crack down on “high-risk” gun dealers by focusing on those dealers who have an excessive amount of: 1) short time-to-crime traces of crime guns; 2) incomplete crime gun trace results for guns sold by

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<sup>66</sup> See, e.g., Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* 17, 41 (June 2000), available at [http://www.mayorsagainstillegalsguns.org/downloads/pdf/Following\\_the\\_Gun%202000.pdf](http://www.mayorsagainstillegalsguns.org/downloads/pdf/Following_the_Gun%202000.pdf).

<sup>67</sup> S. 843, 111th Cong. (2009) (a bill with 17 co-sponsors).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> H.R. 2324, 111th Cong. (2009) (a bill with 109 co-sponsors).

<sup>71</sup> *Id.*

<sup>72</sup> H.R. 4298, 111th Cong. (2009); S. 2878, 111th Cong. (2009).



the dealer; 3) significant or frequently reported firearm losses or thefts; 4) violations of federal firearms laws; or 5) violations of any additional criteria determined by the U.S. Attorney General.<sup>73</sup>

Finally, the bills authorize the Director of ATF to hire additional personnel – specifically 500 additional Industry Operations Investigators and 1,000 additional Special Agents (subject to appropriations) – to address gun trafficking issues.<sup>74</sup> While ATF has legal authority to conduct one unannounced inspection of each FFL per year,<sup>75</sup> ATF actually inspects each FFL, on average, only once every 17 years.<sup>76</sup> The upgrade in personnel offered by the bills would enable the average inspection rate of gun dealers to operate on a three-year inspection cycle.

### c. Preserving Background Check Records

The National Instant Criminal Background Check System (NICS) is checked prior to a firearm transfer to ensure that a prospective purchaser is not in a prohibited category (*i.e.*, a felon, juvenile, domestic violence misdemeanant, or mentally ill).<sup>77</sup> A NICS check automatically generates an audit log for each transaction.<sup>78</sup> Under current law, the FBI must destroy such audit log records within 24 hours of an approved gun transfer.<sup>79</sup> The 24-hour destruction requirement hinders the FBI’s ability to verify that gun dealers are conducting background checks properly and to retrieve guns from persons who are prohibited from having them.<sup>80</sup> The quick destruction of records also impedes ATF from efficiently tracing crime guns or retrieving guns mistakenly sold to prohibited persons.<sup>81</sup>

Senator Lautenberg has introduced the “Preserving Records of Terrorist & Criminal Transactions Act of 2009,” legislation that would stop the quick destruction of

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> 18 U.S.C. § 923(g)(1)(A), (B) (providing that more frequent inspections are permitted if a federal magistrate has issued a search warrant or if the search is incidental to a criminal investigation). *See also* 18 U.S.C. § 923(g)(7) (providing that FFLs must respond to requests for information from ATF regarding the disposition of a firearm if such request is made during the course of a bona fide criminal investigation).

<sup>76</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>77</sup> 18 U.S.C. § 922(g), (t)(1).

<sup>78</sup> 28 C.F.R. § 25.9(b).

<sup>79</sup> 28 C.F.R. § 25.9(b)(1)(iii).

<sup>80</sup> *See, e.g.*, Press Release, Frank R. Lautenberg, U.S. Senator for N.J., *Lautenberg Introduces Bill to Preserve Gun Records Critical to Law Enforcement, Terrorism Prevention* (Dec. 1, 2009), available at <http://lautenberg.senate.gov/newsroom/record.cfm?id=320300&>.

<sup>81</sup> *See, e.g.*, U.S. Gen. Accounting Office, *Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records* 8-10 (July 2002), available at <http://www.gao.gov/new.items/d02653.pdf> (arguing that the 24-hour rule is a public safety concern, in part, because it lessens the FBI’s ability to initiate firearm retrievals involving guns that were approved for transfer (and transferred) but should have been denied. Prior to implementation of the 24-hour rule, over a six-month period under the previous 90-day record retention policy, the FBI used retained records to initiate 235 actions to retrieve illegally possessed guns, of which 228 – or 97% of the actions – would not have been possible under the current 24-hour destruction policy).

background check records for firearms transactions and preserve such records for a longer time period to be available for law enforcement investigations to prevent gun crimes and terrorist acts.<sup>82</sup> The bill would require that records be retained for a minimum of 180 days, and that records generated from a NICS check that indicate the prospective gun purchaser is a known or suspected member of a terrorist organization be retained for a minimum of 10 years.<sup>83</sup> For more information on the destruction of approved gun purchaser records, see the Tiahrt Amendments discussion, *infra* at page 15.

#### **d. Closing the “Terror Gap”**

In 2009, a GAO briefing report found that from February 2004 through February 2009, 963 NICS checks of individuals attempting to purchase firearms matched records of persons on the United States terrorist watch list.<sup>84</sup> Of these transactions, 865 were allowed to proceed because the prospective transferee did not fall into a prohibited category for the purchase of firearms under federal law.<sup>85</sup>

In response to this information, Senator Lautenberg introduced the “Denying Firearms and Explosives to Dangerous Terrorists Act of 2009,” legislation that would permit the U.S. Attorney General to, at his or her discretion, deny the transfer of firearms when a background check reveals the purchaser is a known or suspected terrorist and the Attorney General has a reasonable belief that the prospective transferee may use a firearm in connection with terrorism.<sup>86</sup> The Attorney General would have similar discretion to deny the issuance of or revoke an existing Federal Firearms License. The legislation would not automatically disqualify people on the terrorist watch list from purchasing a firearm, and persons denied licenses would have the opportunity to challenge the denial.<sup>87</sup>

#### **e. Firearm-Free Airports**

Current federal law prohibits guns only in specified sterile areas of commercial airports beyond security points, thereby allowing guns to be possessed in areas immediately adjacent to secure areas but still near or within airport terminals.<sup>88</sup> Individuals and terrorist organizations can use commercial airports and aircraft for premeditated, politically-motivated violence. To prohibit individuals from carrying firearms in certain airport buildings and airfields, Senator Lautenberg has introduced the “Firearm-Free Airport Act.”<sup>89</sup> The bill would prohibit any person from possessing a firearm at a

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<sup>82</sup> S. 2820, 111th Cong. (2009).

<sup>83</sup> *Id.*

<sup>84</sup> U.S. Gov’t Accountability Office, *Firearms & Explosives Background Checks Involving Terrorist Watch List Records*, GAO-09-125R at 18, 26 (May 2009), available at <http://www.gao.gov/new.items/d09125r.pdf>.

<sup>85</sup> *Id.*

<sup>86</sup> S. 1317, 111th Cong. (2009). *See also* H.R. 2159, 111th Cong. (2009) (similar legislation introduced in the House by Rep. Peter King (N.Y.)).

<sup>87</sup> *Id.*

<sup>88</sup> 49 C.F.R. § 1540.111.

<sup>89</sup> S. 3366, 111th Cong. (2009).

commercial airport in any area in a terminal building, in any area adjacent to the sterile area, in an airfield, or in any building that opens onto an airfield. Persons who bring firearms into an airport building solely to transport them while flying in checked baggage would be exempt. Airports would be required to post signs noting this prohibition.<sup>90</sup>

## **2. Legislation to Imperil Public Safety**

### **a. Enacted Legislation**

#### **i. Guns in National Parks**

In May 2009, Congress voted to approve, and President Obama signed, the Credit Card Accountability Responsibility and Disclosure Act of 2009.<sup>91</sup> This Act contained a non-germane amendment enabling the possession of loaded firearms in national parks and wildlife refuges across the country. The amendment, effective February 22, 2010, nullified a Reagan-era rule that prohibited the possession of a firearm in a national park or wildlife refuge unless the gun was kept in the owner's lodging or vehicle and was unloaded, rendered inoperable or stored in a manner that prevented ready use.<sup>92</sup>

Specifically, the new law prohibits the U.S. Department of the Interior (DOI) from promulgating or enforcing any regulation that would prohibit a person in compliance with state law in which the national park or wildlife refuge is located, who is not otherwise prohibited from possessing a firearm, from carrying a gun in a national park or refuge.<sup>93</sup>

The amendment suffers from ambiguous language that makes its impact unclear and hinders the ability of states to enact legislation to address it. Because the amendment provides that DOI may not develop a rule that prohibits firearm possession as long as the possessor is in compliance with state law, it seems to anticipate that a state may prohibit gun possession on federal park land within its borders. However, it is less clear whether a state has authority to directly prohibit possession in federal parks, or whether a state's laws on guns in state parks will be held to also apply to federal parks. DOI is currently drafting regulations to clarify what is and is not permissible under the law.

Loaded guns in national parks are problematic because: 1) ready access to loaded firearms increases the likelihood of violence in parks and harm to park visitors, rangers and other staff; 2) no credible evidence exists to suggest that carrying concealed, loaded firearms would reduce the already low rates of violence and crime in national parks;<sup>94</sup>

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<sup>90</sup> *Id.*

<sup>91</sup> 16 U.S.C. § 1a-7b.

<sup>92</sup> 36 C.F.R. § 2.4(a); 50 C.F.R. § 27.42. *See Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1 (D.D.C. 2009) (involving a case where the Bush Administration had sought to undo the policy in December 2008 with the adoption of a new rule authorizing the open or concealed carrying of loaded firearms in national parks, but the Brady Campaign filed suit and secured a preliminary injunction against the implementation and enforcement of the new rule in March 2009).

<sup>93</sup> 16 U.S.C. § 1a-7b(b).

<sup>94</sup> *See, e.g.*, Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 *Stan. L. Rev.* 1193, 1285, 1296 (Apr. 2003); Ian Ayres & John J. Donohue III, *The Latest Misfires in*

and 3) the rationale for the creation and management of national parks and wildlife refuges is to preserve the land and wildlife for the enjoyment of present and future generations, and allowing guns in parks provides ample opportunity for poaching and shooting at wildlife.<sup>95</sup>

## **ii. Guns on Amtrak**

In late 2009, the federal government adopted dangerous legislation that will allow guns to be transported in checked baggage on Amtrak trains.<sup>96</sup> The Wicker Amendment, sponsored by Senator Roger Wicker (R-MS), was enacted as part of the Consolidated Appropriations Act, 2010, and will allow Amtrak riders to transport handguns, provided they declare the guns and that the guns are unloaded and in a securely locked container. Amtrak must implement procedures for the storage of firearms in checked baggage cars and at Amtrak stations that accept checked baggage by December 2010.<sup>97</sup>

This provision replaces Amtrak policy prohibiting firearms and ammunition in carry-on or checked luggage that was adopted following the 2004 Madrid, Spain, train bombings that killed 191 people and wounded 1,800.<sup>98</sup> Guns on Amtrak pose public safety risks, including susceptibility to theft or loss, an increase in the risk of a mass shooting on a train, and an increase in the risk of unintentional discharge within luggage. The prohibition on firearms in checked baggage will remain in place until the end of 2010.<sup>99</sup>

## **iii. Tiahrt Amendments – Regulatory Limits on Gun Trace Data**

The Tiahrt Amendments 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 corrupt gun dealers.<sup>100</sup> The amendments currently:

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*Support of the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1371, 1397 (Apr. 2003); David Hemenway, *Private Guns, Public Health* 78 (2004); Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034 (Nov. 2009) (finding that on average a gun does not protect a possessor from being shot in an assault, but having a gun makes it more likely the possessor will be shot in an assault than someone not possessing a gun); Nat'l Parks Conservation Ass'n, *Keep Parks Safe: Say No To Loaded Guns in Our National Parks*, [http://www.npca.org/keep\\_parks\\_safe/](http://www.npca.org/keep_parks_safe/) (last visited Aug. 9, 2010).

