



# IN THE LINE OF FIRE

HUMAN RIGHTS AND THE US GUN VIOLENCE CRISIS

AMNESTY  
INTERNATIONAL





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# TABLE OF CONTENTS

<b>Executive Summary</b> .....	<b>8</b>
<b>Key recommendations</b> .....	<b>18</b>
<b>Acknowledgements</b> .....	<b>20</b>
<b>Glossary of abbreviations and a note on terminology</b> .....	<b>21</b>
<b>Methodology</b> .....	<b>23</b>
<b>Chapter 1: Firearm Violence: A Human Rights Framework</b> .....	<b>24</b>
1.1 The right to life .....	25
1.2 The right to security of person.....	25
1.3 The rights to life and to security of person and firearm violence by private actors and in the community.....	26
1.4 A system of regulation based on international guidelines .....	27
1.5 Gender-based firearm violence .....	28
1.6 Suicide and accidental death.....	29
1.7 Firearm violence and economic, social and cultural rights.....	30
1.7.1 Firearm violence and the right to health .....	31
1.7.2 Firearm violence and the right to education.....	31
1.8 Firearm manufacturers, distributors and dealers .....	32
<b>Chapter 2: Firearms in Domestic Law and Politics</b> .....	<b>34</b>
2.1 The Second Amendment .....	34
2.2 The impact of lobbyists on firearm legislation .....	36
2.2.1 The National Rifle Association .....	36
2.2.2 The Gun Violence Prevention Lobby.....	38
<b>Chapter 3: Failure to protect: The gun violence crisis in the USA</b> .....	<b>41</b>
3.1 Urban gun violence.....	43
3.1.1 The disparate impact of gun violence on communities of color .....	43
3.1.2 Unsolved homicides and community mistrust .....	48
3.1.3 Easy access to firearms .....	48
3.1.4 Gangs and gun violence.....	49
3.1.5 Community-based intervention strategies .....	57
3.1.6 Failure to address race-based policing .....	60
3.1.7 Incarceration: rates and consequences.....	61
3.2 Children .....	62
3.2.1 Preventable, unintentional deaths and suicides of children .....	63
3.2.2 Children as the victims of criminal firearm violence.....	67
3.2.3 Children who commit firearm violence .....	70
3.2.3 Gun violence in schools.....	71
3.2.4 Age limits and access to guns .....	74
3.2.5 Gun violence among children: An under-researched public health issue .....	76
3.3 Domestic violence and firearms.....	76
3.3.1 The “boyfriend loophole”.....	78
3.3.2 The “misdemeanor stalking” loophole.....	79
3.3.3 Domestic Violence Protection Orders and firearms possession .....	80
3.3.4 Prohibited possessors and the surrender of firearms .....	82
3.3.5 Inadequate reporting of prohibited individuals to the National Instant Criminal Background Check System.....	83
3.3.6 The “gun show” loophole and private sellers.....	85
3.4 Access to firearms for individuals who may present a risk of harm to themselves or others .....	86
3.4.1 Mandatory waiting periods .....	87
3.4.2 Restrictions on health care providers .....	87

