



## *LCAV Model Law*

# **THE GUN OWNERS' SAFETY AND RESPONSIBILITY ORDINANCE Requiring Firearm Owners' Safety Certificates, Registration of Firearms, Safe Storage of Firearms in the Home, and Reporting of Lost or Stolen Firearms**

**February 2009**

## **Introduction**

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. We focus on policy reform at the state and local levels, marshaling the expertise and resources of the legal community to transform America's gun policies from the grassroots up. LCAV fills a unique role as the first and only lawyers' organization in the gun violence prevention movement – and the only organization exclusively dedicated to providing legal assistance in support of gun violence prevention.

LCAV serves governmental entities and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, [www.lcav.org](http://www.lcav.org), is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws serve as an important resource for policymakers and advocates seeking to adopt effective, legally-defensible policies to reduce gun violence. Our model laws provide a starting point from which state or local legislation can be drafted, reviewed, debated and ultimately adopted. Jurisdictions using LCAV model laws must integrate them with existing codes and statutes, as appropriate. Note that not all local governments have the authority to regulate firearms, and that even when they do, such ordinances must be carefully tailored to ensure conformity with state law. LCAV is available to review regulatory options and assist in the research, analysis and drafting of laws for both state and local jurisdictions.

## **This Model Law**

LCAV has developed this model law for Illinois jurisdictions to require firearm owners' safety certificates, registration, safe storage of firearms and reporting of lost or stolen firearms. The goals of the safety certificate portion of this model law are: (1) to reduce the number of unintentional shootings by ensuring that gun owners know how to safely use and store firearms; and (2) to increase compliance with existing firearms laws by requiring gun owners to demonstrate knowledge of those laws. The registration provisions are intended to: (1) furnish law enforcement with essential information about firearm ownership, to protect officers responding to incidents and

facilitate fast and reliable tracing of crime guns; and (2) reduce illegal gun sales and possession by ensuring that all registered owners are eligible to possess firearms under federal and state law.

A 2001 study analyzing the firearm tracing data of crime guns recovered in 25 U.S. cities revealed that states with some form of both registration and licensing systems have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place.<sup>1</sup> This suggests that licensing and registration laws may make it more difficult for criminals, juveniles and other prohibited purchasers to obtain guns.

Illinois law requires licensing of firearm owners via the Firearm Owners Identification Card Act. Pursuant to 430 Ill. Comp. Stat. 65/2(a)(1), (2), only persons who have been issued a Firearm Owners Identification (FOID) card by the Illinois Department of State Police may acquire or possess firearms or firearm ammunition. This model law is drafted to complement the FOID card system. For example, no firearm safety training is required to obtain a FOID card and FOID cards are valid for up to ten years. These gaps in the law could allow individuals to be licensed to own firearms even if they are untrained, or have become ineligible to purchase or possess firearms under federal or state law. The firearm owners' safety certificate and the registration provisions in this model law together would fill these gaps. All individuals who wish to own, possess, purchase or otherwise acquire a firearm would be required to obtain a firearm owners' safety certificate and register the firearm. The safety certificate requires safety training, live firing, a safe handling demonstration and a written test on firearms laws. The registration provision requires the registered owner to pass a background check for each firearm owned, possessed, purchased or acquired, to ensure that he or she is eligible to possess the firearm at the time of registration.

The safe storage provisions in this model are intended to protect adults and children from the dangers of firearms in the home. Several studies have found that having a gun in the home is associated with an increased risk of homicide, suicide and unintentional shooting.<sup>2</sup> A 2005 study found that over 1.69 million children and youth under age 18 are living in homes with loaded and unlocked firearms in the United States.<sup>3</sup> Furthermore, because no standards exist for firearm locking devices, many locking devices on the market are inadequate and easily defeated.<sup>4</sup> The safe storage provisions of this model law require that firearms be stored unloaded and locked, except

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<sup>1</sup> Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 *Inj. Prevention* 184, 188-89 (2001). The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

<sup>2</sup> See, e.g., Douglas J. Wiebe, *Firearms in U.S. Homes as a Risk Factor for Unintentional Gunshot Fatality*, 35 *Accident Analysis & Prevention* 711, 713-14 (2003) (finding the relative risk of dying from an unintentional gunshot injury to be 3.7 times higher for adults living in homes with guns); Garen J. Wintemute, *Guns, Fear, the Constitution, and the Public's Health*, 358 *New England J. Med.* 1421-1424 (April 3, 2008), at <http://content.nejm.org/cgi/content/full/NEJMp0800859> (finding that living in a home where there are guns increases the risk of homicide by 40 to 170% and the risk of suicide by 90 to 460%); Matthew Miller, David Hemenway, and Deborah Azrael, *State-level Homicide Victimization Rates in the U.S. in Relation to Survey Measures of Household Firearm Ownership, 2001-2003*, 64 *Soc. & Med.* 656, 660 (2007) (finding that states with higher rates of household firearm ownership had significantly higher homicide victimization rates).

<sup>3</sup> Catherine A. Okoro et al., *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings from the Behavioral Risk Factor Surveillance System, 2002*, 116 *Pediatrics* e370, e371-e372 (Sept. 2005), at <http://pediatrics.aappublications.org/cgi/content/full/116/3/e370>.

<sup>4</sup> Press Release, Violence Policy Center, *VPC Demonstrates How Weak Senate Gun Bill Allows "Junk Locks"* (June 8, 1999), at <http://www.vpc.org/press/9906lock.htm>.

when necessary for self-defense (as defined under Illinois law), and provide standards for locking devices and gun safes.

The same section that contains the safe storage provisions also requires firearm owners to report the loss or theft of firearms to law enforcement within a specified period of time. When a crime gun is traced by law enforcement to the last purchaser of record, the owner may claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Laws requiring the reporting of lost or stolen firearms provide a tool for law enforcement to detect this behavior and charge criminals who engage in it. These laws also create accountability for gun owners and facilitate the return of lost or stolen firearms to their lawful owners.

Although LCAV believes this model law would be most effective adopted in its entirety, the safety certificate, registration, safe storage or loss/theft reporting provisions could stand alone. Likewise, any of the sections could be modified to apply to handguns only. We have included findings addressing the specific dangers posed by handguns to support this approach.

The model law is based on LCAV's review of existing laws and judicial decisions, including the Supreme Court's June 2008 decision in *District of Columbia v. Heller*, policy research, studies, and other gun violence prevention data. It is our hope that the model law and accompanying discussion will answer many questions about the options available to communities regarding adoption of safety training, registration, safe storage and loss/theft reporting laws.

This report contains our nonpartisan analysis, study, and research on gun violence prevention case law and policies, and is intended for broad distribution to the public. Our presentation of this model law is based upon our independent and objective analysis of the relevant law and pertinent facts and should enable readers to form their own opinions and conclusions about the merits of this sample legislation.

Part I of these materials provides a summary of common legal challenges to gun violence prevention laws. This summary includes examples of legal arguments typically asserted in challenges to firearms laws and explains that in the majority of cases, courts have rejected these arguments. Part II provides a summary of the key components of LCAV's model law requiring firearm owners' safety certificates, registration, safe storage of firearms and reporting of lost and stolen firearms. Part III provides the text of the model law.

LCAV is ready to provide additional legal research, analysis, and drafting assistance to those seeking to enact a law requiring firearm owners' safety certificates, registration, safe storage of firearms and reporting of lost and stolen firearms, or other laws to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services.

**This report and model law do not offer, and are not intended to constitute, legal advice.**

## I. Common Legal Challenges to Gun Violence Prevention Laws

Litigation challenging firearm laws has become a routine strategy of the gun industry, the National Rifle Association and other “gun rights” groups. These challenges often raise the following issues: (1) the Second Amendment to the U.S. Constitution and state right to bear arms provisions; (2) equal protection; (3) due process; (4) the First Amendment; and (5) in the context of local gun regulations, preemption and local home rule authority to regulate firearms. This section provides an overview of these issues.

### The Second Amendment and State Right to Bear Arms

The Second Amendment and state right to bear arms provisions are often raised as a bar to firearm-related laws and regulations. In fact, these provisions permit a broad range of common sense gun violence prevention measures.

#### The Second Amendment

The Second Amendment to the U.S. Constitution states, “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.” Until recently, the courts, including the United States Supreme Court, interpreted and applied the Amendment to protect a right to keep and bear arms only in relation to service in a well-regulated militia.<sup>5</sup> However, the Supreme Court issued a historic decision in *District of Columbia v. Heller* on June 26, 2008, holding that the Second Amendment confers an individual right to possess firearms unrelated to service in a well-regulated state militia.<sup>6</sup>

In *Heller*, the Court struck down the District’s ban on handgun possession, finding that “the inherent right of self-defense has been central to the Second Amendment” and that handguns are “overwhelmingly chosen by American society” for self-defense in the home, “where the need for defense of self, family, and property is most acute.”<sup>7</sup> The Court also struck down the District’s requirement that firearms in the home be stored unloaded and disassembled or bound by a trigger lock or similar device, because the law contained no exception for self-defense.

Although the *Heller* decision established a new individual right to “keep and bear arms,” the opinion made it clear that the right is not unlimited, and should not be understood as “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”<sup>8</sup>

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<sup>5</sup> Prior to June 2008, the U.S. Supreme Court last addressed the scope of the Second Amendment in *United States v. Miller*, 307 U.S. 174 (1939). In that case, the Court rejected a Second Amendment challenge brought by two individuals charged with violating a federal law prohibiting the interstate transportation of sawed-off shotguns. The Court held that the “obvious purpose” of the Amendment is to “assure the continuation and render possible the effectiveness” of the state militia, and the Amendment “must be interpreted and applied with that end in view.” *Id.* at 178. After *Miller*, the scope of the Second Amendment was addressed in more than 200 federal and state appellate cases. These decisions overwhelmingly rejected Second Amendment challenges to firearm laws. See LCAV’s web site, [www.lcav.org](http://www.lcav.org), for summaries of over 200 federal and state appellate cases prior to *District of Columbia v. Heller* rejecting Second Amendment challenges to firearms laws.

<sup>6</sup> *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

<sup>7</sup> *Id.* at 2817.

<sup>8</sup> *Id.* at 2816.

The Court provided examples of gun laws that it deems “presumptively lawful” under the Second Amendment, including those which:

- prohibit the possession of firearms by felons and the mentally ill;
- forbid firearm possession in sensitive places such as schools and government buildings; and
- impose conditions on the commercial sale of firearms.

