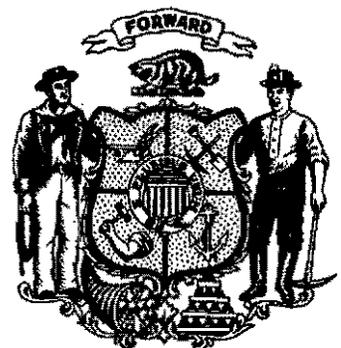


# The Gun Control Debate — An Update

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# THE GUN CONTROL DEBATE — AN UPDATE

## I. INTRODUCTION

Firearms have been an integral part of our national culture since before the country's birth. When the U.S. Constitution was framed, guns were essential in rural areas for hunting and self defense. During the Revolutionary War, local militias, composed of able-bodied male citizens, were expected to provide their own arms. Civilian firearm ownership was seen as necessary to ensure personal, state and national security.

American life has changed dramatically since the 18th century. The population is far more concentrated in urban areas and, while hunting and target shooting are popular sports, few people rely on hunting for food. Although federal law still provides for universal membership in the unorganized militia, the National Guard is the only organized militia.

Some people believe that firearms, especially handguns, have no place in modern civilian life. Others maintain that civilian ownership of firearms is as essential to security and freedom today as when the country was founded.

This bulletin summarizes statistical data relating to firearm use, describes Wisconsin's current approach to gun control, and discusses the arguments for and against gun control policies employed or suggested in other states as well as at the federal and local level.

In public discussions of gun policies, control is usually described in monolithic terms, as if there can only be "more" or "less" of it. In fact, gun control can employ a wide range of approaches, each of which may be evaluated on its own merits. Controls generally encompass regulation of gun manufacture or importation, dealer sales, and purchase or use by an individual. Most gun control laws are enacted at the state level, but control also occurs at the federal and local level.

The goal of most control legislation is to keep guns out of the hands of people who will misuse them. But since it is impossible to single out those individuals, most of the laws affect "law abiding" gun owners as well. For example, state laws prohibiting the carrying of concealed firearms are meant to deter criminals from carrying guns, but these same laws also criminalize carrying a handgun for self defense. In general, the more a proposed form of gun control restricts the average citizen, the less likely it is to be approved.

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## II. BACKGROUND

### A. NUMBER OF FIREARMS

No one knows how many firearms are in civilian hands in the United States today, although the most common estimate is 200 million. Of that number, 60 to 70 million, or roughly one-third, are handguns. Another one to 3 million are semiautomatic "assault" guns. The number of firearms is difficult to estimate because no centralized records are kept of retail firearm sales, and no one knows how long the average firearm remains in circulation.

According to the U.S. Bureau of Alcohol, Tobacco and Firearms (BATF), the number of firearms in civilian hands has quadrupled since 1950, with the sharpest rise occurring in the late 1960s. Much of that rise can be traced to increased handgun sales. In the 1950s handguns accounted for about one in 5 new gun sales. Today they account for one in 2.

Despite the increase in the number of guns, the proportion of gun-owning households has remained stable for decades at 45 to 50 percent. Surveys in Wisconsin indicate that the proportion here may be closer to 60 percent. Almost all gun-owning households in Wisconsin have long guns (rifles or shotguns); approximately half also have handguns.

Gun control proponents argue that the increased number of guns has been a major factor in the increased rate of crimes involving firearms. Opponents respond that any correlation between gun sales and crime rates could just as easily mean that people respond to the threat of crime by arming themselves in self defense. They also point to the low crime rate in countries like Switzerland, where all adult males are required to keep a fully automatic firearm in the home. In any case, so many factors affect crime rates that it is unlikely a cause and effect relationship between gun sales and crime rates could be proven either way.

### B. FIREARM DEATHS AND INJURIES

There are roughly 30,000 to 35,000 firearm deaths every year in the United States, and the majority of the nation's suicides and homicides involve guns. Firearm use annually accounts for about 18,000 suicides, 11,000-14,000 homicides and 1,400-1,500 accidental deaths.

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Estimates of the total number of firearms injuries nationwide range from 70,000-270,000 per year. Anywhere from 6,000 to 26,000 or more firearm injuries may be accidental, but the majority are the result of criminal assault. Suicide attempts account for only a small portion of the injury total because attempts with guns are usually fatal. The overwhelming number of victims and shooters are male.

Both the number and the rate (the number of occurrences per capita) of fatal firearm accidents have decreased steadily over the past 30 years, although some of the decrease may be due to more accurate reporting of suicides. In Wisconsin, the fatal firearm accident rate is only half as high as it was in the 1960s. Roughly 7 times more men than women die in firearm accidents, with the ratio even more skewed for children and teenagers.

The number and rate of firearm suicides increased over the same period. The number of firearm suicides more than doubled; the firearm rate increased faster than the rate by other methods, especially among adolescents and young adults. In Wisconsin in 1988, 10 times as many men as women committed suicide, and men were 3 times more likely than women to use a firearm. Overall, half of all suicides in Wisconsin involve a handgun.

Firearm homicides account for the majority of all homicides reported nationwide. The overall number of homicides has increased over the years, although the homicide rate has fluctuated considerably. For the past 20 years the proportion of homicides committed with firearms has generally fluctuated between 60 and 65 percent with handguns alone accounting for more than 50 percent of all homicides. The general homicide rate doubled from 1960 to 1980, dipped during the early 1980s and increased again in the late 1980s and early 1990s. The homicide rate in 1991 nearly matched the modern high reached in 1980. The most recent increase is entirely accounted for by increases in the handgun homicide rate.

Homicide and suicide are the second and third leading causes of death in the United States for people between 15 and 34 years of age. (Automobile accidents are first.) Homicide is the leading cause of death for black males in that age group. At current homicide rates, the chance that a black male will be a murder victim is one in 30, compared to one in 179 for white males. The suicide rate for blacks is only half as high as the rate for whites.

The firearm death rate is lower in Wisconsin than the nation as a whole, as are the firearm suicide and homicide rates, although suicides make up a larger percentage of the firearm death rate in Wisconsin than nationally. Wisconsin's firearm death rate is highest in Milwaukee, but even that rate is lower than the national average.

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### **C. FIREARM CRIME**

Nationally, it is difficult to tell what percentage of violent crimes, other than homicides, are committed with firearms, because firearm crime is much more likely to be reported than other violent crime. Of reported violent crimes, the proportion committed with firearms rose from 26 percent in 1987 to 31 percent in 1991, but it is estimated that the true proportion of crimes committed using firearms is nearer 11 percent of total crimes, whether reported or not.

The U.S. Bureau of Justice Statistics calculates that nearly 640,000 crimes are committed each year by criminals armed with handguns. The number may be close to one million for all firearms. Very few of these crimes involve injuries or shots being fired, but when injuries do occur, they are often serious or fatal.

As with homicide, males, teenagers and young adults, blacks and inner city residents are most vulnerable to firearm crime. Young black men are victimized by criminals armed with handguns at a rate 7 times higher than the population as a whole.

### **D. TEENAGERS AND FIREARMS**

Of particular concern to many observers are the increasing rates of both juvenile firearm crime and victimization. Nearly 4,000 children ages 19 and under die from gunshot wounds each year, accounting for about 11 percent of deaths for the age group, with the percentage rising to 17 percent for 15-19 year olds.

The reported suicide rate among 15-19 year olds in Wisconsin is 5 times higher than it was 40 years ago, although part of the increase may be due to more accurate reporting. Sixty to 65 percent of teen suicides nationally are committed with guns, a proportion which has also increased over the years, especially among girls, although girls still use guns less frequently than boys.

The firearm homicide rate for teenagers increased more than 60 percent in the 1980s, while the increase for black teens topped 71 percent in just 3 years. The victimization rate for black teenage males living in the inner city is now 24 times the national average.

At the same time, arrest rates for violent crime and weapons violations have increased dramatically among teenagers in the last decade. A study by the U.S. Centers for Disease Control found that 4 percent of U.S. high school students had carried a gun at least once in the month prior to the survey, and it has been estimated that more than 100,000 teenagers carry a gun to school every day.

