



# **Gun Control in the United States**

## **A Comparative Survey of State Firearm Laws**

*A project of the Open Society Institute's  
Center on Crime, Communities & Culture  
and the Funders' Collaborative for  
Gun Violence Prevention.*

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This report was written in March 2000.  
Please help update this information by notifying  
us of any changes in your state or local gun laws.  
Comments on the report are also welcome.

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## I. INTRODUCTION

Consider:

- A 12-year-old in North Carolina needs parental permission to play Little League Baseball, but not to possess a rifle or shotgun. In Texas and five other states, there is no minimum legal age requirement for gun possession.
- In 48 states citizens can legally buy an assault weapon. In 43 states the purchase requires no license or registration.
- In 46 states there is no limit on the number of guns a person can buy at any one time. Only four states impose a limit of one handgun per month as a precaution against illegal gun trafficking.

Considering the intensity of the debate about gun violence prevention, public knowledge of current gun laws is extremely poor. Notions of tough or loose gun control are frequently mentioned in the media, but the question must be asked: by what standard?

This report attempts to bring some clarity to this question by providing the first plain-English, comprehensive survey of the gun laws in all 50 states. It systematically compares the gun laws, scoring them on 30 weighted criteria grouped into three categories. It concentrates on the states because most gun laws are state laws, though federal law also plays an important role.

The result is the most detailed picture ever of the patchwork quilt formed by the gun laws of the United States. It gives policy-makers, the media and the public an opportunity to compare their state with others and consider specific reforms to prevent gun crime – trafficking, robbery, threats, assaults, homicides – unintentional injuries and suicides by firearms.

Two striking features are immediately apparent. First is the very low average state score, 9%. Only a handful of states achieved more than 50% of the 100 available points; the vast majority of jurisdictions lack even basic laws governing the sale and ownership of guns. Second is the breadth of the gun control spectrum across the country: out of a maximum of 100 for very strict laws, state scores ranged from -10 at the bottom of the scale (Maine) to over 70 at the top (Massachusetts and Hawaii).

Concern about the proliferation of weapons has intensified over the past year with a series of brutal reminders that there is no sanctuary from gun violence – not churches, schools, restaurants, workplaces or homes. While some incidents make the cover of *Time*, most escape our awareness: on average, 85 firearm fatalities occur every day in the U.S. Gun violence in inner cities, disproportionately affecting communities of color, attracts little media coverage. Suicides, which make up more than half of all gun deaths, are even less visible.

Americans constitute one of the most heavily armed societies in the developed world, with 40% of households containing guns.<sup>1</sup> U.S. homicide rates are two to ten times higher than in other developed countries.<sup>2</sup>

Violence is a complex phenomenon that cannot be attributed to any single cause. However, the outcome of a violent incident is dramatically influenced by the weapons or methods used. Whether from assault or self-inflicted injury, the likelihood of death is especially high when a gun is involved. As criminologists Franklin Zimring and Gordon Hawkins have pointed out, this is the main reason why the U.S. homicide rate far exceeds those of other comparable Western countries: assaults in the United States more often involve guns, and thus more often result in death.<sup>3</sup>

A breakthrough in understanding gun violence came in the mid-1980s with the recognition that it is a public health hazard, a significant and preventable source of suffering and death. As with motor vehicle injuries, tuberculosis and other serious public health problems, prevention is better than a treatment. A key concept in prevention is an emphasis on “upstream” solutions — taking action near the source of the hazard.

The popular conception of the source of gun violence is a shadowy illegal market, completely divorced from the legitimate firearms industry. “Criminals will always get guns,” goes the refrain, as though the illegal market exists independently of the legal market.

<sup>1</sup> Teret SP, Webster DW, Vernick JS et al. Support for new policies to regulate firearms: results of two national surveys. *New England Journal of Medicine* 1998; 339: 813-818. UN Commission on Crime Prevention & Criminal Justice, *International Study on Firearm Regulation*, Vienna: United Nations 1997.

<sup>2</sup> Krug EG, Powell KE & Dahlberg LL. Firearm-related deaths in the United States and 35 other high- and upper-middle-income countries. *International Journal of Epidemiology* 1998; 27: 214-221

<sup>3</sup> Zimring FE & Hawkins G. *Crime is Not the Problem – Lethal Violence in America*. New York: Oxford University Press 1997.

In fact, the illegal market in guns lies directly “downstream” from the legal market. Almost without exception, every illegal gun in the United States began its life as a legal product, manufactured or imported by a company licensed by the federal government and sold by a licensed dealer. It may enter the illegal market in a number of ways. For example, it may be bought by a “straw purchaser” who hands it over to a prohibited person; or it may be purchased lawfully by an individual who subsequently resells it privately or at a gun show. No matter how the gun ended up in the wrong hands, its origins lie in a legitimate sale (see Figure 1 below). The journey is rapid: 30-40% of all crime handguns traced by the federal government were sold brand-new by a licensed dealer less than three years earlier.<sup>4</sup> The key to dismantling the illegal market is to stop the migration of guns from the legal domain, by controlling the lawful sources of supply.<sup>5</sup>

A focus on the illegal market is even less helpful in preventing suicides and unintentional shootings, which together account for the majority of gun deaths. Since no criminal intent is involved in these injuries, they may appear to be completely different phenomena from homicides and armed robberies. Yet the original source of the agent of injury is the same: the mainstream (legal) gun industry.

