



# **2006 California 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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February 13, 2007

Dear Community Leader,

Legal Community Against Violence (LCAV) is pleased to provide you with the *2006 California Report: Recent Developments in Federal, State and Local Gun Laws*. This report is being provided to elected officials, government attorneys, police chiefs, sheriffs, public health officials and gun violence prevention activists statewide.

LCAV is a public interest law center dedicated to preventing gun violence. Founded by lawyers in the wake of the July 1, 1993 assault weapon massacre at 101 California Street in San Francisco, LCAV is the country's only organization devoted exclusively to providing legal assistance in support of gun violence prevention. We provide free assistance to public officials and activists working nationwide to advance gun violence prevention, focusing on measures that can be implemented at the state and local levels.

As discussed in the *2006 California Report*, guns kill or injure nearly 100,000 Americans – including more than 7,500 Californians – each year. Yet the federal government repeatedly fails to act to stem the tide of gun violence. In fact, as evidenced by Congress' failure in 2004 to renew the federal assault weapon ban and 2005 passage of a law to grant the gun industry sweeping legal immunity, federal gun policy is becoming increasingly weak. Fortunately, gun violence prevention remains a priority in the State of California, both at the state and local levels.

To learn more about LCAV's services and how to get involved, please visit [www.lcav.org](http://www.lcav.org) – our web site is the most comprehensive resource for information on firearms regulation in the U.S.

We hope you find the enclosed report informative. Please do not hesitate to contact us for more information or if we can be of assistance.

Very truly yours,

Juliet A. Leftwich  
Senior Counsel



## Gun Violence: Ravaging Our Nation

### Firearm Deaths and Injuries

The statistics regarding gun violence in America are almost unimaginable. Consider the following:

- In 2004, the most recent year for which statistics are available, guns killed nearly 30,000 Americans – the equivalent of more than 80 deaths **each day** and more than three deaths **each hour**.<sup>1</sup>
- In the same year, 64,389 individuals were treated in hospital emergency departments for non-fatal gunshot wounds.<sup>2</sup>
- In California, 3,313 people died from firearm-related injuries in 2004 and 4,275 others were treated for non-fatal gunshot wounds.<sup>3</sup>
- Guns were the second-leading cause of injury-related deaths in California and nationwide in 2004, second only to motor vehicle accidents.<sup>4</sup> Guns were the leading cause of injury-related deaths in that year, however, for Californians ages 25-29.<sup>5</sup>

Epidemic levels of gun violence are not the inevitable consequence of life in an industrialized society. In fact, America's extraordinarily high rates of gun deaths and injuries are an anomaly in the industrialized world. According to *The Global Gun Epidemic: From Saturday Night Specials to AK-47s* (2006), the U.S. has the highest rate of firearm deaths among 25 high-income nations.<sup>6</sup> Even more disturbing, the overall firearm-related death rate among U.S. children under the age of 15 is nearly 12 times higher than that among children in 25 other industrialized nations *combined*.<sup>7</sup>

These grim statistics are not surprising when one considers that: 1) Americans own far more civilian firearms – particularly handguns – than people in other industrialized nations;<sup>8</sup> and 2) our country's gun laws are among the most lax in the world.<sup>9</sup>

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<sup>1</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (WISQARS), *WISQARS Injury Mortality Reports, 1999-2004* (2007), at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html).

<sup>2</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (WISQARS), *WISQARS Nonfatal Injury Reports* (2007), at <http://webapp.cdc.gov/sasweb/ncipc/nfirates2001.html>.

<sup>3</sup> California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), EPICenter California Injury Data Online, *Firearm Injuries* (2007), at [http://www.applications.dhs.ca.gov/epicdata/content/ST\\_firearm.htm](http://www.applications.dhs.ca.gov/epicdata/content/ST_firearm.htm).

<sup>4</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (WISQARS), *WISQARS Leading Causes of Death Reports, 1999-2004* (2007), at <http://webappa.cdc.gov/sasweb/ncipc/leadcaus10.html>.

<sup>5</sup> *Supra*, note 1.

<sup>6</sup> Wendy Cukier and Victor Sidel, *The Global Gun Epidemic: From Saturday Night Specials to AK-47s*, 17 (2006).

<sup>7</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Morbidity & Mortality Weekly Report, *Rates of Homicide, Suicide, and Firearm-Related Death Among Children – 26 Industrialized Countries* (Feb. 7, 1997).

<sup>8</sup> David Hemenway, *Private Guns, Public Health*, 197 (2004).