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The proliferation of firearms among teenagers can lead to a "kill or be killed" mentality in which the presence of guns escalates disputes that might otherwise have been limited to fistfights. Many teens claim they carry firearms in self defense, but defense all too often means making a preemptive strike. One study found that fully one-third of teenage handgun owners had fired their gun at a person.

#### **E. FIREARM USE FOR SELF DEFENSE**

Public acceptance of firearm ownership varies tremendously depending on how the firearms are used. For example, few people question the legitimacy of using long guns for hunting. On the other hand, no one condones firearm homicide or suicide. But very little agreement exists about other uses. Some people contend that they have an absolute right to use guns for target practice and competitive shooting. Others believe recreational use must be balanced against public safety. The debate over firearm use for self defense is even more contentious. The question of whether there is any legitimate reason to carry a firearm, especially a handgun, or to keep one in the home is central to the gun control debate.

Estimates of how many people own guns primarily or partly for self defense vary widely. Credible sources suggest that roughly 20 percent of gun owners keep a gun primarily to defend against crime, and more keep a gun at least partly for that purpose or to defend against animals. Among women gun owners, the percentage of ownership for self defense is much higher. In fact, the number of women owning guns for self defense has jumped dramatically in the last few years. Approximately 12-15 million women in the United States now own guns.

Some surveys indicate that 2-4 percent of the adult civilian population have fired or threatened to fire a handgun in self defense. Estimates of defensive uses of firearms range from less than 100,000 per year to over 800,000. Very little is known about the circumstances of these uses, such as whether the gun owner was defending against an animal or a person, whether any shots were fired or whether the defense took place in the home or elsewhere. Studies do suggest that defensive gun use tends to be successful; that is, it preserves the victim from injury or loss of property. However, it is not clear whether gun use is more effective than other defense tactics.

Federal Bureau of Investigation statistics for 1991 show 292 justifiable firearm homicides by civilians, compared to 360 by police. These statistics indicate that justifiable homicides comprise no more than one percent of the firearm deaths reported to the FBI. However, Gary Kleck, a criminologist at Florida State University, argues that

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the number of civilian self defense firearm homicides is actually 5 to 10 times higher than FBI records indicate because of discrepancies in reporting and definitions.

Those who disapprove of owning firearms for self defense point to a Seattle study which examined firearm deaths that occurred in the home where the firearm was kept, and concluded that accidental deaths occurred 1.3 times more often than justifiable homicides, criminal homicides occurred 4.6 times more often and suicides occurred 37 times more often. However, the study did not control for the presence of other risk factors in the home. Nor did it take into account defensive uses of guns which did not result in homicide, which probably far outnumbered those that did.

Gun control proponents and opponents agree that owning guns for self defense can cause problems if owners are unfamiliar with their weapons and lack knowledge of effective self defense tactics. While owning a gun may make some people feel safer, if they become complacent, they may end up exposing themselves to extra risk. If they are not well trained in the defensive use of firearms and do not practice regularly with their own guns, they are likely to be at a disadvantage in any confrontation with an assailant.

Aside from actual use, guns owned for self defense may protect through deterrence. A criminal who knows a potential victim is or might be armed may not even attempt a crime. Decreased crime rates following well-publicized gun defense training programs indicate that they have at least short-term deterrent value. Most information on deterrence, however, comes from surveys of imprisoned criminals. One major prisoner survey, conducted by sociologists James Wright and Peter Rossi under the auspices of the National Institute of Justice in 1986, concluded that the belief that a potential victim owns a gun provides a significant deterrent to crime. Most of the felons surveyed agreed that "most criminals are more worried about meeting an armed victim than they are about running into the police". It should be noted, however, that other surveys conclude that a barking dog or evidence of a security system have a much greater deterrent effect on criminals than the possibility that a gun is present in the house. Also, if a gun is present, the criminal may actually be encouraged to break in to steal it.

Beyond statistics and studies, the debate over gun ownership for self defense boils down to competing visions of society. Some people believe citizens should rely on the police for protection. They feel that civilian gun ownership leads too often to domestic tragedy and contributes to a siege mentality that destroys community. Others assert the demands of law enforcement duties preclude police officers from acting as armed guards for any particular individual. They conclude that arming oneself is a valid way of taking

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responsibility for one's own safety, and the government has no right to deny such self-protection.

## F. INTEREST GROUPS

Two national interest groups, the National Rifle Association (NRA) and Handgun Control, Inc., play major roles in shaping the current debate over gun control. Although the NRA dwarfs Handgun Control in terms of membership and funding, Handgun Control has emerged as a significant political force in recent years.

After the Civil War, a group of Union officers who were, according to the *New York Times*, "disgusted with the poor shooting skills among soldiers they had commanded", formed the National Rifle Association in order to "foster excellence in gunmanship". The NRA now claims a membership of 3.2 million, including 80,000 in Wisconsin, and it continues to actively promote firearm education and sports. However, the organization is best known today for its opposition to almost all gun control legislation. It utilizes a variety of political tools in its national, state and local campaigns including grassroots mobilization of members, campaign contributions and mass media advertising.

Sarah Brady organized Handgun Control, Inc., when her husband, former White House Press Secretary Jim Brady, was shot and paralyzed during John Hinckley's attempt to assassinate President Ronald Reagan with a handgun. Claiming close to half a million dues-paying members, the group is the largest national organization lobbying for gun control. At the federal level, Handgun Control supports the Brady Bill (named for Jim Brady), which would mandate background checks and a waiting period for handgun purchasers. Handgun Control also supports laws mandating safe firearm storage, bans on "Saturday Night Specials" and semiautomatic "assault" guns, mandatory safety training and licensing for handgun purchasers, and stricter licensing requirements for gun dealers.

In the wide gulf between the extremes represented by these 2 groups, a large majority of Americans hold more moderate views according to opinion studies. In Wisconsin and nationally, polls indicate that most people support tougher gun control laws, but only a minority support handgun bans. Support for gun control tends to be strongest among nongun owners, women and city dwellers. On the other hand, polls also show that most people believe gun control laws affect only law-abiding citizens and that criminals will always be able to get guns.

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### III. WISCONSIN FIREARM LAWS

In Wisconsin, state law currently requires background checks and a waiting period for all persons buying a handgun from a federally licensed dealer. The purchase or possession of certain firearms and attachments is completely prohibited. The law imposes restrictions on gun possession and carrying, and some of these limitations are specifically designed to protect children. The laws relating to hunting and criminal actions also include provisions regulating gun use.

#### A. PROHIBITED FIREARMS AND ATTACHMENTS

**Machine Guns.** Wisconsin has banned the possession and use of machine guns (fully automatic firearms) since 1929. The law provides exceptions for military, police and scientific purposes and for possession as a keepsake if the gun is inoperable. Wisconsin manufacturers of machine guns are required to keep complete registers of guns manufactured and sold and allow the police to inspect their stock and registers.

1991 Wisconsin Act 137 amended the ban to define a machine gun as a firearm which shoots, is designed to shoot, or can be readily restored to shoot, more than one shot with one pull of the trigger. The new definition, which conforms with the federal definition, also includes machine gun parts and conversion kits for modifying a gun to make it fully automatic.

**Short-barreled Shotguns and Short-barreled Rifles.** Wisconsin has banned the sale, purchase and possession of short-barreled shotguns (often referred to as "sawed-off shotguns") and short-barreled rifles since 1980. The law provides exceptions for the military, police and persons who comply with federal licensing or registration requirements.

**Imitation Firearms.** 1991 Wisconsin Act 155 paralleled federal law prohibiting the sale or distribution of look-alike firearms. The law defines a look-alike firearm as an imitation of any gun except an antique, beebie gun, paintball gun or air gun. The law does not apply to any imitation gun permanently equipped with a blaze orange plug in the end of the barrel.

**Silencers.** 1991 Wisconsin Act 39 banned the sale and possession of firearm silencers. The law provides exceptions for police officers acting in compliance with

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department policy, members of the armed forces in the line of duty and persons who meet federal requirements.

## **B. HANDGUN BACKGROUND CHECKS AND WAITING PERIOD**

State law bars convicted felons and persons found not guilty of a felony by reason of insanity or mental defect from possessing any firearm. It is also illegal to provide a firearm to such a person. The law does not require felons to prove that they have disposed of any guns they own after conviction; judges must simply inform felons of the possession ban at sentencing.