The Court made clear that this list is not exhaustive.<sup>9</sup> The Court also concluded that the Second Amendment is consistent with laws banning “dangerous and unusual weapons” not “in common use at the time,” such as M-16 rifles and other firearms that are most useful in military service.<sup>10</sup> Finally, the Court declared that its analysis should not be read to suggest “the invalidity of laws regulating the storage of firearms to prevent accidents.”<sup>11</sup>

The *Heller* decision failed to articulate a legal standard of review, or test, to be applied in evaluating other laws under the Second Amendment. In addition, because *Heller* considered laws of the District of Columbia (a federal enclave), the Court stated that the question of whether the Second Amendment applies to the states is “a question not presented by this case.”<sup>12</sup> While the *Heller* Court did not rule on whether the Second Amendment applies to state or local governments, the Court did note its earlier decisions holding that “the Second Amendment applies only to the Federal Government.”<sup>13</sup> These cases remain the law in effect throughout the U.S.<sup>14</sup>

Although questions remain as to the standard of review and whether the Amendment applies to state and local governments, the *Heller* decision leaves no doubt that regulation of firearms remains legally permissible. Even after *Heller*, most common sense gun violence prevention measures, such as those contained in this model law, are likely to be upheld. As mentioned above, the Court made clear that the right to bear arms is not unlimited and that its list of presumptively lawful regulation was not exhaustive. The Court also specifically declared that its analysis permits laws regulating the storage of firearms to prevent accidents.<sup>15</sup> Furthermore, the Court did not invalidate the District of Columbia’s licensing and registration laws, stating: “Assuming that *Heller* is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home.”<sup>16</sup>

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<sup>9</sup> *Id.* at 2817 n.26.

<sup>10</sup> *Id.* at 2817.

<sup>11</sup> *Id.* at 2820. In addition, the *Heller* Court did not invalidate D.C.’s requirement that firearms be licensed. Mr. Heller’s attorney conceded that the licensing scheme was not, in itself, unlawful. Therefore, the Court did not address this requirement. *Id.* at 2819.

<sup>12</sup> *Id.* at 2813 n.23.

<sup>13</sup> *Id.*, citing *Miller v. Texas*, 153 U.S. 535, 538 (1894); *Presser v. Illinois*, 116 U.S. 252, 265 (1886); and *United States v. Cruikshank*, 92 U.S. 542 (1876). Following these decisions, lower courts considering challenges to state and local gun laws also have held that the Second Amendment constrains only the federal government, and not actions by state or local government. See also LCAV’s website, [www.lcav.org](http://www.lcav.org), for additional appellate court cases reiterating this position.

<sup>14</sup> See *Maloney v. Cuomo*, 2009 U.S. App. LEXIS 1402 (2d Cir. 2009); *NRA v. Village of Oak Park* 2008 U.S. Dist. LEXIS 98134 (N.D. Ill. 2008), *McDonald v. City of Chicago*, 2008 U.S. Dist. LEXIS 98133 (N.D. Ill. 2008) in which plaintiffs’ arguments that the Second Amendment should be applied to the states were rejected.

<sup>15</sup> *Heller*, 128 S. Ct. at 2820.

<sup>16</sup> *Id.* at 2822.

## State Right to Bear Arms

The constitutions of most states recognize a “right to bear arms.”<sup>17</sup> Many of these state provisions specifically recognize an individual right to bear arms outside the context of militia service or have been interpreted by the courts to protect such a right. However, every state court that has considered a state right to bear arms challenge to a firearms law has determined that the right at issue is not absolute.<sup>18</sup>

Nearly every state with a right to bear arms clause in its constitution, or a similar statutory provision, uses a reasonableness test to determine whether a state or local law violates this right.<sup>19</sup> When this test is applied, firearms regulations are generally upheld against state right to bear arms challenges.

The Constitution of the State of Illinois provides: “Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.” Ill. Const. art. I, § 22. The Illinois Supreme Court has interpreted this provision to allow extensive regulation of firearms, including prohibitions on a particular class of firearms, so long as the ordinance bears a rational relation to the goal of reducing weapons-related injuries and accidents.<sup>20</sup>

## **Equal Protection**

The Equal Protection Clause of the Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction, the equal protection of the laws.” The federal government is similarly limited by the Fifth Amendment. However, when a law makes a classification neither “involving fundamental rights nor proceeding along suspect lines,” the law will withstand constitutional scrutiny so long as it bears a rational relationship to a legitimate governmental interest.<sup>21</sup>

In *Kalodimos v. Village of Morton Grove*, 470 N.E.2d 266 (Ill. 1984), the Illinois Supreme Court upheld a municipal ordinance banning handguns against equal protection and other claims.<sup>22</sup> The court first noted that the right to bear arms is not fundamental and that the appropriate level of scrutiny was whether the ordinance bore a rational relationship to a legitimate governmental interest. The court upheld the law, finding that it bore “a rational relation to the goal of reducing weapons-related injuries and accidents within the village of Morton Grove.” Other Illinois cases

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<sup>17</sup> California, Iowa, Maryland, Minnesota, New Jersey and the District of Columbia have no provision granting a right to bear arms. Kansas, Massachusetts, and New York grant a right to bear arms for militia service only (note that New York’s state right to bear arms is conferred by statute, not by the state’s constitution. N.Y. Civ. Rights Law art. 2, § 4).

<sup>18</sup> See Adam Winkler, *Scrutinizing the Second Amendment*, 105 Mich. L. Rev. 683, 716–718 (2007).

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

<sup>20</sup> *Kalodimos v. Village of Morton Grove*, 470 N.E.2d 266 (Ill. 1984) (upholding village ordinance banning possession of handguns). The handgun ban at issue in *Kalodimos* was repealed shortly after the NRA sued the Village of Morton Grove after the decision in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008). The *Heller* decision addressed only the Second Amendment, and has no effect on the interpretation in *Kalodimos*, or any other judicial opinion, regarding the scope of the right to bear arms under the Illinois Constitution.

<sup>21</sup> *Heller v. Doe*, 509 U.S. 312, 319-320 (1993), see also *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981). Classifications along “suspect lines” can include a suspect class (e.g., race) or quasi-suspect class (e.g., gender). See, e.g., *Lavia v. Pennsylvania*, 224 F.3d 190, 200 (3d Cir. 2000).

<sup>22</sup> *Kalodimos*, 470 N.E.2d 266. See discussion *supra* note 20.

similarly have upheld firearms laws against equal protection claims. *See, e.g., People v. Allen*, 888 N.E.2d 686 (Ill. App. Ct. 2008) (upholding Illinois law prohibiting firearm possession by felons), *People v. Jackson*, 646 N.E.2d 1299 (Ill. App. Ct. 1995) (same). *See also United States v. Lewitzke*, 176 F.3d 1022 (7th Cir. 1999) (rejecting equal protection challenge to federal law banning possession of firearm by person convicted of domestic violence misdemeanor); *United States v. McKenzie*, 99 F.3d 813 (7th Cir. 1996) (rejecting equal protection challenge to federal law banning possession of firearm by felon).

At least one Illinois court has concluded, however, that a law may violate equal protection where it is shown to be under-inclusive. In *Illinois Sporting Goods Ass'n v. County of Cook*, 845 F.Supp. 582 (N.D. Ill. 1994), a federal court found that a Cook County ordinance that exempted some firearm sellers from a prohibition on operating within .5 miles of the grounds of schools and public parks was not rationally related to the ordinance's purpose. The County subsequently amended the ordinance to apply to a broader category of sellers. Cook County, Ill., Code of Ordinances ch. 54, art. III, div. II, § 54-154.

The majority of cases outside Illinois also have rejected equal protection challenges to firearms laws under the U.S. Constitution and analogous state constitutional provisions.<sup>23</sup>

Note that the decision in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), did not address an equal protection claim, but the Court's *dicta* suggests that the rational basis test is not appropriate for reviewing firearms regulation under the Second Amendment.<sup>24</sup> The Court did not set a standard for reviewing firearms laws. The Court also did not consider whether the Second Amendment right is a fundamental right for purposes of equal protection review. It is likely that future cases will resolve these issues.

## Due Process

The Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution provide that no person shall be deprived of "life, liberty, or property, without due process of law...." A law failing to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, or failing to provide explicit standards for those who apply the law, violates due process under the federal constitution. As the U.S. Supreme Court has explained, "[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."<sup>25</sup> Note, however, that clearly written laws also can violate due process when they are overbroad, impinging on constitutionally-protected conduct.<sup>26</sup>

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<sup>23</sup> *See, e.g., Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002) (rejecting equal protection challenge to 1994 federal assault weapon ban and finding that individual weapon ownership does not involve a fundamental right); *California Pistol and Rifle Ass'n v. City of West Hollywood*, 66 Cal. App. 4th 1302 (Cal. Ct. App. 1998) (rejecting equal protection challenge to ban on the sale of "junk guns"); *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109 (Cal. Ct. App. 1997) (rejecting equal protection challenge to ordinance regulating operation of firearms dealers). *But see Fraternal Order of Police v. United States*, 152 F.3d 998 (D.C. Cir. 1998) (upholding equal protection challenge against federal law banning possession of firearms by government employees convicted of domestic violence misdemeanors but allowing possession by government employees convicted of domestic violence felonies).

<sup>24</sup> *Heller*, 128 S.Ct. at 2818 n.27.

<sup>25</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

<sup>26</sup> *Id.* at 114-15.

In *People v. Harris*, 798 N.E.2d 1259 (Ill. App. Ct. 2003), the defendant appealed his conviction under 720 Ill. Comp. Stat. 5/24-1.1(a) for possession of a weapon by a convicted felon. The defendant argued that the law violated due process because it did not require a culpable mental state and it could have permitted a conviction based on innocent conduct. The court rejected this argument. Applying the rational basis test, the court found that the purpose of the law was to protect the public by keeping firearms out of the hands of felons and that the law was “reasonably designed to remedy the evils the legislature has found to be a threat to public safety.”<sup>27</sup> Similarly, in *Kalodimos v. Village of Morton Grove*, 470 N.E.2d 266 (Ill. 1984), the Illinois Supreme Court rejected a due process claim against a local ordinance banning handgun possession finding that the ordinance was a rational approach to reducing gun deaths and injuries.<sup>28</sup> See also *United States v. Lim*, 444 F.3d 910 (7th Cir. 2006) (rejecting due process challenge to federal law requiring registration of sawed off shotguns).

Most other courts also have rejected due process challenges to firearms laws under the U.S. Constitution and analogous state constitutional provisions.<sup>29</sup>

Note that the decision in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), did not address a due process claim, but the Court’s *dicta* suggests that the rational basis test is not appropriate for reviewing firearms regulation under the Second Amendment.<sup>30</sup> The Court did not set a standard for reviewing firearms laws. The Court also did not consider whether the Second Amendment right is a fundamental right for purposes of due process review. It is likely that future cases will resolve these issues.

## The First Amendment

The First Amendment to the U.S. Constitution provides that “Congress shall make no law...abridging the freedom of speech...” or “abridging...the right of the people to assemble.”

In *Gun Owners’ Action League, Inc. v. Swift*, 284 F.3d 198 (1st Cir. 2002), firearms dealers, associations and individuals challenged a Massachusetts law that, among other things, prohibited certain gun clubs from allowing patrons to shoot at targets depicting human figures. The plaintiffs argued that shooting targets such as those depicting specific historical figures like Adolf Hitler was expressive conduct protected by the First Amendment. The court found that the law was content-neutral, intended to reduce gun fatalities rather than suppress a particular viewpoint. The court further found that the law was narrowly tailored to serve a significant governmental interest and

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<sup>27</sup> *Harris*, 798 N.E.2d at 1263-66.