<sup>95</sup> See Legal Cmty. Against Violence, *LCAV Comment to U.S. Department of the Interior Against Proposed Regulatory Changes Permitting the Carrying of Concealed, Loaded Firearms in National Parks and Wildlife Refuges* (June 2008), [http://www.lcav.org/publications-briefs/reports\\_analyses/LCAV\\_Comment.Loaded\\_Guns\\_in\\_National\\_Parks.06.30.08.pdf](http://www.lcav.org/publications-briefs/reports_analyses/LCAV_Comment.Loaded_Guns_in_National_Parks.06.30.08.pdf).

<sup>96</sup> Consolidated Appropriations Act 2010, Pub. L. No. 111-117, § 159, 123 Stat. 3034 (2009).

<sup>97</sup> *Id.*

<sup>98</sup> Rebecca Terrell, *Senate Votes to Allow Guns on Amtrak*, *The New American*, Sept. 18, 2009, <http://www.thenewamerican.com/index.php/component/content/article/1-latest/1913-senate-votes-to-allow-guns-on-amtrak>; Kathryn Westcott, *Transport Systems as Terror Targets*, *BBC News*, July 7, 2005, <http://news.bbc.co.uk/2/hi/europe/4659547.stm>.

<sup>99</sup> Consolidated Appropriations Act 2010, Pub. L. No. 111-117, § 159, 123 Stat. 3034 (2009).

<sup>100</sup> Commerce, Justice, Science, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034 (2009). The amendments are named for their sponsor, U.S. Representative Todd Tiahrt (R-KS).

- Prohibit 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 purchaser records within 24 hours; and
- Prohibit ATF from requiring gun dealers to submit inventories to law enforcement.<sup>101</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. In addition, the provision renders all gun trace data immune from legal process and inadmissible in non-ATF administrative proceedings or civil actions.<sup>102</sup>

The amendments also preclude disclosure of trace data to members of the public, including researchers and litigants in lawsuits against the gun industry. ATF may, however, publish statistical information regarding gun trafficking in aggregate form. This aggregate data is crucial to the investigation and prosecution of gun traffickers because it assists law enforcement in understanding the flow of illegal guns across jurisdictional boundaries.

*Mandatory 24-Hour Destruction of Gun Purchaser Records:* The Tiahrt Amendments require the FBI to destroy all approved gun purchaser records within 24 hours of approval,<sup>103</sup> making it extremely difficult for ATF to quickly and efficiently trace crime guns or retrieve firearms from prohibited persons who are mistakenly sold guns.

*Prohibition on Gun Dealer Inventories:* The Tiahrt Amendments prohibit ATF from requiring gun dealers to submit inventories.<sup>104</sup> Gun dealer inventories facilitate enforcement of the federal law requiring dealers to report the loss or theft of a gun and help law enforcement oversee the more than 50,000 firearms dealers nationwide.

For detailed information on the Tiahrt Amendments, see the Mayors Against Illegal Guns<sup>105</sup> primer, at <http://www.mayorsagainstillegalguns.org/html/federal/tiahrt.shtml>, as well as LCAV's Tiahrt Amendments summary, at <http://www.lcav.org/content/Federallawsummary.asp#TiahrtAmendments>.

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Mayors Against Illegal Guns, formed in 2006 by Mayors Michael Bloomberg of New York City and Thomas Menino of Boston, is a national coalition of more than 500 U.S. mayors and state and municipal legislators united in the goal of stopping illegal gun trafficking in the United States. Visit the Mayors Against Illegal Guns web site at <http://www.mayorsagainstillegalguns.org/html/home/home.shtml>.

## **b. Proposed Legislation**

### **i. Concealed Carrying of Handguns – State Reciprocity**

In July 2009, the U.S. Senate narrowly defeated a dangerous amendment to a defense spending bill that would have required the 48 states that have varying conditions for the carrying of concealed handguns to recognize concealed carry licenses issued by other states.<sup>106</sup> The amendment, sponsored by Senator John Thune (R-SD), would have forced states with license requirements enacted for public safety purposes to allow licensees from states with little to no safety requirements to carry concealed guns in the jurisdictions with strong safety laws.<sup>107</sup>

Although the amendment received an alarming 58 votes, the Senate had agreed prior to the vote that 60 votes would be required for passage in order to avoid a threatened filibuster. For further information, see *LCAV's Statement on the U.S. Senate's Defeat of Dangerous Concealed Weapons Legislation*, at [http://www.lcav.org/publications-briefs/policy\\_statements/LCAV\\_Statement\\_On\\_Thune\\_Amendment.07.22.09.pdf](http://www.lcav.org/publications-briefs/policy_statements/LCAV_Statement_On_Thune_Amendment.07.22.09.pdf).

### **ii. Eviscerating Washington, D.C.'s Gun Laws**

The District of Columbia has one of the strongest schemes of gun regulation in the country. Following the U.S. Supreme Court 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,<sup>108</sup> the District revised and expanded its firearm regulations in conformity with the *Heller* opinion.<sup>109</sup>

As the District was adopting these code revisions, in early 2009 the U.S. Senate passed the District of Columbia House Voting Rights Act, which would have granted the District a long-sought voting representative in Congress.<sup>110</sup> Unfortunately, a group of senators vociferously opposed to the District's gun laws added a detailed, National Rifle Association (NRA)-backed amendment sponsored by Senator John Ensign (R-NV) in an attempt to repeal the District's gun laws and limit the District Council from adopting any such regulations. Likely a "poison pill" to kill off the District's pursuit of a seat in the House, the amended bill, if passed, would have seriously threatened public safety and

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<sup>106</sup> S. 845, 111th Cong. (2009).

<sup>107</sup> *Id.*

<sup>108</sup> *District of Columbia v. Heller*, 128 S. Ct. 2783, 2817 (2008).

<sup>109</sup> See Title 22 Amendment Act of 2008, 2007 D.C. Code Adv. Leg. Serv. 524, Law 17-390, § 3 (2008); Inoperable Pistol Amendment Act of 2008, 2007 D.C. Code Adv. Leg. Serv. 690, Law 17-356 (2008); Firearms Registration Amendment Act of 2008, 2007 D.C. Code Adv. Leg. Serv. 708, Law 17-372 (2008); Omnibus Public Safety and Justice Amendment Act of 2009, 2009 D.C. Code Adv. Leg. Serv. 189, Law 18-88 (2009).

<sup>110</sup> S. 160, 111th Cong. (2009).

homeland security in the District. On April 20, 2010, those promoting the legislation decided to abandon the bill – primarily because of the amendment.<sup>111</sup>

The District’s gun laws remain under attack, however. Legislation absurdly entitled the “Second Amendment Enforcement Act,” introduced by Senators John McCain (R-AZ) and Jon Tester (D-MT) on April 27, 2010, would abolish most of the District’s detailed gun laws – including repealing registration and permitting the sale of currently-prohibited guns and ammunition – and strip local authorities of their ability to regulate firearms.<sup>112</sup>

## IV. State Update

### A. Trends in State Legislation

The gun lobby is also forcing its perilous policy agenda at the state level. Many state legislatures, regrettably, are running amok. Despite an increasing body of public health research indicating that guns are rarely used for self-defense purposes, and that more and more persons licensed to carry concealed handguns are committing homicide and other crimes, state legislatures continue to adopt legislation designed to weaken licensing requirements and loosen location limits for the carrying of concealed handguns. Equally disconcerting is the advancement of state “Firearms Freedom Acts” – laws purporting to declare that any firearms made, retained and later possessed solely within one state are beyond Congress’ constitutional power to regulate interstate commerce. Finally, gun rights supporters have increasingly and aggressively begun to openly carry guns in public, forcing legislatures to act defensively to protect their communities.

The push to weaken gun regulation is irrational, especially when one considers that stronger gun violence prevention laws appear to correlate with fewer gun deaths. LCAV has recently analyzed and compared each state’s firearms laws and ranked the states based on their depth and quality of gun regulation. The brochure *Gun Laws Matter: A Comparison of State Firearms Laws and Statistics*, reveals that many of the states with the strongest gun laws also have the lowest gun death rates, and vice versa. *Gun Laws Matter* is available at [http://www.lcav.org/gun\\_laws\\_matter.asp](http://www.lcav.org/gun_laws_matter.asp).

#### 1. Lax Carrying Concealed Weapons Laws

In accordance with the gun lobby’s agenda, states across the country have continued to loosen public safety requirements for licenses or permits to carry concealed weapons (CCW). Iowa removed law enforcement discretion from the permit issuance process,<sup>113</sup> while Utah removed the requirement that CCW permit applicants demonstrate good character.<sup>114</sup> Georgia,<sup>115</sup> Louisiana,<sup>116</sup> Mississippi<sup>117</sup> and Virginia<sup>118</sup> have expanded the

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<sup>111</sup> Ann E. Marimow & Ben Pershing, *Congressional Leaders Shelve D.C. Voting Rights Bill*, Wash. Post, April 20, 2010, at B01, <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/20/AR2010042004796.html>.

<sup>112</sup> S. 3265, 111th Cong. (2010). Similar legislation, H.R. 5162, has been introduced in the House.

<sup>113</sup> S. 2379, 83rd Gen. Assemb., 2d Sess. (Iowa 2010).

<sup>114</sup> H.B. 214, 58th Leg., 2010 Gen. Sess. (Utah 2010).



locations, such as parks, houses of worship, and establishments where alcohol is served, at which concealed firearms may be carried.

Arizona's legislation was by far the most extreme, as the state eliminated its requirement that a person obtain a permit or license to carry a concealed, loaded handgun, sanctioning such conduct without any background check, gun safety training, or exercise of law enforcement discretion.<sup>119</sup> Prior Arizona law required concealed weapon holders to apply for a license, pass a background check, and obtain firearms safety training.<sup>120</sup> Arizona joins only two other states, Vermont and Alaska, that allow concealed handguns to be carried without a license or permit.