1993 Wisconsin Act 195 extends the possession and transfer ban to persons who were adjudicated delinquent as a juvenile for an act that, if committed by an adult, would be a felony. The ban applies unless the person proves to the court that he or she is not likely to act in a manner dangerous to the public. 1993 Wisconsin Act 196 further extends the ban to persons who have been involuntarily committed for treatment of mental illness, drug dependency or developmental disability, as long as the court deems the persons to be a threat to themselves or others. In this case, the court is required to order that the person's firearms be seized or stored elsewhere.

The possession ban does not apply to felons who either have received a governor's pardon or obtained relief from federal firearms restrictions from the Bureau of Alcohol, Tobacco and Firearms. Until Congress cut off funding to investigate applications in October 1992, BATF granted relief at its discretion. The state ban is also lifted if a person who has been found not guilty by reason of insanity is declared no longer insane and the court determines that the person is no longer dangerous.

**Background Checks.** In 1990, a new law authorized the Wisconsin Department of Justice to establish a statewide toll-free hotline for firearm sellers to permit them to voluntarily request criminal record searches on prospective firearm purchasers. The 1991 Wisconsin Legislature restricted access to the hotline to federally licensed firearms dealers and required them to use the hotline to request background checks on all prospective handgun purchasers (1991 Wisconsin Acts 11 and 39). 1993 Wisconsin Act 44 increased the fee for each search from \$5 to \$8.

Rifle and shotgun purchases do not require background checks. The law exempts certain handgun exchanges from background checks, including transfers of antique

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handguns, transfers between wholesalers and firearms dealers, and transfers to law enforcement agencies or the armed services.

**Waiting Period.** Wisconsin has had a 48-hour waiting period for handgun purchases since 1976, but there is no waiting period for the purchase of rifles and shotguns. 1991 Wisconsin Act 11 allowed the Department of Justice to extend the 48-hour waiting period up to 3 additional working days if the criminal history record search indicates a felony charge without a recorded disposition. During the 3-day extension, the department must try to determine the disposition of the charge. After that time, the dealer may complete the sale if there has been no notification from the department that the purchaser is ineligible. According to the department's Crime Information Bureau, about 65% of the background checks in Wisconsin can be completed within 60 seconds.

In 1991, the City of Milwaukee adopted an ordinance requiring background checks and city permits for the purchase of guns that are not used solely for sporting purposes and mandating a 7-day waiting period for handgun purchases.

### **C. POSSESSION AND CARRYING RESTRICTIONS**

Various Wisconsin statutory restrictions limit the place and manner in which firearms may be carried, transported or used. For example, a firearm being transported in a vehicle or aircraft must be unloaded and encased. Shooting across a road or from a vehicle or aircraft is prohibited, except that a disabled person with a special hunting permit may hunt from a stationary vehicle. 1993 Wisconsin Act 95 prohibits carrying a handgun where alcohol beverages may be sold and consumed, with a number of exceptions.

State law also prohibits carrying a concealed weapon or carrying a firearm in a public building. In 1990, the City of Milwaukee adopted an ordinance barring anyone from openly carrying a firearm in the city except under certain circumstances. The combination of the ordinance and the law against carrying concealed weapons makes it illegal for most people to carry any firearm within the Milwaukee city limits.

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## D. CHILD PROTECTION

**Age Restrictions.** Wisconsin prohibits children under the age of 18 from possessing firearms except for long guns used in conformity with state hunting laws or firearms used by minors under adult supervision or in the armed forces in the line of duty. The law also forbids transferring firearms to minors, with the same exceptions. 1993 Wisconsin Act 98 increased the penalty for violating this provision.

**Safe Storage.** 1991 Wisconsin Act 139 barred adults from leaving a loaded firearm within the reach or easy access of a child under the age of 14. An adult is guilty of a misdemeanor if a child improperly possesses or exhibits the adult's firearm in a public place or if the child uses the gun to injure or kill someone. If a child is injured or killed by the gun of a parent or guardian, the district attorney may take that person's trauma into account in deciding whether to issue a complaint, and the parent may not be arrested until 7 days after the shooting.

The law specifies a number of conditions under which an adult would not be held responsible if a child gained access to the firearm. For example, adults can protect themselves by keeping firearms disabled or securely locked, and they are not held responsible if a child obtains a gun through illegal entry.

**Gun-Free School.** 1991 Wisconsin Act 17, modeled on the federal 1990 Gun-Free School Zone Act, prohibited the possession or firing of a firearm within a school zone, defined as the school grounds and the area within 1,000 feet of the school grounds. (Prior law only restricted possession on school grounds.) The law provides a number of exceptions, including possessing a firearm on private property, using a firearm for a school program or carrying a firearm while crossing a school zone to get to lands open to hunting. 1993 Wisconsin Act 336 amended the law to include beebee guns, air guns and starter pistols.

## E. HUNTING

Wisconsin instituted a statewide hunter education program in 1985, which includes instruction in the commonly accepted safety principles for handling hunting firearms. The law requires that anyone born after January 1, 1973, who wishes to obtain a hunting license, must successfully complete the program, with exceptions for persons

who have completed an approved course in another state or basic training in the U.S. Armed Forces.

Wisconsin hunting laws provide that children under the age of 16 may use long guns under the following conditions:

- children under 12 may possess a long gun only during a hunter education class or under parental supervision while traveling to and from class;
- children ages 12 and 13 may possess a long gun under the above conditions or if they are with a parent or guardian or are on their family's land; they need not be under a parent's supervision to transport the firearm to and from a hunter education class; and
- children ages 14 and 15 may possess a long gun under the above conditions and they may hunt on their own if they have been issued a certificate of accomplishment through the hunter education program or a similar program in another state.

#### **F. CRIMINAL MISUSE**

State law prohibits endangering safety by use of a dangerous weapon. Homicide or injury by negligent or intoxicated use of a firearm is a felony. So is firing a gun into an occupied vehicle or building or setting a spring gun. Negligent handling of a firearm, handling a firearm while intoxicated, intentionally pointing a firearm at someone, or firing a gun within 100 yards of a residence without the landowner's permission are all misdemeanors under the law.

Persons convicted of using a gun in connection with another crime are subject to enhanced sentences and presumptive minimum sentences. State law also provides enhanced penalties for firearm theft. 1993 Wisconsin Act 94 enhances the penalties for firing at a person, vehicle or building if the shots are fired from a vehicle (drive-by shootings). 1993 Wisconsin Act 98 enhances the penalties for possession of armor-piercing bullets during a crime involving a handgun.

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#### IV. GUN CONTROL APPROACHES NATIONWIDE

A basic consideration in establishing firearm policy is deciding what level of government — federal, state or local — is best suited to implement the policy. Regardless of jurisdiction, firearm laws typically regulate one of the following: kinds of firearms that may be manufactured and sold; firearm buyers; firearm sellers; or possession and use of a firearm (including criminal misuse).

##### A. JURISDICTION

Advocates and opponents of gun control both complain about the hodge-podge of federal, state and local firearm laws (opponents claim that there are more than 20,000 state and local gun laws). They disagree, however, over appropriate responsibilities for each level of government.

Gun control advocates argue for federal legislation on the theory that weak gun control laws in some states allow people to get around stronger laws in other states by buying firearms in states with few purchase restrictions and illegally transporting them to other states. Opponents respond that state gun control laws do not work because they are inherently ineffective, not because of sabotage by other states. They also contend that states with little gun crime should not have to be burdened with federal laws aimed at high crime areas.

Even when it comes to laws against criminal misuse of firearms, opinion is divided over the role of the federal government. While gun control opponents have traditionally supported harsher federal criminal penalties, others argue that federal laws are not as useful as state laws because they are less likely to be enforced.

*U.S. and State Constitutional Provisions.* One of the main arguments advanced by opponents of gun control legislation at both the federal and the state level is that the Second Amendment to the U.S. Constitution guarantees an individual's right to own firearms. The Second Amendment reads:

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.