<sup>28</sup> See discussion *supra* note 20.

<sup>29</sup> See, e.g., *United States v. Edwards*, 182 F.3d 333 (5th Cir. 1999) (rejecting due process challenge to federal law banning possession of firearm by an unlawful user of a controlled substance); *City of Cincinnati v. Langan*, 640 N.E.2d 200 (Ohio Ct. App. 1994) (rejecting due process challenge to local assault weapon ban). But see *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994) (upholding a due process challenge to parts of the definition of “assault weapon” in local assault weapon ban); *United States v. Vest*, 448 F. Supp. 2d 1002 (S.D. Ill. 2006) (upholding as applied due process challenge to law enforcement exception to federal laws restricting transfer and possession of machine guns).

<sup>30</sup> *Heller*, 128 S.Ct. at 2818 n.27.



allowed for reasonable alternative channels of communication and thus did not violate the First Amendment.<sup>31</sup>

As with equal protection and due process, discussed above, the majority of cases have rejected First Amendment challenges to federal and state firearm laws.<sup>32</sup> LCAV is not aware of any Illinois cases addressing First Amendment challenges to firearms laws.

## **Preemption and Local Authority to Regulate Firearms**

Preemption occurs when a higher level of government removes regulatory power from a lower level of government. For example, Congress may remove legislative authority from the states in certain areas. Likewise, state governments may, in some cases, remove local legislative authority.

### Federal Preemption

Under the Supremacy Clause of Article VI of the U.S. Constitution, a federal law is binding on all state and local governments so long as Congress duly enacted the law pursuant to one of its limited powers. Federal preemption occurs when federal law removes state authority (and thus local authority) to regulate a specific subject matter. Federal preemption of state law is uncommon in the area of firearms regulation.

Congress may make its intention to preempt an area of state law clear by expressly stating its intent in the language of a statute. Absent such a statement, when considering a challenge to a state or local law based on the claim that regulation of the subject has been preempted by Congress, courts presume that the federal government does not intend to preempt state and local authority.<sup>33</sup> When the challenged law is within an area of traditional state authority, the reviewing court will find preemption only when the court is “absolutely certain” that Congress intended to take away that authority.<sup>34</sup> Courts look for the existence of a pervasive scheme of federal legislation of the particular subject, or an irreconcilable conflict between the federal regulation and the challenged law, to determine congressional intent.<sup>35</sup>

Congress has not expressly preempted the broad field of firearms regulation.<sup>36</sup> Furthermore, courts have held that congressional regulation of firearms does not create a scheme so pervasive that it

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<sup>31</sup> *Gun Owners’ Action League*, 284 F.3d at 210-13.

<sup>32</sup> *Nordyke v. King*, 319 F.3d 1185 (9th Cir. 2003) (rejecting First Amendment challenge to local ordinance prohibiting possession of firearms and ammunition on county-owned property); *Coalition of N.J. Sportsmen v. Whitman*, 44 F. Supp. 2d 666 (D.N.J. 1999), *aff’d*, 263 F.3d 157 (3d Cir. 2001) (rejecting a First Amendment challenge to a state assault weapon ban defining assault weapons, in part, by naming specific weapons); *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109 (Cal. Ct. App. 1997) (rejecting argument that local ordinance regulating operation of firearms dealers warranted higher standard of review because ordinance implicated First Amendment). *But see Nordyke v. Santa Clara County*, 110 F. 3d 707 (9th Cir. 1997) (upholding a First Amendment challenge to a portion of a lease provision which banned offering firearms or ammunition for sale at a county fairground).

<sup>33</sup> *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 285 (E.D.N.Y. 1995), *aff’d*, 97 F.3d 681 (2d Cir. 1996) (upholding New York City’s assault weapon ban against a federal preemption challenge).

<sup>34</sup> *Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991) (rejecting a federal preemption challenge to a Missouri law setting mandatory retirement age for state judges).

<sup>35</sup> *Richmond*, 896 F. Supp. at 285.

<sup>36</sup> Rather, courts have cited 18 U.S.C. § 927 for the proposition that Congress has expressed an intent *not* to preempt the field of firearms. *See, e.g., Oefinger v. Zimmerman*, 601 F. Supp. 405 (W.D. Pa. 1984) (rejecting a federal

leaves no room for state and local law.<sup>37</sup> Thus, absent a specific, irreconcilable conflict between a challenged state or local firearms law and a federal enactment, there is no federal preemption of that state or local law.

### State Preemption

Most state constitutions allocate authority to local governments to regulate in the interests of the public health, safety and welfare (which generally includes regulation of firearms). “State preemption” occurs when a state government removes a portion of a local government's legislative authority. States differ considerably in how and to what extent they preempt the regulation of firearms.

Generally, local governments in Illinois, and “home rule units” in particular,<sup>38</sup> enjoy broad authority to regulate firearms and ammunition.<sup>39</sup> Illinois courts have rejected preemption challenges to local laws such as those banning handguns and requiring registration.<sup>40</sup> In upholding a local firearms ordinance, the Illinois Supreme Court concluded that when the state enacted statutes relating to the ownership, possession and sale of firearms and ammunition, it did not preempt further regulation in this area.<sup>41</sup>

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preemption challenge to a state law banning machine guns and sawed off shotguns); *C.D.M. Products, Inc. v. City of New York*, 350 N.Y.S.2d 500 (N.Y. Sup. Ct. 1973) (rejecting a federal preemption challenge to a local ordinance requiring licensing of wholesale firearm manufacturers and assemblers). 18 U.S.C. § 927 provides that “No provision of this chapter [18 U.S.C. § 921 *et seq.* which contains provisions regulating the licensing of firearms manufacturers and dealers, firearms possession, the carrying of weapons, and armor piercing ammunition] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.” Note, however, that 18 U.S.C. § 926A provides that, notwithstanding state or local law, a person may transport firearms “from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm” so long as he or she complies with the specified safety standards. Courts have found this provision to supercede local laws regulating transportation of firearms. *See, e.g., Bieder v. United States*, 662 A.2d 185 (D.C. 1995) (reversing conviction for multiple violations of District firearms laws on grounds that trial court failed to allow defense based on 18 U.S.C. § 926A); *Arnold v. City of Cleveland*, 1991 Ohio App. LEXIS 5246 (Ohio Ct. App. 1991)(upholding federal preemption challenge to local law banning transportation of assault weapons). *But see Fresno Rifle & Pistol Club, Inc. v. Van de Kamp*, 746 F. Supp. 1415 (E.D. Cal. 1990) (rejecting federal preemption challenge to state law banning transportation of assault weapons).

<sup>37</sup> *Richmond*, 896 F. Supp. at 285.

<sup>38</sup> A “home rule unit” is a county with an elected chief executive officer, any municipality which has a population of more than 25,000, or a municipality that has become a home rule unit by referendum. Ill. Const. art. VII, § 6(a).

<sup>39</sup> 430 Ill. Comp. Stat. 65/13.1; Ill. Const. art. VII, § 6(a).

<sup>40</sup> *Kalodimos*, 470 N.E.2d 266, *see discussion supra* note 20; *City of Chicago v. Taylor*, 774 N.E.2d 22 (Ill. App. Ct. 2002) (upholding local firearms registration ordinance).

<sup>41</sup> *Kalodimos*, 470 N.E.2d at 276-77.

## **II. Summary of Model Law Requiring Firearm Owners' Safety Certificates, Registration, Safe Storage of Firearms and Reporting of Lost and Stolen Firearms**

The principal elements of LCAV's model law to require firearm owners' safety certificates, registration, safe storage of firearms and reporting of lost and stolen firearms include:

- Findings. The findings show, among other things, that:
  - Guns killed 8,018 Illinois residents between 1999 and 2005, and 1,039 were children;
  - Having a gun in the home is associated with an increased risk of homicide, suicide and unintentional shooting;
  - The risk of suicide increases in homes where guns are kept loaded and/or unlocked;
  - The practices of keeping firearms locked and unloaded, and storing ammunition in a locked location separate from firearms, may assist in reducing youth suicide and unintentional injury in homes with children and teenagers where guns are stored;
  - Many firearms locking devices on the market are inadequate and easily broken or defeated and quality standards are needed to ensure the safety of these devices;
  - Information generated by a firearms registration system can: (1) help protect police responding to incidents by providing them with information about whether firearms may be present at the scene, and, if so, how many and what types; and (2) help police trace firearms used in crime faster and more effectively;
  - States with some form of both registration and licensing systems have greater success keeping firearms from being recovered in crimes than states without such systems in place.<sup>42</sup>
  - Laws requiring the reporting of lost or stolen firearms provide a tool for law enforcement to detect the behavior of criminals and gun traffickers who falsely claim that their guns have been lost or stolen and used by others to commit crimes.
- Definitions. The firearm owners' safety certificate and registration provisions of the model law incorporate definitions of a firearm and law enforcement from Illinois state law. The safe storage provision defines "locking device" and "gun safe."
- Prohibitions. The firearm owners' safety certificate provisions of the model law provide that it is unlawful for any person to own, possess, purchase or otherwise acquire a firearm without a valid safety certificate. Applicants for a certificate must have a valid Illinois Firearm Owners Identification card. Applicants must complete a firearms safety course, which includes live firing and safe handling training, and pass a written test

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<sup>42</sup> Illinois law requires licensing of firearm owners via the Firearm Owners' Identification Card Act. Pursuant to 430 Ill. Comp. Stat. 65/2(a)(1), (2), only persons who have been issued a Firearm Owners' Identification (FOID) card by the Illinois Department of State Police may acquire or possess firearms or firearm ammunition.

demonstrating knowledge of firearm safety and laws. The written test must be completed each time the permit is renewed. The certificate expires after two years.

The model law's registration provisions require that a person have a valid registration certificate for each firearm he or she owns, possesses, purchases or otherwise acquires. Registrants must possess a valid FOID card and pass a background check. The registration certificate must be renewed annually and the holder must pass a background check each time the certificate is renewed.

The safe storage provision makes it unlawful for any person to keep any firearm on his or her land or in his or her abode unless it is unloaded and disabled with an approved locking device appropriate for the firearm, or stored in a locked gun safe. In addition, firearm owners must report the loss or theft of any firearm.