Whether at state or national levels, elected officials have found it easier to pass laws punishing the misuse of guns – laws that apply after violence is committed – rather than preventing it. In the absence of systematic preventive policies, a variety of “downstream” efforts have been made to reduce gun violence, including voluntary buybacks, metal detectors in public buildings, more resources for police, longer sentences for criminals, lawsuits against the gun industry, and public awareness campaigns. Worthwhile though these may be, they cannot substitute for a comprehensive legislative framework to regulate the build-up and movement of guns in the community.

Public opinion polls indicate that Americans recognize a link between gun violence and easy access to firearms. National surveys show consistently high levels of public support – over 70% – for tougher restrictions on the manufacture, sale and ownership of guns.<sup>6</sup> In this regard the public is far ahead of its legislators.

This report reveals how wide the gap is between the public mandate and levels of gun control across the nation. We hope these new findings will help drive debate and action on this important issue.

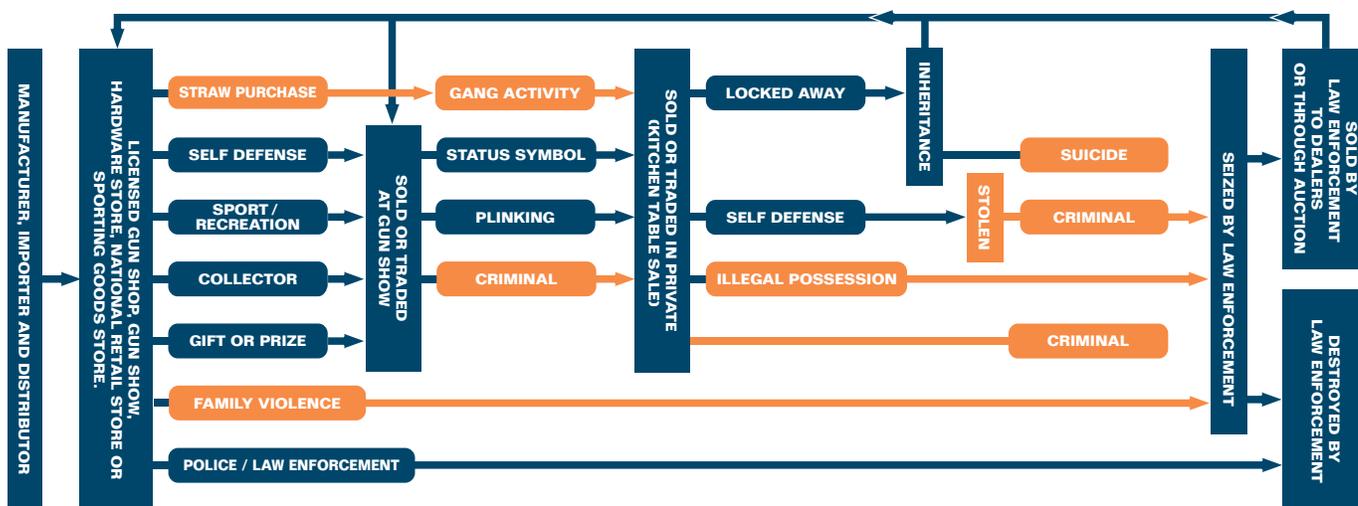


Figure 1. How guns move from legal to illegal ownership.

A gun lasts longer than most other consumer products. Federal law demands that only the first retail sale be recorded. After that, a gun may change hands many times without any documentation being required. Law-abiding owners can unwittingly contribute to the illegal market by selling their guns second-hand, or giving them away. This diagram gives examples of how a gun can move from legal to illegal ownership, sometimes being recycled through the legitimate market again. For law enforcement purposes, the record of the first retail buyer becomes virtually useless as soon as he or she transfers the gun to its second owner.

Ovals show how firearm is used.

Bars show how firearm is transferred from one individual to another.

Blue represents legal use.

Orange represents illegal or violent use.

<sup>4</sup> Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms. *Youth Crime Gun Interdiction Initiative, 27 Communities Study*. February 1999, p12.

<sup>5</sup> Cook PJ & Cole TB. Strategic Thinking About Gun Markets & Violence. *Journal of American Medical Association* 1996, 275(22): 1765-67. Vernick JS, Webster DW, Hepburn LM. Effects of Maryland’s law banning Saturday night special handguns on crime guns. *Injury Prevention* 1999; 5: 259-263.

<sup>6</sup> Teret et al, above.