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Although the intent of this amendment has been the subject of intense scholarly and public debate, very few rulings by the U.S. Supreme Court have touched on it. Surveys show that a large majority of respondents believe the Second Amendment guarantees an individual the right to own guns, although the Supreme Court and other federal courts have consistently held that the amendment only protects the states' right to organize militias without interference from the federal government.

Gun control opponents have therefore turned to the states in recent years to secure guarantees of individual rights. The constitutions of 43 states now protect the right to keep and bear arms. The exceptions are California, Iowa, Maryland, Minnesota, New Jersey, New York and Wisconsin.

Some of these provisions copy the Second Amendment exactly; others specify that the right to bear arms should be considered an individual right. However, even these guarantees have generally been interpreted by state courts to allow states to impose some regulations on gun ownership in the interest of public safety.

In Wisconsin, a resolution calling for such a state constitutional amendment has been introduced on first consideration in every session of the legislature since 1983. Only one has been debated in its house of origin. (1989 Assembly Joint Resolution 18 passed the assembly.)

*Preemption of Local Controls.* In addition to pushing for state guarantees of individual rights, pro-gun advocates seek state preemption of local gun control measures. The NRA began to focus on working for preemption in response to the widely publicized handgun ban enacted in Morton Grove, Illinois, in 1981. As of early 1992, 38 states had either legislatively or judicially preempted local authority to regulate guns. Three other states require that local firearms ordinances be approved by the state legislature. In some cases, preemption laws have been accompanied by stricter statewide gun control laws as part of a compromise package.

Preemption measures were introduced in every session of the Wisconsin Legislature from 1983 to 1991, but were reported out of committee on only 2 occasions. Preemption legislation passed as part of the 1987 budget adjustment act (Wisconsin Act 399) but was vetoed by Governor Tommy G. Thompson on the grounds that the issue was controversial enough that it should be addressed in separate legislation and receive full public debate.

As of 1989, the latest year for which information is available from BATF, 19 Wisconsin municipalities restricted gun sale or ownership in some manner. Ten of these merely restricted the age at which a person could purchase a gun.

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## B. FIREARM MANUFACTURE AND SALE

One type of firearm regulation focuses on firearms themselves and specifies what kinds of guns may be manufactured, imported or sold and what physical standards they must meet.

**Manufacture and Importation.** Firearms manufacture in the United States is for the most part unregulated. The federal government imposes no minimum standards or safety requirements on domestically manufactured firearms. Regulation is limited to bans on the manufacture, importation and sale of certain types of weapons. The federal government has banned machine guns and armor-piercing ammunition for civilian purchase since 1986; plastic weapons that cannot be sensed by metal detectors have been illegal since 1988. Many states have adopted these bans as well. Wisconsin bans machine guns, but not plastic weapons or armor-piercing ammunition. (The stricter federal law is controlling in Wisconsin.)

The federal government does impose certain standards on imported firearms. The Gun Control Act of 1968 requires that imports be suitable for sporting purposes, which effectively bans the import of small, cheap handguns known as "Saturday Night Specials". The act also bans import of the frames, receivers or barrels of forbidden firearms. More recently, the Bush administration permanently barred the import of 43 firearm models popularly termed "assault rifles".

Gun control advocates argue that domestically manufactured weapons should be held to the same standards as imports. For example, imported revolvers are required to pass the "drop test" — they must withstand being dropped to the floor without discharging. Domestic revolvers are not held to this standard, and many of the cheaper ones fail the test.

Some states have adopted manufacturing standards of their own. Maryland, for example, banned the manufacture and sale of Saturday Night Specials in 1989. However, banning the manufacture of a certain kind of firearm at the state level is generally not very effective. The manufacturer can simply pick up and move to another state, and the guns will still be available. Gun control advocates argue that action must be taken at the federal level to be effective.

*Safety Features.* Since 1972, federal law has specifically prohibited the federal Consumer Product Safety Commission (CPSC) from regulating firearms and ammunition. The General Accounting Office (GAO) and several members of the U.S.

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Congress have pushed unsuccessfully for legislation which would allow the CPSC to regulate firearms as it does other consumer products.

Many experts believe such regulations should require all firearms, domestic and imported, to have safety features intended to prevent accidental discharge, such as magazine safeties on semiautomatics which prevent a chambered bullet in the gun from being fired unless the magazine is inserted. According to the GAO, universal use of some kind of safety mechanism could reduce accidental firearm deaths by almost one-third.

Ironically, toy guns are more strictly regulated than real ones. Not only do they have to meet the general safety standards for toys but, if they look like a real gun, federal and Wisconsin law requires that they have a blaze orange plug in the mouth of the barrel to identify them as toys. Given how often children (and adults) mistake real guns for toys, with frequently tragic results, the reverse might be just as useful, i.e. to require distinctive markings on real guns to identify them as real.

*Liability.* In the absence of federal safety regulations, some people have turned to the civil courts. For example, plaintiffs in a number of recent court cases have charged manufacturers with negligence for failing to equip their semiautomatic handguns with magazine safeties or to design them to prevent discharge when dropped. It is too soon to tell if this theory of negligence will be generally accepted by the courts.

Taking a slightly different approach, the District of Columbia government has attempted several times to hold assault firearm manufacturers liable for deaths and injuries caused by their weapons on the theory that the guns are inherently dangerous. Thus far, Congress has blocked these attempts. Opponents contend that it is unconstitutional to hold a manufacturer responsible for someone else's criminal acts. In fact, as the judge in a recent liability case in Virginia pointed out, the problem with assault firearms is not that they are "unreasonably dangerous for (the) use to which they would ordinarily be put", but that they perform exactly as intended.

**Sales.** While states have little direct control over firearms manufacture, they can restrict the sale of certain firearms in the state. The effectiveness of this approach is limited by the fact that as long as any state allows the sale of particular firearms, those firearms will be available (albeit illegally) throughout the country. However, for states wishing to discourage the possession of certain firearms, such restrictions are one of the few available policy options. Federal law and the laws of many states, including Wisconsin, prohibit the sale of silencers and sawed-off rifles and shotguns. Bans on

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handguns and assault guns are much more controversial and only a few states and municipalities have adopted them.

*Handguns.* In a number of national surveys, approximately 40 percent of respondents supported a ban on the sale or possession of handguns, although few were convinced such a ban would be effective. The evidence appears to bear out this opinion. Because many factors affect handgun crime rates, it is virtually impossible to isolate the effects of a handgun ban.

Handgun bans based on sales or possession or both have been enacted in several large cities, including Chicago and some of its suburbs, the District of Columbia and New York City. In the April 1993 election, voters in the City of Madison narrowly rejected a nonbinding referendum to ban handgun possession in the city. (Handgun sales have been banned in Madison since 1975.)

It is difficult to determine the effects of these bans on crime rates. For example, scholars on both sides of the argument who have studied the District of Columbia's 1976 handgun ban do not even agree on whether crime rates increased or decreased following the ban, much less whether the ban had anything to do with the change. In areas with low crime rates, such as the Chicago suburbs that ban handguns, the bans do not appear to have much effect on crime rates either.

One reason bans do not work very well is that few gun owners are willing to voluntarily surrender their guns. Thus, possession bans are mainly enforced by confiscation in connection with another crime. This mechanism rounds up few weapons and does not prevent a person whose gun is confiscated from buying a new gun outside the area of the ban. In sum, it appears that most people, including otherwise law-abiding citizens, make their decisions about handgun ownership at a personal level with little regard for whether sales or possession are banned in their community.

Opponents of local bans argue that, even if a handgun ban did significantly curtail the supply of handguns in an area, it would not prevent criminals from turning to long guns or sawed-off guns. While these guns cannot be as easily concealed as handguns, or used in as many situations, they are also considerably more deadly.

*Saturday Night Specials.* Saturday Night Specials can be purchased for \$60-100 from a licensed dealer or even less on the street. The Gun Control Act banned importation of the guns in response to concerns over their use in crime. Instead of reducing the availability of Saturday Night Specials, the import ban encouraged U.S. manufacturers to enter the market.

Aside from safety concerns raised by the guns' shoddy construction, gun control advocates argue that Saturday Night Specials should be banned because they have no legitimate use. Opponents claim that Saturday Night Specials are useful for self defense and the guns are popular for that purpose, although their small caliber, inaccuracy and unreliability make them fairly ineffective defensive weapons. Although serious criminals favor more powerful weapons, small cheap handguns are still commonly used in criminal activity, particularly by teenage perpetrators.