- General Exceptions. The firearm owners' safety certificate and registration provisions of the model law include exceptions for federal, state and local law enforcement, members of the U.S. Armed Forces and National Guard, licensed firearm manufacturers, transporters and dealers while acting as licensees, and nonresidents participating in certain lawful recreational firearm-related activity. The safe storage provision does not apply to law enforcement officials, members of the U.S. Armed Forces and National Guard, and security personnel while each are engaged in official duties or acting within the course of their employment.
- Self-Defense Exception: All of the model laws' provisions provide an exception for self-defense. These exceptions incorporate the affirmative defense required by state law at 720 ILCS 5/24-10. The state provision provides an affirmative defense to a violation of a municipal ordinance that regulates private ownership of firearms if the individual used a firearm in self-defense or defense of another as defined in sections 720 ILCS 5/7-1 and 720 ILCS 5/7-2. Section 720 ILCS 5/24-10 was approved in 2004 following a well-publicized incident involving a shooting by a Wilmette resident (in violation of the local handgun ban) during a home break-in. The exceptions also satisfy the *U.S. v. Heller* decision in which the Supreme Court found that the Second Amendment protects a right to use handguns for self-defense in the home.<sup>43</sup>

This model law has been drafted so that the firearm owners' safety certificate, registration, safe storage and loss/theft reporting sections each stand alone. The goal is to provide jurisdictions that adopt only one, or some combination of, these sections with a complete set of provisions necessary to implement the law. Therefore, there is some duplication in the sections. Note, however, that if the firearm owners' safety certificate provisions are adopted without the registration section, the provisions should be modified to incorporate the registration section's background check requirements.

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<sup>43</sup> *Heller*, 128 S. Ct. at 2817. Note that after *Heller*, the NRA challenged the City of Evanston's handgun possession ban. The city subsequently modified the ban to incorporate an exception for guns possessed in the home for self-defense purposes. The trial court found that the self-defense exception adequately addressed the requirements of *Heller* opinion. *NRA v. City of Evanston*, 2008 U.S. Dist. LEXIS 95572 (N.D. Ill. 2008)

## **Note about Opposition Arguments**

Several arguments are frequently raised by opponents of registration and safe storage measures and gun violence prevention measures in general. Some of the most common arguments are:

- New laws are not necessary, we should simply enforce the laws already on the books;
- Registration, safety training and loss/theft reporting requirements are too burdensome for law-abiding gun owners;
- Registration laws are too costly;
- Safe storage laws are dangerous because they do not allow for self-defense.

Opponents claim that gun violence should be addressed by enforcing the laws already in existence, rather than enacting new laws. This argument, however, is flawed. As discussed above, safety training and registration laws are important tools that would facilitate better enforcement of existing federal, state and local firearms laws. Requiring gun owners to obtain safety training would increase compliance with existing firearms laws by requiring gun owners to demonstrate knowledge of those laws. Requiring that all applicants for a registration certificate pass a thorough background check would make it harder for criminals, the mentally ill, and other prohibited purchasers to gain access to firearms. This would help enforce federal and state laws prohibiting certain classes of people from purchasing or possessing firearms. By furnishing law enforcement with essential information about firearms ownership, a registration law would protect police officers responding to an incident by providing crucial information about whether firearms are likely to be present at a location, and, if so, how many and what types. This information would also facilitate fast and reliable tracing of crime guns, and reduce illegal firearms sales by creating accountability for gun owners. A 2001 study analyzing the firearm tracing data of crime guns recovered in 25 U.S. cities revealed that states with some form of both registration and licensing have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place.<sup>44</sup>

In addition, registration laws do not pose an undue burden on law-abiding gun owners. Most gun owners recognize the benefits of registration laws. Nationwide polls consistently find overwhelming support for gun registration laws, even among gun owners. For example, a nationwide poll conducted in May of 2001 found that 83% of respondents, including 72% of gun owners, favored registration of all newly-purchased handguns.<sup>46</sup> Any burden registration or safety training laws place on gun owners is far outweighed by the benefits to public safety and to gun owners themselves. Laws requiring safety training would likely reduce the number of unintentional shootings by ensuring that gun owners know how to safely use and store firearms. Loss and theft

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<sup>44</sup> Webster, *supra* note 1. Illinois law requires licensing of firearm owners via the Firearm Owners' Identification Card Act. Pursuant to 430 Ill. Comp. Stat. 65/2(a)(1), (2), only persons who have been issued a Firearm Owners' Identification (FOID) card by the Illinois Department of State Police may acquire or possess firearms or firearm ammunition.

<sup>46</sup> Lake, Snell, Perry & Associates, Inc. Poll, Educational Fund to Stop Gun Violence (May 15-21, 2001), at <http://www.commondreams.org/news2001/0612-05.htm>. See also *infra* note 72 and accompanying text.

reporting requirements protect law abiding owners whose guns are later used in crime. These requirements also maximize a gun owner's chances of recovering his or her property.

The argument that registration laws are overly costly ignores the astronomical cost of gun violence to society. Medical costs related to gun violence are estimated at \$2.3 billion annually, half of which are borne by American taxpayers.<sup>47</sup> Once all the direct and indirect medical, legal and societal costs are factored together, the annual cost of gun violence in our nation amounts to \$100 billion.<sup>48</sup> These costs far outweigh any administrative cost that may be associated with registering a small number of firearms. In addition, the costs of setting up a registration system could be borne, in part, by charging registrants a small fee.

Finally, the self-defense objection to safe storage requirements has been addressed by the Supreme Court's decision in *District of Columbia v. Heller*. The *Heller* Court held that the District of Columbia's requirement that firearms be stored unloaded and disassembled, or locked, at all times was unconstitutional because it made it impossible for individuals to use firearms for self defense.<sup>49</sup> Note, however, that the *Heller* Court also stated that laws requiring safe storage of firearms to prevent accidents are permissible.<sup>50</sup> Therefore, post-*Heller* safe storage laws must allow for the ability to use firearms for self-defense, as this model does.

Furthermore, research shows that firearms in the home are more likely to be involved in a fatal or nonfatal accidental shooting, criminal assault or suicide attempt than to be used to injure or kill in self-defense.<sup>51</sup> Several studies have found that having a gun in the home is associated with an increased risk of homicide, suicide and unintentional shooting.<sup>52</sup> Meanwhile, self-defensive gun use is extremely rare. According to the FBI Uniform Crime Reports, of the 30,694 Americans who died by gunfire in 2005, only 147 were shot in justifiable homicides by private citizens with firearms.<sup>53</sup> In contrast, 789 people died from unintentional firearm injuries that year.<sup>54</sup>

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<sup>47</sup> Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, 282 JAMA 447 (Aug. 4, 1999).

<sup>48</sup> Philip Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

<sup>49</sup> *Heller*, 128 S. Ct. at 2821-22.

<sup>50</sup> *Id.* at 2820.

<sup>51</sup> Arthur L. Kellerman et al., *Injuries and Deaths Due to Firearms in the Home*, 45 J. Trauma 263 (1998).

<sup>52</sup> *Supra* note 2.

<sup>53</sup> U.S. Department of Health and Human Services, National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Injury Mortality Reports, 1999-2005* (2008), at [https://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](https://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html); Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States, 2006 Expanded Homicide Data Table 14*, at [http://www.fbi.gov/ucr/cius2006/offenses/expanded\\_information/data/shrtable\\_14.html](http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_14.html).

<sup>54</sup> *Id.*

### III. Text of Model Law

#### A. Findings

*[Findings in support of a law are most effective when they are specific and localized. When possible, incorporate state and/or local data from law enforcement, public health experts, and other sources of information regarding gun violence in the community. General findings are included below.]*

#### General Findings Regarding Gun Violence

*Whereas, from 1999 to 2005 (the most recent year for which statistics are available) guns killed 8,018 Illinois residents;*<sup>55</sup>

*Whereas, in 2005, 1,019 people died from firearm-related injuries in Illinois, 569 of which were homicides;*<sup>56</sup>

*Whereas, in 2005, 130 children aged 0-19 in Illinois were killed by guns;*<sup>57</sup>

*Whereas, in 2005, firearms were the primary weapon used in violent deaths in Cook County;*<sup>58</sup>

*Whereas, based on an analysis of data from Cook, Kane and Peoria counties by the Illinois Violent Death Reporting System, in 2005 71% (435) of homicides were committed with firearms in those counties;*<sup>59</sup>

*Whereas, based on an analysis of data from Cook, Kane and Peoria counties by the Illinois Violent Death Reporting System, in 2005 firearms were used in 10 out of 14 murder-suicide incidents in Cook, Kane and Peoria counties, or 70% of the time. Children witnessed or were present at eight of the 14 murder-suicide incidents, or 57% of the time;*<sup>60</sup>

*Whereas, firearms killed over 30,000 people in the United States in 2005;*<sup>61</sup>

*Whereas, in 2005, 69,825 individuals in the United States were treated in hospital emergency departments for non-fatal gunshot wounds;*<sup>62</sup>

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<sup>55</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Injury Mortality Reports, 1999-2005* (2008), at [https://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](https://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html).

<sup>56</sup> *Id.*

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

<sup>58</sup> Illinois Violent Death Reporting System (IDVRS), *Volume 1, Issue 1 – August 2007*. Children’s Memorial Research Center.

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

<sup>60</sup> *Id.*

<sup>61</sup> *Supra* note 53.

<sup>62</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Nonfatal Injury Reports* (2008), at <https://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>.

Whereas, guns cause the death of 19 young people (those 24 years of age and under) each day in the U.S.,<sup>63</sup>

Whereas, children and young people under the age of 25 constituted over 40% of all firearm deaths and injuries in 2005;<sup>64</sup>

Whereas, medical costs related to gun violence are estimated at \$2.3 billion annually, half of which are borne by American taxpayers;<sup>65</sup>

Whereas, once all the direct and indirect medical, legal and societal costs are factored together, the annual cost of gun violence in our nation amounts to \$100 billion;<sup>66</sup>

### Findings Regarding Firearm Registration and Safety Training

Whereas, firearm registration laws, which require gun owners to record their ownership of a firearm with a designated law enforcement agency, help police quickly and reliably “trace” (identify the source of) firearms used in crime, causing one study to conclude, “[r]egistration would in effect function as a super tracing system, offering clear benefits to law enforcement;”<sup>67</sup>

Whereas, states with some form of both registration and licensing systems for firearms have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems, suggesting that licensing and registration laws make it more difficult for criminals, juveniles and other prohibited purchasers to obtain guns;<sup>68</sup>

Whereas, Illinois has a licensing system for gun owners, since it requires a person to be issued a Firearm Owners Identification (FOID) card by the Illinois Department of State Police before the person acquires or possesses firearms or firearm ammunition,<sup>70</sup> but neither federal nor Illinois law contains any requirement that firearm owners register their weapons;

Whereas, the increased information generated by a registration system helps police return lost or stolen firearms to their rightful owners,

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<sup>63</sup> *Supra* note 53.

<sup>64</sup> *Id.* *Supra* note 62.

<sup>65</sup> Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, 282 JAMA 447 (Aug. 4, 1999).

<sup>66</sup> Philip Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

<sup>67</sup> Violence Policy Center, *Handgun Licensing and Registration: What It Can and Cannot Do, Section Two: Licensing and Registration* (Sept. 2000), at <http://www.vpc.org/studies/lrntwo.htm>.