## II. SUMMARY OF RESULTS

In this survey the states were individually scored on their gun laws out of a maximum possible score of 100%. The higher the score, the tougher the state's gun laws. Full results are set out on Side I of the chart that accompanies this report. The following provides a summary:

### General results

- 42 states scored less than 20% on the study criteria. The average score among all states was only 9%.
- The two highest-ranking states, with strong gun laws, were:
  - Massachusetts (76)
  - Hawaii (71)
- Six states have moderate gun laws:
  - California (53)
  - Connecticut (50)
  - Maryland (43)
  - New Jersey (35)
  - Illinois (35)
  - New York (27)

Two core categories of criteria — owner licensing and gun registration — accounted for the wide disparity between these states' scores and the rest.

- 22 states scored between zero and 20:
  - Iowa (18)
  - North Carolina (18)
  - Rhode Island (18)
  - South Carolina (17)
  - Minnesota (16)
  - Michigan (15)
  - Missouri (15)
  - Washington (8)
  - Florida (6)
  - Nebraska (6)
  - Virginia (6)
  - Colorado (4)
  - Ohio (4)
  - Wisconsin (3)
  - Delaware (2)
  - Pennsylvania (2)
  - New Mexico (1)
  - Oregon (1)
  - Tennessee (1)
  - Nevada (0)
  - New Hampshire (0)
  - Utah (0)

- The 20 lowest-ranking states scored less than zero:

Arizona	(-1)
Indiana	(-1)
Kansas	(-2)
Mississippi	(-2)
Alabama	(-3)
Idaho	(-3)
South Dakota	(-3)
West Virginia	(-3)
Oklahoma	(-4)
Wyoming	(-4)
Arkansas	(-5)
Georgia	(-5)
North Dakota	(-5)
Vermont	(-5)
Kentucky	(-6)
Montana	(-6)
Texas	(-6)
Alaska	(-8)
Louisiana	(-8)
Maine	(-10)

### Specific Regulatory Measures

#### Licensing and registration

- 35 states have neither licensing nor registration for any type of gun. Only one state, Massachusetts, has both licensing and registration for all guns. Consequently, Massachusetts is the only state where police have the ability to check and reconsider whether changing circumstances affect someone's suitability to own guns.

#### Background checks

- 32 states require no background checks when a handgun is purchased from a private seller, whether over the back fence or at a gun show. Some states that do require background checks have no mechanism for ensuring that they occur.
- 44 states require no background checks when a rifle or shotgun is bought from a private seller.
- 23 states require only the basic federal background checks when a handgun is purchased from a dealer. (The other 27 states require checks of state police records as well.)

## *Children*

- Seven states have no legal minimum age for a child buying rifles or shotguns from a private seller. 18 states have no minimum age for possession of these guns, and 13 states have a minimum age between 12 and 16.
- Six states have no legal minimum age for a child to possess handguns. Five states set the minimum age between 14 and 16. (Federal law stipulates a minimum age of 18 to possess handguns, but the survey found that state policy prevails in enforcement.)

## *Waiting periods*

- 31 states have no waiting period for handgun purchases. 12 states require more than three days.
- 43 states have no waiting period for purchase of rifles or shotguns.

## *“One-gun-a-month”*

- Only four states have a one-gun-a-month law: California, Maryland, South Carolina and Virginia. In the other 46 states there is no legal obstacle to prevent illegal gun traffickers from buying multiple handguns.

## *“Saturday night specials” or “Junk guns”*

- Only seven states have banned cheap, dangerous, “Saturday night specials”, also known as “junk guns”.

## *Assault weapons*

- 43 states require no license or registration for assault weapons such as AK-47s. The police have no practical way of knowing how many of these guns are owned, or whether someone is stockpiling them.
- Only two states, California and Connecticut, prohibit private sales of assault weapons. (New production of assault weapons was banned by federal law in 1994, but in 48 states pre-1994 weapons continue to circulate.) Hawaii and Maryland prohibit private sales of assault pistols only.

## *Safe storage*

- Only four states have laws requiring guns to be kept locked or unloaded: California, Connecticut, Hawaii and Massachusetts.
- 18 states have a Child Access Prevention (CAP) law, which punishes parents if their gun is used by a child to cause death or injury.

## *Industry immunity from litigation*

- 13 states have laws protecting the gun industry from being sued by local governments for negligent design or distribution of its products.

## *Preemption of local ordinances*

- 40 states prohibit or restrict municipalities from enacting local gun laws. Only 10 states allow cities and counties to impose tighter gun laws.

## **Gun Laws and Gun Violence**

The relationship between gun laws and violence is a question arousing great interest and controversy in the United States. The issue is complicated by many factors including: demographics, levels of urbanization, poverty, unemployment, organized crime, alcohol and drug use, extent of gun ownership, predominance of handguns vs. long guns (rifles and shotguns) in the community, and proximity to other states with weaker or stronger laws. Other criminal justice, social and educational policies also play a role. Gun laws are often phased in gradually so their effects take years to be felt; published injury and mortality data generally lag 2-3 years behind. Variations in implementation and enforcement can mean that ostensibly the same law operates differently in different jurisdictions. Further, gun violence and gun laws may have a reciprocal effect which can be difficult to deconstruct: tightening gun laws can reduce violence, but high levels of gun violence make it more likely that gun laws will be tightened.<sup>7</sup>

For all these reasons the relationship between particular regulatory measures and violence lies outside the scope of this survey, whose purpose is to analyze and compare the laws themselves. However, the connection between gun laws and gun injury warrants careful research in its own right.