Approximately 70 percent of respondents in 1989 and 1990 Gallup polls said they would favor banning Saturday Night Specials. Several states have tried to ban such sales by setting minimum standards. Starting in 1990, Maryland set certain criteria for handguns sold based on accuracy, concealability, caliber, safety and quality of construction. Illinois, Minnesota and South Carolina use the melting point of a firearm as an indicator of its overall quality.

*Assault Firearms.* Strictly speaking, an assault firearm is a "select fire" firearm, that is, the user can select either a fully automatic or semiautomatic mode of firing. BATF is charged with ensuring that any firearm which can be easily converted to fully automatic operation is classified as a machine gun. In practice, the bureau has a hard time staying ahead of manufacturers, who regularly develop new products that push the limits.

In popular usage and as used in this bulletin, assault firearm has come to mean a semiautomatic firearm with "no sporting value" or one that has a large magazine or is available with paramilitary features, such as a flash suppressor or a threaded barrel to accommodate a silencer. On a long gun, features such as a folding stock or pistol grip are often considered. Many pro-gun advocates complain that a gun is more likely to be called an assault gun if it is ugly.

Some manufacturers leave little doubt about whether they think of their products as assault firearms rather than sporting weapons. Advertising copy for the "Street Sweeper", a rapid-fire shotgun made by S.W. Daniel, reads, "Time for spring cleaning. Why try clean-ups with inadequate equipment?? Buy the machine designed to clean thoroughly on the first pass." The Tec-9, a 9-mm pistol, has been described as "sexy", "high-spirited", "cute", "futuristic" and "menacing". Intratec, the gun's manufacturer, describes the gun as being "as tough as your toughest customer". The Tec-9 first became popular when it was featured on the television series "Miami Vice", as did a number of other guns which debuted on the show in the late 1980s.

As with all other firearms, it is very difficult to estimate the number of assault firearms in circulation. The fact that no one agrees on a definition for these guns only complicates the matter. Prior to the 1989 ban on imported assault firearms, imports had been increasing exponentially from 4,000 in 1986 to 750,000 barred from entering the United States in 1989. Some estimate that imports accounted for only one-fourth of assault gun sales in the United States prior to the ban, so it seems likely that there are at least several million more assault guns in circulation today than there were in 1989, when the number was estimated at one to 2 million.

In 1989, Patrick Purdy opened fire with an AK-47 in a Stockton, California, schoolyard, killing 5 children and wounding 28 others and a teacher. That shooting, along with other multiple shootings involving assault firearms, focused intense media and political attention on these weapons. Assault firearms are also described as the "guns of choice" for gangs and drug lords. Opinion is sharply divided, however, over whether criminal use of assault firearms is really a widespread problem. For a number of reasons, information on involvement of assault firearms is generally not included in crime reports. For example, extra reporting requirements impose additional costs on local police; if the gun is not recovered, there may be no way of telling if it was an assault firearm; and, again, there is little agreement on the definition of assault firearms.

A study conducted in 1989 by Jim Stewart and Andrew Alexander, reporters for the *Atlanta Journal* and *Atlanta Constitution*, provides the most comprehensive analysis of assault gun crime use available. They examined BATF records of all firearms trace requests for 1988 and the first part of 1989. (BATF was not able to conduct the research itself because it lost funding for its computer system in 1985.) Their study concluded that, although only about one out of every 200 guns in circulation at the time was an assault firearm, the guns were used in one out of every 10 crimes in which a firearms trace was requested (nearly an 80 percent increase from 1986). In other words, use of assault firearms in crime was 20 times more common than their numbers would predict. In addition, the study found that assault firearms accounted for almost 30 percent of firearms traced to organized crime. The Atlanta study is not conclusive because traces are only requested in about 10 percent of firearms crimes and police may be more likely to request traces on assault firearms than other kinds of guns.

When assault firearms are used in crime, they can be quite dangerous. Because the guns allow many rounds to be fired in quick succession, they make it easy and fairly safe for the shooter to fire indiscriminately, catching a number of people in the gunfire or inflicting multiple wounds on one person. Some high-powered rifles can penetrate walls and kill people not even at the scene. Various studies have observed increases in

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the last few years in the numbers of cartridges recovered at crime scenes, victims shot more than once and bystanders wounded by stray bullets or fragments of flying masonry. Many observers conclude that assault firearms are responsible for these trends.

The federal government and many states and cities have considered bans or restrictions on the sale of semiautomatic assault guns in recent years, but only a few have acted and the results have been mixed. A number of national polls show that 70 to 80 percent of the public, including a majority of gun owners, would support a ban on the sale and possession of assault guns. Surveys of Wisconsin residents have yielded similar results. Most major police organizations, including the Fraternal Order of Police and the International Brotherhood of Police Officers, also support assault gun bans.

When the Bush administration permanently banned the importation of 43 assault rifle models in 1989, the action effectively protected the U.S. market for domestic manufacturers, who commanded a majority of the market even before the import ban. Since the ban took effect, sales of domestic assault firearms have soared. In addition, many foreign manufacturers have circumvented the ban by converting banned rifles to handguns or removing paramilitary features. A number of bills have been introduced in Congress in the last few years which would have banned the sale or possession of some domestically manufactured assault guns, but none has passed.

To date, only California, New Jersey and a sprinkling of cities and counties nationwide have banned the sale of domestic assault guns. California banned the sale of assault firearms in 1989, in the wake of the Stockton shooting. In 1990, bills were introduced in 24 states, including Wisconsin, to ban assault weapon sales but, in the face of strong NRA opposition, only the New Jersey bill was enacted. Since then New Jersey Governor James Florio has twice vetoed attempts to weaken or overturn that law. Some states have imposed lesser restrictions on assault firearms. For example, Alabama requires a waiting period to obtain an assault firearm, Virginia requires a background check, and Connecticut requires a permit.

California's law bans the sale of 60 listed firearms and authorizes an assault weapons commission to add other firearms to the list. Anyone who owned an assault firearm on or before June 1, 1989, was required to register the weapon and pay a \$20 fee. It is estimated that fewer than one in 6 owners registered their weapons.

Prices and demand for the guns soared in the months before the California ban took effect, as they did before the federal import ban. According to Col. Martin Fackler of the U.S. Army Wound Ballistics Laboratory, sales of assault weapons quadrupled after

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the Stockton shooting and the average price tripled. In fact, negative publicity surrounding any assault firearm boosts its price and demand.

Still, despite increased sales and widespread defiance of the registration requirement, police in a number of large California cities report that confiscations of assault firearms decreased dramatically after the law passed.

### C. FIREARM PURCHASERS

Many gun enthusiasts argue that guns are not the real culprits in firearm incidents. They agree with the NRA viewpoint that "guns don't kill people; people kill people", and they believe regulations should focus on the people who misuse firearms, rather than the firearms themselves. Most state laws do regulate who may purchase or possess firearms and how the firearms may be used. Even so, groups like the NRA argue that these regulations should focus more narrowly on persons who misuse firearms, rather than burdening the majority of legitimate gun users. Gun control proponents respond that the inconvenience of policies such as waiting periods and background checks is a small price to pay to weed out people who should not own guns.

**Restricted Persons Defined.** Federal law prohibits anyone from knowingly transferring a firearm to the following:

- convicted felons or persons currently under indictment for a felony,
- fugitives from justice,
- persons adjudicated as a mental defective or who have been committed to a mental institution,
- illegal aliens,
- persons dishonorably discharged from military service,
- unlawful users of controlled substances, and
- persons who have renounced U.S. citizenship.

In addition, federal law prohibits licensed dealers from transferring long guns to anyone under age 18 and handguns to anyone under age 21.

The states also impose restrictions on who can legally purchase or possess firearms. Some restrictions are modeled on federal law, allowing the state to prosecute offenses the federal government is unlikely to pursue. For example, most states, including Wisconsin, bar convicted felons from possessing firearms. Federal law allows each state to determine what constitutes a restoration of civil rights for the purpose of

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firearm ownership. Many states allow previously convicted felons to possess firearms a certain number of years after fulfilling their sentence. In Wisconsin a governor's pardon is required to restore a felon's right to own a gun.