<sup>9</sup> As stated in Cukier et al., *supra*, note 6 at 131, “While gun control is extremely controversial in the United States, with opposition to even basic regulations such as licensing and registration, a review of legislation around the world

## **Firearm Ownership and the Costs of Gun Violence**

Our nation is awash in guns, with Americans owning an estimated 234 million firearms.<sup>10</sup> Of course, no one knows exactly how many guns are in the United States because there is no system of federal registration or other comprehensive record-keeping requirements to track firearm ownership. In fact, federal law currently *prohibits* the use of the National Instant Criminal Background Check System to create any system of registration of firearms or firearm owners.<sup>11</sup>

We do know, however, that gun manufacturers continue to produce, and Americans continue to buy, millions of guns each year. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), more than 3.3 million new firearms were manufactured in 2003 (the most recent year for which statistics are available).<sup>12</sup> The U.S. Bureau of Justice Statistics reports that in 2005, more than 8.1 million firearm sales were approved.<sup>13</sup> In California, more than 340,000 gun transfers were approved in 2005.<sup>14</sup>

Our nation pays an extremely high price for these guns. In addition to the tremendous human toll caused by gun violence, firearm-related deaths and injuries result in estimated medical costs of \$2.3 billion each year – half of which are borne by U.S. taxpayers.<sup>15</sup> This figure skyrockets to an estimated \$100 billion each year when pain and suffering, lost productivity, criminal justice system costs and other expenditures are included.<sup>16</sup>

## **Congressional Inaction Leads to State and Local Reform**

Despite the fact that most Americans favor stronger gun laws,<sup>17</sup> Congress has not enacted any significant gun legislation since the early 1990s, when it adopted the Brady Act – establishing a limited system of background checks for gun purchasers – and the federal assault weapon ban. In fact, under the Bush Administration, Congress has consistently acted to weaken our nation’s gun laws. In 2004, for example, Congress allowed the assault weapon ban to expire, mandated that approved firearm purchaser records be destroyed within 24 hours, and severely restricted access to crime gun trace data.<sup>18</sup>

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shows that the norms in most countries, both industrialized and developing, are to strictly regulate civilian possession of firearms.”

<sup>10</sup> Small Arms Survey, Graduate Institute of International Studies, Geneva, *Small Arms Survey 2003* at 61 (2003).

<sup>11</sup> 28 C.F.R. § 25.9(b)(3).

<sup>12</sup> U.S. Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms, *Annual Firearms Manufacturing and Export Report 2003*, at: <http://www.atf.treas.gov/firearms/stats/afmer/afmer2003.pdf>.

<sup>13</sup> U.S. Department of Justice, *Background Checks for Firearm Transfers, 2005*, Bureau of Justice Statistics Bulletin (November 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/bcft05.pdf>. 2005 is the most recent year for which statistics are available.

<sup>14</sup> California Department of Justice Firearms Division, *Dealer’s Record of Sales Transactions 1972-2005*, available at <http://ag.ca.gov/firearms/forms/pdf/drosdata2005.pdf>; U.S. Department of Justice, *Background Checks for Firearm Transfers, 2005*, Bureau of Justice Statistics Bulletin (November 2006), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/bcft05.pdf>.

<sup>15</sup> Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, Journal of the American Medical Association (August 4, 1999).

<sup>16</sup> Philip Cook and Jens Ludwig, *Gun Violence: The Real Costs*, Oxford University Press (2000).

<sup>17</sup> Recent polling data is discussed further below in Beyond California: Mayors Against Illegal Guns, at pages 10-11.

<sup>18</sup> The 24-hour record destruction and crime gun trace data disclosure rules have been included in appropriations bills funding the Department of Justice every year since 2004. Prior to 2004, approved firearm purchaser records were retained for 90 days, allowing ATF time to inspect dealer records to determine whether the dealer submitted accurate

In 2005, President Bush signed legislation to provide unprecedented legal immunity to the gun industry. The NRA-sponsored Protection of Lawful Commerce in Arms Act prohibits, with certain narrow exceptions, civil lawsuits and administrative proceedings against manufacturers and sellers of firearms and ammunition, and requires the dismissal of most lawsuits pending against the industry nationwide.<sup>19</sup> No other industry receives such special protection from the consequences of its actions.<sup>20</sup>

Moreover, because of the aggressive lobbying tactics and enormous financial resources of the gun lobby, many of our federal gun laws are filled with loopholes. The Brady Act background check requirements, for example, only apply to licensed dealers.<sup>21</sup> Thus, persons buying guns from unlicensed sellers (an estimated 40% of all guns purchased)<sup>22</sup> are not required to undergo background checks. This “private sale” loophole allows criminals, minors and the mentally ill to buy guns easily throughout most of the country.<sup>23</sup>

In addition, federal law does not: 1) regulate guns as a consumer product (guns and ammunition are exempt from the Consumer Product Safety Act);<sup>24</sup> 2) require that handgun owners be licensed or that handguns be registered;<sup>25</sup> 3) limit the number of handguns that can be purchased at any one time (without this limitation, gun traffickers are able to buy guns in bulk and resell them to prohibited purchasers); 4) impose a waiting period;<sup>26</sup> or 5) ban assault weapons or 50 caliber rifles.<sup>27</sup>

Because Congress has been unwilling to adopt common sense laws to address our nation’s gun violence epidemic, state and local governments have been compelled to act. As discussed below, California provides an outstanding example of the progress that can be achieved at the state and local levels. The state has adopted several important firearm-related laws, many of which were

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information about the purchaser. Disclosure of crime gun trace data is discussed further below in the Federal Update, at page 4.