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<sup>7</sup> e.g. California, Illinois and Maryland have tightened their laws because of high homicide rates in Los Angeles, Chicago, and Baltimore respectively.

### III. SCOPE AND FOCUS OF THE STUDY

#### State vs. Federal Gun Laws

This report deals with state gun laws, for several reasons. First, most existing gun laws are state laws, yet clear information on these laws is particularly difficult for ordinary citizens to obtain. The scope and structure of the laws vary widely from state to state; sometimes the substance of the law can only be ascertained through a conversation with police or the state Attorney General's office about implementation.

Second, state legislatures may be more responsive to the growing public pressure for reform, since they are smaller and closer to the community than Congress. The mechanisms for implementation and enforcement – police, courts, health agencies – are primarily the responsibility of state and local government. The emotional, social and economic impact of gun violence is felt at local and state levels: in schools, neighborhoods, workplaces, battered women's shelters, welfare offices, hospitals, police stations, prisons and jails.

One benefit of examining state gun laws is the variety of policy options that they offer. States with highly developed systems of firearm regulation can serve as policy-testing sites and potentially provide models for other governments to follow.

The disadvantage of relying on state laws compared with federal gun laws is their lack of uniformity. A consistent legal framework is crucial for a hazardous product that is easily transported across state borders.

Very strict gun laws in one state can be undermined by permissive laws in neighboring states.<sup>8</sup> When adjacent jurisdictions have different levels of gun control, the weaker law becomes the common standard. This was illustrated by Virginia's one-gun-a-month law in 1993. Handguns are banned in Washington, D.C., but are routinely trafficked from adjoining states. For years Virginia was the primary source of crime guns recovered in the nation's capital. In July 1993, Virginia passed a law prohibiting multiple sales of handguns: an individual could not buy more than one handgun per month from licensed dealers. After this law was enacted, the flow of crime guns from Virginia declined, indicating that the guns had been coming from multiple sales by licensed dealers there. Maryland then became the main source of crime guns in Washington, D.C., and that state too has since enacted a one-gun-a-month law.<sup>9</sup>

One answer to this uneven coverage is a strong federal gun law. At present the scope of the federal law is narrowly defined, concentrating primarily on sales by licensed gun dealers:

- Gun manufacturers, distributors and dealers must hold a Federal Firearms License. Manufacturers may not provide new guns directly to anyone who is not a Federal Firearms Licensee (FFL). Other people may still sell guns as unlicensed sellers, as long as they are not "engaged in the business" of dealing in firearms.
- FFLs must not sell handguns to people under 21 or long guns (rifles and shotguns) to people under 18.
- Private and unlicensed sellers must not sell handguns to people under 18, and no one under 18 may possess handguns or ammunition only suitable for a handgun.
- Importation of small, poor quality handguns ("junk guns"), and of some overseas assault weapons is banned.
- Fully automatic machine guns may not be manufactured, imported, bought or sold. (Pre-1986 weapons can continue to be owned and sold.)
- New production of certain assault weapons is banned, along with magazines holding more than 10 rounds of ammunition. (Pre-1994 weapons and magazines can continue to be owned and sold.)
- Certain classes of people, like convicted felons, are prohibited from possessing guns.

This last point is the most important, since it is the provision on which we routinely rely to prevent criminals from buying guns from retailers. The protection is provided when the gun dealer or police contact the FBI's National Instant Check System (NICS) to find out whether a customer's name appears on a list of convicted felons, fugitives from justice, people subject to certain types of restraining orders or those convicted of domestic violence. During the first year of NICS' operation, some 180,000 "prohibited" persons were stopped from illegally buying firearms.<sup>10</sup>

<sup>8</sup> Weil DS & Knox RC. Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms. *Journal of American Medical Association* 1996, 275(22): 1759-61.

<sup>9</sup> Cook PJ & Cole TB. Strategic Thinking About Gun Markets & Violence. *Journal of American Medical Association* 1996, 275(22): 1765-67.

<sup>10</sup> Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms. *Commerce in Firearms in the United States*. February 2000.

Despite this success, NICS has very severe limitations. The requirement to check NICS only applies to sales by a licensed dealer or FFL. Thus a “prohibited” person who would be turned away at a gun shop can simply choose to shop elsewhere. Just as car buyers can ignore the authorized showroom and shop through the classified ads, nothing stops gun buyers from making their purchase from an unlicensed seller, a neighbor, a gun show, pawnshop or garage sale. In fact, just under half of all handgun owners acquire their guns in this “secondary” market.<sup>11</sup> As long as the seller is not an FFL, no background check is required under federal law. Once a gun has entered the unregulated secondary sphere, it is equally available to “bad” and “good” people alike.

