



## PREVENT HANDGUN VIOLENCE AGAINST KIDS

### Regulation of Handguns as a Consumer Product

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#### **Why should handguns be regulated as a consumer product?**

Nearly 50% of Americans recently surveyed report that they have a gun in their home.<sup>1</sup> But unlike most consumer products typically found in the home, such as lawn mowers, toasters and teddy bears, which are regulated by the Consumer Product Safety Commission (CPSC), firearms are not subject to any safety regulations that would decrease the likelihood of misuse and accidents. Although CPSC has jurisdiction over pellet and air guns, regulation over firearms and ammunition is strictly exempted.<sup>2</sup> Currently, there is no federal agency with the authority to prohibit or regulate the domestic manufacture or sale of firearms or firearm technology.

#### **How should handguns be regulated?**

Firearms manufacturing and sales should be regulated for product safety. Firearms that have manufacturing defects, either by design or as a result of poor quality, have the potential to inflict severe and life-threatening damage on users and other unintended parties. An effective regulatory system would set safety standards for firearms, monitor compliance with safety standards, restrict the availability of weapons in certain firearm classes and certain firearm products, establish minimum quality standards for firearms manufacturing, and collect data related to firearms and firearm injury.

#### **What about the ways that consumers get handguns?**

Greater oversight of firearm dealers is also needed. As of late 1994, there were 18 times more gun dealers in California than McDonald's restaurants in California.<sup>3</sup> Dealers in possession of a federal firearm license can ship and receive firearms and ammunition in large quantities at wholesale prices, via interstate commerce. Although it is a licensing requirement that dealers engage in the business of selling, buying or trading firearms, one study by the Bureau of Alcohol, Tobacco, and Firearms (ATF) found that only half of the licensed dealers surveyed actually purchased or sold any firearms in the previous 12 months.<sup>4</sup> If the selling, buying or trading requirement were rigidly enforced, the number of licensed firearm dealers would decrease by almost 50%, and ATF would then be able to effectively regulate firearm dealers and provide better firearm oversight.

#### **Who should regulate handguns?**

Cities and counties are now taking steps to regulate handguns and firearms dealers. Cities are taking steps to protect consumers by requiring that trigger locks be sold with all firearms, imposing standards for liability insurance on dealers in their jurisdictions, and mandating safe storage requirements for ammunition and firearms in both the home and where firearms are sold. The cities of Richmond, Oakland and Berkeley, as well as Contra Costa County, have also enacted local ordinances to dramatically reduce the number of firearm dealers in their jurisdictions.



State Assemblymember Antonio Villaraigosa introduced two bills designed to regulate handguns as consumer products: AB 576 to require semiautomatic handguns manufactured in California to come equipped with loaded chamber indicators; and AB 577 to require that firearm dealers offer trigger locks with the sale of all firearms. Each of these bills were defeated by the Assembly Public Safety Committee in January 1996.

At the national level, there are several possibilities for regulating consumer safety relating to handguns, the Consumer Products Safety Commission, Department of Justice or Department of Health and Human Services. However, ATF has considerable expertise and is already charged with other regulatory duties concerning firearms. As a division of the Department of the Treasury, ATF is charged with enforcing federal firearm laws including; the collection of excise taxes; inspection of manufacturers, wholesalers and dealers; the issuing of permits and licenses; and the investigation of illegal trafficking in firearms. In fiscal year 1993, ATF had a total budget of \$360 million and a staff of 4,300.<sup>5</sup> It is estimated that more than \$230 million and 2,500 staff members are already dedicated to firearms-related work, and according to studies by ATF, more rigid enforcement of licensing requirements would enable more ATF personnel to oversee the regulation of firearms.<sup>6</sup>

### **Would regulating handguns as a consumer product help prevent handgun violence against kids?**

Yes. The US General Accounting Office found that unintentional shootings, in which children under the age of six killed themselves or others, could have been prevented by childproof safety devices.<sup>7</sup> Furthermore, it is estimated that 30% of all unintentional shootings could be prevented by the presence of two safety features: trigger-locks and loaded chamber indicators.<sup>8</sup>

### **For Further Reading:**

“Special report: Life without Guns,” *Mother Jones*, January/February 1994; 37-57.