<sup>19</sup> 15 U.S.C. § 7901-7903.

<sup>20</sup> In 2006, President Bush further demonstrated his aversion to gun violence prevention when, in response to four school shootings which occurred within a two-week period in the fall, he called a national summit on school violence. Not surprisingly, the President neglected to invite any gun violence prevention organizations to the summit and failed to even mention the word “gun” in his comments. Dana Milbank, *Guns Are in Schools but Not in the President’s Vocabulary*, Washington Post, Oct. 11, 2006 at A02.

<sup>21</sup> 18 U.S.C. § 922(s).

<sup>22</sup> Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Department of Justice, National Institute of Justice Research in Brief 6-7 (May 1997).

<sup>23</sup> Only California, Washington, D.C. and Rhode Island have closed the private sale loophole and now require background checks of all firearm purchasers. In Rhode Island, concealed weapons permit holders are exempt from this requirement.

<sup>24</sup> 15 U.S.C. §§ 2051, 2052(a)(1)(E).

<sup>25</sup> Licensing laws help ensure that gun owners know how to safely use a firearm and are familiar with firearms laws. Registration laws help law enforcement officials trace crime guns and return lost or stolen firearms to their lawful owners.

<sup>26</sup> Waiting periods provide a “cooling off” period and allow sufficient time for the completion of a background check. Under the Brady Act, most guns are immediately transferred to the purchaser. Moreover, if the background check has not been completed within three days, the dealer may transfer the gun by default without knowing whether the transfer is lawful. 18 U.S.C. § 922(t)(1).

<sup>27</sup> Fifty caliber rifles are military-style firearms that combine long range, accuracy and massive power. These dangerous weapons are treated as ordinary long guns under federal law and thus, can be purchased by persons over age 18. Moreover, because of the private sale loophole, 50 caliber rifles can be easily purchased in most states by criminals and would-be terrorists.

modeled after innovative local ordinances enacted by cities and counties in this state. In addition, California local governments continue their invaluable leadership role in the gun violence prevention movement.

## **Federal Update: Continued Efforts to Weaken our Gun Laws**

### **2006 Legislation**

In 2006, the gun lobby attempted to build on the victories it achieved in 2004 and 2005 with the passage of additional legislation to weaken our nation's gun laws. Fortunately, these efforts were met with little success.

One of the most potentially dangerous bills of 2006 was **H.R. 5005**, legislation to limit disclosure of data obtained by ATF through crime gun traces (which law enforcement authorities use to determine the origin of guns involved in crimes). That bill would have codified and made permanent similar restrictions on disclosure of crime gun trace data which have been attached as annual amendments to Department of Justice appropriations bills since 2004.<sup>28</sup>

Prior to these restrictions, ATF analyzed crime gun trace data and released it publicly, allowing scholars, law enforcement, government officials and the public to examine trends and patterns in the illegal gun market. The appropriations bill amendments have prohibited ATF from releasing crime gun trace data to anyone other than a law enforcement officer or prosecutor engaged in a particular criminal investigation in a particular jurisdiction.<sup>29</sup> Thus, the public has not had access to the data and even law enforcement authorities have been unable to examine larger patterns of gun trafficking.

Fortunately, although H.R. 5005 passed a House Judiciary Committee subcommittee, it was not voted on by the full House. Thus, although the restrictions on disclosure of crime gun trace data will remain in effect until the end of fiscal year 2007, the gun lobby's efforts to codify these restrictions in 2006 were unsuccessful.<sup>30</sup>

Another 2006 bill, **H.R. 5092**, would have significantly weakened ATF's power to revoke the licenses of corrupt firearms dealers by, among other things, redefining the standard required for proving a violation, limiting the types of violations for which a license may be revoked, setting up a system of very low fines, and shortening the time a dealer's license may be suspended. H.R. 5092 passed the House last year, but was not voted on by the Senate.

Finally, **H.R. 1384** would have removed the federal ban on interstate handgun sales or deliveries and allowed federally licensed dealers to conduct business at gun shows in any state. This bill

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<sup>28</sup> These amendments – known as the Tiahrt amendments – are named after their primary sponsor, Rep. Todd Tiahrt (R. Kansas).