3.4.3 Mechanisms to temporarily remove access to firearms for individuals at risk of harming themselves or others.....	88
3.5 Firearms and Tribal Nations .....	89
3.5.1 Tribal firearm laws .....	89
Recommendations .....	90
<b>Chapter 4: Gunshot survivors .....</b>	<b>93</b>
4.1 Gunshot injury: the devastating human cost .....	93
4.2 International standards: health and human rights .....	94
4.3 Emergency trauma care.....	95
4.4 The long recovery.....	97
4.5 Retained bullets .....	99
4.6 Spinal cord injury .....	99
4.7 Lack of accessible housing and inappropriate institutionalization .....	101
4.8 Financial burden of gun injuries: The cost of carnage.....	102
4.9 Post-Traumatic Stress Disorder.....	103
Recommendations .....	105
<b>Chapter 5: Failure to prevent: Inadequate gun laws and policy .....</b>	<b>106</b>
5.1 Background checks .....	106
5.1.1 Background check failure #1: Exemption for private sales .....	108
5.1.2 Background check failure #2: Checks that take longer than three days .....	109
5.1.3 Background check failure #3: Individuals exempt from federal background checks .....	110
5.1.4 Background check failure #4: Failure to check identification .....	112
5.1.5 Background check failure #5: Incomplete data in federal database.....	113
5.1.6 Background check failure #6: Failure to address loopholes in the federal background check system .....	113
5.2 Training, licensing and registration of firearms.....	114
5.2.1 Training on the use of firearms .....	115
5.2.2 Firearm licenses .....	116
5.2.3 Registration of firearms .....	119
5.3 Regulating the carrying of firearms in public.....	122
5.3.1 Permitless carry.....	124
5.3.2 Open carry in public.....	124
5.3.3 Concealed carry in public .....	126
5.3.4 Concealed carry reciprocity legislation .....	127
5.3.5 Campus carry .....	128
5.4 Lost and stolen firearms .....	130
5.4.1 Gun trafficking and straw purchases .....	131
5.4.2 The failure to mandate the reporting lost or stolen firearms .....	132
5.4.3 Ensuring secure storage to reduce the risk of theft .....	132
5.4.4 Regular audits and oversight of gun dealers and stores .....	133
5.4.5 Safe storage by individual gun owners.....	134
5.4.6 Failure to recover lost or stolen weapons .....	134
5.5 Semi-automatic assault rifles and shotguns, large-capacity magazines, bump stocks, trigger/gat cranks and other dangerous devices .....	135
5.5.1 Weapons designed for military use.....	137
5.5.2 Regulation of semi-automatic assault rifles, semi-automatic shotguns, semi-automatic submachine guns and high-capacity magazines .....	140
5.5.3 Large-capacity magazines (ammunition) .....	141
5.5.4 Bump stocks and trigger/gat cranks .....	144
5.5.5 Ghost and 3D guns .....	145
5.5.6 Litigation to hold manufacturers of semi-automatic assault rifles and large-capacity magazine accountable .....	146

5.6 Stand Your Ground Laws .....	147
5.6.1 Failure to limit self-defense .....	147
5.6.2 Stand Your Ground Laws: Increased homicides and discrimination .....	148
5.7. Smart guns and gun safety technology .....	149
5.7.1 Barriers to the development of smart gun technology.....	150
5.8 Failure to invest in research to identify strategies to reduce gun violence .....	151
Recommendations .....	154
<b>ENDNOTES.....</b>	<b>158</b>

# EXECUTIVE SUMMARY

**O**ne woman has lost all of her four children to gun violence in Chicago.

**Ronnie, a 33-year-old aspiring music producer, was shot in the head while sitting in a parked car on the West Side of Chicago on 26 January 2013. On a television talk show a few weeks earlier, he had explained that he was a former gang member who had been in and out of jail, but was now mentoring young rappers, trying to keep them away from gang life. Jerome, aged 23, was shot and killed while using a payphone outside the Cabrini-Green public housing complex on 26 July 2000. Three months earlier, on 27 April, his 15-year-old sister, LaToya, had been standing in the lobby of a Cabrini-Green public housing complex when she was shot and killed by a 13-year-old boy. Five years before that, on 28 November 1995, 18-year-old Carlos was shot twice in the head by a classmate just blocks from their school, Jones Metropolitan High, in Chicago's South Loop.**

Gun violence in the USA is a human rights crisis. In 2016, an average of 106 individuals died per day from firearm related deaths. Per capita, this is significantly higher than in other industrialized countries. In fact, the USA has both the highest absolute and highest per capita rates of gun ownership in the world, yet the USA does not sufficiently restrict access to firearms

to those most at risk of abusing them. There is no uniform system to track firearm owners. The USA has not taken effective steps to implement violence reduction, prevention or protection measures where gun violence persists and has not adequately addressed firearm violence as a public health issue, failing to invest in research on the impact of firearms in the USA to inform effective policy solutions. The right to live free from violence, discrimination and fear has been superseded by a sense of entitlement to own a practically unlimited array of deadly weapons, without sufficient regulations on their acquisition, possession and use. In the face of clear evidence of persistent firearm violence, high rates of gun ownership, and ease of access to firearms by individuals likely to misuse them, the USA is failing to meet its obligation to protect and promote human rights pursuant to international law.