No credible statistical evidence supports the gun lobby's claim that permissive CCW laws reduce crime.<sup>121</sup> A review of existing data on the effectiveness of gun laws, including research purporting to demonstrate that lax CCW laws (sometimes described as "right-to-carry" laws) reduce crime, found that the "evidence to date does not adequately indicate either the sign or the magnitude of a causal link between the passage of right-to-carry laws and crime rates."<sup>122</sup>

The gun lobby frequently claims that guns are used defensively 2.5 million times every year, and that guns are used defensively about five times as often as they are used in crimes.<sup>123</sup> These claims are incorrect. These parroted statistics are based on studies that have widely been discredited.<sup>124</sup> Even when a gun is used in self-defense, which is rare, research shows that it is no more likely to reduce a person's chance of being injured

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<sup>115</sup> S.B. 308, 150th Gen. Assemb., 2009-2010 Reg. Sess. (Ga. 2010).

<sup>116</sup> See H.B. 556, H.B. 1272 & S.B. 534, 2010 Reg. Sess. (La. 2010).

<sup>117</sup> S.B. 2862, 2010 Reg. Sess. (Miss. 2010).

<sup>118</sup> H.B. 505, 2010 Gen. Assemb., Reg. Sess. (Va. 2010); S.B. 334, 2010 Gen. Assemb., Reg. Sess. (Va. 2010).

<sup>119</sup> S.B. 1108, 49th Leg., 2d Reg. Sess. (Ariz. 2010).

<sup>120</sup> Ariz. Rev. Stat. § 13-3112. The permitting process is still available for persons who want to carry a concealed handgun in other states that have reciprocity with Arizona, or into a restaurant or bar that serves alcohol. *Id.*

<sup>121</sup> See, e.g., Ian Ayres & John J. Donohue III, *supra* note 94, at 1285, 1296; Ian Ayres & John J. Donohue III, *supra* note 94, at 1397.

<sup>122</sup> Nat'l Research Council of the Nat'l Acad., *Firearms and Violence: A Critical Review* 7, 120-151 (2005).

<sup>123</sup> See, e.g., Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense With a Gun*, 86 J. Crim. L. & Criminology, Guns & Violence Symp. 150 (1995).

<sup>124</sup> Harvard Injury Control Research Ctr., *Comparing the Incidence of Self-Defense Gun Use and Criminal Gun Use*, 3 *Bulletins* (Spring 2009), at 1-3, available at [http://www.hsph.harvard.edu/research/hicrc/files/Bullet-Ins\\_Spring\\_2009.pdf](http://www.hsph.harvard.edu/research/hicrc/files/Bullet-Ins_Spring_2009.pdf) (finding that the 2.5 million defensive gun uses claim is based on a study that contains several fatal methodological flaws, including its reliance upon merely 66 responses, or 1.3% of respondents, in a telephone survey of 5,000 people that was multiplied by, and purportedly represents, 200 million American adults). See also David Hemenway, *Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 *Crim. L. & Criminology* 1430, 1432 (1997); Dennis A. Henigan, *Lethal Logic: Exploding the Myths that Paralyze American Gun Policy* 116-121 (2009) (for a detailed refutation of the "2.5 million defensive gun uses per year" fallacy).



during a crime than various other forms of protective action.<sup>125</sup> A recent Harvard study reviewed different approaches to evaluating the number of self-defense gun use versus criminal gun use and found that the number of criminal gun uses vastly exceeds the number of self-defense gun uses.<sup>126</sup>

Rather than deterring a shooting, possession of a gun actually appears to encourage being shot. Recent public health research has found that, on average, a gun does not protect a possessor from being shot in an assault.<sup>127</sup> Rather, a person with a gun is more than four times more likely to be shot in an assault than someone not possessing a gun. Although successful defensive gun uses do occur each year, the chances of success are low, particularly in urban areas.<sup>128</sup>

The gun lobby also loudly voices its opinion that individuals who carry concealed handguns are law-abiding, responsible citizens. In fact, concealed handgun permit holders commit crimes.<sup>129</sup> As of July 23, 2010, concealed carry permit holders had killed 182 people – including nine law enforcement officers – since May 2007.<sup>130</sup> The dangers of carrying concealed weapons are further detailed in LCAV's publication *America Caught in the Crossfire: How Concealed Carry Laws Threaten Public Safety*, at [http://www.lcav.org/concealedcarry/LCAV\\_CCW.pdf](http://www.lcav.org/concealedcarry/LCAV_CCW.pdf).

## 2. Firearms Freedom Acts

So-called “Firearms Freedom Acts” declare that all guns and ammunition manufactured, transferred and possessed solely within a particular state fall outside of federal commercial regulation and thus are not subject to federal gun laws, including background checks for gun transfers, dealer licensing and recordkeeping requirements, and dealer inspections by ATF. The first states to adopt these laws were Montana<sup>131</sup> and Tennessee<sup>132</sup> in 2009. In 2010, Firearms Freedom Acts were enacted in Alaska,<sup>133</sup> Arizona,<sup>134</sup> Idaho,<sup>135</sup> South Dakota,<sup>136</sup> Utah<sup>137</sup> and Wyoming.<sup>138</sup> Such acts have been introduced, but not yet adopted, in at least 18 states.<sup>139</sup>

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<sup>125</sup> David Hemenway, *Private Guns, Public Health* 69, 78 (2004) (citing a Harvard study finding the ratio of gun crimes to defensive gun uses to be between 4 to 1 and 6 to 1).

<sup>126</sup> Harvard Injury Control Research Ctr., *supra* note 124, at 3.

<sup>127</sup> Branas et al., *supra* note 94, at 2034.

<sup>128</sup> *Id.*

<sup>129</sup> Violence Policy Ctr., *Concealed Carry Killers*, <http://www.vpc.org/ccwkillers.htm> (last visited Aug. 9, 2010).

<sup>130</sup> *Id.*

<sup>131</sup> Mont. Code Ann. § 30-20-101 *et seq.*

<sup>132</sup> Tenn. Code Ann. § 4-54-101 *et seq.*

<sup>133</sup> H.B. 186, 26th Leg., 2d Sess. (Alaska 2010).

<sup>134</sup> H.B. 2307, 49th Leg., 2d Reg. Sess. (Ariz. 2010).

<sup>135</sup> H.B. 589, 60th Leg., 2d Reg. Sess. (Idaho 2010).

<sup>136</sup> S.B. 89, 85th Leg. Sess. (S.D. 2010).

<sup>137</sup> S.B. 11, 2010 Gen. Sess. (Utah 2010).

<sup>138</sup> H.B. 95, 60th Leg. (Wyo. 2010).

<sup>139</sup> See Firearms Freedom Act, *State by State*, <http://firearmsfreedomact.com/state-by-state/> (last visited Aug. 9, 2010) (tracking Firearms Freedom Act legislation).

Despite the recent push for such Acts, these laws are likely unconstitutional.<sup>140</sup> On the effective date of the Montana statute, the Montana Shooting Sports Association and others filed an action in federal court seeking a ruling that the Act is constitutional.<sup>141</sup>

### **3. The Open Carry Movement**

The past year also has seen the rise of an “open carry movement” in the U.S., promoting the carrying of exposed firearms in public. Open carry proponents have been spotted carrying guns at political rallies and in other public places like coffee shops, restaurants and public parks, unnerving families and law enforcement alike. While in most states the open carrying of guns is legal and does not require a license or permit, the act of openly carrying a gun intimidates the public, wastes law enforcement resources, and creates opportunities for injury and death due to the intentional and unintentional use of firearms.

Open carrying poses particular challenges for law enforcement officers who become burdened by responding to 911 calls from citizens concerned about persons openly carrying guns in public. Instead of improving safety, open carrying needlessly increases the likelihood that everyday interpersonal conflicts will turn into deadly shootouts. Furthermore, in states that allow open carrying without a permit, law enforcement officers may be prohibited from demanding identification when stopping an individual who is openly carrying a firearm. Without identification, law enforcement is unable to confirm whether the person may lawfully possess a gun.

California has responded to the challenge posed by open carry proponents by proposing a ban on the open carrying of unloaded handguns in any public place or on any public street.<sup>142</sup> Current California law prohibits the open possession of loaded handguns, but does not prohibit the open carrying of unloaded handguns, even if the individual is also carrying ammunition on his or her person.<sup>143</sup>

For more on the dangers of open carrying, see LCAV’s *Open Carrying: Provocative Conduct, Dangerous Consequences*, at [http://www.lcav.org/content/open\\_carrying.pdf](http://www.lcav.org/content/open_carrying.pdf).

### **4. Guns in Parking Areas – Usurping Private Property Rights**

Legislation that limits private property rights by forcing businesses and employers to allow firearms in parked vehicles on their property continues to be introduced in, and adopted by, state legislatures. In 2010, Indiana adopted such a law.<sup>144</sup>

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<sup>140</sup> Firearms Freedom Act, *The Firearms Freedom Act (FFA) is Sweeping the Nation*, <http://firearmsfreedomact.com/> (2010) (admitting that the Acts are “primarily a Tenth Amendment challenge to the powers of Congress under the ‘commerce clause,’ with firearms as the object – it is a state’s rights exercise.”).

<sup>141</sup> *Mont. Shooting Sports Ass’n v. Holder*, No. CV-09-147-M-DWM-JCL (D. Mont. Oct. 1, 2009).

<sup>142</sup> S. 1934, 2010 Leg., Reg. Sess. (Cal. 2010).

<sup>143</sup> Cal. Penal Code § 12031(a)(1), (g).

<sup>144</sup> H.R. 1065, 116th Gen. Assemb., 2d Reg. Sess. (Ind. 2010).

For further information on this type of legislation, see LCAV's fact sheet on *Carrying Firearms: Guns in Parking Areas*, at [http://www.lcav.org/content/guns\\_in\\_parking\\_areas\\_factsheet.asp](http://www.lcav.org/content/guns_in_parking_areas_factsheet.asp).

## B. Other Firearm-Related Legislation

During the past year, states have adopted or considered, and in some cases continue to consider, proactive gun violence prevention laws:

*Domestic Violence & Firearms:* Iowa<sup>145</sup> and Michigan<sup>146</sup> enacted provisions that restrict gun possession and facilitate the surrender of firearms by domestic abusers. These laws continue a recent trend in legislation enacted by several states over the past few years.

*Mental Health & Firearms:* Following another recent trend in state laws, Wisconsin<sup>147</sup> adopted a law requiring that mental health records be sent to the National Instant Criminal Background Check System (NICS) for firearm background check purposes. In addition, the new legislation requires state courts, when making certain mental health-related dispositions, to determine whether the disposition renders a defendant prohibited under federal law from possessing a firearm and, if so, to order him or her not to possess firearms and to order seizure of his or her firearms.<sup>148</sup>

California is considering a bill to require the electronic reporting of mental health designations.<sup>149</sup> Current law prohibits any person from possessing a gun for five years if he or she is certified for intensive treatment or taken into custody as a danger to himself, herself or others.<sup>150</sup> When such a person is first certified or taken into custody, a mental health facility is required to submit a form to the California Department of Justice that notifies the agency of this designation.<sup>151</sup> Current law does not require electronic reporting, however. As a result, reporting is delayed, increasing the chance that a mentally disturbed person could pass a background check and purchase firearms.