<sup>29</sup> Later versions of the Tiahrt amendment also prohibit disclosure and use of this data in any civil action other than an action commenced by ATF or the Attorney General to enforce certain provisions of federal law (18 U.S.C. Chapter 44).

<sup>30</sup> In addition to the restriction on crime gun data, H.R. 5005 would have eliminated the current provision of federal law requiring licensed firearms dealers to forward reports of multiple handgun sales to state and local law enforcement.

would have weakened the ability of states with strong gun laws, such as California, to ensure proper enforcement of these laws. H.R. 1384 passed a House Judiciary Committee subcommittee, but was not voted on by the full House.

### **Challenges to the Gun Industry Immunity Law**

Several courts have analyzed the federal gun industry immunity law since it was enacted in October 2005. Litigation regarding the immunity law has focused on the applicability of an exception to the law for lawsuits based on a “knowing violation of a state or federal statute applicable to the sale or marketing of firearms,” as well as on the law’s constitutionality.<sup>31</sup>

In December 2005, in *City of New York v. Beretta U.S.A. Corp.*, the United States District Court for the Eastern District of New York refused to dismiss a case brought against members of the gun industry by the City of New York, holding that the immunity law did not apply to the lawsuit. According to the court, the lawsuit, which alleged that the defendants’ sales and marketing practices created a public nuisance in violation of New York’s nuisance law, came within the exception to the immunity law for actions based on a knowing violation of a state or federal statute applicable to the sale or marketing of firearms. Although the court held that the immunity law did not apply to the case, the court rejected various constitutional challenges to the law.<sup>32</sup>

In March 2006, in *Ileto v. Glock, Inc.*, the United States District Court for the Central District of California came to a contrary conclusion regarding the applicability of the exception to the immunity law. That court held that the exception only applied to lawsuits alleging a violation of a state or federal statute specifically applicable to the sale or marketing of firearms. The court found that the lawsuit before it, which alleged that gun manufacturers and dealers had violated California’s negligence and nuisance laws, did not fall within the exception and thus was barred by the immunity law. The court also rejected plaintiffs’ constitutional challenges to the law.<sup>33</sup>

The Superior Court for the District of Columbia expressed an even narrower view of the immunity law exception in May 2006. The court in *District of Columbia v. Beretta* held that the immunity law barred a lawsuit that alleged a violation of the District’s Assault Weapon Strict Liability Act. The court found that the lawsuit did not fall within the immunity law’s exception for actions based on a knowing violation of a state or federal statute, despite the allegation that the defendants violated the District’s Strict Liability Act, because, according to the court, permitting the lawsuit go forward would contradict the purpose of the federal immunity law. The court also rejected various constitutional challenges to the law.<sup>34</sup>

In *City of Gary v. Smith & Wesson*, in contrast, the Superior Court for Lake County, Indiana held, in October 2006, that the immunity law was unconstitutional for two reasons. On both points, the Indiana court disagreed with the courts in New York and the District of Columbia. First, the Indiana court held that the law’s requirement that pending lawsuits be dismissed violated the prohibition on retroactive application of new laws implicit in the U.S. Constitution’s due process

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<sup>31</sup> The exception to the immunity law is set forth in 15 U.S.C. § 7901, *et seq.*

<sup>32</sup> *City of New York v. Beretta*, 401 F. Supp. 2d 244 (E.D.N.Y. 2005). Appeal pending.

<sup>33</sup> *Ileto v. Glock, Inc.*, 421 F. Supp. 2d 1274 (C.D. Cal. 2006). Appeal pending.

<sup>34</sup> *District of Columbia v. Beretta U.S.A. Corp.*, No. 2000-CA-000428B (D.C. Super. Ct., May 22, 2006). Appeal pending.

clause. Second, the court held that the immunity law violated the principle of separation of powers between the legislature and the courts, because it was legislation intended to direct the outcome of particular pending court cases. For these reasons, the court refused to apply the immunity law, and refused to dismiss the lawsuit against the industry.<sup>35</sup>

The New York, California, Washington, D.C., and Indiana decisions have been appealed.<sup>36</sup> Similar cases regarding the immunity law are pending in other courts throughout the country.

### **The Second Amendment**

*“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.”*

Although the NRA and other gun rights activists repeatedly mount legal challenges to firearms laws on the basis of the Second Amendment, **not one** of those challenges has succeeded since the U.S. Supreme Court ruled, in 1939, that the “obvious purpose” of the Amendment was to “assure the continuation and render possible the effectiveness” of the state militia. *U.S. v. Miller*, 307 U.S. 174 (1939).