Amnesty International's report is a critical assessment of existing data and research related to the scope of gun violence in the USA, and an analysis of US laws and policies - where they exist - governing the acquisition, possession and use of firearms by private individuals, in the context of international human rights laws and standards. In this report, Amnesty International defines the term "gun violence" broadly, encompassing



interpersonal and communitywide violence using firearms; implicit threats of violence that firearms represent in certain circumstances; misuse of firearms in the home; and acts of self-harm by firearms, including accidents and suicide. Amnesty International provides a clear set of recommendations, developed under the human rights framework in the context of firearms violence, that the USA must adopt to address this crisis.

The sheer volume of people killed or injured each year in the USA by gun violence is staggering. In 2016, 38,658 died by gun violence. Of these deaths, 22,938 were suicides and 14,415 were homicides (an added 495 deaths were unintentional, 300 were of an undetermined intent and 510 were legal interventions). More than 116,000 additional people suffered non-fatal firearm injuries. Gun violence in the USA affects people nationwide whether they live in a city, suburb, or rural community, but often in dissimilar and disparate ways. Firearm homicides disproportionately impact communities of color and data suggests that the rate of gun homicides has increased in recent years. Moreover, the failure of the USA to implement laws and/or address existing gaps in protection in current policies leave marginalized groups such as children, and those impacted by domestic violence (largely women) at risk of exposure to firearm violence. The use of firearms by private individuals to inflict injury or death on others often dominates the discussion on gun violence. However, access to firearms for individuals who may present a risk of harm to themselves or others and the lack of restrictions on personal possession of firearms by those at recognizable risk of self-harm needs to be acknowledged and is critical to addressing the full spectrum of firearm-related deaths. The impact of firearm violence extends far beyond the numbers of those injured and killed. While mass shootings garner public attention and international concern, the relentless reality of gunfire in homes, schools,

businesses and on the streets of the USA, and the long-lasting trauma and impact of gun violence on victims, survivors, families and communities, rarely does.

## **FIREARM VIOLENCE: A HUMAN RIGHTS FRAMEWORK**

***“Given the potential harm and devastating impact of the misuse of firearms on the enjoyment of human rights, public policies with respect to civilian access to firearms should be reviewed and formulated through a human rights lens.”***

- The Office of the United Nations High Commissioner for Human Rights (OHCHR) in its 2016 report

In the past, Amnesty International has developed recommendations based on international humanitarian law and international human rights law, in relation to the use of force, including specifically the use of firearms and other lethal force, by state actors and armed groups in situations of armed conflict, and in relation to the use of force by state agents in law enforcement. Amnesty International also has long-standing positions on states' obligations to regulate the transfer of arms where there is a substantial risk of them being used to commit or facilitate serious human rights violations, along with issues related to illicit markets and the illicit transfer of weapons through diversion. Amnesty International has analyzed international human rights laws and standards and developed a clear set of criteria for states to meet obligations to protect the right to life, the right to security of person, and other human rights, in the context of gun violence carried out by private individuals in non-conflict settings.

The USA has either signed or ratified several international human rights conventions that guarantee human rights impacted by gun violence and firearm-related injuries and deaths, including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the Convention on the Elimination on all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The USA, therefore, has a legal obligation to respect, protect and fulfill the human rights set out in these treaties and to exercise due diligence by taking measures to combat actual or foreseeable threats to these rights, including the right to life. In the context of firearms, this obligation also includes reducing and preventing violent acts against individuals and communities, addressing discriminatory violence, violence against children, gender-based violence, and the use of firearms in suicides, unintentional and accidental deaths. The USA is obliged to exercise due diligence to prevent, punish, investigate and redress harm caused by private individuals and they should pay particular attention to those most at risk, be they individuals or marginalized communities.