Sugarmann, J. and Rand, K. *Cease Fire: A Comprehensive Strategy to Reduce Firearms Violence* (Washington, D.C.: Violence Policy Center, 1994).

*Data compiled by the Pacific Center for Violence Prevention, San Francisco, California.*

<sup>1</sup> 1989 Gallop Poll cited by Cook, P.J. Noted in: “The Availability and Prevalence of Firearms,” *American Journal of Preventive Medicine*, May/June 1993; 9(3) (suppl): 33.

<sup>2</sup> Sugarmann, J. and Rand, K. *Cease Fire: A Comprehensive Strategy to Reduce Firearms Violence* (Washington, D.C.: Violence Policy Center, 1994), 27. Citing, House Conference Report No. 1593: Oct. 12, 1972; hereafter cited as *Cease Fire*.

<sup>3</sup> Bureau of Alcohol, Tobacco and Firearms statistics for FFL Dealers as of December 31, 1994 and McDonald’s Regional Corporate Headquarters for stores as of October 1994.

<sup>4</sup> *Cease Fire*: 14.

<sup>5</sup> *Cease Fire*: 14.

<sup>6</sup> *Cease Fire*: 14.

<sup>7</sup> Wintemute, G., Hancock, M., Loftin, C., McGuire, A., Pertschuck, M. and Teret S. “Policy Options on Firearm Violence,” *Improving the Health of the Poor: Strategies for Prevention*, Samuels, S.P. and Smith, M.D. (Eds.), (Menlo Park, CA: Henry J. Kaiser Family Foundation), 79-76.

<sup>8</sup> Bureau of Alcohol, Tobacco and Firearms. ATF Ready Reference 1991 (Washington, DC: BATF Firearms and Explosives Operations Branch, Office of Compliance Operations).





## PREVENT HANDGUN VIOLENCE AGAINST KIDS

### **Banning Saturday Night Specials**

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#### **What is a Saturday Night Special?**

“Saturday Night Special” is the term commonly used to describe a short-barreled (4 inches or shorter), easily concealed handgun that generally lacks any sporting purpose and is often made from inferior materials.<sup>1</sup> These handguns are disproportionately used in the commission of crimes. In 1968, Congress passed the Gun Control Act banning the importation of Saturday Night Specials, but not their manufacture or sale in the United States.

#### **Why should we ban these particular handguns?**

In February 1968, arguing in favor of a ban on the importation of Saturday Night Specials, *The American Rifleman*, a publication of The National Rifle Association, identified Saturday Night Specials as “miserably-made, potentially defective arms that contribute so much to rising violence.”<sup>2</sup> This statement is equally applicable to many of today’s domestically manufactured Saturday Night Specials. Because they are poorly made, these handguns carry the potential to injure the user and are a poor choice for self-defense.

#### **Who supports banning Saturday Night Specials?**

The vast majority of the public. National public opinion polls indicate that 68% to 73% of those polled support banning the manufacture, sale and possession of Saturday Night Specials.<sup>3</sup> Even gun owners overwhelmingly support a ban on Saturday Night Specials.<sup>4</sup>

#### **Where do these handguns come from?**

Six privately owned companies in Southern California, located within a 45-mile radius of one another, manufacture 80% of all guns classified as Saturday Night Specials in the United States, as well as 34% of all handguns in the country.<sup>5</sup> In 1994, 7 out of 10 traced firearms used in crimes nationwide were manufactured by these companies.<sup>6</sup> Additionally, 8 out of the 10 guns confiscated by California police in 1993 were manufactured by these companies.<sup>7</sup> Three of these manufacturers accounted for 27% of the handguns sold after 1986 that were used in murders and other violent offenses during 1990 and 1991.<sup>8</sup>

#### **What is California doing about Saturday Night Specials?**

Despite the successful Senate passage of SB933, a bill banning the manufacture and possession of Saturday Night Specials, in May 1995, both SB933 and AB629, a bill to establish a state Handgun Roster, were defeated by the Assembly Public Safety Committee in June 1995 and January 1996, respectively.



On January 16, 1996, West Hollywood became the first community in the nation to ban the sale of Saturday Night Specials within city limits. Shortly thereafter, Compton passed a similar law and other cities, including Los Angeles, introduced similar ordinances.