Since *Miller*, the courts have rejected over two hundred Second Amendment challenges to firearm-related laws. Despite these judicial victories, the gun lobby continues to argue that the Second Amendment precludes common sense laws to regulate firearms. Former U.S. Supreme Court Chief Justice Warren Burger once characterized the NRA’s interpretation of the Second Amendment as “one of the greatest pieces of fraud, I repeat the word *fraud*, on the American public by special interest groups that I have ever seen in my lifetime.”<sup>37</sup>

In 2006, the appellate courts continued their uniform rejection of Second Amendment challenges to state and federal gun laws. See, for example, *United States v. Coccia*, 446 F.3d 233 (1<sup>st</sup> Cir. 2006)(rejecting a Second Amendment challenge to 18 U.S.C. § 922(g)(8), which prohibits firearm possession by anyone subject to a domestic violence restraining order), and *United States v. Willaman*, 437 F.3d 354 (3<sup>d</sup> Cir. 2006)(rejecting a Second Amendment challenge to 18 U.S.C. § 922(o)(1), which prohibits the knowing possession of a machine gun).

Summaries of these and other Second Amendment cases can be found on the LCAV web site at [www.lcav.org/content/secondamend\\_index.asp](http://www.lcav.org/content/secondamend_index.asp)

### **The New Congress: A New Attitude Toward Gun Violence Prevention?**

As a result of the 2006 midterm elections, Democrats (who have historically been more supportive than Republicans of laws to reduce gun violence) now have a majority in Congress. Whether the new Congress will make gun violence prevention a priority remains to be seen. The NRA, however, is certainly sounding the alarm. In a post-election pamphlet entitled “Freedom in Peril, Guarding the 2<sup>nd</sup> Amendment in the 21<sup>st</sup> Century,” the organization attacks Congressional

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<sup>35</sup> *City of Gary v. Smith & Wesson, Corp.* No. 45D05-0005-CT-00243 (Lake Cty. Ind. Super. Ct., Oct. 23, 2006). Appeal pending.

<sup>36</sup> In 2006, LCAV filed an *amicus* (“friend of the court”) brief in support of New York City in the New York litigation.

<sup>37</sup> *Nuclear Nightmare: First Freedoms*, The MacNeil/Lehrer NewsHour, Dec. 16, 1991.

Democrats, members of the media, the United Nations and animal rights “terrorists,” among others, issuing the following dire warning:

Second Amendment freedom today stands naked in the path of a marching axis of adversaries far darker and more dangerous than gun owners have ever known. Acting alone and in shadowy coalitions, these enemies of freedom are preparing for a profound and foreboding confrontation in which they will not make the mistakes of their predecessors. We’d better be ready.

If the new Congress does, in fact, decide to strengthen our nation’s gun laws, it will have many opportunities for reform (e.g., to restore public access to crime gun trace data, strengthen the Brady Act, and renew and strengthen the assault weapon ban). In the interim, state and local governments – including those in California – will continue to lead the way.

## **California State Update: Steady Progress in Gun Violence Prevention**

### **2006 Legislation**

The State of California has some of the strongest gun laws in the nation. Unlike most states, for example, California: 1) has closed the private sale loophole;<sup>38</sup> 2) prohibits the manufacture and sale of handguns that have not passed certain safety tests;<sup>39</sup> 3) maintains handgun purchaser records and requires handgun purchasers to obtain a handgun safety certificate;<sup>40</sup> 4) limits handgun sales to one per person per month;<sup>41</sup> 5) imposes a 10-day waiting period;<sup>42</sup> and 6) bans assault weapons and 50 caliber rifles.<sup>43</sup>

California further strengthened its gun laws in 2006, when the Legislature adopted and Governor Schwarzenegger signed five firearm-related bills into law. Those bills are:

**AB 2521 (Jones/DOJ) – Firearms Dealers.** This legislation: 1) requires out-of-state vendors to verify through the Department of Justice (DOJ) that the recipient of a firearms shipment is authorized to receive the shipment; 2) requires persons who identify themselves as Federal Firearms Licensees (FFLs) who are exempt from state licensing requirements (e.g., manufacturers) to be included on a centralized list of exempted FFLs; 3) allows DOJ to inspect the premises of persons included on the centralized list of exempted FFLs; and 4) requires persons on the centralized list of exempted FFLs to possess a certificate of eligibility confirming that they are eligible to possess firearms.

**SB 585 (Kehoe) – Restraining Orders/Immediate Relinquishment of Firearms.** Prior law provided that a person subject to a domestic violence protective order must, within 24 hours of being served with the order, relinquish all firearms and, within 72 hours of receiving the order, file with the court a receipt showing the firearms were relinquished. SB 585 requires, instead, that a

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<sup>38</sup> All firearm sales must be completed through a licensed dealer. Cal. Penal Code § 12072(d).

<sup>39</sup> Penal Code § 12125 *et seq.*

<sup>40</sup> Penal Code §§ 11106(c)(1), 12071(b)(8)(B), 12800 *et seq.*

<sup>41</sup> Penal Code § 12072(a)(9)(A).