The criteria developed by Amnesty International provides guidance based upon these human rights obligations in the context of gun violence. These recommendations range from setting up systems of regulation to govern the acquisition, possession and use of firearms, as well as establishing measures to enable complex social interventions at the community level to reduce overall levels of firearm violence. States' responsibilities to prevent firearm violence, as part of their obligation to protect the right to life and other human rights, require two interrelated approaches: (i) Restricting access to firearms especially to those most at risk of misusing them; and (ii) Taking effective

steps to put in place and implement violence reduction or protection measures where firearms misuse persists. States should establish robust systems for the regulation of the possession and use of firearms and ammunition to prevent them from being used by private actors to abuse human rights. These systems should include measures to address: licensing, registration, restriction of certain weapon types, security of stocks, research and public policy development. It is imperative that a licensing system mandates certain qualifications for eligibility that include an established "credible justification" for firearm possession, in addition to the consideration of other factors including, but not limited to - an adequate minimum age requirement and the absence of known risk factors for misuse. The USA should take steps to urgently reform its regulatory system for the acquisition, possession and use of firearms to ensure that they meet these international standards.

## **US FAILURE: INADEQUATE GUN LAWS & POLICY**

Under international human rights law, if a State does not exercise adequate control over the purchase, possession and use of arms by private actors in the face of clear evidence of persistent firearms violence, they could be considered to have breached their due diligence obligations. The USA has failed to implement a comprehensive, uniform and coordinated system of gun safety laws and regulations particularly in light of the large number of firearms in circulation, which perpetuates unrelenting and potentially avoidable violence, leaving individuals susceptible to injury and death from firearms.

## BACKGROUND CHECKS

Federal law does not currently require universal comprehensive background checks with each and every transfer or purchase of a firearm in the USA. As a result, studies have shown that 22% of all firearm sales are conducted without any background check. States mandating universal background check requirements for firearm purchases have been found to have significantly less firearms trafficking, substantially fewer firearm-involved suicides, 47% fewer women killed in firearm-related violence by an intimate partner, and 53% fewer police officers killed on duty. Moreover, even when a background check is required, it may not be adequately comprehensive or accurate because relevant records are often not properly and/or rapidly submitted for inclusion in state and federal databases.

## TRAINING, LICENSING AND REGISTRATION OF FIREARMS

The USA has a patchwork of inconsistent and inadequate federal and state laws governing training, licensing, and registration of firearms. A common feature of the licensing process in most countries around the world is a requirement to have a credible justification for owning a weapon, effectively introducing needs-based ownership criteria. The USA has failed to take all measures necessary to prevent and protect against firearms being owned or accessed by individuals who do not have a credible justification for their ownership, possession or use. Federal law does not require the training, licensing, or registration of individuals who possess or use a firearm. In fact, US law expressly prohibits the creation of a national registry of most firearms. Two states require registration of all firearms, but eight states explicitly prohibit firearm registration within their borders. Only six states (California, Connecticut, Hawaii, Illinois, Massachusetts, New Jersey) and Washington, D.C. require a license or permit to

purchase all types of firearms, and nationwide, only six states (California, Connecticut, Hawaii, Massachusetts, and Maryland and Rhode Island but only for handguns) and Washington, D.C. mandate some form of firearm training prior to purchasing a firearm.

## CARRYING FIREARMS IN PUBLIC

Individuals can lawfully carry concealed firearms in public in every state in the USA and can lawfully openly carry firearms in public in most states. However, there is no nationwide uniformity in laws governing the carrying of firearms in public and in some states, there are no laws at all: 12 states allow individuals to carry concealed weapons in public without any license or permit and 30 states allow the open carrying of a handgun in public without any license or permit. Open carrying of firearms in public, in some form, is currently allowed in 45 states. In only seven states are you required to provide a credible justification or demonstrated need to carry a concealed firearm. All 50 states and Washington, D.C. allow for some form of concealed carrying of firearms in public. Worryingly, in some states, permit systems are ineffective, resulting in permits being issued to individuals who are legally prohibited from possessing firearms, including people convicted of felonies, with outstanding criminal warrants, with domestic violence injunctions and others at risk of misusing a firearm.