### **Does banning Saturday Night Specials violate the Second Amendment?**

No. No federal court has ever struck down any gun control law as a violation of the Second Amendment.<sup>9</sup> More than 100 years ago, the U.S. Supreme Court ruled that state laws regulating guns do not violate the Second Amendment of the federal Constitution.<sup>10</sup> Despite the gun lobby's persistent assertions to the contrary, the Second Amendment has nothing to do with state or local regulation of firearms. The state of California unquestionably possesses the power to ban the manufacture and sale of Saturday Night Specials.

### **Can cities and counties ban the sale of Saturday Night Specials?**

We believe so. Although the California courts have not yet addressed this question directly, state law apparently leaves open to local governments the field of the sale of particularly dangerous firearms, such as Saturday Night Specials.<sup>11</sup> The recent adoption of sale bans by the cities of West Hollywood and Compton reflect this power. However, the National Rifle Association and the California Rifle and Pistol Association have sued West Hollywood in an effort to invalidate the ordinance.

### **For Further Reading:**

Freedman, A. "Fire Power: Behind the Cheap Guns Flooding the Cities Is a California Family," *Wall Street Journal*, February 28, 1992.

Sugarmann, J. and Rand, K. *Cease Fire: A Comprehensive Strategy to Reduce Firearms Violence*, (Washington, D. C.: Violence Policy Center, 1994).

Wintemute, G. J. *Ring of Fire: The Handgun Makers of Southern California* (Sacramento, CA: Violence Prevention Research Program, 1994).

*Data compiled by the Pacific Center for Violence Prevention, San Francisco, California.*

<sup>1</sup> Sugarmann, J. and Rand, K. *Cease Fire: A Comprehensive Strategy to Reduce Firearms Violence*, (Washington, D. C.: Violence Policy Center, 1994).

<sup>2</sup> "Are We Really So Violent?" *American Rifleman*, February 1968.

<sup>3</sup> Several polls cited in Vernick, J. S., Teret, S. P., Howard, K. A., Teret, M. D. and Wintemute G. J. "Public Opinion Polling on Gun Policy," *Health Affairs*, Winter 1993; 12 (4): 198-208.

<sup>4</sup> Yankelovich Clancy Shulman poll for *Time/CNN* (Dec. 15, 1989) cited in Vernick et al. "Public Opinion Polling on Gun Policy," *Health Affairs*, Winter 1993; 12 (4): 198-208.

<sup>5</sup> Wintemute, G. J. *Ring of Fire: The Handgun Makers of Southern California* (Sacramento, CA: Violence Prevention Research Program, 1994).

<sup>6</sup> Zawitz, M. "Guns Used in Crime," *Bureau of Justice Statistics: Selected Findings*. (U.S. Department of Justice: July 1995).

<sup>7</sup> Wintemute, G. J.

<sup>8</sup> Freedman, A. "Fire Power: Behind the Cheap Guns Flooding the Cities Is a California Family," *Wall Street Journal*, February 28, 1992.

<sup>9</sup> Vernick, J. S. and Teret, S. P. "Firearms and Health: The Right to Be Armed with Accurate Information about the Second Amendment," *American Journal of Public Health*, 1993; 83 (12): 1773-77.

<sup>10</sup> *Presser v. Illinois*. 116 U.S. 252; 1886.

<sup>11</sup> Gorovitz, E. "California Dreamin': The Myth of State Preemption of Local Firearm Regulation," *University of San Francisco Law Review*, 1996; 30: [forthcoming].





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**POLICY INFO**  
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## **Concealed Handguns: Permits & Penalties**

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### **Who can carry concealed handguns in the state of California?**

Under current state law, a permit is required to carry a concealed handgun. Police chiefs and sheriffs issue these permits at their discretion based on the need of the applicant and criteria established by the state and their jurisdiction.<sup>1</sup> Under existing law, law enforcement officers are under no obligation to issue permits, but they *may* do so as they deem appropriate.