<sup>42</sup> Penal Code § 12071(b)(3)(A), 12072(c)(1).

<sup>43</sup> Penal Code §§ 12280(a)(1). For a complete summary of California’s firearm laws, go to the LCAV web site, <http://www.lcav.org/states/california.asp>.

person subject to a domestic violence protective order immediately surrender the firearms to a law enforcement officer, upon request, or, if no request is made, within 24 hours of service of the order. In addition, the bill requires a person subject to a protective order to file with the court, within 48 hours of being served with the order, a receipt showing the firearms were relinquished.

**SB 1538 (Scott) – False Information on Firearm Purchase Application.** SB 1538 increases the penalty, from a misdemeanor to a wobbler (punishable by up to one year in county jail or imprisonment in the state prison), for any person who is prohibited from obtaining a firearm who knowingly provides false or incomplete information to a firearms dealer in connection with the purchase of a firearm.

**AB 2129 (Spitzer) – Restraining Orders, Relinquishment of Firearms.** Prior law required a person who is subject to a restraining order in cases involving elder or dependent adult abuse, civil harassment or workplace violence to relinquish his or her firearms within 24 hours of the order if the person is present in court, or 48 hours after being served with the order if the person is not in court. AB 2129 requires that all firearms be surrendered within 24 hours of service of the order, regardless of whether the person is present in court.

**AB 2728 (Klehs/DOJ) - Assault Weapons.** This legislation deletes the obsolete "add on" provision of the state assault weapon ban, which allowed the Attorney General to deem certain weapons "assault weapons" (and required a new registration period for each of the newly-listed weapons).<sup>44</sup> AB 2728 also makes the possession of an assault weapon or 50 caliber rifle a nuisance, allowing for destruction of the weapons.

The Governor vetoed two other firearm-related bills, **SB 59** (Lowenthal) and **AB 2714** (Torrico). SB 59 would have required new handgun owners to notify law enforcement when their handguns are lost or stolen, thereby increasing gun owner accountability and assisting law enforcement in tracing guns to crimes. SB 59 was not as strong as local ordinances in effect in Berkeley, Oakland, San Francisco and Los Angeles, which require the reporting of the loss or theft of all firearms (not just handguns acquired after the laws' effective date).

In his veto message, the Governor stated, among other things, that SB 59 would punish victims of crime (i.e., persons whose guns have been stolen). However, laws requiring that individuals report the loss or theft of a firearm do not punish "victims" any more than existing state laws which require: 1) firearms dealers and manufacturers to report firearm loss or theft; and 2) persons who have been involved in serious automobile accidents to report the incident to the Department of Motor Vehicles.<sup>45</sup>

The second vetoed bill, AB 2714, would have prohibited the retail sale of handgun ammunition unless the prospective purchaser presented, in person, bona fide evidence of majority. An ammunition seller could have complied with this provision by ensuring that a carrier obtained the signature of the purchaser and viewed the purchaser's bona fide evidence of majority before

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<sup>44</sup> The "add on" provision became obsolete once state law was amended to allow assault weapons to be classified by their physical characteristics, as well as by their name. See Penal Code § 12276.1.

<sup>45</sup> Penal Code §§ 12071(b)(13), 12086(c)(3) and Vehicle Code § 2004.

delivering the ammunition. The primary goal of AB 2714 was to prevent internet ammunition sales to minors.<sup>46</sup>

**Microstamping: A Critical Crime-Fighting Tool.** The most far-reaching legislation before the California Legislature in 2006 was **AB 352** (Koretz), a bill to require handgun microstamping. This groundbreaking legislation would have required that the interior surface or internal working parts of all new handguns manufactured or sold in California after January 1, 2009, be etched with a microscopic array of characters that identify the make, model and serial number of the handgun. These characters would be transferred to each cartridge case when the weapon is fired. Using California's existing handgun purchaser database, law enforcement could positively match a cartridge case found at a crime scene to the individual who purchased the gun. This bill – the first of its kind in the nation – would have provided an outstanding crime-fighting tool because it would help law enforcement solve gun crimes even when the guns themselves have not been recovered.

AB 352 passed the Assembly in 2005 and the Senate in 2006. Because the bill was amended in the Senate, however, it was returned to the Assembly for a concurring vote. AB 352 was narrowly defeated in the Assembly, but will be reintroduced in 2007.

LCAV supported each of the 2006 bills described above and, together with other gun violence prevention organizations, helped defeat several bills which would have weakened California's gun laws, including those which would have significantly diluted the state's assault weapon ban and forced employers to allow firearms in cars at the workplace.