Some states extend the prohibition against firearm possession to those convicted of violent misdemeanors. One reason to ban possession by misdemeanants is that persons arrested on felony charges are rarely convicted of a felony. For example, despite a long string of felony arrests, Patrick Purdy, who shot the schoolchildren in Stockton, had legally purchased his guns because all the felony charges previously brought against him had been plea-bargained to misdemeanors or dropped.

Alcohol and drug abuse may contribute to all kinds of violence, including gun violence. Besides the fact that a sizable number of armed criminals act under the influence of these substances, guns are pervasive tools of the illicit drug trade. Drugs and alcohol also play a significant role in firearm suicides and accidents. Although federal law and some state statutes bar unlawful users of controlled substances from purchasing firearms, there is no direct way of identifying these persons. A state could, however, bar persons with criminal convictions for violating alcohol or drug laws from acquiring firearms.

Some states consider mental competence when deciding who may legally own a firearm. Some ban possession by anyone who has been admitted to a mental hospital within a certain number of years; others restrict sales only to persons who have been deemed dangerous to themselves or others. In certain cases, mentally retarded persons are barred from possessing guns. Some people contend that mental illness alone bears little relation to violence and should not lead to an automatic ban on gun ownership. They also worry that some in need of treatment might fail to seek it if they feared they would lose their firearms as a result.

Newer purchase restrictions focus on domestic violence. The FBI reports that 30 percent of female homicide victims are killed by a partner or ex-partner, most often after repeated and escalating abuse. Unless a victim of abuse is actually killed, the abuser is rarely arrested, much less convicted of a felony, so restriction based on criminal convictions would be ineffective. To close loopholes like this, California forbids anyone under a restraining order for domestic violence from acquiring a firearm. The Boston City Council carried the idea a step further in July 1992 by passing an ordinance ordering police to confiscate guns from people who had restraining orders issued against them in domestic violence cases, but Mayor Raymond Flynn vetoed the proposal.

**Background Checks/Waiting Periods.** In an attempt to prevent restricted persons from purchasing firearms, federal law requires that prospective purchasers fill out an application form which asks if they fall into any of the federally prohibited categories. Purchasers are expected to answer the questions correctly and show proper identification. However, the federal government does not check the information on the applications. The dealer, who is not required to check the information either, merely keeps the forms on file.

As critics point out, the federal application process basically works on the honor system. While it is a federal crime to give false information on the application, an ineligible buyer would only face punishment if later arrested for a firearms crime. Unless the background information is checked at the time of application, it serves no preventive purpose.

Many states have concluded that the federal application process is inadequate. To verify an applicant's eligibility, these states require background checks, waiting periods or both at the time of purchase. However, many states, including Wisconsin, use these precautions only for handgun purchases. Some people argue that background checks and waiting periods should be extended to shotgun and rifle sales as well. While shotguns and rifles are used in crimes far less often than handguns, they are generally more lethal when used. As one Florida gun store owner put it, "If your husband wants to kill you and he can't obtain a .38 revolver without waiting three days, don't you think a 12-gauge would work just fine?"

Background checks are performed either when a person attempts to purchase a gun or applies for a permit to purchase. Eleven states, including the 4 bordering Wisconsin, employ permit systems either for handgun purchases or for all firearms. Some states also restrict the sale of ammunition to persons with a firearms permit.

Delaware, Florida, Illinois, Virginia and Wisconsin all have instant background check systems, although Illinois still requires a permit to purchase and Florida requires a 3-day waiting period for handgun purchases unless the purchaser has a concealed weapons permit. Virginia's instant background check applies only to state residents purchasing "assault" rifles and handguns with barrels shorter than 5 inches.

States are hindered in performing criminal background checks because their own and other states' criminal records are often incomplete. Currently, only half of the FBI's criminal records are fully automated, and only half the states belong to the FBI's national computerized network. These limitations make it impossible to determine with any certainty whether an applicant has been convicted of a federal crime or a felony in another state. While the federal government has recently awarded grants to help states

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computerize their records, experts believe a comprehensive computer network is at least several years and several hundred million dollars away.

If a state restricted firearms purchases on other grounds than criminal record, it would entail the creation of even more extensive databases using information which might be difficult or impossible to obtain. Illinois, for example, includes a state mental health department database in its background check. However, granting access to this otherwise confidential information raises significant privacy concerns.

Although the idea of background checks is generally quite popular, their effectiveness is uncertain. Background checks do stop some sales by licensed dealers to ineligible applicants. In its first 15 months of operation, Wisconsin's background check system denied sales to 328 ineligible persons out of 42,600 applicants, or less than one percent of all applicants. Similar percentages are reported by other states which perform background checks. Proponents suggest that more ineligible persons are deterred from even attempting to purchase a firearm by the prospect of a background check, although the extent of this effect would be impossible to measure.

Most felons can easily circumvent background checks by obtaining firearms from other sources. Major sources include burglary, private or black market sales, and "straw man" purchases in which a confederate with a clean record makes the purchase. The 1986 Wright and Rossi prisoner study suggested that only one in 6 gun-owning felons obtained his most recent handgun from a licensed dealer. A *Milwaukee Sentinel* survey of Wisconsin prison inmates reached a similar conclusion.

Given that background checks are an imperfect means of keeping guns out of the hands of people who should not have them, some people question whether they are worth the expense. Others respond that background checks are worth the expense if they prevent even one criminal from obtaining a firearm. Still others argue that background checks should not be judged on a cost-benefit basis, but as a symbol of the public consensus that criminals should not own firearms.

As of mid-1992, 24 states including Wisconsin required either a permit or a waiting period before purchasing certain firearms, generally handguns. Handgun waiting periods range from 48 hours in Wisconsin and 3 other states to 6 months in New York. The City of Milwaukee has a 7-day waiting period for handgun purchases. A number of surveys indicate that upwards of 80 percent of the public in Wisconsin and nationally, including a substantial majority of gun owners, favor a 7-day or longer waiting period for the purpose of completing a background check on a prospective purchaser.

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The version of the Brady Bill before the last session of the U.S. Congress would have required a waiting period of 5 business days and a background check for handgun purchases from federally licensed dealers. The waiting period would have been eliminated once a national instant background check system was in place. Wisconsin would have been exempt from the 5-day waiting period because it already has a mandatory background check system in place.

Besides providing time to do a background check, proponents of waiting periods argue that they serve as "cooling-off" periods for the angry, suicidal or fearful impulse buyer. It is not clear that a cooling-off period actually saves lives; anecdotal evidence can be found to support either position. Opponents believe that, aside from the inconvenience, a waiting period would hurt someone who was unable to buy a gun for self defense in response to an immediate threat.

**Registration.** Another way to keep track of firearm purchasers is to require the purchaser or the seller to inform local, state or federal officials of the sale. Firearm registration generally refers to permanently recording such information, much like motor vehicle registration. Registration makes it easier for police to trace a gun to its owner if it is stolen or used in a crime.

As of 1989, only Hawaii, Michigan, New York and certain localities in Illinois, Kansas and Nevada required the registration of handguns, according to the NRA. Although federal law requires licensed dealers to keep a record of each sale, the 1986 federal Firearm Owners Protection Act prohibits the BATF from maintaining those records centrally. BATF may only inspect dealers' records at certain times and may not use the records for registration or statistical purposes. These restrictions are meant to ensure gun owners' privacy. However, since the records are not centralized or computerized, it can also be quite tedious for BATF to trace weapons used in crime.

Significant majorities in Wisconsin and national opinion polls support registration, especially for handguns and assault guns. Surveys indicate that both gun owners and nonowners support registration, although the numbers are larger among nonowners.

However, many gun owners strenuously object to registration. They argue that registration is just the first step toward a total ban. Once the police know who owns guns and where to find them, they reason, the guns can easily be confiscated later. The fear of confiscation is not entirely unrealistic: in New York City, to enforce a 1991 ban on the possession of assault rifles, police officers collected the weapons from people who had legally registered them prior to the ban.