One federal provision does attempt to cover the secondary market: private sellers must not sell handguns to people under 18, and no one under 18 may possess handguns or ammunition only suitable for a handgun. However, compliance with this law is effectively optional, since most states do not require records of private sales.

Numerous legislative initiatives to broaden and strengthen the federal gun law have either failed to move out of committee or been voted down on the floor of the Senate or House of Representatives. Prospects may be better for reform across groups of adjacent states, creating regions of stronger gun control where each state’s regulatory scheme is enhanced by those of the surrounding jurisdictions.

Federal attention tends to focus on punishment for gun misuse rather than prevention. For example, Project Exile is a program whose “...strategy is to prosecute in Federal court all individuals arrested for illegally possessing a firearm, because of the length of mandatory sentences and pre-trial detention provisions.”<sup>12</sup> This program combats gun misuse from the demand side, by jailing some consumers and deterring others from acquiring the product. However, it can have little effect on the supply, because it does not address the flow of guns from the legal to the illegal market. As long as federal legislators concentrate on punishment, responsibility for prevention will fall on the states. And as long as some states continue to allow legal guns to feed the illegal market, the preventive efforts of the other states will be undermined.

Opponents of gun control often argue that new or existing legislation would be unconstitutional, due to the Second Amendment’s protection of the “right to keep and bear arms.” This is untrue. In fact, no federal court has ever overturned a state or local gun law — even one that banned all handguns — for violating the Second Amendment. Indeed, the Supreme Court has stated that the Second Amendment does not apply to states.<sup>13</sup> Regarding federal laws, the court has said that the Second Amendment is closely related to “the preservation or efficiency of a well regulated militia.” As a result, with only one exception currently on appeal, every federal law challenged on Second Amendment grounds has survived.<sup>14</sup>

## Licensing and Registration

The wide gulf between the high-ranking and low-ranking states in this survey is due primarily to two factors, licensing of gun owners and registration of guns. These two measures roughly parallel the licensing and registration system for motor vehicles, another dangerous consumer product.

There are 185 million licensed motorists and 130 million registered cars in the United States.<sup>15</sup> Though each state has its own laws, there is an underlying consistency in the regulation of cars across the country. All states require at least three categories of oversight:

- Registration and insurance of the car
- Training, screening and licensing of the driver
- Safe maintenance and operation under specific traffic laws

This system allows cars to be identified, monitored for safety and traced. It gives others on the road some degree of confidence that each person behind the wheel of a car has passed at least a minimal test of competence.

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<sup>11</sup> Smith T, *National Gun Policy Survey of the National Opinion Research Center: Research Findings*. NORC, University of Chicago, May 1999.

<sup>12</sup> Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms. *Youth Crime Gun Interdiction, 27 Communities Study*, February 1999.

<sup>13</sup> *Presser v. Illinois* 116 U.S. 252 (1886)

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<sup>14</sup> Vernick JS, Teret SP. New courtroom strategies regarding firearms: tort litigation against firearm manufacturers and constitutional challenges to gun laws. *Houston Law Review* 1999; 36: 1713-1754.

<sup>15</sup> Why Gun Licensing Works, *USA Today*, Editorial, February 2, 2000.

The system also incorporates preventive mechanisms of self-enforcement. In a perfect world, drivers would avoid speeding, illegal turns or drunk driving, simply because they are responsible citizens who value public safety. In reality, the law recognizes that public safety is too fragile to leave to the discretion of individual drivers at any given moment. Thus, it not only provides speed limits, traffic lights and penalties for violations, but also an underlying framework that ensures a high degree of compliance. Drivers tend to obey the law not only to maintain public safety, but also to avoid costly and inconvenient damage to their car, tickets from the police, points on their driving record, higher insurance premiums and the potential loss of their license. (This is an important feature of licensing: it allows the privilege of driving to be withdrawn preventively from people who break the rules, even if no one has yet been killed or injured.) Likewise, the registration system discourages lending of cars because the same risks accrue to the owner, even if someone else is driving at the time.

A regulatory framework for guns based on licensing and registration is roughly similar, though not identical. It consists of three main categories of oversight:

- Registration of the gun
- Licensing of the gun owner
- Regulation of the sale (e.g. waiting periods)

This scheme provides several analogous benefits to the motor vehicle regulatory system. Licensing identifies those people who have met established minimum standards in terms of age, training and screening to buy or own a gun. And registration links each gun with its owner, for police or insurance purposes.

However, as with cars, the major benefit of gun licensing and registration is to underpin and ensure compliance with other gun laws. For example, the federal law bans convicted felons and domestic violence offenders from owning handguns. A NICS background check at the point of purchase prevents such a person from buying a handgun in a gunshop. However, if an individual with a clean record acquires a gun and later is convicted of a felony or domestic violence, no alarm is triggered in NICS to warn the police that this owner's possession of a gun has become illegal. A licensing and registration system would allow the privilege of gun ownership to be withdrawn or curtailed when the owner proves unworthy – even if no one has been killed.