*Guns in National Parks:* As noted in the Federal Update, a new federal law went into effect in 2010 that permits the possession of loaded firearms in national parks and wildlife refuges.<sup>152</sup> In response to this dangerous legislation, Maine adopted a statute prohibiting the use or possession of a firearm in Acadia National Park.<sup>153</sup> This provision

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<sup>145</sup> Iowa Code §§ 236.4(2), 236.5(1)(b), 664A.3(6), 724.26.

<sup>146</sup> Mich. Comp. Laws § 600.2950a.

<sup>147</sup> Wis. Stat. §§ 51.20(13)(cv), 51.45(13)(i), 54.10(3)(f), 55.12(10), 175.35(1)(at), 175.35(2g)(d), 941.29, 968.20(1r).

<sup>148</sup> *Id.* § 51.20(13)(cv). The impetus behind mental health reporting laws like the Wisconsin law is to ensure the NICS databases have as much mental health-related information in them as possible to effectively enforce the federal prohibitions on gun sales to persons that are adjudicated mentally defective or “committed to any mental institution.”

<sup>149</sup> A.B. 302, 2010 Leg., Reg. Sess. (Cal. 2010).

<sup>150</sup> Cal. Welf. & Inst. Code § 8103(g).

<sup>151</sup> Cal. Welf. & Inst. Code § 8103(f).

<sup>152</sup> 16 U.S.C. § 1a-7b.

<sup>153</sup> Me. Rev. Stat. Ann., tit. 12, § 756.

is subject to various exceptions, including possession of a gun in a person's residential dwelling within park lands, or pursuant to a state permit to carry a concealed firearm.<sup>154</sup>

*Handgun Microstamping:* Microstamping technology involves equipping semiautomatic pistols with a microscopic array of characters that identify the pistol and are imprinted on a cartridge casing whenever the gun is fired.<sup>155</sup> In 2007, California became the first jurisdiction in the nation to require handgun microstamping. California has adopted a statute that will require all models of semiautomatic pistols manufactured for sale after a certain date to be equipped with such microscopic characters, etched in two or more places internal to the pistol.<sup>156</sup> Using California's handgun purchaser database, law enforcement can use the imprinted gun information on shell casings left at a crime scene to match the cartridge case to the individual who purchased the microstamped handgun. This technology is a valuable crime-fighting tool as it helps law enforcement solve gun crimes where the actual firearms have not been recovered.

Legislation that would require handgun microstamping is pending in Illinois<sup>157</sup> and New Jersey<sup>158</sup> and was defeated in New York.<sup>159</sup>

*Handgun Ammunition Vendor Regulation:* In 2009, California adopted Assembly Bill 962 (AB 962), novel legislation to require persons or businesses engaged in the retail sale of handgun ammunition to, *inter alia*: 1) maintain sales records containing certain identifying information about the purchaser and the ammunition being sold; and 2) store handgun ammunition so that it is inaccessible to purchasers without the assistance of the vendor.<sup>160</sup> AB 962 was adopted following the success of ammunition sales recordkeeping ordinances in Los Angeles and Sacramento.<sup>161</sup>

California is considering additional legislation that would build upon AB 962 and require ammunition vendors to provide written notice to local law enforcement of the intent to do business in the jurisdiction and obtain any local regulatory or business license. This bill will help facilitate local law enforcement's use of ammunition sales records to identify prohibited gun and ammunition purchasers.<sup>162</sup>

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<sup>154</sup> *Id.*

<sup>155</sup> See, e.g., Coalition to Stop Gun Violence, *Microstamping*, <http://www.csgv.org/issues-and-campaigns/microstamping> (last visited Aug. 12, 2010).

<sup>156</sup> Cal. Penal Code § 12126(b)(7). Note that while this statutory provision imposes the date of January 1, 2010 for the sale of only microstamped pistols to commence, as of July, 2010 California has not yet implemented its microstamping regulations.

<sup>157</sup> S. 3425, 96th Gen. Assemb. (Ill. 2010).

<sup>158</sup> S. 1700, 214th Leg. (N.J. 2010).

<sup>159</sup> S. 6005-A, 2010 Leg., 232d Sess. (N.Y. 2010).

<sup>160</sup> Cal. Penal Code §§ 12060, 12061, 12318. LCAV was a co-sponsor of AB 962.

<sup>161</sup> See the Local Update, *infra* at page 30, for further discussion of these ordinances.

<sup>162</sup> A.B. 2358, 2010 Leg., Reg. Sess. (Cal. 2010).

## V. Local Update

### A. Background: Local Regulatory Authority

State constitutions generally grant authority to local governments to regulate in the interests of the public health, safety and welfare. However, states sometimes remove, or preempt, local governments from exercising legislative or regulatory authority to adopt laws governing certain subject matter. States differ considerably in how and to what extent they preempt the regulation of firearms and ammunition, but most states, unfortunately, have significantly curtailed local authority to regulate these areas. Preemption can be expressly stated in state law, or implied via state-local conflicts or comprehensive regulatory schemes.

Express preemption arises when a state explicitly limits or bars a lower government's regulatory authority in a statute or constitutional provision. Absent express preemption, courts may infer a state's intent to take over a field of regulation, even if no express legislative statement exists. This implied preemption occurs when a court finds that a local law conflicts directly with state law or a comprehensive scheme of regulation exists on a particular subject matter that demonstrates an implied intent to claim exclusive authority over that subject matter.<sup>163</sup> The existence and degree of both express and implied preemption of local firearms and ammunition regulation varies from state to state.

Note that state constitutions or statutes may also contain "home rule" provisions that delineate local regulatory authority. Localities in some states possess home rule power that supersedes a state's authority to preempt local law in a given area.

For further information on the preemption issue, see the section of LCAV's *Regulating Guns in America* report entitled *Preemption and Local Authority to Regulate Firearms and Ammunition*, at [http://www.lcav.org/publications-briefs/regulating\\_guns.asp](http://www.lcav.org/publications-briefs/regulating_guns.asp).

### B. Specific Local Measures to Combat Gun Violence

#### 1. New York

##### a. Broad Local Authority to Regulate Guns and Ammunition

In New York, there are no state laws expressly preempting local authority to regulate firearms or ammunition. Although a local law may not conflict with state law or regulate

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<sup>163</sup> See, e.g., *Cal. Rifle & Pistol Ass'n v. City of W. Hollywood*, 78 Cal. Rptr. 2d 591 (Cal. Ct. App. 1998) (discussing the doctrine of implied preemption in California and rejecting a preemption challenge to a local ban on Saturday Night Specials).

in an area occupied by the state,<sup>164</sup> courts have not found that the state has preempted the broad field of firearms and ammunition regulation.<sup>165</sup>

New York City has adopted a broad array of public safety laws that regulate firearms and ammunition, including those:

- Prohibiting possession or transfer of assault weapons, prohibiting possession of ammunition feeding devices designed for handguns, and limiting possession of such devices for long guns to those with a capacity of five rounds or less;<sup>166</sup>
- Requiring a permit for the purchase or possession of a long gun and a license for the possession of a handgun.<sup>167</sup> The handgun license also serves as registration of the handgun; every long gun owner must have a registration certificate;<sup>168</sup>
- Barring dealers from selling more than one firearm to any person as part of the same transaction, and providing that no person may acquire more than one firearm from dealers in the city in a 90-day period;<sup>169</sup>
- Requiring that any person engaging in the business of transferring firearms must have at least one of two types of dealer licenses, for: 1) dealers in rifles and shotguns; or 2) dealers in handguns and short-barreled rifles and shotguns;<sup>170</sup>
- Prohibiting the carrying of a loaded rifle or shotgun in public within city limits. Unloaded long guns in public must be enclosed or contained in a non-transparent carrying case;<sup>171</sup> and
- Implementing many ammunition transfer restrictions: prohibiting the transfer of ammunition by any person other than a licensed dealer; restricting transfer of any ammunition unless the purchaser has a license to possess a handgun of that caliber or a permit and registration certificate to possess a rifle or shotgun; requiring a

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<sup>164</sup> See, e.g., *DJL Rest. Corp. v. City of New York*, 749 N.E.2d 186, 190 (N.Y. 2001).

<sup>165</sup> Rather, courts have upheld municipal gun laws against preemption challenges and ruled that the state has intended to occupy only limited areas of gun regulation. See, e.g., *People v. Stagnitto*, 691 N.Y.S.2d 223, 225 (N.Y. App. Div. 1999) (rejecting preemption challenge to city ordinance regulating assault weapons); *Citizens for a Safer Cmty. v. City of Rochester*, 627 N.Y.S.2d 193, 196 (N.Y. Sup. Ct. 1994) (rejecting preemption challenge to ordinance banning assault weapons but finding regulation of manufacture, sale, and possession of air guns preempted by state law); *Grimm v. City of New York*, 289 N.Y.S.2d 358, 360 (N.Y. Sup. Ct. 1968) (rejecting preemption challenge to ordinance requiring licensing and registration of rifles and shotguns); *People v. Del Gardo*, 146 N.Y.S.2d 350, 357 (City Magis. Ct. 1955) (finding ordinance banning imitation handguns preempted by state law).

<sup>166</sup> New York, N.Y., Admin. Code §§ 10-131(i), 10-301(16), 10-301(17), 10-303.1, 10-306; New York, N.Y., Rules tit. 38, § 17-01.

<sup>167</sup> New York, N.Y., Admin. Code § 10-303; New York, N.Y., Rules tit. 38, §§ 5-01 - 5-07.

<sup>168</sup> New York, N.Y., Rules tit. 38, § 3-07.

<sup>169</sup> New York, N.Y. Admin. Code § 10-302.1.

<sup>170</sup> See New York, N.Y., Admin. Code §§ 10-302, 10-303.2(b), 10-306(c), 10-131(i); New York, N.Y., Rules tit. 38, §§ 1-04 – 1-06, 4-04.

<sup>171</sup> New York, N.Y., Admin. Code §§ 10-131(h)(1), (2); New York, N.Y., Rules tit. 38, § 5-01.

permit to store ammunition for sale; requiring safe storage of certain ammunition in the home; requiring ammunition seller recordkeeping of the receipt and transfer of ammunition, including purchaser information.<sup>172</sup>

### **b. New York City's Investigation of U.S. Gun Shows**

New York City has not only enacted some of the strongest gun laws in the U.S., it has also been proactive in investigating and combating illegal gun trafficking nationally. Gun shows are one avenue linked to illegal trafficking that provide a marketplace for persons who cannot pass a background check to acquire a gun.<sup>173</sup> Both licensed dealers and unlicensed sellers may transfer guns at gun shows, but unlicensed sellers also provide an avenue – via the private sale or “gun show loophole” – whereby prohibited purchasers may obtain guns without a background check or a record of the gun transaction.<sup>174</sup>

In October 2009, New York City officials launched an undercover investigation of illegal sales at seven gun shows in Nevada, Ohio and Tennessee. Undercover agents simulated illegal sales transactions, attempting to purchase guns from both FFLs and private sellers, to determine whether: 1) private sellers would sell guns to people who said they probably could not pass a background check; and 2) licensed dealers would sell guns to people who appear to be straw purchasers.<sup>175</sup>

New York City's investigators found that:

- Sixty-three percent of private sellers approached by investigators sold a gun to a purchaser who said he or she probably could not pass a background check, with some private sellers failing this test multiple times at multiple shows;
- Ninety-four percent of FFLs approached by investigators sold a gun to apparent straw purchasers; and
- Thirty-five out of 47 sellers approached by investigators completed sales to people who appeared to be criminals or straw purchasers.<sup>176</sup>

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<sup>172</sup> New York, N.Y. Admin. Code §§ 10-131(i), 10-306, 10-308; New York, N.Y., Rules tit. 38, §§ 1-02, 1-05, 2-06, 2-07, 3-07, 3-11, 3-14, 4-04, 5-23.