<sup>68</sup> Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 *Inj. Prevention* 184, 188-89 (2001). The study analyzed the firearm tracing data of crime guns recovered in 25 U.S. cities and revealed that states with some form of both registration and licensing systems have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place. The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

<sup>70</sup> 430 Ill. Comp. Stat. 65/2(a)(1), (2).



*Whereas*, information generated by a firearms registration system helps protect police responding to incidents by providing them with information about whether firearms may be present at the scene, and, if so, how many and what types;

*Whereas*, laws requiring the registration of firearms reduce illegal gun possession by allowing law enforcement to run regular background checks on firearms owners to ensure that all registered owners continue to be eligible to possess firearms under federal and state law;

*Whereas*, a firearm registration system would help law enforcement retrieve firearms from persons who have become prohibited from possessing them (through criminal convictions or otherwise) by helping law enforcement determine whether such persons own firearms;

*Whereas*, nationwide polls consistently find overwhelming support for laws requiring the registration of firearms, even among firearm owners.<sup>72</sup> For example, a nationwide poll conducted in May of 2001 found that 83% of respondents, including 72% of gun owners, favored registration of all newly-purchased handguns.<sup>73</sup> In addition, an Opinion Research Corporation International poll in 2001 found that 82% of the respondents supported laws requiring the licensing and registration of handguns;<sup>74</sup>

*Whereas*, a nationwide poll conducted in May of 2001 found that 70% of the respondents mistakenly believed that a system of licensing and registration already exists;<sup>75</sup>

*Whereas*, requiring gun owners to obtain safety training would help ensure that gun owners know how to safely use and store firearms and are knowledgeable regarding existing firearms laws;

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<sup>72</sup> See, e.g., Greenlan Quilan Rosner Research & The Tarrance Group for the Mayors Against Illegal Guns, *Strong Public Support for Tough Enforcement of Common Sense Gun Laws (Graphs)*, January 23, 2007, available at: [http://www.greenbergresearch.com/articles/1849/2630\\_MAIGslides.pdf](http://www.greenbergresearch.com/articles/1849/2630_MAIGslides.pdf); CNN/Opinion Research Corporation, *Most Americans Say Constitution Guarantees Right to Own a Gun*, June 2008, available at: [http://www.opinionresearch.com/fileSave/CNNPR\\_Gun\\_6\\_28\\_2008.pdf](http://www.opinionresearch.com/fileSave/CNNPR_Gun_6_28_2008.pdf); Penn, Schoen, & Berland Associates, Inc. for Brady Campaign to Prevent Gun Violence, *Post-Election Analysis: Sensible gun laws builds bridges not burns them to moderates, McCain, and even gun owners in post-Heller world*, November 2008, available at: <http://www.bradycampaign.org/xshare/pdf/memo-11-18-08.pdf>; National Opinion Research Center (NORC) at the University of Chicago, *Public Attitudes Towards Regulations of Firearms*, March 2007, available at: <http://www.icpgv.org/pdf/NORCPoll.pdf>.

<sup>73</sup> *Supra* note 46.

<sup>74</sup> Lois Hess, Editorial, *Bush Undermining Gun Control Laws*, Balt. Sun, July 31, 2001, at 11A, available at <http://www.commondreams.org/views01/0731-03.htm>.

<sup>75</sup> Lake, Snell, Perry & Associates, Inc. Poll, Educational Fund to Stop Gun Violence (May 15-21, 2001), at <http://www.commondreams.org/news2001/0612-05.htm>;

Whereas, neither federal nor Illinois law contains any general requirements that firearm owners obtain safety training;

### Findings Regarding Safe Storage

Whereas, in Illinois, from 1999-2005, 37 children and youth died from unintentional gunshot wounds;<sup>76</sup>

Whereas, in the United States, over 1,600 individuals under twenty-five years of age died from unintentional gunshot wounds between 2000 and 2005;<sup>77</sup>

Whereas, the overall firearm-related death rate among U.S. children under age 15 is nearly 12 times higher than that among children in 25 other industrialized nations combined;<sup>78</sup>

Whereas, in 2005, guns were used in 424 suicides in Illinois, a 10% increase from 2004;<sup>79</sup>

Whereas, based on an analysis of data from Cook, Kane and Peoria counties by the Illinois Violent Death Reporting System, in 2005 36% (164) of suicides were committed with firearms in Cook, Kane and Peoria counties;<sup>80</sup>

Whereas, between 2000 and 2005, over 4,500 people in the United States died from unintentional shootings;<sup>81</sup>

Whereas, 15,000 persons in the United States are treated each year in hospital emergency rooms for unintentional gunshot wounds;<sup>82</sup>

Whereas, several studies have found that having a gun in the home is associated with an increased risk of homicide, suicide and unintentional shooting;<sup>83</sup>

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<sup>76</sup> *Supra* note 53.

<sup>77</sup> *Id.*

<sup>78</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, *Rates of Homicide, Suicide, and Firearm-Related Death Among Children--26 Industrialized Countries* Vol. 46, No.5. (Feb. 7, 1997), at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00046149.htm>.

<sup>79</sup> *Supra* note 53.

<sup>80</sup> *Supra* note 58.

<sup>81</sup> *Supra* note 53.

<sup>82</sup> Karen E. Gotsch et al., *CDC Surveillance Summary No. SS-2, Surveillance for Fatal and Nonfatal Firearm-Related Injuries – United States 1993-1998* 2 (Apr. 13, 2001), at <http://www.cdc.gov/mmwr/pdf/ss/ss5002.pdf>.

<sup>83</sup> See, e.g., Douglas J. Wiebe, *Firearms in U.S. Homes as a Risk Factor for Unintentional Gunshot Fatality*, 35 *Accident Analysis & Prevention* 711, 713-14 (2003) (finding the relative risk of dying from an unintentional gunshot injury to be 3.7 times higher for adults living in homes with guns); Garen J. Wintemute, *Guns, Fear, the Constitution, and the Public's Health*, 358 *New England J. Med.* 1421-1424 (April 3, 2008), at <http://content.nejm.org/cgi/content/full/NEJMp0800859> (finding that living in a home where there are guns increases the risk of homicide by 40 to 170% and the risk of suicide by 90 to 460%); Matthew Miller, David Hemenway, and Deborah Azrael, *State-level Homicide Victimization Rates in the U.S. in Relation to Survey Measures of Household Firearm Ownership, 2001-2003*, 64 *Soc. Sci. & Med.* 656, 660 (2007) (finding that states with higher rates of household firearm ownership had significantly higher homicide victimization rates).

Whereas, a 2000 study found that 55% of U.S. homes with children and firearms have one or more firearms in an unlocked place; 43% have guns without a trigger lock in an unlocked place;<sup>84</sup>

Whereas, a 2005 study found that over 1.69 million children and youth under age 18 are living in homes with loaded and unlocked firearms in the United States;<sup>85</sup>

Whereas, many young children, including children as young as three years old, are strong enough to fire handguns;<sup>86</sup>

Whereas, a 2005 study found that the practices of keeping firearms locked and unloaded, and storing ammunition in a locked location separate from firearms, may assist in reducing youth suicide and unintentional injury in homes with children and teenagers;<sup>87</sup>

Whereas, many firearms locking devices on the market are inadequate and easily broken or defeated and, therefore, quality standards are necessary to ensure that such devices are safe;<sup>88</sup>

Whereas, over 17,000 people in the United States committed suicide using a firearm in 2005; 1,041 of these victims were under twenty-one years of age;<sup>89</sup>

Whereas, the suicide rate for children between the ages of five and fourteen years old in the United States is twice the average of that in other developed countries;<sup>90</sup>

Whereas, 68% of the attackers in school shootings obtained the gun(s) from their own home or that of a relative;<sup>91</sup>

Whereas, a 1999 study found that more than 75% of the guns used in youth suicide attempts and unintentional injuries were stored in the residence of the victim, a relative, or a friend;<sup>92</sup>

Whereas, studies have found that the risk of suicide increases in homes where guns are kept loaded and/or unlocked;<sup>93</sup>

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<sup>84</sup> Mark A. Schuster et al., *Firearm Storage Patterns in U.S. Homes with Children*, 90 Am. J. Pub. Health 588, 590 (Apr. 2000).

<sup>85</sup> Catherine A. Okoro et al., *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings from the Behavioral Risk Factor Surveillance System, 2002*, 116 Pediatrics e370, e371-e372 (Sept. 2005), at <http://pediatrics.aappublications.org/cgi/content/full/116/3/e370>.

<sup>86</sup> Naureckas, S.M. et al., *Children's and Women's Ability to Fire Handguns*, 149 Archives of Pediatric and Adolescent Medicine, 1318 (1995).

<sup>87</sup> David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (2005).

<sup>88</sup> Press Release, Violence Policy Center, *VPC Demonstrates How Weak Senate Gun Bill Allows "Junk Locks"* (June 8, 1999), at <http://www.vpc.org/press/9906lock.htm>.

<sup>89</sup> *Supra* note 53.

<sup>90</sup> *Supra* note 78.

<sup>91</sup> The Final Report and Findings of the Safe Schools Initiative: Implications for the Prevention of School Attacks in the United States, U.S. Secret Service and U.S. Dept. of Education, May 2002, p. 15 and p. 27.

<sup>92</sup> David C. Grossman, Donald T. Reay & Stephanie A. Baker, *Self-Inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of the Firearm*, 153 Arch. Pediatr. Adolesc. Med. 875, 877 (Aug. 1999).

*Whereas*, the International Association of Chiefs of Police recommends that state and local governments mandate safe storage of firearms;<sup>94</sup>

*Whereas*, neither federal nor Illinois law contains any requirements for the safe storage of firearms, or standards for firearms locking devices;

*Whereas*, a February 2007 survey of Illinois voters found that 82% strongly support requiring gun owners to lock their guns if there are children under the age of 18 in the household;<sup>95</sup>

#### Findings Regarding Reporting of Lost or Stolen Firearms

*Whereas*, neither federal nor Illinois law contains any requirement that all firearm owners report lost or stolen firearms;

*Whereas*, when a crime gun is traced by law enforcement to the last purchaser of record, the owner may claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Laws requiring the reporting of lost or stolen firearms provide a tool for law enforcement to detect this behavior and charge criminals who engage in it;

*Whereas*, when a person who legally owned a gun falls into a prohibited category, it is crucial that law enforcement remove the firearm from his or her possession. Reporting laws help disarm prohibited persons by deterring them from falsely claiming that their firearms were lost or stolen;

*Whereas*, existing reporting laws, like Illinois's requirement that motorists report serious automobile accidents to the Department of Motor Vehicles,<sup>96</sup> demonstrate that reporting laws are not unduly burdensome. Moreover, the highly lethal nature of firearms justifies an increased level of responsibility over that required for ownership of other, less dangerous products;

*Whereas*, reporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner;

*Whereas*, the extreme danger firearms pose to public safety requires a heightened level of accountability on the part of individuals who choose to own firearms. Reporting laws make gun owners more accountable for their weapons;

*Whereas*, a December 2008 report by Mayors Against Illegal Guns (a coalition of over 300 mayors that targets illegal guns nationwide) states that lost or stolen firearm reporting laws "can help law

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<sup>93</sup> Matthew Miller & David Hemenway, *The Relationship Between Firearms and Suicide: A Review of the Literature*, 4 *Aggression & Violent Behavior* 59, 62-65 (1999) (summarizing the findings of multiple studies).