Registration is the crucial preventive mechanism for self-

enforcement, establishing a chain of accountability that creates an incentive for each gun owner to help enforce the law. This is especially important given that nearly half of all gun transfers occur in the secondary market. In the absence of registration, nothing prevents a private owner from selling, lending or giving away a gun as casually as a golf club – “cash and carry” with no questions asked. (In most states this is legal.) However, registration discourages this because the original owner knows his or her name will automatically be associated with any subsequent incident involving the gun. When a gun is sold, the seller wants to make sure the transfer is registered so that the new owner becomes accountable for the weapon. Since the gun can only be registered to a license-holder, the seller is unlikely to consider transferring it to an unlicensed person. At the very least, registration means a private owner who gives or sells a gun to an unqualified person cannot claim ignorance of the illegality of the transaction.

Firearm registration has other benefits, particularly for law enforcement. One of the most important benefits is the ability to trace a gun to its owner. Without registration, police wishing to trace a recovered crime gun must go to the manufacturer, ask which distributor the gun was supplied to and then which dealer made the first retail sale. In 40% of cases the first retail purchaser can be identified, but almost invariably the trail dries up at that point, since no records exist for subsequent private sales.<sup>16</sup> As soon as a gun is resold once, it disappears from the tracing system. By contrast, registration allows the gun to be linked directly to the last legal owner, a far more relevant piece of information for investigating crime.

Registration is also an important tool against gun trafficking, because it allows laws against multiple sales to be enforced. Without registration, one-gun-a-month laws only affect purchases from licensed dealers, which excludes a very large proportion of all gun transfers. If legislators decide that the growth of individual arsenals should be restricted to one gun per month, then that limit should apply to gun purchases from any source, including private transactions. In the absence of registration, there is no way of knowing when a buyer exceeds the monthly limit.

#### IV. METHODOLOGY

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<sup>16</sup> *Commerce in Firearms in the United States*, above.

The United States' gun laws do not lend themselves to simple comparisons or categorizations. In many instances the law is applied largely through administrative practice, and it is impossible to tell the legal position simply by reading the legislation. State laws can be confusing even to those who enforce them, due to poor drafting, local differences in interpretation, or simple misunderstandings.<sup>17</sup>

The terminology of firearm legislation can be confusing. For example, the terms “license” and “permit” frequently are used interchangeably. And a wide spectrum of regulation may be denoted by one term. Both Hawaii and North Carolina require a “permit to purchase” for handguns. Hawaii has a centralized permit system administered by the Honolulu Police Department, which records each permit issued in the entire state. This forms the basis for a state-wide handgun registration system. In contrast, in North Carolina the local sheriff grants permits-to-purchase and keeps a record of each permit for only one year.

In choosing the criteria for this study, judgments were inevitably made about the relative significance of different gun control measures. Determinations were based on a systematic analysis of current state laws to identify principal components. These include the major elements of gun control laws in other developed countries, as well as some measures found only in the U.S. Components were arranged into a hypothetical model law, which was assigned a total of 100 points. The 100 points were then distributed among the components. In general, more points were assigned to “upstream” than to “downstream” measures, to restrictions on handguns than to long guns, and to measures that facilitate the enforcement of other laws.

## **Choice of Criteria**

This report covers state laws related to ownership, possession, sale and transfer of guns. Each state's gun law was scored on 30 criteria, grouped into six categories:

### ***1. Registration of firearms***

- Registration of assault weapons
- Permit to purchase assault weapons from a dealer
- Permit to purchase assault weapons in private transactions
- Registration of long guns (rifles and shotguns)
- Permit to purchase long guns from a dealer
- Permit to purchase long guns in private transactions
- Registration of handguns
- Permit to purchase handguns from a dealer
- Permit to purchase handguns in private transactions

### ***2. Safety training***

- Safety training required prior to purchase

### ***3. Regulation of firearm sales***

- Assault weapon ban
- “Junk gun” or “Saturday night special” ban
- Background check in dealer sales of long guns
- Background check in private sales of long guns
- Minimum age for private purchase of long guns
- Waiting period for long guns
- Background check in dealer sales of handguns
- Background check in private sales of handguns
- Minimum age for private purchase of handguns
- Waiting period for handguns
- One-gun-a-month law for handguns

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<sup>17</sup> For example, New Jersey law provides for a license to possess assault weapons. The State Police believe assault weapons are effectively banned, saying they would never issue such a license. However, in law the power to issue an assault weapons license lies not with the police but with judges. Since the “ban” envisaged by the State Police is not codified in the law, New Jersey was scored as not having an assault weapons ban.

#### 4. Safe storage and accessibility

- Safe Storage requirement
- Child Access Prevention (CAP) law

#### 5. Owner licensing

- Owner licensing for assault weapons
- Owner licensing for long guns
- Minimum age for possession of long guns
- Owner licensing for handguns
- Minimum age for possession of handguns

#### 6. Litigation and preemption

- Ban on litigation against the gun industry
- State preemption of municipal gun laws

These criteria represent gun control measures already in place in at least one state. The top-ranking states, Massachusetts and Hawaii, achieved high scores on nearly all criteria.