<sup>173</sup> Gun shows are a significant source for guns that turn up in crime. See Bureau of Alcohol, Tobacco and Firearms, U.S. Dep't of Treasury, *supra* note 66, at 13 (finding that gun shows were associated with 25,862 out of 84,128 total trafficked firearms).

<sup>174</sup> 18 U.S.C. § 921(a)(21)(C). See also U.S. Dep't of Justice & Bureau of Alcohol, Tobacco and Firearms, U.S. Dep't of Treasury, *Gun Shows: Brady Checks and Crime Gun Traces* 4, 6, 26 (Jan. 1999) (finding that gun shows provide a market where criminals can shop for firearms anonymously; that gun shows provide a ready supply of firearm to gangs, violent criminals and other prohibited persons; and that an estimated 25% to 50% of gun show sellers are private sellers).

<sup>175</sup> City of New York, *Gun Show Undercover: Report on Illegal Sales at Gun Shows* 6 (2009), available at [http://www.gunshowundercover.org/images/FE/chain266siteType8/site226/client/Gun\\_Show\\_Undercover\\_report.pdf](http://www.gunshowundercover.org/images/FE/chain266siteType8/site226/client/Gun_Show_Undercover_report.pdf).

<sup>176</sup> *Id.* at 6-7, 16, 20.



The New York City study concluded that the two best ways to deter illegal sales and trafficking at gun shows are to: 1) require a background check and transaction record for every transfer at a gun show;<sup>177</sup> and 2) increase enforcement of existing dealer and anti-trafficking laws.<sup>178</sup>

For further information on New York City's gun shows investigation, visit *Gun Show Undercover*, at <http://www.gunshowundercover.org>. For methods to deter illegal sales transactions, see LCAV's Policy Focus on universal background checks, *infra* at page 33, and LCAV's Gun Shows summary, at [http://www.lcav.org/content/gun\\_shows.pdf](http://www.lcav.org/content/gun_shows.pdf).

## 2. Illinois

Local governments in Illinois, and home rule jurisdictions in particular,<sup>179</sup> also enjoy broad authority to regulate firearms and ammunition.<sup>180</sup> The Illinois Supreme Court has concluded that when the state enacted statutes relating to the ownership, possession and sale of firearms and ammunition, it did not preempt further regulation, and Illinois courts have rejected preemption challenges to a variety of local gun laws.<sup>181</sup>

One Illinois city in particular – Chicago – has been a gun violence prevention leader. As discussed in the Federal Update, on June 28, 2010, the U.S. Supreme Court ruled that the Second Amendment applies to state and local governments in addition to the federal government, effectively nullifying Chicago's handgun ban.<sup>182</sup> In response to this decision, on July 2, 2010, Chicago extensively revised and expanded its firearm-related ordinances, adopting laws:

- Prohibiting the sale or transfer of: 1) firearms, except by inheritance;<sup>183</sup> 2) armor piercing and .50 caliber ammunition;<sup>184</sup> 3) metal piercing bullets;<sup>185</sup> 4) laser sights, firearm silencers, and mufflers;<sup>186</sup> and 5) high capacity magazines.<sup>187</sup> The sale or transfer of ammunition is prohibited without a weapons dealer's license;<sup>188</sup>

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<sup>177</sup> See the Federal Update, *supra* at page 10, for proposed legislation to close the “gun show loophole.”

<sup>178</sup> City of New York, *supra* note 175, at 7, 27-30.

<sup>179</sup> A home rule “unit” is a county with an elected chief executive officer, any municipality which has a population of more than 25,000, or a municipality that has become a home rule unit by referendum. Ill. Const. art. VII, § 6(a).

<sup>180</sup> Ill. Const. art. VII, § 6(a); 430 Ill. Comp. Stat. 65/13.1.

<sup>181</sup> *Kalodimos v. Vill. of Morton Grove*, 470 N.E.2d 266, 276-77 (Ill. 1984) (upholding local handgun ban); *City of Chicago v. Taylor*, 774 N.E.2d 22, 25 (Ill. App. Ct. 2002) (upholding local firearms registration ordinance).

<sup>182</sup> *McDonald v. Chicago*, 130 S. Ct. 3020, 3020 (2010). See generally Legal Cmty. Against Violence, *McDonald v. Chicago* (2010), <http://www.lcav.org/content/McDonald-v-Chicago.asp> (for more information about the *McDonald* decision).

<sup>183</sup> Chicago, Ill., Code § 8-20-100. Note that loaning, borrowing, giving and renting firearms is also prohibited.

<sup>184</sup> *Id.* § 4-144-061.

<sup>185</sup> *Id.* § 4-144-065.

<sup>186</sup> *Id.* § 8-20-060.

<sup>187</sup> *Id.* § 8-20-085.

<sup>188</sup> *Id.* §§ 4-144-010, 8-20-100.



- Limiting the location where a person may carry or possess a handgun to his or her home.<sup>189</sup> The ordinance defines the home as “the inside of a person’s dwelling unit,” and does not include any garage, porch, yard, dormitory or hotel;<sup>190</sup>
- Prohibiting no more than one assembled and operable firearm per eligible adult in the home; all other firearms must be broken down or secured by a trigger lock;<sup>191</sup>
- Prohibiting the keeping or possession of a firearm or ammunition in the home if the person knows or has reason to believe that a minor is likely to gain access to it, unless the firearm is being held by the person or secured on the person’s body, secured by a trigger lock, or the gun and ammunition are in a locked container;<sup>192</sup>
- Requiring a Chicago Firearms Permit (CFP) to carry or possess a firearm (applicants for a CFP must, *inter alia*, complete a state certified firearm training course, including one hour of range training and four hours of classroom instruction, in addition to fingerprinting and other requirements);<sup>193</sup>
- Prohibiting the possession of a firearm without a registration certificate.<sup>194</sup> To qualify for a certificate, a person must have been issued a CFP, and the application for a certificate must include identifying information about the gun and personal information about the gun owner.<sup>195</sup> Only one registration certificate may be issued for a handgun within any 30-day period;<sup>196</sup>
- Banning the registration of “unregisterable firearms,” including but not limited to: 1) assault weapons (defined using a one-characteristic test);<sup>197</sup> 2) .50-caliber rifles; 3) unsafe handguns (any handgun on the Police Superintendent’s roster of unsafe handguns because, in the Superintendent’s determination, the gun is unsafe due to factors making it inappropriate for lawful use);<sup>198</sup> and 4) machine guns;
- Establishing a gun offender registry.<sup>199</sup>

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<sup>189</sup> *Id.* § 8-20-020. *See also id.* § 8-20-070 (providing that vehicles will be impounded if the vehicle contains an unlawful firearm, laser sight, silencer or muffler); *id.* § 8-20-030 (providing that a person may carry or possess a long gun only within his or her home or fixed place of business).

<sup>190</sup> *Id.* § 8-20-020.

<sup>191</sup> *Id.* § 8-20-040.

<sup>192</sup> *Id.* § 8-20-050.

<sup>193</sup> *Id.* § 8-20-110.

<sup>194</sup> *Id.* § 8-20-180(c). Possession is only authorized in the approved locations on the certificate or in lawful transportation.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* § 8-20-160.

<sup>197</sup> *Id.* §§ 8-20-170 (listing unregisterable firearms); 8-20-010 (defining unsafe handguns, assault weapons).

<sup>198</sup> *Id.* § 8-20-240 (requiring also that the superintendent post the roster of unsafe handguns on the police department’s web site).

<sup>199</sup> *Id.* §§ 8-26-010 - 8-26-110.

As expected, the gun lobby filed lawsuits challenging Chicago's revised ordinances immediately following their enactment.<sup>200</sup> See LCAV's *Post-Heller Litigation Summary*, at [http://www.lcav.org/content/post-heller\\_summary.pdf](http://www.lcav.org/content/post-heller_summary.pdf) for further information.

### 3. California

California courts have ruled that local governments have broad authority to regulate firearms and ammunition.<sup>201</sup> For example, courts have rejected preemption challenges to many local gun laws, including ordinances regulating junk guns,<sup>202</sup> the location and operation of firearms dealers,<sup>203</sup> and the sale and possession of guns and ammunition on county-owned property.<sup>204</sup> Over 100 California cities and counties have used this authority over the past few decades to adopt a variety of local laws, including those to:

- Prohibit the sale<sup>205</sup> or possession<sup>206</sup> of guns and ammunition on publicly-owned property;
- Require any resident who owns or possesses a firearm to report the loss or theft of the firearm to law enforcement within 48 hours;<sup>207</sup>
- Require ammunition sellers to obtain a local license or permit;<sup>208</sup> and
- Regulate firearms dealers (*e.g.*, require local licenses; prohibit residential dealers; require liability insurance with a minimum coverage of at least \$1 million; bar dealers from operating within a specified distance (*e.g.*, 1,500 feet) of certain "sensitive areas" like schools, parks, places of worship, liquor stores, bars and other gun dealers; and require dealer employee background checks).<sup>209</sup>

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<sup>200</sup> See, *e.g.*, *Benson v. Chicago*, No. 10-4184 (E.D. Ill. filed July 6, 2010).

<sup>201</sup> See, *e.g.*, *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420, 425 (Ct. App. 1997) ("That state law tends to concentrate on specific areas, leaving unregulated other substantial areas relating to the control of firearms, indicates an intent to permit local governments to tailor firearms legislation to the particular needs of their communities.").

<sup>202</sup> *Cal. Rifle and Pistol Ass'n, Inc. v. City of W. Hollywood*, 78 Cal. Rptr. 2d 591 (Ct. App. 1998).

<sup>203</sup> *Suter*, 67 Cal. Rptr. 2d at 425.