<sup>94</sup> International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 16 (Sept. 2007).

<sup>95</sup> Overbrook Research and Lake Research Partners, *2007 Voter Survey on Gun Regulations: Statewide Report*, available at: [http://www.icpgv.org/icpgv\\_polling.html](http://www.icpgv.org/icpgv_polling.html). More specific polling data is available on this website for Districts 21, 23, 28, and 43.

<sup>96</sup> 625 Ill. Comp. Stat. 5/11-407

enforcement more easily identify and prosecute gun traffickers.” The report presents data showing that states that require the reporting of lost or stolen firearms are less than one-third as likely as states that do not require such reporting to be the source of a gun recovered in an out-of-state crime;<sup>97</sup>

*Whereas*, a 2007 report by the International Association of Chiefs of Police states, “law enforcement’s early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence.” The report recommends that state and local governments mandate reporting of lost or stolen firearms;<sup>98</sup>

*Whereas*, more than half a million firearms are stolen each year in the United States and many are subsequently sold illegally;<sup>99</sup>

*Whereas*, Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, and Rhode Island, and the District of Columbia, and several major cities, including Chicago, Illinois, Cleveland and Columbus, Ohio, Hartford, Connecticut, and New York, New York, require the reporting of lost or stolen firearms;

*Whereas*, federal law requires licensed firearms dealers to report the loss or theft of firearms to law enforcement within 48 hours;<sup>100</sup>

*Whereas*, polls consistently find almost unanimous support for requiring the reporting of lost or stolen firearms. A 2008 survey found 91 percent of the 800 Americans surveyed, and 88 percent of polled gun owners favored requiring the reporting of lost or stolen firearms.<sup>101</sup> Similarly, a February 2007 survey of Illinois voters found that 86% strongly support requiring the reporting of lost or stolen firearms;<sup>103</sup>

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<sup>97</sup> Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking*, (December 2008), at

[http://www.mayorsagainstillegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf). States “export” a crime gun when the last purchase of record occurred in the state and the gun is later recovered at a crime scene in a different state.

<sup>98</sup> International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 16, 22 (Sept. 2007).

<sup>99</sup> Philip J. Cook & James A. Leitzel, “Smart” Guns: A Technological Fix for Regulating the Secondary Market 7 (2001).

<sup>100</sup> 18 U.S.C. § 923 (g)(6).

<sup>101</sup> Greenberg Quinlan Rosner Research and The Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* (April 10, 2008), available at

[http://www.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf).

<sup>103</sup> Overbrook Research and Lake Research Partners, *2007 Voter Survey on Gun Regulations Fact Sheet*, available at [http://www.icpgv.org/icpgv\\_polling.html](http://www.icpgv.org/icpgv_polling.html).

## Findings Regarding Handguns

*[Note that although LCAV believes this model law would be most effective adopted in its entirety, any of the sections could be modified to apply to handguns only. For this reason, we have included findings addressing the specific dangers posed by handguns.]*

*Whereas*, an FBI report concluded that in 2006, over 76% of firearms murders were committed with handguns;<sup>105</sup>

*Whereas*, from 1993 to 2001, an average of 737,360 violent crimes were committed with handguns in the U.S. each year, making handguns seven times more likely to be used to commit violent crimes than other firearms;<sup>106</sup>

*Whereas*, handguns make up only 34% of firearms and yet approximately 80% of firearm homicides are committed with a handgun;<sup>107</sup>

*Whereas*, women face an especially high risk of handgun violence.<sup>108</sup> In 2005, 72% of female homicide victims were killed with a handgun;<sup>109</sup>

*Whereas*, a California study found that in the first year after the purchase of a handgun, suicide was the leading cause of death among handgun purchasers.<sup>110</sup> In the first week after the purchase of a handgun, the firearm suicide rate among purchasers was 57 times as high as the adjusted rate in the general population;<sup>111</sup>

*Whereas*, [jurisdiction/governing body] believes that requiring firearm owners' safety certificates, registration, safe storage of firearms and reporting of lost and stolen firearms would significantly reduce gun deaths and injuries;

*Therefore*, the [jurisdiction/governing body] hereby adopts the following:

**B. Title.** This [Article/Chapter] may be cited as the Gun Owners' Safety and Responsibility Ordinance.

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<sup>105</sup> *Crime in the United States 2006*, Federal Bureau of Investigation, Criminal Justice Information Services Division, Expanded Homicide Data table 7.

<sup>106</sup> Office of Justice Programs, U.S. Department of Justice, *Bureau of Justice Statistics Special Report, National Crime Victimization Survey, 1993-2001 -- Weapon Use and Violent Crime* 3 (Sept. 2003).

<sup>107</sup> Violence Policy Center, *Handgun Ban Backgrounder* (1999), at [http://www.vpc.org/fact\\_sht/hgbanfs.htm](http://www.vpc.org/fact_sht/hgbanfs.htm).

<sup>108</sup> Garen J. Wintemute et al., *Mortality among Recent Purchasers of Handguns*, 341 *New Eng. J. Med.* 1583, 1585 (Nov. 18, 1999).

<sup>109</sup> Violence Policy Center, *When Men Murder Women: An Analysis of 2005 Homicide Data* 7 (Sept. 2007), at <http://www.vpc.org/studies/wmmw2007.pdf>.

<sup>110</sup> Wintemute, *supra* note 108, at 1583-84.

<sup>111</sup> *Id.* at 1585.

## C. Definitions<sup>112</sup>

As used in this [Article/Chapter]:

- 1) “Department” means the [Municipal] Police Department;
- 2) “Firearm”<sup>113</sup> means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion; expansion of gas or escape of gas, excluding:
  - a) Any pneumatic gun, spring gun, paint ball gun or B-B gun which either expels a single globular projectile not exceeding .18 inch in diameter and which has a maximum muzzle velocity of less than 700 feet per second or breakable paint balls containing washable marking colors;
  - b) Any device used exclusively for signaling or safety and required or recommended by the United States Coast Guard or Interstate Commerce Commission;
  - c) Any device used exclusively for firing of stud cartridges, explosive rivets or similar industrial ammunition; and
  - d) Any antique firearm, (other than a machine-gun) which, although designed as a weapon, the Illinois Department of State Police finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon;
- 3) “Handgun” means a firearm designed to be held and fired by the use of a single hand, and includes a combination of parts from which such a firearm can be assembled;  
*[The definition of handgun would be required only if the jurisdiction chose to limit certain provision to apply to handguns only. The definition provided here is consistent with Illinois law under 720 Ill. Comp. Stat. 5/24-3(A)(h).]*
- 4) “Person” means any individual, corporation, company, association, firm, partnership, club, society or joint stock company;
- 5) “Antique firearm” means any firearm designated as such under 18 U.S.C. § 921(a)(16);
- 6) “Law enforcement” means any person employed by a state, county, municipality or township as a policeman, peace officer or in some like position involving the enforcement of the law and protection of the public interest at the risk of that person's life;<sup>114</sup>
- 7) “Locking Device” means a device that locks and that renders a firearm inoperable or inaccessible to unauthorized users. The device may be installed on a firearm, be incorporated into the design of a firearm, or be a locked container that prevents access to the firearm;

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<sup>112</sup> As noted herein, terms in this section are defined using Illinois law whenever possible.

<sup>113</sup> This definition of firearm is consistent with Illinois law under 430 Ill. Comp. Stat. 65/1.1.

<sup>114</sup> This definition of law enforcement is consistent with Illinois law under 50 Ill. Comp. Stat. 707/5 and 715/1.

- a) To qualify as a locking device, the device must meet the following standards:
- i) The device cannot be removed or deactivated without a key, combination, or other unique method as intended by the manufacturer of the device;
  - ii) The device must render the firearm inoperable or inaccessible immediately upon activation;
  - iii) For devices utilizing a combination locking system, there must be a minimum of 1,000 possible unique combinations consisting of a minimum of three numbers, letters, or symbols per combination;
  - iv) For devices utilizing a key locking system, the locking system must be unique to the manufacturer's firearms safety device;
- b) Any locking device that is included on the Roster of Approved Firearm Safety Devices promulgated by the California Department of Justice, or the Roster of Approved Firearm Safety/Locking Devices promulgated by the Massachusetts Department of State Police, is deemed to satisfy the definition of locking device contained in this Ordinance;<sup>115</sup>
- 8) "Gun Safe" means a locking container that fully contains and secures one or more firearms and is certified to/listed as meeting Underwriters Laboratories Residential Security Container rating standards by a Nationally Recognized Testing Laboratory (NRTL).<sup>116</sup>

#### **D. Firearm Owners' Safety Certificate**

1) Firearm Owners' Safety Certificate Required: No person may own, possess, purchase or otherwise acquire a firearm without a firearm owners' safety certificate. Any person residing in or having a place of business within [Jurisdiction] may apply for a safety certificate with the [Department]. Any person owning or possessing a firearm on the effective date of this [Article/Chapter] shall obtain a safety certificate in accordance with this section within [90] days of the effective date of this [Article/Chapter];

#### **2) Process for Application/Eligibility**

- a) Eligibility: Applicants must have a valid Illinois Firearm Owners Identification (FOID) card and must not be prohibited from purchasing or possessing a firearm under Illinois or federal law;

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<sup>115</sup> The California Department of Justice's Roster of Approved Firearm Safety Devices is available at <http://ag.ca.gov/firearms/forms/pdf/allmakes.pdf>. The Massachusetts Department of State Police Roster of Approved Firearm Safety/Locking Devices is available at <http://www.mass.gov/?pageID=eopstopic&L=2&L0=Home&L1=Firearms+Registration+%26+Laws&sid=Eeops>.

<sup>116</sup> See <http://www.ul.com/> for more information about Underwriters Laboratories-approved residential security containers.