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Another objection often raised to registration is the expense. In 1990, the Milwaukee Common Council considered a registration system, but the proposal died in part due to police concerns that it would divert officers and resources from more important tasks. One way of addressing these concerns would be to impose a registration fee. It has also been proposed that to cut down on costs local authorities be alerted to all gun sales without keeping a permanent record of the information.

**License to Purchase.** Rather than registering guns, some people argue that gun owners themselves should be registered. Many people on both sides of the gun control debate contend that all prospective gun owners should have to demonstrate minimal competence with the type of firearm they wish to purchase along with a thorough knowledge of gun safety and the laws governing the carrying and use of firearms in their state. This approach responds to the fears of confiscation that firearm registration raises in some people because the government would only know who could own a gun, not who did own one. Firearm user licensing is often compared to driver licensing and could be implemented at either the state level or, as former Surgeon General C. Everett Koop has urged, the national level.

Very few states require any safety training or knowledge in order to purchase a firearm, although most, including Wisconsin, require some form of hunter education to get a hunting license. In Wisconsin, the rate of hunting accidents in 1991 had dropped to one-third of its level in 1966, when hunter education started. Proponents argue that similar accident reductions could be realized by licensing all gun owners.

**Purchase Limits.** One weakness of state gun purchase controls is that ineligible persons often get around them by buying guns in other states with less restrictive laws. South Carolina has imposed a limit of one handgun purchase per person per month in an attempt to prevent large numbers of guns being run to other states for sale on the black market. The Virginia Legislature recently passed similar legislation, and a bill to impose the limit nationwide has been introduced in the U.S. Congress.

#### **D. FIREARM SELLERS**

Because a large number of firearm transfers occur between private individuals, regulation of firearm purchasers has little effect if it applies only to transactions with federally licensed dealers. Most states do not regulate private sales, and Wisconsin law requiring background checks and waiting periods does not cover private transfers. So

an ineligible person wishing to avoid a background check in Wisconsin could easily acquire a gun from a private individual. Private sellers only violate the law if they know that a purchaser is ineligible; they cannot call the background check hotline because its use is limited to licensed dealers.

California now requires that private sales go through a licensed gun dealer and comply with state waiting period and background check laws. Some people contend that criminals will sell guns illegally regardless of the law and the law will only inconvenience legitimate gun owners. On the other hand, such a law would help prevent a private individual from inadvertently transferring a firearm to an ineligible person. Also, if all gun sales were routed through dealers, a database of stolen guns could be created for the dealer to check before ratifying the sale.

Compliance could be encouraged by holding a person liable for damages caused by a gun if he or she failed to transfer it through a licensed dealer or knowingly transferred it to an ineligible recipient. Dealers could be held liable in the same way. Some courts are already moving in this direction even without specific legislative guidance. For example, the jury in a recent court decision in Virginia held a dealer liable for making a straw man sale in which the real purchaser was a minor who later took the gun to school and killed a teacher.

A number of states have requirements for firearms dealers that are more restrictive than federal law. All that is required to obtain a 3-year federal firearms dealer license is \$30 and a background check by name. Of the more than a quarter of a million federally licensed gun dealers in the United States only about 30 percent actually operate storefront businesses. Most "dealers" are simply private individuals who obtain licenses so they can order guns at wholesale prices through the mail and across state lines. Ironically, in some states, purchasers without dealers licenses must submit to fingerprinting, while dealers are not required to do so, although they have much broader purchasing powers.

Some states and municipalities require state or local dealer licenses, in addition to the federal license. Currently, 22 states license firearm dealers, but 8 of those license only handgun dealers. A Milwaukee city ordinance requires gun dealers who sell firearms that are not used for hunting or target practice to obtain a license from the city. The ordinance does not specify which firearms are covered.

Across the country, suggestions for reforming dealer licensing include: requiring more thorough background checks, including fingerprint checks; requiring a dealer to demonstrate a basic knowledge of gun safety and relevant local, state and federal laws; restricting federal licenses to those who comply with the laws for state and local licenses;

and imposing higher license fees with the revenues going toward gun law enforcement efforts.

Some policymakers have proposed increasing the tax levied on gun and ammunition sales with the proceeds going to medical care for gunshot victims. (The federal tax is currently 10 percent on handguns and 11 percent on other firearms and ammunition.) Many gun owners strongly oppose such a "sin tax", arguing that the vast majority of gun owners are not to blame for the criminal misuse of guns and should not have to pay for it.

Other theorists advocate a tax with the idea that if the cost of firearms were raised high enough, many criminals would be priced out of the market. Opponents reply that, besides being unfair to legitimate owners, exorbitant prices would only encourage gun smuggling and theft and an expansion of the black market in guns.

#### **E. FIREARM POSSESSION AND USE**

The final category of firearm laws applies to firearm owners and dictates the conditions under which a person may possess and use a firearm.

**Carrying.** Eight states and the District of Columbia ban the open carrying of handguns. An additional 17 required a license either to carry a handgun openly on one's person or in a vehicle. The remaining 25 states, including Wisconsin, do not require a license, although the City of Milwaukee does prohibit carrying firearms inside the city. In a national 1989 Gallup poll, 84 percent of respondents said they would favor a law requiring a license to carry a gun outside the home.

Fifteen states including Wisconsin ban carrying a concealed firearm. Of the other 35 states, all but Vermont require a permit to carry a concealed handgun. The bases on which these permits are issued vary widely. Many states issue permits based on passing a criminal background check, demonstrating proficiency, or passing a written test that may include questions on gun safety and state laws governing the use of deadly force. Some states are more restrictive, requiring that a person be of "good character" as determined by local police or demonstrate a "convincing need" to carry a concealed firearm. Permits are virtually impossible to get in some states.

It is unclear whether concealed carry licensing has any effect on crime. A 1990 study by the Oregon State Police found that about one in 1,000 persons who had been issued concealed handgun licenses in the state within the last year were later arrested for crimes involving the use or possession of a firearm. Florida reports roughly

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comparable figures. These statistics do not reveal whether concealed carry licensing facilitated any of the crimes. On the other hand, homicide rates in Florida and Oregon fell after those states started allowing concealed carry permits, although again it is not known whether the decreases were directly related to the issuance of permits.

**Storage.** Several surveys indicate that more than half of gun owners do not keep their firearms locked up, and at least a quarter keep them loaded at all times. These figures are only slightly lower for households with children. Regardless of whether there are children in the house, firearms experts, including the NRA, agree that firearms should be stored unloaded in a locked area separate from ammunition.

Wisconsin and at least 9 other states have passed laws in the last 3 years requiring that gun owners secure their guns from children. The storage laws provide criminal penalties if a child gains access to a gun and injures or kills himself or someone else. Very few criminal cases have been brought under the laws. Opponents contend that bringing criminal charges against someone who is already grieving is inappropriate and unnecessary. Supporters reply that the laws are valuable mainly as a deterrent to prevent accidents from happening in the first place.

Most storage laws, including Wisconsin's, apply only to children 14 or under. However, firearm accidents, homicide and suicide are all far more common among 15-19 year olds, and many teenagers get the guns they use from their parents' homes.

Many storage laws mandate some sort of safety education for children. The NRA also provides its own gun safety program to elementary schools. No one knows how effective these programs are. Given that many children play with toy guns and are exposed to attractive images of guns in the mass media, any school program that tries to persuade them to avoid guns probably faces an uphill battle.

Aside from safety considerations, secure storage helps protect against gun theft. Since anywhere from 20 to 70 percent of guns used in crime are stolen, either from gun stores or homes, theft prevention measures could have a significant impact on the number of guns available for criminal use. Few gun owners report stolen guns or provide police with enough information to identify them, making it very difficult to track stolen guns used in crime. Some states address this problem by requiring owners to report stolen guns or face a fine or civil liability for any later misuse of the gun.

**Criminal Sentencing.** Pro-gun activists have traditionally supported stiff sentences for criminals who use firearms. They argue that the way to make society safer is to lock up criminals, not to restrict the ability of law-abiding citizens to defend themselves.

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Certainly the most beneficial effect of criminal sanctions would be to deter people from committing crimes in the first place. However, states which have imposed stricter sentencing guidelines have generally seen little response in crime rates. The main reason sentencing schemes exert such a minimal deterrent effect is that the vast majority of criminals are never convicted and imprisoned. Gun advocates like to claim that criminals are at least as likely to be confronted by an armed victim as to be imprisoned, a claim which may not be far off.