<sup>204</sup> *Great Western Shows, Inc. v. County of Los Angeles*, 44 P.3d 120 (Cal. 2002) (rejecting preemption challenge to ordinance banning the sale of firearms and ammunition on county-owned property); *Nordyke v. King*, 44 P.3d 133 (Cal. 2002) (rejecting preemption challenge to ordinance banning possession of firearms and ammunition on county-owned property; other issues remain pending in *Nordyke*). See generally Legal Cmty. Against Violence, *Nordyke v. King Litigation* (2010) <http://www.lcav.org/content/Nordyke-v-King.asp>.

<sup>205</sup> L.A. County, Cal., Code §§ 13.67.010 – 13.67.070.

<sup>206</sup> Alameda County, Cal., Code § 9.12.120; Marin County, Cal., Code §§ 6.50.010 – 6.50.070; San Mateo County, Cal., Code §§ 3.53.010 – 3.53.030; Sonoma County, Cal., Code § 19-14.

<sup>207</sup> Berkeley, Cal., Code § 13.75.020; L.A., Cal., Code Chap.V, art. 5, § 55.12; Oakland, Cal., Code § 9.36.131; S.F., Cal., Police Code art. 9, § 616.

<sup>208</sup> Berkeley, Cal., Code § 9.04.177; L.A., Cal., Code Chap. V, art. 5, § 55.11, Chap. X, art. 3, Div. 9, § 103.314.1; Richmond, Cal., Code §§ 7.100.010 – 7.100.150; Sacramento, Cal., Code §§ 5.64.010 – 5.64.180; S.F., Cal., Police Code art. 9, §§ 613 – 613.10, 613.11 – 613.20.

<sup>209</sup> L.A., Cal., Code Chap. X, art. 3, Div. 9, §§ 130.12, 103.314; Oakland, Cal., Code §§ 5.26.010 – 5.26.190; S.F., Cal., Police Code art. 9, §§ 613 – 613.10, 613.11 – 613.20.

Utilizing their authority to regulate guns, local jurisdictions in California have been instrumental in adopting specific firearm-related ordinances that later became state law:

- Limiting handgun purchasers to one gun per month;<sup>210</sup>
- Banning the sale of junk guns;<sup>211</sup>
- Requiring that a locking device be included with every gun sold;<sup>212</sup>
- Regulating handgun ammunition sales, including recordkeeping requirements for handgun ammunition transfers, requiring that such records be provided to law enforcement, and mandating the safe storage of ammunition for sale;<sup>213</sup> and
- Banning the sale or transfer of large capacity ammunition magazines (*i.e.*, an ammunition feeding device with the capacity to accept more than 10 rounds).<sup>214</sup>

California expressly preempts local governments from regulating guns and ammunition in very specific areas: 1) registration or licensing of firearms;<sup>215</sup> 2) manufacture, sale or possession of imitation firearms;<sup>216</sup> and 3) licensing or permitting with respect to the purchase, ownership, possession or carrying of a concealable firearm in the home or place of business.<sup>217</sup>

#### 4. Ohio – Home Rule and *Cleveland v. Ohio*

Ohio offers a recent case study on how broad home rule provisions may trump state preemption of local gun regulation. Ohio’s Constitution grants municipalities authority to exercise all powers of self-government, including authority to adopt and enforce local

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<sup>210</sup> Cal. Penal Code §§ 12072(a)(9)(A), 12072(c)(6).

<sup>211</sup> *Id.* §§ 12125 – 12133.

<sup>212</sup> *Id.* § 12088.1(a).

<sup>213</sup> *Id.* §§ 12060, 12316–12318. California adopted its handgun ammunition recordkeeping statute following the success of the law in Los Angeles and Sacramento. L.A., Cal., Code Chap. V, art. 5, § 55.11; Sacramento, Cal., Code §§ 5.66.010 – 5.66.090. Sacramento’s ordinance, for example, requires detailed recording of personal information about the purchaser and transaction and requires purchasers to provide a thumbprint. Sacramento, Cal., Code § 5.66.020. The data is then electronically submitted to the Sacramento Police Department and cross-referenced with California Department of Justice information on persons prohibited from possessing guns and ammunition. *Id.* § 5.66.040. The ordinance has been successful in identifying many felons and misdemeanants who purchased ammunition and were later found illegally in possession of both guns and ammunition and involved in other crimes. See Sacramento Police Department, *Ammunition Sales Records Study Presentation to Sacramento City Council* (Aug. 12, 2008), [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>214</sup> Cal. Penal Code § 12020(a)(2), (b). See generally Legal Cmty. Against Violence, *Communities on the Move 2000: How California Communities Are Addressing the Epidemic of Handgun Violence* (2000), [http://www.lcav.org/publications-briefs/surveys\\_local\\_orads/com2000\\_pdf.pdf](http://www.lcav.org/publications-briefs/surveys_local_orads/com2000_pdf.pdf).

<sup>215</sup> Cal. Gov’t Code § 53071.

<sup>216</sup> *Id.* § 53071.5.

<sup>217</sup> Cal. Penal Code § 12026(b).

police regulations, as long as the regulations are not in conflict with general state laws.<sup>218</sup> Because local police powers are constitutionally granted, the state legislature may not withdraw them without a constitutional amendment.<sup>219</sup> Moreover, even though the legislature may explicitly state in a statute its intent to preempt a regulatory field, such a statement does not automatically overrule the constitutional authority of a municipality to enact legislation pursuant to the Home Rule Amendment.<sup>220</sup> Local authority may be limited only by a general state law that conflicts with, and thus likely supersedes, a local ordinance or regulatory area.<sup>221</sup>

On March 14, 2007, a statute went into effect in Ohio purporting to remove local authority to regulate firearms.<sup>222</sup> Cleveland, which has its own body of gun violence prevention law, challenged the statute as a violation of the Home Rule Amendment.<sup>223</sup> The Ohio Court of Appeals ruled in favor of Cleveland and struck down the law.<sup>224</sup> The State of Ohio has appealed this ruling to the Ohio Supreme Court.<sup>225</sup>

Cleveland has developed some of the broadest local gun laws in Ohio, including those:

- Prohibiting the transfer, acquisition or possession of certain assault weapons;<sup>226</sup>
- Prohibiting specified persons (some beyond those prohibited by federal or state law) from purchasing and possessing handguns;<sup>227</sup>
- Prohibiting minors<sup>228</sup> from purchasing, owning, possessing or using any gun;<sup>229</sup>

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<sup>218</sup> Ohio Const. art. XVIII, §§ 1, 3. Certain counties may also be organized as municipal corporations, and possess all the police powers granted to cities and villages. Ohio Const. art. X, § 3.

<sup>219</sup> See *Am. Fin. Servs. Ass'n v. City of Cleveland*, 858 N.E.2d 776, 782 (Ohio 2006).

<sup>220</sup> *Id.*

<sup>221</sup> *Fondessy Enterprises, Inc. v. City of Oregon*, 492 N.E.2d 797, 799-800 (Ohio 1986).

<sup>222</sup> Ohio Rev. Code Ann. § 9.68(A) (declaring that the state “finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition.” This law also provides that regardless of local law, a person “without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition” so long as his or her action does not violate federal or state law.

<sup>223</sup> *City of Cleveland v. State*, 923 N.E.2d 183, 187 (Ohio Ct. App. 2009), *appeal docketed*, 922 N.E.2d 969 (Ohio 2010) (challenging Ohio’s “attempt to use R.C. 9.68 as a mechanism to preempt all local ordinances, notwithstanding the absence of conflict between the City’s local ordinances and a corresponding general law enacted by the State.”).

<sup>224</sup> *City of Cleveland v. State*, 923 N.E.2d at 190-91.

<sup>225</sup> *City of Cleveland v. State*, 922 N.E.2d 969 (Ohio 2010). LCAV has filed an *amicus* brief in the Ohio Supreme Court in support of Cleveland, *available at* [http://www.lcav.org/publications-briefs/amicus\\_briefs/Cleveland\\_v\\_Ohio\\_Amicus\\_Brief\\_Ohio\\_Supreme\\_Court.pdf](http://www.lcav.org/publications-briefs/amicus_briefs/Cleveland_v_Ohio_Amicus_Brief_Ohio_Supreme_Court.pdf).

<sup>226</sup> Cleveland, Ohio, Code §§ 628.01 – 628.99.

<sup>227</sup> *Id.* § 674.04(d).

<sup>228</sup> Cleveland does not define “minor.” Under Ohio law, “minors” are generally defined to be persons under age 18. Ohio Rev. Code Ann. § 3109.01.

<sup>229</sup> Cleveland, Ohio, Code § 627.08.

- Requiring that handgun dealers obtain a local license, obtain a separate license for each business location, do business only within general retail districts or semi-industrial districts, and not do business within 1,000 feet of a school, church, day care center, liquor establishment or another handgun dealer;<sup>230</sup> and
- Requiring that for each firearm transferred, dealers offer to sell or give the purchaser a trigger locking device.<sup>231</sup>

## 5. Pennsylvania

Pennsylvania has a preemption law that limits local regulation of guns and ammunition.<sup>232</sup> Many of the state's cities plagued by gun violence have requested that the state amend the law or exempt certain local jurisdictions, opening the door for cities to regulate gun trafficking and gun crime.

In 2008, Philadelphia adopted a package of gun violence prevention ordinances to help curb spiraling gun violence. The NRA challenged these laws as preempted by the state.<sup>233</sup> In June 2008, a lower court permanently enjoined enforcement of several of the ordinances, but rejected plaintiffs' challenge to the ordinance requiring gun owners to report the loss or theft of a firearm,<sup>234</sup> finding that plaintiffs had failed to establish the type of injury required to confer standing to challenge the provision.<sup>235</sup> This decision was affirmed on appeal.<sup>236</sup> A comparable suit brought against Pittsburgh's law was dismissed on similar grounds in July 2009.<sup>237</sup>

While a dismissal on standing grounds leaves the door open to future preemption challenges to this type of gun ordinance, a groundswell of support in favor of loss/theft reporting ordinances shows that many communities in the state support local control over gun policy. Local jurisdictions across Pennsylvania have begun adopting loss/theft

<sup>230</sup> *Id.* §§ 674.07, 674.09, 627.16, 627A.03.

<sup>231</sup> *Id.* § 627A.03.

<sup>232</sup> 18 Pa. Cons. Stat. Ann. § 6120(a) (providing that “[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.”).

<sup>233</sup> See *Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78, 80 (Pa. Commw. Ct. 2009).

<sup>234</sup> Loss/theft reporting laws commonly require gun owners to report to police a lost or stolen firearm within a specific time, usually 24 to 72 hours, after the loss or theft is discovered. See, e.g., Conn. Gen. Stat. § 53-202g; N.Y. Penal Law § 400.10; R.I. Gen. Laws § 11-47-48.1. See generally Legal Cmty. Against Violence, *Reporting Lost or Stolen Firearms, in Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws* 197 (2008), available at [http://www.lcav.org/content/reporting\\_lost\\_stolen.pdf](http://www.lcav.org/content/reporting_lost_stolen.pdf).