*[A jurisdiction, at its option, could further restrict eligibility by prohibiting certain individuals who are not already prohibited by federal or state law. For example, applicants could be denied if they have committed a crime of violence or if they are below a certain age. LCAV is available to assist with drafting these provisions.]*

b) Application: Every person who is required to obtain a firearm owners' safety certificate under this [Article/Chapter] shall obtain an application from [Department]. The application shall be in writing, sworn under oath, signed by the applicant and an authorized representative of the [Department] and shall require the following information:

i) The applicant's name, address, residence telephone number, gender, race, height, weight, date of birth, place of birth, country of citizenship, alien or admission number, his or her thumbprint, and his or her Illinois driver's license or Illinois State Identification Card number;

ii) A true and correct copy of the applicant's FOID card; and

iii) Such additional information as the [Head of Department] may deem necessary to process the application;

c) Safety Training & Testing Required: Any firearm owners' safety certificate applicant, as a condition for issuance of a safety certificate, must complete a firearms safety training course or program;

i) Classroom Requirements: The firearms safety training course or program must require, at a minimum, [five] hours of classroom instruction on:

A) The safe use, handling and storage of firearms;

B) Methods for safely storing and securing firearms and keeping children safe when firearms are present; and

C) Applicable federal, state and local laws relating to the purchase, sale, possession, transportation and storage of firearms;

ii) Live Firing Requirement: The applicant must complete at least [two hours] of live firing instruction at a firing range using the type of firearm to be purchased or acquired;

iii) Safe-handling Requirement: The applicant must satisfactorily complete a safe-handling demonstration in the presence of the course instructor. The safe-handling demonstration must include the proper loading, unloading, and engaging/disengaging of firearm safety mechanisms;

iv) Certified/Approved Programs: The firearm safety training course or program must be:

- A) Conducted by a [certified]<sup>117</sup> firearm instructor or a military firearm instructor;
  - B) Offered by a state, county or municipal law enforcement agency and available to the general public; or
  - C) A program offered to law enforcement officers, security guards, investigators, deputy sheriffs, or any division or subdivision of law enforcement or security enforcement by a state or county law enforcement agency that teaches the safe handling, storage and use of firearms;
- v) The firearm owners' safety certificate applicant must receive from the instructor(s) who conducted the course or program a signed affidavit providing the name, address, and telephone number of the instructor, the name of the person taking the course and the date(s) and place(s) of the course and attesting to the successful completion of the course by the applicant. The applicant must present this affidavit to the [Department] as proof of completion of each program requirement;
- vi) Written Test Required: Following the safety training course or program, the firearm owners' safety certificate applicant must successfully complete a written test, administered by the [Department], demonstrating knowledge of firearm safety and applicable firearms laws before a safety certificate will be issued;
- A) The applicant must pass the written test with a passing grade of at least [75 percent];
  - B) If an applicant fails the objective test on the first attempt, he or she may retake the test. However, the applicant may not take a written test more than once during a 24-hour period and may not take the same version of the test on any two consecutive attempts. In the event that an applicant fails the written test on the third consecutive attempt, he or she may not take the written test again until he or she has re-taken the firearm safety course required in Section D(2)(c)(i);
  - C) Applicants may be charged a fee to cover the administrative costs of issuing the test;
- d) Upon satisfying the requirements in paragraphs a) through c), the applicant shall be issued a firearm owners' safety certificate;
- e) The firearm owners' safety certificate shall not be transferable, shall be stored with the firearm in the holder's home or place of business, and shall be carried with the firearm if it is transported from the home or place of business by the holder. The certificate shall be exhibited to any law enforcement officer upon her or his demand for inspection. Issuance of a firearm owners' safety certificate shall not make lawful the carrying or possessing of a firearm if otherwise prohibited by law;

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<sup>117</sup> Note that, ideally, firearm instructors should be certified by a law enforcement agency or other reliable body to ensure quality.

### 3) Miscellaneous Provisions

- a) Validity of FOID Card: No firearm owners' safety certificate shall be issued or renewed until the [Department] has verified that the applicant is the holder of a valid FOID card;
- b) Duration of Firearm Owners' Safety Certificate: A firearm owners' safety certificate shall be valid for no more than [two] years from the date of issue;
- c) Duty of Seller: No person may sell or otherwise transfer a firearm to any resident unless the transferee presents a valid firearm owners' safety certificate;
- d) Submission of Records: A copy of every firearm owners' safety certificate issued or renewed must be sent to the [head of the Department] within one week of the date of issuance;
- e) Application Fee: An applicant may be charged a fee to cover the administrative costs of issuance or renewal of the safety certificate;
- f) Revocation: A firearm owners' safety certificate is deemed immediately revoked and void:
  - i) For violation of any provision of this or any other applicable city, state or federal statute, rule or regulation relating to the unlawful use of firearms;
  - ii) For fraud, misrepresentation or bribery in securing a safety certificate;
  - iii) If the holder falls into any of the prohibited categories for purchase or possession of a firearm under federal, Illinois, or local law; or
  - iv) Upon the occurrence of any event or circumstance that would have disqualified the holder from being issued the original certificate;
- g) Renewal: The safety certificate must be renewed every [two] years. Each renewal of the certificate requires satisfaction of the requirements in section D(2)(a) and (b) and successful completion of the written test required in section D(2)(c)(vi);

### 4) Appeal Procedure

- a) In the event an application for a firearm owners' safety certificate is denied, the [Chief of Police/County Sheriff of Department] shall inform the applicant in writing of the reasons for the denial. Any applicant who believes that his or her application was wrongfully denied may, within [30] days after receiving notice of the denial, file a written appeal of the denial with the [Chief of Police/County Sheriff of Department];
- b) Upon filing of such appeal, the [Head of Jurisdiction's Executive Body] shall hold a hearing and, based upon the evidence contained in the record of such hearing, either affirm or reverse the decision of the [Chief of Police/County Sheriff of Department]. The action of the [Head of Jurisdiction's Executive Body] shall be subject to judicial review in accordance with the provisions of the Administrative Procedure Act;

5) Retention of Records: For all firearm owners' safety certificates, the [Chief of Police/County Sheriff of Department] shall keep an accurate record of every application received and acted upon, together with all other information and data pertaining thereto on all applications for firearm owners' safety certificates issued or denied under the provisions of this [Article/Chapter]. Applications for firearm owners' safety certificates shall be numbered in consecutive numbers as filed, and every certificate issued shall be identified with the duplicate number of the application upon which it was issued;

6) Exceptions

a) The following individuals are exempt from the firearm owners' safety certificate requirement in Section D(1) of this [Article/Chapter]:

i) Law enforcement officials of this or any other jurisdiction;

ii) United States Marshals, members of the Armed Forces of the United States or the National Guard or federal officials required to carry firearms;

iii) Licensed manufacturers, bulk transporters or licensed sellers of firearms who transfer firearms at wholesale or retail, while engaging in the course and scope of their activities as licensees, provided that such person has all licenses required by federal, state or local law;

iv) Minors while in the custody and immediate control of their parent or legal guardian or other person *in loco parentis* to the minor if the parent or legal guardian or other person *in loco parentis* to the minor has a currently valid firearm owners' safety certificate;

v) Persons who are otherwise eligible to obtain a firearm owners' safety certificate and are under the direct supervision of a holder of a firearm owners' safety certificate while the person is a participant in a [certified] firearms safety and training course;

vi) Nonresidents of [Jurisdiction] participating in any lawful recreational firearm-related activity in [Jurisdiction], or on their way to or from such activity in another jurisdiction, provided that their ownership or possession of a firearm for such purposes is lawful in the jurisdiction in which they reside, and that such weapon is transported in compliance with 18 U.S.C. § 926A;

vii) Any person who temporarily possesses a firearm in the home of a person who has been issued a firearm owners' safety certificate; provided, that the person is not otherwise prohibited from possessing firearms and the person reasonably believes that force which is intended or likely to cause death or great bodily harm is necessary to:

A) Prevent imminent death or great bodily harm to himself or herself or another, or the commission of a forcible felony; or

B) Prevent or terminate unlawful entry into or attack upon a dwelling if the entry is made or attempted in a violent, riotous, or tumultuous manner, and he or she reasonably believes that such force is necessary to prevent:

1) An assault upon, or offer of personal violence to, him or her or another then in the dwelling; or

2) The commission of a felony in the dwelling;<sup>118</sup>

viii) Possession of a firearm included in an estate by the executor or administrator of the estate so long as possession occurs only where authorized by the probate court;

ix) Any person who owns or possesses a permanently inoperable firearm (that has been made incapable of being readily restored to a firing condition);

b) The following individuals are exempt from the firearm safety training course classroom instruction, live-firing requirement and safe-handling demonstration. To obtain a firearm owners' safety certificate, these individuals must successfully complete the written test required in section D(2)(c)(vi) and meet all other application requirements:

i) Any retired federal, state or local law enforcement officer, retired corrections officer, and retired member of the United States Armed Forces or National Guard, who owned or possessed a firearm while engaged in the operation of his or her official duties prior to retirement;

ii) Any person who is the holder of a valid firearm control card issued by the Department of Financial and Professional Regulation pursuant to the Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004, 225 ILCS 447/5-35 et seq.;

iii) Any person who is the holder of a valid certificate of competency after completion of a firearms and hunter safety course authorized by the Department of Natural Resources pursuant to 520 ILCS 5/3.2.

## **E. Registration of Firearms**

### **1) Registration Required**

a) All firearms shall be registered in accordance with the provisions of this section. It shall be the duty of a person owning, possessing, purchasing or otherwise acquiring any firearm to cause such firearm to be registered within [five] days of acquisition;

b) Persons owning or possessing a firearm on the effective date of this [Article/Chapter] shall register their firearms in accordance with this section within [90] days of the effective date of this [Article/Chapter];

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<sup>118</sup> This exception is consistent with Illinois law under 720 Ill. Comp. Stat. 5/24-10, 5/7-1 and 5/7-2.

c) Unregisterable Firearms

i) No registration certificate shall be issued for any firearm the purchase, possession or ownership of which is prohibited by federal, Illinois, or local law;

ii) No person shall, within [Jurisdiction], own, possess, purchase or acquire any firearm which is unregisterable;

*[A jurisdiction, at its option, could make weapons such as assault weapons or 50 caliber rifles unregisterable, effectively prohibiting their purchase/possession. Please see LCAV's Model Law to Ban Assault Weapons and Model Law Prohibiting the Sale of 50 Caliber Rifles and Cartridges. These models can be downloaded at [http://www.lcav.org/library/model\\_laws.asp](http://www.lcav.org/library/model_laws.asp). LCAV is available to assist with the drafting of these provisions.]*

2) Registration Process

a) No registration certificate shall be issued for a firearm to any person unless such person:

i) Possesses a valid firearm owners' safety certificate as required under this [Article/Chapter] or establishes that he or she is exempt, pursuant to section D(6)(a) of this [Article/Chapter], from the firearm owners' safety certificate requirement;

ii) Submits proof of residency or place of business in [Jurisdiction]; and

iii) Submits to a background check;

A) The [Chief of Police/County Sheriff of Department] shall request a criminal background check on the applicant by the State Police to ensure compliance with the requirements of this [Article/Chapter]. No registration certificate shall be issued if the applicant falls into any category of persons prohibited from purchasing or possessing a firearm under federal, Illinois, or local law;