### **California Local Governments: Leading the Nation in Gun Policy Reform**

California cities and counties are at the forefront of legislative efforts to reduce gun violence. Since the mid-1990s, local governments in California have adopted over 300 innovative firearm ordinances. Significantly, this local regulatory activity has provided a catalyst for several new state laws, including those to: 1) prohibit the manufacture and sale of "junk guns;" 2) require firearms dealers to equip all firearms with child-safety locks; 3) prohibit the sale of large-capacity ammunition magazines; 4) limit handgun purchases to one per person per month; and 5) prohibit the manufacture and sale of 50 caliber rifles. Each of these laws was modeled after local ordinances adopted since 1995.

The courts have held that California local governments have a great deal of authority to regulate firearms. *See, e.g., California Rifle and Pistol Association, Inc. v. City of West Hollywood* (1998) 66 Cal. App. 4<sup>th</sup> 1302 (upholding a ban on the sale of Saturday Night Specials or "junk guns"),<sup>47</sup> *Suter v. City of Lafayette* (1997) 57 Cal. App. 4<sup>th</sup> 1109 (upholding an ordinance regulating firearms dealers),<sup>48</sup> *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal. 4<sup>th</sup> 853 (upholding a

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<sup>46</sup> The Governor's veto message on AB 2714 stated, among other things, that the bill "could be counter productive by providing a negligible benefit to public safety while concurrently discouraging legitimate business."

<sup>47</sup> West Hollywood was the first California city to ban the sale of these dangerous firearms. LCAV's survey of local gun laws indicates that as of May 31, 2000, 55 cities and counties had followed West Hollywood's lead.

<sup>48</sup> The Lafayette ordinance required dealers to sell trigger locks and obtain liability insurance and prohibited dealers from operating in residential areas and admitting minors unless accompanied by an adult. The court held that one ordinance provision – which imposed security requirements for firearms dealer premises – was preempted by a state statute which imposed similar, yet less stringent requirements. State law now allows local governments to impose security requirements that are more strict than state law. *See* Penal Code § 12071(b)(15).

ban on the sale of firearms and ammunition on county-owned property), and *Nordyke v. King* (2002) 27 Cal. 4<sup>th</sup> 875 (upholding a ban on the possession of firearms and ammunition on county-owned property).<sup>49</sup>

California communities continue to enact a variety of cutting-edge ordinances to fill gaps in state and federal law, including those to:

- Prohibit firearms dealers from operating in residential neighborhoods and near other “sensitive” areas, e.g., schools, playgrounds and places of worship;
- Require firearms dealers to obtain liability insurance to ensure that persons injured by the dealer’s actions are adequately compensated;
- Require firearms dealers to conduct employee background checks to screen out employees who are prohibited from possessing firearms;
- Prohibit the sale or possession of firearms on publicly owned property (this type of ordinance has had the effect of ending gun shows at some public facilities, such as county fairgrounds);
- Require gun owners to notify law enforcement when their firearms are lost or stolen; and
- Regulate ammunition sales.<sup>50</sup>

LCAV is pleased to work closely with elected officials and activists statewide on these and other gun violence prevention measures. For more information about the types of ordinances currently in effect in California cities and counties, see the California Local Ordinance Summary page of our web site at [www.lcav.org/states/callocalord.asp](http://www.lcav.org/states/callocalord.asp).

### **Beyond California: Mayors Against Illegal Guns**

Calls for strong laws to reduce gun-related deaths and injuries are growing louder across the country. On April 25, 2006, a group of 15 mayors, hosted by New York Mayor Michael Bloomberg and Boston Mayor Thomas Menino, held a summit in New York City to discuss strategies for stopping the flow of illegal guns into America’s cities. At this summit, the mayors formed a coalition called Mayors Against Illegal Guns and urged mayors throughout the country to

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<sup>49</sup> In *Doe v. City and County of San Francisco* (1982) 136 Cal. App. 3d 509, in contrast, the court held that Government Code Section 53071 (preempting local licensing or registration laws) and Penal Code Section 12026 (preempting local licensing or permitting laws relating to the purchase, ownership, possession or carrying of a concealable firearm in one’s home, place of business or on other property lawfully owned or possessed by a citizen or legal resident) expressly preempted a local ordinance banning the possession of handguns. Because the ordinance contained an exception for concealed weapons licensees, the court found that it had the effect of creating a new class of persons who would be required to obtain a license in order to possess a handgun in their home or place of business. The court also stated that even if it were to find no “licensing” requirement in the ordinance, it would still conclude that Section 12026 impliedly preempted the ordinance on the ground that the statute occupies the field of residential handgun possession. The court found nothing in state law to suggest, however, that the Legislature intended to prevent local governments from regulating all aspects of firearm possession.