<sup>235</sup> *Nat'l Rifle Ass'n v. City of Philadelphia*, No. 1472, 2008 Phila. Ct. Com. Pl. LEXIS 159, at \*9 (Phila. Ct. Com. Pl. June 30, 2008), *aff'd*, 977 A.2d 78 (Pa. Commw. Ct. 2009).

<sup>236</sup> *Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78 (Pa. Commw. Ct. 2009).

<sup>237</sup> See *Nat'l Rifle Ass'n v. City of Pittsburgh*, No. 2048, 2010 Pa. Commw. LEXIS 309, at \*8 (Pa. Commw. Ct. June 25, 2010). See also CeaseFirePA, *State Court Allows Pittsburgh Lost or Stolen Handgun Reporting Law to Stand 1-2* (July 21, 2009), available at <http://www.ceasefirepa.org/images/2009%20ceasefirepamorereleases/07.21.09%20Pittsburgh%20Lost%20or%20Stolen%20Release%20FINAL%207.21.09.pdf>.

reporting ordinances to curb gun trafficking and make gun owners more responsible.<sup>238</sup> Over 40 municipalities have either adopted this type of ordinance or passed resolutions requesting that the state legislature enact this law.<sup>239</sup> Cities likely will continue to adopt this common sense anti-trafficking measure until the legislature either adopts the statute or the courts halt enforcement of the ordinances.

## 6. Tennessee

In 2009, Tennessee legalized the carrying of concealed handguns in parks.<sup>240</sup> To encourage legislators to adopt the law, a provision was added allowing cities and counties to prohibit the possession of concealed handguns in parks, regardless of whether the possessor has a valid state permit.<sup>241</sup> Voicing displeasure with the state’s legalization of concealed guns in parks, nearly 70 cities and counties – including Nashville and Memphis – voted to ban guns in parks.<sup>242</sup> Such proactive local action demonstrates an unfortunate disconnect that exists in most states between state legislative priorities and local public health and safety concerns.

## VI. Policy Focus: Universal Background Checks and Dealer Regulations

### A. Universal Background Checks

*Policy Background:* Federal law requires anyone engaging in the business of selling firearms to obtain a federal firearms license.<sup>243</sup> These licensees are required to conduct a background check on a prospective gun purchaser before transferring a firearm.<sup>244</sup> Firearms dealers aren’t the only individuals who can transfer guns, however. Due to a huge loophole in federal law, unlicensed sellers are not legally required to conduct a background check or document transaction information prior to transferring a firearm.<sup>245</sup>

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<sup>238</sup> See, e.g., CeaseFirePA, *Days Before PA Primary, More Communities Take Action Supporting Lost or Stolen Handgun Reporting* (May 14, 2010), available at <http://webcache.googleusercontent.com/search?q=cache:BxwhxeGZyHEJ:www.ceasefirepa.org>.

<sup>239</sup> Philadelphia, Pittsburgh, Allentown, Pottsville, Reading, Lancaster, Harrisburg, Wilkinsburg, Erie, Homestead, West Homestead, Clairton, Oxford, Munhall, Braddock, Castle Shannon, Aliquippa, West Mifflin, Hatfield Township, Norristown, Duquesne, Glassport, Liberty, Conshohocken, Easton, York, Heidelberg, Lincoln, Swarthmore, West Conshohocken, Bridgeport, Ambler, Radnor Township, Baldwin, Upper Merion Township, Whitaker, Catasauqua, Sharon Hill, Wilson, Charleroi, Whitemarsh and Plymouth. *Id.*; CeaseFirePA, *Two More Towns Adopt Lost or Stolen Handgun Reporting Law* (June 3, 2010), available at [http://www.ceasefirepa.org/index.php?option=com\\_content&view=article&id=3&Itemid=2](http://www.ceasefirepa.org/index.php?option=com_content&view=article&id=3&Itemid=2) (last visited Aug. 12, 2010).

<sup>240</sup> Tenn. Code Ann. § 39-17-1311(b)(1)(I), (J).

<sup>241</sup> *Id.* § 39-17-1311(d), (e).

<sup>242</sup> Chas Sisk, *Next Gun Battle is About Local Control*, *The Tennessean* (Sept. 1, 2009), <http://www.wbir.com/news/watercooler/story.aspx?storyid=97527>.

<sup>243</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>244</sup> 18 U.S.C. § 922(g), (t)(1).

<sup>245</sup> See, e.g., 18 U.S.C. § 921(a)(21)(C) (providing only 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 (also known as the “Firearms Owners”



This “private sale loophole” is a significant part of the estimated 40% of gun transfers made by unlicensed sellers each year in the U.S. – transfers that take place *without* a background check on the purchaser.<sup>246</sup> Because of this loophole, criminals and other prohibited persons have easy access to guns.

Private sales are a significant public safety concern:

- ATF found that for the period July 1996 through December 1998, unlicensed sellers were involved in about one-fifth of illegal trafficking investigations and associated with nearly 23,000 guns.<sup>247</sup>
- Roughly 20% of gun trafficking investigations involve transfers by unlicensed sellers who are not required to conduct a background check.<sup>248</sup>
- States that do not require background checks for sales of handguns at gun shows are the sources of crime guns recovered in other states at more than twice the rate of states that require background checks.<sup>249</sup> None of the ten states that are most frequently the sources of crime guns have any universal background check or gun show background check requirement.<sup>250</sup>

Background checks are a proven method to keep guns out of the hands of prohibited persons. Since the Brady Act was adopted in 1994, nearly 1.8 million prohibited persons have been denied a firearm transfer or permit.<sup>251</sup> In 2009 alone, 70,656 gun transfers were denied using NICS.<sup>252</sup>

Implementing universal background checks would reduce illegal trafficking and treat all transfers equally, whether the purchaser is buying from a licensed gun shop, at a gun show, or from a neighbor. Universal background checks would help ensure that persons buying guns are legally eligible to do so, and recording information about the transaction would allow law enforcement to track the owners of guns recovered in crimes.

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Protection 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.” *Id.* 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.* It is such private sellers that jeopardize public safety.

<sup>246</sup> Cook & Ludwig, *supra* note 13, at 6–7.

<sup>247</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of Treasury, *supra* note 66, at xi.

<sup>248</sup> *Id.*

<sup>249</sup> Mayors Against Illegal Guns, *supra* note 76, at 10-11.

<sup>250</sup> *Id.*

<sup>251</sup> Bureau of Justice Statistics, U.S. Dep’t of Justice, *Background Checks for Firearm Transfers, 2008 - Statistical Tables*, <http://bjs.ojp.usdoj.gov/content/pub/html/bcft/2008/bcft08st.pdf> (last visited Aug. 10, 2010) (covering the period March 1, 1994 – December 31, 2008).

<sup>252</sup> U.S. Dep’t of Justice, Bureau of Justice Statistics, Criminal Justice Information Services Division, *CJIS Annual Report 2009* 10, available at [http://www.fbi.gov/hq/cjisd/cjis\\_annual\\_report2009.pdf](http://www.fbi.gov/hq/cjisd/cjis_annual_report2009.pdf) (finding that these denials were out of 14.4 million NICS background checks in 2009).

*Universal Background Checks at the State and Local Levels:* California,<sup>253</sup> Rhode Island<sup>254</sup> and the District of Columbia<sup>255</sup> have instituted universal background checks and require that, prior to any firearm transfer, a licensed dealer or law enforcement agency conduct a background check on the prospective transferee. Connecticut,<sup>256</sup> Maryland<sup>257</sup> and Pennsylvania<sup>258</sup> impose universal background checks on handgun purchasers.

*Public Support for Universal Background Checks:* Americans overwhelmingly support background checks for all prospective gun purchasers:

- A nationwide poll conducted in early 2008 found that 87% of Americans, including 83% of gun owners, favor requiring everyone who sells guns to conduct criminal background checks on prospective purchasers.<sup>259</sup>
- A poll conducted shortly after the 2008 presidential election found that 83% of voters, including 84% of gun owners, favor background checks for all sales.<sup>260</sup>
- A national survey conducted for Mayors Against Illegal Guns (MAIG) in January 2007 found that 92% of Americans – including 91% of gun owners – favor mandatory criminal background checks for all people purchasing guns.<sup>261</sup>

For more information on universal background checks and private sales issues, see LCAV's Private Sales Policy Summary, at [http://www.lcav.org/content/private\\_sales.pdf](http://www.lcav.org/content/private_sales.pdf).

## **B. Firearms Dealer Regulations**

*Policy Background:* Current federal laws – and enforcement of those laws – are insufficient to ensure that the public is safe from unscrupulous firearms dealers. In addition to requiring dealer licenses and mandating background checks by dealers, federal law requires a Federal Firearms Licensee (FFL) to:

- Conduct background checks on prospective firearm purchasers to ensure they are not prohibited from purchasing or possessing guns;<sup>262</sup>

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<sup>253</sup> Cal. Penal Code §§ 12072(d), 12082.

<sup>254</sup> R.I. Gen. Laws §§ 11-47-35 – 11-47-35.2 (stating that the background check requirement does not apply to persons licensed to carry a concealed handgun).

<sup>255</sup> D.C. Code Ann. §§ 7-2502.01, 7-2502.03, 7-2505.01, 7-2505.02.

<sup>256</sup> Conn. Gen. Stat. § 29-33(c).

<sup>257</sup> Md. Code Ann., Pub. Safety §§ 5-101(r), 5-124(a), 5-130(j).

<sup>258</sup> 18 Pa. Cons. Stat. §§ 6111(b), (c), (f)(1)-(2).

<sup>259</sup> Greenberg Quinlan Rosner Research & The Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3, 6 (Apr. 10, 2008), available at [http://www.mayorsagainstillegalsguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalsguns.org/downloads/pdf/polling_memo.pdf).

<sup>260</sup> Green & Bechak, *supra* note 36, at 1.

<sup>261</sup> Greenberg Quinlan Rosner Research & The Tarrance Group, *Strong Public Support for Tough Enforcement of Common Sense Gun Laws* 12, 18 (2007), available at [http://www.greenbergresearch.com/articles/1849/2630\\_MAIGslides.pdf](http://www.greenbergresearch.com/articles/1849/2630_MAIGslides.pdf).

<sup>262</sup> 18 U.S.C. § 922(t)(1); 27 C.F.R. §§ 478.11, 478.102, 478.124.