Of further concern are recent efforts to enact federal legislation which would override existing state laws where safeguards and processes are in place to curtail misuse related to concealed carrying of firearms, which are permitted in all states.

## **LOST & STOLEN FIREARMS**

Lost and stolen guns fuel the underground illicit gun market, allowing prohibited purchasers and others to obtain guns used to carry out violent crimes. They not only facilitate human rights violations, but also hamper the ability to hold those responsible to account; a stolen firearm is difficult to trace, preventing law enforcement from promptly identifying potential suspects and thus impeding their investigation.

Reporting of lost or stolen firearms by private individuals and unlicensed dealers is not mandatory under federal law and therefore there is no precise data for the number of firearms lost or stolen in the USA. However, according to the Federal Bureau of Investigation (FBI), an estimated 1.4 million firearms were stolen from private individuals between 2005 and 2010. More recent data estimates that approximately 380,000 firearms are stolen annually from private individuals. The FBI reported that approximately 31,500 firearms were stolen from gun stores between 2012 and 2016. These numbers are significant and do not include the substantial number of firearms lost or stolen each year that are not reported.

There are no laws requiring gun owners to report lost or stolen firearms to law enforcement in 39 states.

## **SEMI-AUTOMATIC ASSAULT RIFLES AND SHOTGUNS, LARGE CAPACITY MAGAZINES, BUMP STOCKS**

Mass shooting incidents around the country have demonstrated that shooters armed with semi-automatic assault rifles with large-capacity magazines can kill many people in a matter of minutes and pose a significant threat to public safety. Firearms and ammunition which represent

a high level of risk to public safety and are likely to cause excessive or unintended injury must be prohibited for use by private individuals. These would include at a minimum: semi-automatic assault rifles, semi-automatic shotguns, and semi-automatic submachine guns including accessories/modifications for semi-automatic weapons which allow rapid firing functions akin to those of fully automatic firearms; and large-capacity magazines. The federal government does not regulate these types of weapons, ammunition and accessories which increase the lethality of firearms and they are regulated by only a handful of states. As such, there remains no universal or uniform national framework governing the possession, use or inventory of these weapons.

## **FAILURE TO INVEST IN RESEARCH TO IDENTIFY STRATEGIES TO REDUCE GUN VIOLENCE**

The significant impact of firearms on those living in the USA is irrefutable and yet, for more than 20 years, federal legislation known as the Dickey Amendment has worked to restrict federal funding for firearm research through publicly-funded entities. These restrictions have had a substantial negative effect on gun violence research and, for over two decades, researchers, policy makers, and experts have been inadequately resourced to fill huge gaps in knowledge about the causes, consequences, and prevention of gun violence in the USA. The USA has also failed to fund research and development of all potential mechanisms of firearms safety to inform evidence-based policy-making aimed at reducing firearms violence, and/or to allow the release of identifying information regarding firearm acquisition, possession and use, for purposes of conducting further firearm research on gun violence prevention policies.

## CONCLUSION

Due to the sheer volume of firearms in circulation and lack of adequate regulation, Amnesty International recommends that the USA adopt measures to address: licensing, registration, restriction of certain weapon types, security of stocks, research and public policy development in furtherance of its duty to promote and protect human rights.

## THE GUN VIOLENCE CRISIS IN THE USA: THE IMPACT ON INDIVIDUALS AND COMMUNITIES

No part of US society is unaffected by gun violence, and yet some individuals and groups are disproportionately at risk of being impacted. Failure to implement adequate policies and measures to address access to firearms by private individuals, has far-reaching consequences, particularly for those living in urban communities, children, those suffering from domestic abuse, individuals who may be at risk of self-harm, and survivors of gun violence.