### **What is the current law regulating concealed weapons?**

In California, carrying a concealed handgun without a permit is treated differently than other types of weapons-carrying offenses. The California Penal Code makes it a misdemeanor crime to carry upon one's person or within any vehicle, a pistol, revolver or other firearm capable of being concealed.<sup>2</sup> However, the carrying of generally less fatal weapons, such as certain types of knives, throwing stars, metal knuckles and blackjacks is punishable as a felony.<sup>3</sup>

### **Why is this a problem?**

The percentage of homicides committed with guns increased nationwide between 1985 and 1992. More specifically, from 1985 to 1992 the percentage of homicides with guns increased from 58.7% to 68.2%, while homicides with knives decreased from 21.1% to 14.5% and homicides with blunt objects decreased from 5.5% to 4.6%.<sup>4</sup>

### **What has been done in California to increase penalties?**

Two Assembly Bills, one to decrease and one to increase the number of concealed handguns, were considered in January 1996. The Assembly Public Safety Committee defeated AB632 by Assemblymember Richard Katz. This bill would have increased the penalty for carrying a concealed handgun without a permit from a misdemeanor to a felony if the individual was carrying a stolen gun, was an active member of a gang or was otherwise ineligible for a concealed weapon permit.

Instead, the Assembly Public Safety and Appropriations Committees, as well as the entire Assembly, passed AB638 by Assemblymember Pete Knight, which liberalizes the California concealed weapons permitting procedures by removing the discretion of police chiefs and sheriffs in issuing permits. The law will change the current "may issue" statute to a "shall issue" statute, which would *require* police chiefs and sheriffs to issue permits to anyone who meets the minimum requirements as outlined in the law. Applicants will be under no obligation to demonstrate a need for carrying a concealed weapon.



## What is more effective? Issuing tougher penalties or more permits?

Studies have shown that the imposition of severe penalties for carrying concealed handguns without a permit has reduced both firearm homicides and robberies in Massachusetts<sup>5</sup> and Detroit.<sup>6</sup> In contrast, a 1995 study shows that in states that have liberalized their firearm-carrying laws, such as Florida, Oregon and Mississippi, the firearm homicide rate has increased by an average of 26%.<sup>7</sup>

### For Further Reading:

Glick, S. *Concealed Carry: The Criminal's Companion* (Washington, D.C.: Violence Policy Center, 1995).

McDowall, D., Loftin, C. and Wiersema, B. "Easing Concealed Firearm Laws: Effects on Homicide in Three States," *Journal of Criminal Law and Criminology*, Summer 1995; 86 (1).

Teret, S. P. and Wintemute, G. J. "Policies to Prevent Firearm Injuries," *Health Affairs*, Winter 1993; 12 (4).

*Data compiled by the Pacific Center for Violence Prevention, San Francisco, California.*

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<sup>1</sup>CA Penal Code § 12025.

<sup>2</sup>CA Penal Code § 12025.

<sup>3</sup>CA Penal Code § 12020.

<sup>4</sup>U.S. Department of Justice, Federal Bureau of Investigation. *Crime in the United States 1993, Uniform Crime Reports* (Washington, D. C: December 1994).

<sup>5</sup>Webster, D., Chaulk, C. P., Teret, S. P., and Wintemute, G. J. "Reducing Firearm Injuries," *Issues in Science and Technology*, Spring 1991.

<sup>6</sup>O'Carroll, et al. "Preventing Homicide: An Evaluation of the Efficacy of a Detroit Gun Ordinance," *American Journal of Public Health*, 1991; 81: 576-581.

<sup>7</sup>McDowall, D., Loftin, C. and Wiersema, B. "Easing Concealed Firearm Laws: Effects on Homicide in Three States" *Journal of Criminal Law and Criminology*, Summer 1995; 86(1).





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## Home Rule for Handgun Regulation

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### What is Home Rule?