B) The [Department] must acquire and forward one copy of the application to the Illinois Department of State Police, which must, within 30 days, advise the [Department], in writing, of any record or other reason the applicant is disqualified from acquiring or possessing a firearm. The background check will include a search of state criminal history record information files and those of the Federal Bureau of Investigation, including the National Instant Criminal Background Check System, and of the files of the Department of Human Services relating to mental health and developmental disabilities, in accordance with 430 Ill. Comp. Stat. 65/3.1;

b) Application: Every person who is required to register a firearm under this [Article/Chapter] shall obtain an application for registration of such firearm from [Department]. The application shall be in writing, sworn under oath, signed by the applicant and an authorized representative of the [Department] and shall require the following information:

i) The applicant's name, home and business addresses, residence telephone number, gender, race, height, weight, date of birth, place of birth, country of citizenship, alien or admission number, his or her thumbprint, and an Illinois driver's license or Illinois State Identification Card number;

ii) A true and correct copy of the applicant's FOID card;

iii) The name of the manufacturer and importer, the caliber or gauge, the model, type of action and serial number of each firearm to be registered;

iv) The name, address, and telephone number of the person, corporation, or entity from which the firearm was obtained;

v) A statement by the applicant that he or she has in his or her possession a valid firearm owners' safety certificate issued pursuant to this [Article/Chapter], along with a copy of the certificate, or proof that she or he is exempt, pursuant to section D(6)(a) of this [Article/Chapter], from the firearm owners' safety certificate requirement; and

vi) Such additional information as the [Head of Department] may deem necessary to process the application;

*[Optional: A jurisdiction may wish to limit registration of firearms to no more than one in a specified time period.]<sup>119</sup>*

c) Approval

i) Within [30] days of his or her receipt of an application, the [Chief of Police/County Sheriff of Department], after consideration of the application for a registration certificate and all information obtained relative thereto, shall either approve or deny the application and notify the applicant in writing of the decision, including the reason(s) for denial;

ii) In the event the application is approved, the [Chief of Police/County Sheriff of Department] shall issue to the applicant a registration certificate containing the applicant's name, residence address, date of birth, and such other personal information as may be required by the [Chief of Police/County Sheriff of Department];

iii) The registration certificate shall not be transferable. The registration certificate shall be stored with the firearm in the registrant's home or place of business, and shall be carried with the firearm if it is transported from the home or place of business by the registrant. The registrant shall exhibit the certificate to any law enforcement officer upon her or his demand for inspection. Registration shall not make lawful the carrying or possessing of a firearm if otherwise prohibited by law;

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<sup>119</sup> California, Maryland and Virginia limit handgun purchases to one per person per 30-day period. New York City limits purchases of handguns to one per person per 90-day period, and purchases of rifles and shotguns to one per person per 90-day period. Such limitations typically do not apply in cases where the owner is replacing a firearm that was lost or stolen.

d) Denial

i) Firearm Surrender: If an application for a registration certificate is denied, the applicant must immediately surrender to [Department] the firearm for which the applicant was denied registration;

ii) Firearm Retrieval: If an applicant fails to surrender his or her firearm to [Department] after his or her application for registration is denied, the [Department] shall retrieve the firearm within [24] hours of the denial of the registration certificate;

iii) Appeal Procedure

1) In the event an application for a registration certificate is denied, the [Chief of Police/County Sheriff of Department] shall inform the applicant in writing of the reasons for the denial. Any applicant who believes that his or her application was wrongfully denied may, within [30] days after receiving notice of the denial, file a written appeal of the denial with the [Chief of Police/County Sheriff of Department];

2) Upon the filing of such appeal, the [Head of Jurisdiction's Executive Body] shall hold a hearing and, based upon the evidence contained in the record of such hearing, either affirm or reverse the decision of the [Chief of Police/County Sheriff of Department]. The action of the [Head of Jurisdiction's Executive Body] shall be subject to judicial review in accordance with the provisions of the Administrative Procedure Act;

3) In the event that the decision to deny the application is reversed, the firearm shall be immediately returned to the applicant;

4) In the event that the decision to deny the application is affirmed, [Department] shall destroy the firearm, pursuant to Section F, only after all time for judicial review of the decision of the [Head of Jurisdiction's Executive Body] has expired;

e) Expiration and Renewal: Registration certificates shall expire automatically one year after the date of issuance. The holder of a registration certificate is required to renew his or her registration annually. The renewal process for all registrants shall include a background check, as provided in this section (E)(2)(a). Applications for renewal shall be received by the Department [60] days prior to the expiration of the current registration certificate. [Department] shall mail renewal notices to each registrant at least [90] days prior to expiration of the registration certificate;

f) Registration Fees: An applicant may be charged a fee to cover the administrative costs of the registration for each firearm;

3) Retention of Records: For all registration certificates, the [Chief of Police/County Sheriff of Department] shall keep an accurate record of every application received and acted upon, together with all other information and data pertaining thereto on all applications for registration certificates



issued or denied under the provisions of this [Article/Chapter]. Applications for registration certificates shall be numbered in consecutive numbers as filed, and every certificate issued shall be identified with the duplicate number of the application upon which it was issued;

4) Exceptions: The registration certificate provisions of this [Article/Chapter] shall not apply to:

a) Law enforcement officials of this or any other jurisdiction while engaged in the course and scope of their official duties;

b) United States Marshals, members of the Armed Forces of the United States or the National Guard or federal officials required to carry firearms while engaged in the operation of their official duties;

c) Licensed manufacturers, bulk transporters or licensed sellers of firearms who transfer firearms at wholesale or retail, while engaged in the course and scope of their activities as licensees, provided that such persons have all licenses required by federal, state or local law;

d) Minors while in the custody and immediate control of their parent or legal guardian or other person *in loco parentis* to the minor if the firearm is lawfully registered to the parent or legal guardian or other person *in loco parentis* to the minor;

e) A person who temporarily possesses a firearm while under the direct supervision of the person to whom the firearm is lawfully registered;

f) Nonresidents of [Jurisdiction] participating in any lawful recreational firearm-related activity in [Jurisdiction], or on their way to or from such activity in another jurisdiction, provided that their ownership or possession of a firearm for such purposes is lawful in the jurisdiction in which they reside, and that such weapon is transported in compliance with 18 U.S.C. § 926A;

g) Private security personnel who possess any firearms for use in the course and scope of employment, provided that such firearms shall be owned by the security firm employing such personnel and shall be registered by the security firm in accordance with the section; or

h) Any person who temporarily possesses a firearm registered to another person in the home of the registrant; provided, that the person is not otherwise prohibited from possessing firearms and the person reasonably believes that force which is intended or likely to cause death or great bodily harm is necessary to:

i) Prevent imminent death or great bodily harm to himself or herself or another, or the commission of a forcible felony; or

ii) Prevent or terminate unlawful entry into or attack upon a dwelling if the entry is made or attempted in a violent, riotous, or tumultuous manner, and he or she reasonably believes that such force is necessary to prevent:

A) An assault upon, or offer of personal violence to, him or her or another then in the dwelling; or

B) The commission of a felony in the dwelling.<sup>120</sup>

i) Persons who own or possess a permanently inoperable firearm (that has been made incapable of being readily restored to a firing condition).

**F. Destruction of Weapons Confiscated or Surrendered:** Whenever any firearm is surrendered or confiscated because the registrant became a prohibited purchaser or possessor under Illinois or federal law, or for any other reason provided by this [Article/Chapter], [Department] shall ascertain whether the firearm is needed as evidence in any matter. If the firearm is not required for evidence it shall be destroyed at the direction of [Department]. A record of the date and method of destruction and an inventory of the firearm so destroyed shall be maintained.

**G. Safe Storage of Firearms and Reporting of Lost and Stolen Firearms**

1) Except when carried on his or her person, no person may keep any firearm on his or her land or in his or her abode at any time, regardless of whether he or she is physically present, unless it is unloaded and:

- a) Disabled with a locking device appropriate for such firearm; or
- b) Stored in a locked gun safe;

2) Reporting of Loss or Theft of Firearm or Firearm Owners' Safety Certificate or Registration Certificate: All individuals must report to [Department]

- a) Within 48 hours of the time he or she discovered or should have discovered:
  - i) The loss or theft of any firearm he or she owns or possesses if the individual resides in [Jurisdiction] or the loss or theft occurs in [Jurisdiction]; or
  - ii) Any change in the owner's or possessor's status that would affect eligibility for ownership or possession of a firearm or for a safety certificate or registration certificate;
- b) Within 14 days of the occurrence of:
  - i) Any change in the information appearing on the firearm owners' safety certificate or registration certificate that would not affect eligibility for either certificate; or
  - ii) The loss, theft or destruction of any firearm owners' safety certificate or registration certificate;

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<sup>120</sup> This exception is consistent with Illinois law under 720 Ill. Comp. Stat. 5/24-10, 5/7-1 and 5/7-2.

[Optional provision:

c) Within 60 days of the effective date of this ordinance, the loss or theft of any firearm he or she owned or possessed within the five years prior to the effective date of this ordinance if the individual resided in [Jurisdiction] at the time of the loss or theft, or the loss or theft occurred in [Jurisdiction] unless the firearm has been recovered.]<sup>121</sup>

3) Exceptions:

a) Section G(1) shall not apply to a person while he or she reasonably believes that force which is intended or likely to cause death or great bodily harm is necessary to:

i) Prevent imminent death or great bodily harm to himself or herself or another, or the commission of a forcible felony; or

ii) Prevent or terminate unlawful entry into or attack upon a dwelling if the entry is made or attempted in a violent, riotous, or tumultuous manner, and he or she reasonably believes that such force is necessary to prevent:

A) An assault upon, or offer of personal violence to, him or her or another then in the dwelling; or

B) The commission of a felony in the dwelling;<sup>122</sup>

b) Sections G(1) and G(2) shall not apply to the following persons:

i) Law enforcement officials while engaged in their official duties;

ii) Members of the Armed Forces of the United States or the National Guard while engaged in their official duties;

c) Section G(1) shall not apply to private security personnel while acting in the course of their employment.

#### **[H. Additional Sections]**

*[A jurisdiction, at its option, could include additional sections that duplicate or enhance state law. Such provisions would safeguard local communities in the event that state laws are repealed or weakened in the future. For example, a jurisdiction could include provisions banning the carrying of concealed weapons, imposing waiting periods and/or requiring that gun owners be licensed. LCAV is available to assist with the drafting of these provisions.]*

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<sup>121</sup> This provision is designed to decrease the ability of a gun owner to falsely claim that his or her gun was lost or stolen before the reporting requirement went into effect.

<sup>122</sup> This exception is consistent with Illinois law under 720 Ill. Comp. Stat. 5/24-10, 5/7-1 and 5/7-2.

## **H. Acquisition or Possession Prohibited by Law**

Nothing in this [Article/Chapter] shall make lawful the acquisition or possession of firearms or firearm accessories which are otherwise prohibited by law.

## **I. Penalties**

*[Include relevant penalties for violation of this ordinance here, as authorized by state law.]*

## **J. Rules and Regulations**

The [Department] shall have the authority to promulgate rules and regulations for the implementation of this [Article/Chapter] and to prescribe all forms and the information required thereon.

## **K. Severability**

If any provision or term of this [Article/Chapter], or any application thereof, is held invalid, the invalidity shall not affect other applications of the provisions or terms of this [Article/Chapter] which reasonably can be given effect without the invalid provision or term for the application thereof.