The list of criteria excludes laws that are under consideration but not yet enacted. For example, the Maryland Attorney General has proposed a state handgun ban, while the New Jersey Legislature has a bill in committee that would require handguns to be “personalized” so they can only be fired by authorized users.

The list also excludes county or municipal laws, which are often much stricter than the prevailing state law. For example, Illinois did not receive points for the handgun bans in Chicago or Morton Grove, nor did Ohio for Toledo’s ban on “Saturday night specials”. Clark County, Nevada (which includes Las Vegas), has a mandatory handgun registry, as do Oklahoma City and Tulsa. Several cities in Kansas impose waiting periods for the purchase of any firearm. Four Florida counties have long waiting periods for handgun purchases; while five require background checks on sales at gun shows.

Also omitted from the criteria in this survey were laws aimed at punishing, rather than preventing, gun crime. (Conviction for an offense committed with a gun typically results in a longer sentence than the same offense without a gun.)

## The Research Process

Information was gathered for this study in three stages: analysis of primary law; cross-checking with the principal secondary sources; verification with law enforcement and state agencies.

Research in each state began with the published statutes, many of which are compiled in a publication of the Bureau of Alcohol, Tobacco and Firearms (ATF).<sup>18</sup> The ATF’s publication is produced primarily for firearm dealers, and does not include all the laws relevant to this study. Thus, we also consulted the relevant state codes and statutes.

The second stage was a cross-check with information from secondary sources, including the National Rifle Association,<sup>19</sup> Handgun Control Inc.<sup>20</sup> and the Bureau of Justice Statistics.<sup>21</sup>

The final stage was verifying with officials from each state the local interpretation and application of the law. Typically the person contacted was either a law enforcement officer with responsibility for firearms, or an official from the state attorney general’s office. This process was guided by a set of questions:

- Is a license required to possess a gun?
- Are guns registered to their owners?
- Does a buyer need a permit to purchase each gun?
- Are state databases consulted as part of background checks?
- Are background checks required for secondary private sales?
- What is the waiting period for the purchase of a gun?
- Is there a one-gun-a-month law?
- Are assault weapons banned?
- Are “junk guns” or “Saturday night specials” banned?
- Is safe storage mandatory?
- Is there a Child Access Prevention (CAP) law?
- What are the minimum ages for the possession and purchase of guns?
- Is there any restriction on local governments’ right to sue the gun industry?
- Are local municipalities preempted from making laws concerning guns?

<sup>18</sup> Bureau of Alcohol, Tobacco & Firearms. *State Laws and Published Ordinances – Firearms*, 1998.

<sup>19</sup> [www.nra.ila.org](http://www.nra.ila.org)

<sup>20</sup> [www.handguncontrol.org](http://www.handguncontrol.org)

<sup>21</sup> Bureau of Justice Statistics. *Survey of State Procedures Related to Firearm Sales*. NCJ-173942, 1998.

Many of these questions were asked separately in relation to handguns, long guns and assault weapons. The questions also distinguished between private and dealer sales. Special attention was paid to areas where the primary law seemed to differ from the advice of state officials. In many cases the local advice was incorrect, suggesting a need for better police training in firearm laws.

## **Scoring the States**

Each state's gun laws were scored on 30 criteria, and grouped into six categories: registration of firearms, safety training, regulation of firearm sales, safe storage and accessibility, owner licensing, litigation and preemption. The top-ranking states, Massachusetts and Hawaii, achieved high scores on nearly all criteria.

Each criterion was assigned a maximum numeric value between 0 and 7. Licensing and registration had maximum possible points of 7, reflecting their important role in underpinning other measures including the federal ban on prohibited classes of purchasers. Handgun waiting periods could earn between 0 points (for no waiting period) and 6 points (more than three days).

On background checks for gun sales, all states are federally mandated to perform a NICS background check on each person buying guns from a licensed dealer. However, some states require more comprehensive checks than this; and a few require background checks in private gun sales as well. These states received extra points for their background check systems, since they exceed the federal standard.

Likewise, points were deducted from states that fell below the federal standard on the minimum age for gun purchase or possession. For example, under federal law the minimum age for possession of a handgun is 18. However, some states have set lower standards: age 14 in Montana, and age 16 in Alaska, Georgia, New York and Vermont. Six states have no statutory minimum age at all for possession of a handgun: Alabama, Louisiana, New Hampshire, Maine, Texas and Wyoming.

Points were also deducted for state preemption of local ordinances, and for bans on lawsuits against the gun industry.

The accompanying chart shows the range of points available on each criterion (Side 2, "Description of the Laws Included in this Study"). The maximum any state could score was a total of 100 points. The minimum possible score was -10. Each state's score is provided in the bar graph on Side 1 of the chart.