<sup>50</sup> In November 2005, San Francisco voters adopted Proposition H, an initiative ordinance to prohibit possession of handguns by San Francisco residents and ban the manufacture, sale, distribution and transfer of firearms and ammunition in the city. In June 2006, a trial court ruled that the ordinance is preempted by state law. See *Fiscal v. City and County of San Francisco*, San Francisco Superior Court Case No. CPF-05-505960. The city is appealing the ruling. LCAV was not involved in the development or drafting of Proposition H, but has provided *pro bono* consulting services to San Francisco since the measure was placed on the ballot. LCAV also filed an *amicus* brief in support of the city’s legal right to adopt the ordinance.

join in this national effort. Now, less than one year later, over 150 mayors from more than 40 states are members of the coalition.

Mayors Against Illegal Guns is dedicated to making America's cities safer by cracking down on illegal guns. In addition to supporting local, state and federal legislative efforts to target these firearms, the coalition opposes federal efforts to restrict cities' access to gun trace data and to restrict ATF's efforts to combat illegal gun trafficking. The coalition also seeks to hold accountable irresponsible gun dealers who knowingly sell guns to straw purchasers,<sup>51</sup> and supports the development and use of technologies that aid in the detection and tracing of illegal guns.

In 2006, LCAV participated in regional meetings of Mayors Against Illegal Guns in Chicago and Atlanta, and provided materials for the Boston regional meeting. These conferences provided an opportunity for the mayors and their staffs to share information, discuss best practices, and coordinate legislative and enforcement strategies.

LCAV also attended the coalition's national summit on January 23, 2007 in Washington, D.C. At the conclusion of that summit, those assembled signed an "open letter" to Congress expressing their opposition to amendments to Department of Justice appropriations bills restricting the use of federal crime gun trace data (see the Federal Update section above on page 4). The coalition also released the results of a national poll showing majority support for stricter gun laws, including those to:

- Require mandatory background checks of all gun purchasers;
- Limit handgun purchases to one per person per month;
- Require all guns to have a ballistic fingerprint, which allows police to identify the gun a bullet was fired from; and
- Require every gun owner to register each gun he or she owns as part of a national gun registry.<sup>52</sup>

LCAV will continue to support the efforts of Mayors Against Illegal Guns and to help members of the coalition identify opportunities for policy reform at the state and local levels. For more information about the coalition, go to [www.mayorsagainstillegalsguns.org](http://www.mayorsagainstillegalsguns.org).

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<sup>51</sup> A "straw purchaser" is a person who buys firearms on behalf of a convicted felon, juvenile or other prohibited purchaser. As part of its efforts to crack down on irresponsible gun dealers, New York City filed a lawsuit against 15 dealers in Georgia, Ohio, Pennsylvania, South Carolina, and Virginia in May 2006. In December 2006, the City filed a second lawsuit against 12 additional gun dealers in the same states. Investigators using hidden cameras recorded the dealers named in both suits engaging in transactions that the dealers should have recognized as straw purchases. More than a third of the gun dealers named in the initial suit have now settled out of court and agreed to unprecedented oversight of their firearms sales. Under the terms of these agreements, a Special Master has been appointed who will have unlimited access to the dealers' records and the power to impose escalating fines for any new violations of federal, state, or local gun laws.

<sup>52</sup> The national survey of 803 Americans was conducted by Greenberg Quinlan Rosner Research and The Tarrance Group on behalf of Mayors Against Illegal Guns on January 10-15, 2007.

## How We Can Help

LCAV is available to provide free legal assistance to community leaders working to promote gun violence prevention. We are proud to provide the legal expertise, information and advocacy that make it possible for state and local officials and activists to advance effective, legally defensible reforms. Specifically, we:

- Conduct legal and policy research and analysis;
- Assist in the drafting of firearms laws;
- Testify at public hearings regarding firearms laws;
- Arrange for *pro bono* litigation assistance, for example, when a local government is sued following the adoption of a violence prevention ordinance; and
- Maintain a library of gun ordinances enacted statewide and pleadings filed in ordinance-related litigation.

LCAV also publishes reports, such as the 2006 California Report, to educate community leaders about the issue of gun violence prevention. In 2006, we issued a comprehensive publication entitled “Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws.” LCAV’s publications are available on our web site, [www.lcav.org](http://www.lcav.org).

We welcome the opportunity to work with you to make our country safer from gun violence.

### ***Join LCAV Today***

*LCAV’s national membership program reaches out to lawyers and other supporters, gathering a powerful national voice in favor of stronger and safer gun regulations. Members broaden LCAV’s base of support in both financial and human terms. You can make an immediate difference by joining or renewing your membership today.*

*As a member, you will receive monthly e-communications with important information about emerging gun laws, invitations to receptions and educational events, and much more. Equally important, you will feel the satisfaction of playing a supporting role in the gun violence prevention movement.*

*To learn more about membership, visit [www.lcav.org](http://www.lcav.org) or call (415) 433-2062.*

**Legal Community Against Violence  
welcomes your interest and support**

To request assistance, become a member,  
or for more information, please visit [www.lcav.org](http://www.lcav.org)  
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