“Home Rule” is the ability of local governments to pass laws tailored to the specific needs of their communities. Local laws and regulations have long been acknowledged as appropriate and effective ways for communities to address local public health threats. States can, and typically do, delegate substantial powers to local governments recognizing that they are more familiar with, and better able to solve the problems facing their communities. As a general rule, the law favors local rule by allowing localities wide latitude in fashioning solutions to address local public health problems.<sup>1</sup>

### What is the current law in California?

The ability of local governments to exercise Home Rule in any given field depends in part upon the extent to which the state has occupied that field. When the state has occupied a field, state law takes precedence over, or *preempts*, local regulation in that field. The California legislature has preempted certain narrow areas of firearms regulation, including the licensing or registration of commercially manufactured firearms,<sup>2</sup> and the imposition of permit or license requirements on the possession of handguns at one’s home or place of business.<sup>3</sup>

### What can California counties and cities do under state preemption?

Under current state law, local governments retain Home Rule over many other areas of firearm regulation, such as placing zoning restrictions on gun sales, mandating the registration of ammunition purchases, or banning the sale of Saturday Night Specials.<sup>4</sup> Throughout California, counties and cities are doing just that.

- ◆ Communities in Contra Costa County passed ordinances that reduced the number of gun dealers from more than 700 in 1994 to less than 350 in 1995 by restricting gun dealers from operating in residential areas. Additionally, Contra Costa County now requires that dealers in commercial areas apply for “land use” permits that would prohibit operation too close to churches, schools or other gun dealers.
- ◆ Santa Clara and San Mateo counties prohibit gun shows on county property, including fairgrounds.
- ◆ Los Angeles and Pasadena now require that dealers record all ammunition sales.
- ◆ Lafayette requires that dealers sell trigger-locks with all firearms.
- ◆ West Hollywood and Compton have banned the sale of Saturday Night Specials.



## **Why is Home Rule appropriate for handgun regulation?**

Statewide legislation rarely takes into account problems experienced by a state's various regions and environments. As juvenile and adult arrest and victimization rates indicate, different regions have varying degrees of problems with firearm violence. For example, a 1989 study indicated that the firearm homicide rate in metropolitan counties was five times the rate in non-metropolitan counties.<sup>5</sup>

## **What has been done in California to protect Home Rule?**

In the 1995 California legislative session, Assemblyman Louis Caldera introduced AB643, which calls for a repeal of the preemption law and would allow Home Rule under all circumstances. AB643 was defeated by the Assembly Public Safety Committee in January 1996.

### **For Further Reading:**

*Addressing Gun Violence Through Local Ordinances: A Legal Resource Manual for California Cities and Counties* (San Francisco: Legal Community Against Violence, 1996).

Gorovitz, E. "California Dreamin': The Myth of State Preemption of Local Firearm Regulation," *University of San Francisco Law Review*. 1996; 30: [forthcoming].

Kirby, A. "Law and Disorder: Morton Grove and the Community Control of Handguns," *Urban Geography*, 1990; 11.5: 474-87.

O'Sullivan, M. and Calhoun, D. *Taking Action: Passing Local Ordinances to get Kitchen Table Gun Dealers Out of Your Neighborhood and a Dozen Other Steps Toward Preventing Violence in Your California Community* (Oakland, CA: Women Against Gun Violence & Youth ALIVE!, May 1995).

*Taking Aim at Gun Dealers: Contra Costa's Public Health Approach to Reducing Firearms in the Community* (Pleasant Hill, CA: Contra Costa County Health Services Department, 1995).

Teret, S. P., Defrancesco, S. and Bailey, L. A. "Gun Deaths and Home Rule: A Case for Local Regulation of a Local Public Health Problem," *American Journal of Preventive Medicine*, 1993; 9 (suppl. 1): 44-6.

*Data compiled by the Pacific Center for Violence Prevention, San Francisco, California.*

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<sup>1</sup> Teret, S. P., Defrancesco S. and Bailey, L.A. "Gun Deaths and Home Rule: A Case for Local Regulation of a Local Public Health Problem," *American Journal of Preventive Medicine*, 1993; 9 (suppl. 1): 44-6.

<sup>2</sup> Government Code § 53071.

<sup>3</sup> Penal Code § 12026(b).

<sup>4</sup> Gorovitz, E. "California Dreamin': The Myth of State Preemption of Local Firearm Regulation," *University of San Francisco Law Review*; 1996; 30: [forthcoming].

<sup>5</sup> Fingerhut, L. A., Ingram, D. D. and Feldman, J. J. "Firearm and Non-Firearm Homicide among Persons 15 through 19 Years of Age," *JAMA*, 1992; 267: 3048-53.