## V. CONCLUSION

Perennial campaigns and current crises provide the impetus for proposed firearm laws throughout the country. Certain proposals tend to appear regularly at the state level, including background checks, waiting periods, local preemption laws and constitutional amendments to guarantee the right to keep and bear arms. Lawmakers tend to suggest other ideas, such as assault gun bans and safe storage requirements, in reaction to specific situations. For example, the Virginia Legislature recently passed a bill limiting handgun purchases to one per month at least partly in response to a report that the state is a center for gunrunning to other Eastern states.

At all levels of government, the gun control debate is dominated by those who believe that gun ownership is destructive to society and those who believe that it is an inviolable right guaranteed by the U.S. Constitution. It is difficult to make rational decisions in an atmosphere where absolute moral values are assigned to an inanimate object. A gun, while powerful and often destructive, is no more than a tool controlled by the person who uses it. Legislators are further hampered by the fact that very little reliable, unbiased information exists on which to base lawmaking decisions.

Gun control legislation focuses on regulating access to firearms, but the availability of guns is only one of many factors contributing to crime. Any measures that attempt to restrict access to firearms without reference to drugs, poverty with its attendant lack of educational and employment opportunities, clogged courts and overcrowded prisons are bound to have only marginal effects on firearm crime.

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## VI. APPENDICES

### APPENDIX 1: Wisconsin Statutes Regarding Firearms

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|-----------------------------|--|
| 29.101                      | Lead shotshell restrictions  |
| 29.221                      | Duties on accidental shooting  |
| 29.222                      | Required report on hunting accident  |
| 29.225 &<br>29.226          | Hunter education and firearm safety program; certificate of accomplishment required to obtain hunting approval                           |
| 29.227                      | Restrictions on hunting and firearm use by persons under 16 years of age   |
| 48.341                      | Delinquency adjudication; restriction on firearm possession  |
| 51.20(13)(cv)<br>& (16)(gm) | Involuntary commitment for treatment; restriction on firearm possession  |
| 167.30                      | Use of firearms near municipal park, etc.  |
| 167.31                      | Safe use and transportation of firearms  |
| 175.30                      | Purchase of firearms in contiguous states permitted  |
| 175.35                      | Waiting period and background check for purchase of handguns   |
| 175.37                      | Warning required when transferring a firearm regarding leaving a loaded firearm within easy access of a child                            |
| 182.021                     | Gun clubs  |
| 939.22                      | Definitions relating to criminal behavior, including "airgun," "dangerous weapon," "transfer" and "under the influence of an intoxicant" |
| 939.63                      | Use of dangerous weapon in a crime   |
| 939.64                      | Use of bulletproof garment in a crime  |
| 940.08                      | Homicide by negligent handling of dangerous weapon   |
| 940.09                      | Homicide by intoxicated user of firearm  |
| 940.24                      | Injury by negligent handling of dangerous weapon   |
| 941.20                      | Endangering safety by use of dangerous weapon  |

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- 941.23 Carrying concealed weapon
  - 941.235 Carrying firearm in public building
  - 941.237 Carrying handgun where alcohol beverages may be sold and consumed
  - 941.25 Manufacturer to register machine guns
  - 941.26 Machine gun sale, use and possession
  - 941.27 Machine gun definition
  - 941.28 Short-barreled shotgun or short-barreled rifle sale, use and possession
  - 941.29 Persons prohibited from possessing a firearm
  - 941.296 Use or possession of a handgun and an armor-piercing bullet during crime
  - 941.2965 Use of facsimile firearms
  - 941.297 Sale or distribution of imitation firearms
  - 941.298 Sale or possession of firearm silencers
  
  - 943.07(2) Discharging a firearm at a railroad train
  - 943.10(2) Armed burglary  
(a)&(b)
  - 943.20(3)(d)(5) Firearm theft
  - 943.23(1g) Vehicle theft by use or threat of use of a firearm
  - 943.32(2) Armed robbery
  
  - 946.44(1m) Providing a firearm or facsimile firearm to a prisoner
  
  - 948.55 Leaving a loaded firearm within the reach or easy access of a child
  - 948.60 Dangerous weapon, possession by or transfer to a child
  - 948.605 Gun-free school zones
  - 948.61 Dangerous weapons on school premises
  
  - 968.02(4) & 968.07(3) Complaint filed when child injured or killed by gun that parent left in reach; arrest
  - 968.20 Return or disposition of seized firearms
  
  - 971.17(1g) Commitment of persons found not guilty by reason of mental disease or mental defect; restriction on firearm possession
  
  - 973.033 Sentencing; restriction on firearm possession

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**APPENDIX 2: Violent Crime Control and Law Enforcement Act of 1993**

The Violent Crime Control and Law Enforcement Act of 1993, passed by the U.S. Congress on August 25, 1994, contains a number of provisions relating to firearms, the most controversial being a ban on many assault firearms.

*Assault Firearms.* The act, which sunsets in 10 years, bans, with certain exceptions, the manufacture of a number of "semiautomatic assault weapons" and the transfer or possession of any such illegally manufactured weapons. The act exempts 650 named firearms (all long guns) and does not prohibit the transfer or possession of firearms or ammunition feeding devices legally owned before the date of enactment.

The following categories of firearms and ammunition feeding devices are banned:

- 19 named assault firearms (modeled after the list in California state law);
- copies of the named firearms;
- any firearm that has at least 2 specified military-style features; and
- "large capacity ammunition feeding devices" (magazines or other devices that can accept more than 10 rounds of ammunition)

In response to a request from Senator Larry Craig (R-Idaho) for a list of firearms that would be banned, John Magaw, director of the Bureau of Alcohol, Tobacco and Firearms (BATF), wrote on April 1, 1994:

the majority of semiautomatic firearms could be modified by the addition of features such as pistol grips, folding stocks, flash suppressors, etc., such that their modified configuration would make them subject to the definitions of assault weapon.... Therefore, it would not be possible to formulate such a comprehensive list.

By the same token, Magaw added, "The vast majority of firearms meeting the definition of assault weapon...could be modified to remove them from that definition." Of a list of 180 firearms that Senator Craig supplied to BATF, Magaw responded that the majority would be considered assault weapons.

*Juvenile Handgun Possession.* The act bars juveniles under the age of 18 from possessing handguns or handgun ammunition under most circumstances and prohibits any person from transferring a handgun or handgun ammunition to someone the person has reasonable cause to believe is a juvenile.

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*Firearms Dealers.* The act requires applicants for federal firearms dealer licenses to include a photograph and fingerprints with their application. An applicant must also certify that the business conducted under the license is not prohibited by state or local law and that the applicant will comply with state and local requirements. Finally, an applicant must inform the chief of local law enforcement of the applicant's intention to seek a federal license. BATF will also notify local law enforcement when a license is issued. Once in business, a licensee must report any firearm theft or loss to BATF within 48 hours and must respond immediately to any request by BATF for information in connection with a criminal investigation.

*Domestic Abuse.* The act bars persons under a restraining order for domestic violence from receiving a firearm until the order lapses or is terminated, and it prohibits anyone from transferring a firearm to such a person. The restriction applies under the following conditions:

- the order restrains the person from harassing, stalking or threatening an intimate partner or a partner's child;
- the order is issued after a hearing in which the person could participate;
- the court finds that the person represents a credible threat to a partner or child; and
- the order specifically prohibits the person from using physical force against a partner or child.

An intimate partner is defined as a spouse, a former spouse, the other parent of the person's child, or someone who lives with or has lived with the person.

*Armor Piercing Ammunition.* The act expands the definition of banned armor piercing ammunition to include: "a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile."

*Penalties.* The act provides enhanced penalties for many firearms crimes, including:

- use of any semiautomatic firearm (not just an assault weapon) during a crime of violence or a drug trafficking;

- firearm theft and transactions involving stolen firearms;
- unlawful possession of a firearm by violent felons, serious drug offenders and those on probation or supervised release;
- providing false information when purchasing a firearm;
- use of a firearm in counterfeiting or forgery;
- interstate gun trafficking; and
- firearms conspiracy.

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