- Maintain records of the acquisition and sale of firearms;<sup>263</sup>
- Report multiple sales of handguns (*i.e.*, the sale of two or more pistols or revolvers to an unlicensed person within any five consecutive business days);<sup>264</sup>
- Report the theft or loss of a firearm from the licensee’s inventory within 48 hours after the theft or loss is discovered (a requirement that helps deter gun trafficking and discourage persons with a clean background from purchasing guns for prohibited possessors);<sup>265</sup> and
- Provide a secure gun storage or safety device with every handgun transferred.<sup>266</sup>

In addition, a FFL may not sell or deliver: 1) a handgun to a resident of another state; 2) a shotgun or rifle or long gun ammunition to a person the dealer knows or has reasonable cause to believe is under the age of 18; or 3) a handgun or handgun ammunition to a person the dealer knows or has reasonable cause to believe is under age 21.<sup>267</sup>

Beyond these basic provisions, however, federal law imposes minimal regulation on firearms dealers and ammunition sellers. ATF does not have the resources or authority to properly oversee the more than 100,000 FFLs that it licenses. ATF has legal authority to conduct one unannounced inspection of each FFL per year,<sup>268</sup> yet ATF inspects each FFL, on average, only once every 17 years.<sup>269</sup> The U.S. Department of Justice Office of the Inspector General has concluded that ATF compliance inspections are not fully effective for ensuring that FFLs comply with federal firearms laws.<sup>270</sup>

In June of 2000, ATF issued a comprehensive report of firearms trafficking, analyzing 1,530 trafficking investigations from July 1996 – December 1998 that involved more than 84,000 diverted firearms.<sup>271</sup> ATF found that FFLs were associated with the largest number of trafficked guns – over 40,000 – and concluded that dealer “access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law.”<sup>272</sup>

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<sup>263</sup> 18 U.S.C. § 923(g)(1)(A).

<sup>264</sup> 18 U.S.C. § 923(g)(3)(A).

<sup>265</sup> 18 U.S.C. § 923(g)(6) (stating that the report must be made to the Attorney General and to the “appropriate local authorities”).

<sup>266</sup> 18 U.S.C. § 922(z).

<sup>267</sup> 18 U.S.C. § 922(b)(1), (3).

<sup>268</sup> 18 U.S.C. § 923(g)(1)(B). More frequent inspections are permitted if a federal magistrate has issued a search warrant or if the search is incidental to a criminal investigation. 18 U.S.C. § 923(g)(1)(A), (B). In addition, FFLs must respond to requests for information from ATF regarding the disposition of a firearm if such request is made during the course of a bona fide criminal investigation. 18 U.S.C. § 923(g)(7).

<sup>269</sup> *Mayors Against Illegal Guns*, *supra* note 76, at 18.

<sup>270</sup> Office of the Inspector General, U.S. Dep’t of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* i (2004), available at <http://www.usdoj.gov/oig/reports/ATF/e0405/exec.htm>.

<sup>271</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *supra* note 66, at ix.

<sup>272</sup> *Id.* at x.

Better funding, improved staffing and greater frequency of dealer inspections by ATF would aid in reducing illegal trafficking and the gun violence flowing from such trafficking. Routine inspections of gun dealers provide law enforcement with more opportunities to uncover dealers in violation of the law, help identify dealers who exercise lax oversight of their inventory, and may lead to improved compliance with federal, state and local laws.<sup>273</sup> Recent research by MAIG shows that states that do not permit or require inspections of gun dealers are the sources of guns recovered in crimes in other states at a rate that is 50% greater than states with these inspections.<sup>274</sup>

Moreover, ATF has found that one percent of federally licensed firearms dealers are likely responsible for selling almost 60% of the guns that are found at crime scenes and traced to dealers.<sup>275</sup> More inspections, with a focus on eliminating dishonest dealers, will help deter illegal gun trafficking and reduce gun deaths and injuries.

*Firearms Dealer Regulations at the State and Local Levels:* Because of limited federal regulation and the significant enforcement issues present at the federal level, state (and where permissible local) licensing and regulation of gun dealers is crucial to ensure dealers operate in a manner that protects the public safety. A 2009 study found that cities in states that significantly regulate dealers and where gun businesses undergo regular compliance inspections have considerably lower levels of trafficking than other cities.<sup>276</sup>

States have adopted the following dealer regulations:

- Dealer licensing for the transfer of all firearms (California, Hawaii, Massachusetts, New Jersey, Pennsylvania, Rhode Island, Washington);
- Prohibiting dealers from operating out of a residence or dwelling (Massachusetts);
- Requiring background checks on gun dealer employees (Connecticut, Delaware, New Jersey, Virginia, Washington);
- Instituting various security measures to reduce the risk of theft, including: 1) prohibiting gun displays in shop windows; 2) implementing security measures that include burglar alarms; and 3) requiring that guns be securely stored and locked during and after business hours (Alabama, California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, West Virginia);
- Gun sales records reporting to state and local law enforcement (Connecticut);

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<sup>273</sup> Mayors Against Illegal Guns, *supra* note 76, at 18.

<sup>274</sup> *Id.*

<sup>275</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Dep't of the Treasury, *Commerce in Firearms in the United States* 14 (Feb. 2000).

<sup>276</sup> See Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, 86 J. Urb. Health 525 (July 2009).

- Requiring that a gun seller include a firearms safety device with a gun sale or transfer (Michigan and New York – all firearms; Connecticut, Illinois, Maryland, New Jersey, Pennsylvania and Rhode Island – handguns); and
- Imposing strict liability on firearms dealers for any damage, death or injury resulting from the sale of a gun to a known prohibited purchaser, or with knowledge that the purchaser intends to use the gun in a crime (Connecticut, Pennsylvania, the District of Columbia).<sup>277</sup>

MAIG has instituted the Responsible Firearms Retailer Partnership, a 10-point code for firearms retailers to help ensure their guns do not fall into the hands of prohibited possessors or end up in the illegal market.<sup>278</sup> The retailer code includes a few of the provisions listed above, as well as cutting-edge dealer policies such as video recording of transactions, detailed checking of dealer inventory and the development of a computerized crime gun trace log for retailers.<sup>279</sup> The retailer partnership was created in conjunction with Wal-Mart, the first major retailer to agree to implement the code.<sup>280</sup>

*Public Support for Firearms Dealer Regulations:* The American public overwhelmingly supports strong regulation of firearms dealers. A national poll conducted for MAIG in the spring of 2008 found that most Americans, including gun owners and NRA members, strongly favor thorough regulation of dealers, including laws that:

- Require gun retailers to perform background checks on their employees (91% of Americans favor, including 88% of gun owners);
- Require gun retailers to inspect their inventories every year and report stolen or missing guns (86% of Americans favor, including 83% of gun owners);
- Require gun retailers to videotape all gun sales (74% of Americans favor);
- Require gun sellers to install machines that can verify the validity of a gun buyer's driver's license (83% of Americans favor);
- Require gun stores to keep all guns locked securely to prevent theft (88% of Americans favor); and

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<sup>277</sup> See Legal Cmty. Against Violence, *Dealer Regulations, in Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws* 145 (2008), available at [http://www.lcav.org/content/dealer\\_regulations.pdf](http://www.lcav.org/content/dealer_regulations.pdf).

<sup>278</sup> Mayors Against Illegal Guns, *Responsible Firearms Retailer Partnership: A 10-Point Voluntary Code* (2008), available at <http://www.mayorsagainstillegalguns.org/html/partnership/partnership.shtml>.

<sup>279</sup> *Id.*

<sup>280</sup> Press Release, Mayors Against Illegal Guns, *Wal-Mart and Mayors Against Illegal Guns Announce "Responsible Firearms Retailer Partnership": A 10-Point Voluntary Code* (Apr. 14, 2008), available at <http://www.mayorsagainstillegalguns.org/html/media-center/pr007-08.shtml>.

- Prohibit gun retailers whose licenses have been revoked from continuing to sell their guns without a new background check (80% of Americans favor, including 80% of gun owners).<sup>281</sup>

NRA members (90%) and non-NRA member gun owners (93%) agree that irresponsible gun dealers who break the law by knowingly selling guns to unqualified purchasers should be held accountable to the maximum extent of the law.<sup>282</sup> Seventy-two percent of NRA members and 79% of non-NRA member gun owners strongly agree with this principle.<sup>283</sup> Eighty-two percent of NRA members and 85% of non-NRA member gun owners would support a requirement that gun retailers perform background checks on their employees to ensure they are not felons.<sup>284</sup>

For further information on firearms dealers, see LCAV’s Dealer Regulations Policy Summary, at [http://www.lcav.org/content/dealer\\_regulations.pdf](http://www.lcav.org/content/dealer_regulations.pdf). LCAV has drafted comprehensive model legislation for use by local jurisdictions in California to regulate gun dealers. View LCAV’s *Model Law Regulating Firearms Dealers and Ammunition Sellers (Local Governments in California)* 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).

## How LCAV Can Help

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 in support of or in opposition to gun 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; and
- Develop model laws.

Our 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 selected states. The site also provides a detailed discussion of the Second Amendment to the U.S. Constitution and summaries of more than 35 firearm-related policies. Moreover, our site offers detailed analyses on gun

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<sup>281</sup> Greenberg Quinlan Rosner Research & The Tarrance Group, *supra* note 259, at 3.

<sup>282</sup> Luntz, *supra* note 36, at 9.

<sup>283</sup> *Id.*

<sup>284</sup> *Id.* at 14.

policy topics, model legislation and *amicus curiae* briefs filed in firearm-related litigation. Finally, our site allows access to our publications, including:

- *Gun Laws Matter: A Comparison of State Firearms Laws and Statistics*;<sup>285</sup>
- *10 Myths About Gun Violence in America*;<sup>286</sup>
- *America Caught in the Crossfire: How Concealed Carry Laws Threaten Public Safety*;<sup>287</sup> and
- *Open Carrying: Provocative Conduct, Dangerous Consequences*.<sup>288</sup>

LCAV also publishes detailed reports such as our *Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws*, to more-broadly educate community leaders about the issue of gun violence prevention. To request additional information or assistance, please contact us at (415) 433-2062 or visit [http://www.lcav.org/mail/request\\_assistance.asp](http://www.lcav.org/mail/request_assistance.asp).

## **Join LCAV's Membership Program Today**

Legal Community Against Violence is only as strong as the people who stand behind the LCAV mission. Five 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 bold agenda. Please help make an immediate difference by joining or renewing your membership for 2011.

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<sup>285</sup> Legal Cmty. Against Violence, *Gun Laws Matter: A Comparison of State Firearms Laws and Statistics* (2010), available at [http://www.lcav.org/gun\\_laws\\_matter.asp](http://www.lcav.org/gun_laws_matter.asp).

<sup>286</sup> Legal Cmty. Against Violence, *10 Myths about Gun Violence in America* (2009), available at [http://www.lcav.org/publications-briefs/reports\\_analyses/Ten\\_Myths.pdf](http://www.lcav.org/publications-briefs/reports_analyses/Ten_Myths.pdf).

<sup>287</sup> Legal Cmty. Against Violence, *America Caught in the Crossfire: How Concealed Carry Laws Threaten Public Safety* (2009), available at [http://www.lcav.org/concealedcarry/LCAV\\_CCW.pdf](http://www.lcav.org/concealedcarry/LCAV_CCW.pdf).

<sup>288</sup> Legal Cmty. Against Violence, *Open Carrying: Provocative Conduct, Dangerous Consequences* (2010), available at [http://www.lcav.org/content/open\\_carrying.pdf](http://www.lcav.org/content/open_carrying.pdf).

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