## V. CONCLUSION

The most striking results of this survey are (a) the lack of uniformity in firearm regulation across the country; (b) the enormous differential between the top and bottom of the spectrum; and (c) the poor scores achieved by most states. 42 states fall below minimum standards for public safety, since they lack basic gun laws such as licensing and registration. The lowest ranking states have almost no firearm regulation of their own; instead they rely entirely on the federal government's NICS background check at point-of-sale by licensed dealers.

Despite this gloomy verdict, the survey also contains some good news. The highest-ranked states prove that comprehensive gun laws can be passed and implemented successfully in the United States. This disproves the notion that the U.S. "love affair" with guns stands in the way of tough gun regulation.

A common refrain heard in the gun control debate is that state and federal governments should simply enforce the current laws instead of generating more. This report reveals the limited scope of the existing laws. The fact that the average score is only 9% shows how little there is to enforce. Across most of the country, state gun control is virtually non-existent.

As a practical matter, enforcing many of the existing gun laws is almost impossible in the absence of licensing and registration. These two measures enable other existing laws to achieve their purpose. For example, many states have passed a law declaring that felons may not own guns. Without licensing and registration, this law becomes largely symbolic, since there is no way for the authorities to know whether a person being convicted is a gun owner.

### Recent Developments

President Clinton recently proposed a national licensing system for firearm owners. Under the proposal, states would issue a license only if an applicant has (a) passed a federal background check; and (b) shown proof of having completed a certified safety course or exam.<sup>22</sup>

Undoubtedly this system would offer benefits by improving owners' understanding of the law and of their responsibilities for safe gun use and storage. However, on its own it would fall short of addressing the problem of guns moving from legal to illegal ownership. Trafficking, straw purchases and backyard sales would be minimally affected by a licensing system that was not accompanied by firearm registration.

The very large number of guns already in circulation (some 200 million) poses a daunting challenge for regulators. After all, an older or unregistered gun is just as deadly as a brand-new, registered one. Even if gun laws were tightened overnight, how could this have any effect on the existing stockpile? The answer lies in the rapid turnover of guns used in crime. 30-40% of all traced crime guns are less than three years old. Thus a regulatory change that interferes with the traffic in new guns is likely to have an impact within three years. The guns most likely to be used in violence are precisely the ones most likely to be affected by licensing and registration.

### Action by State Legislatures

State governments regulate the sale of firearms in order to protect the safety of their citizens. However, guns are easily transported across borders, and an assault weapon bought out-of-state is no less dangerous than one obtained locally.

Ideally, regulation of dangerous products like firearms should be uniform across the country. Nonetheless, states need not wait for the federal government to take the lead. With very high levels of public support for gun control, there now exists an unprecedented opportunity for governors and state legislatures to move toward minimum national standards for enforceable firearm regulation.

The development of licensing and registration systems in particular would benefit from a coordinated effort between the states. Whether verifying an applicant's background or tracing a gun recovered at a crime scene, law enforcement agencies need an efficient means of checking licensing and registration records interstate. This topic could be addressed through organizations like the National Governors Association, the Council of State Governments, National Conference of State Legislators, and the National Association of Attorneys General.

Meanwhile, there are other steps each state can take to support police and public health efforts to prevent gun-related violence and injuries. We hope the information in this report will help policy-makers and the public to identify and remedy the weaknesses in their gun laws.

<sup>22</sup> State participation in the licensing system would be optional. In states that decide not to participate, gun dealers would issue licenses. Clinton Proposes State Licenses for Handgun Purchases, U.S. Newswire, January 27, 2000.

## Recommendations:

1. Federal firearm laws should be made internally consistent by abolishing arbitrary legal distinctions between old vs. new guns, purchases from licensed vs. unlicensed sellers, and domestic vs. imported weapons:

- The minimum age for both purchase and possession of handguns should be 21, whether or not the seller is a licensed dealer.
- Background checks should be required in all gun sales, whether or not the seller is a licensed dealer.
- Pre-1986 machine guns and pre-1994 assault weapons should be banned from private purchase.
- Domestic “junk guns” or “Saturday night specials” should be subject to the same standards as imported models.

2. The federal government should assist and support state efforts to raise the standard and promote consistency of state gun laws, along with strengthening implementation and enforcement.

3. At the very least, all state gun laws should be consistent with the federal law. At present this would mean a minimum age limit of 18 for possession of any gun, and 21 for purchase of a handgun from a dealer.

4. All states should move toward consistent regulatory frameworks based on licensing of firearm owners and registration of guns. States should implement basic anti-trafficking measures, in particular one-gun-a-month laws.

5. States should close the loopholes between the regulation of primary and secondary sales, by requiring the same age limits and background checks for new and used guns.

6. Leading state legislators on the issue of gun violence prevention from all 50 states should form a national network to coordinate efforts and develop model legislation.

7. Researchers should conduct well-designed studies to evaluate various gun laws and assess the role of implementation and other factors in their effectiveness.

## VI. ACKNOWLEDGEMENTS

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