## URBAN GUN VIOLENCE

Urban firearm violence, and specifically firearm homicide, disproportionately impacts communities and particularly young black men. For example, while African Americans represented approximately 13% of the US population in 2016, they made up 58.5% of gun homicides nationwide and a black male aged 15-34 was almost 20 times more likely to die from firearm homicide than a white male of the same age group.

The disparate impact of gun violence on urban communities of color raises serious concerns about the protection of human rights including the

right to life, to security of the person, to freedom from discrimination and to equal protection of the law. The UN Working Group of Experts on People of African Descent has expressed concern over the lack of firearm regulations in the USA and its impact on black communities. Additionally, the UN Human Rights Committee and the Committee on the Elimination of All Forms of Racial Discrimination both highlighted the issue of gun violence in their most recent reports on US human rights compliance. They remain troubled by the increasing number of gun-related deaths and injuries in the USA, and the disparate impact on racial and ethnic minorities. Both committees noted that the US government's failure to curb gun violence constitutes a violation of the right to life and the right to non-discrimination under international law.

The causes of gun violence in communities of color are multi-faceted and there are deep-seated issues around poverty, discrimination, and economic, social and cultural rights that are beyond the scope of this report. Much of the gun violence in urban communities is attributed to gang activity. However, the relationship between "gangs" and gun violence in the USA is complex. The term "gang" tends to be misused broadly to categorize all gun-related activity amongst communities of color and in urban areas. For this, and other reasons, the actual scope and impact of gang violence, including gun violence, around the country remains unclear. However, what is clear is that gang members are likely to own guns with many claiming to own more than one, and that armed gang members exert control over the streets in their self-designated territories, retaliate against rival gangs in other territories, and often endanger the lives of uninvolved people who are caught in the crossfire. Firearms used in violent crimes across the USA, including those used in communities of color have often been trafficked, or deviated out of the legal commerce stream and into the illegal market. Most gang killings remain

unsolved and unprosecuted, resulting in impunity for the perpetrators, and feeding the cycle of gun violence. Reducing access to firearms is a key element in reducing gun violence in these communities.

Where patterns of firearms possession and use lead to chronic insecurity, states' obligations are to protect life and ensure security for all through human rights compliant law enforcement; community interventions and tightening regulations on firearms possession and use.

The solutions to urban firearm violence in the USA are varied. They include legislation which works to undermine the illegal firearm market thereby restricting access to trafficked firearms and the prompt investigation of all firearm-related deaths so that those responsible are held accountable. The USA should also work to reduce these high levels of firearm violence in low income and minority communities and to address the long-term socio-economic impact of gun violence. Research indicates that long-term, adequately-funded, evidence-based projects tailored towards specific social, economic and cultural contexts, and working in partnership with the affected communities, can achieve sustained reductions in firearm violence. In fact, several federal and state-funded and supported evidence-based violence intervention and reduction strategies, have proven effective in decreasing gun violence. Most importantly, they have been able to combat and reduce gun violence while simultaneously offering life-altering opportunities for individuals living in high-crime neighborhoods. Unfortunately, despite the success and numerous available models for these programs, lack of funding and lack of political will have prevented sustained and adequate implementation of these initiatives.

## CHILDREN

In 2016, 1,637 children died from firearm-related violence in the USA. Of these, 862 were homicides and 633 were suicides (an added 104 firearm deaths were accidents, 31 were undetermined intent, and 7 were the result of legal intervention). Gun violence impacts children across the USA whether through unintentional or intentional violence, or as a mechanism for self-harm. This is due, at least in part, to that fact that an estimated 4.6 million children live in households with loaded and unlocked firearms. Children all over the country are also at risk of gun violence in their schools.

In 1995, the USA signed the Convention on the Rights of the Child (CRC), a comprehensive international human rights agreement on children's rights. Although the USA is the only country in the world that has signed but not ratified the CRC, the USA still has an obligation to refrain from acts that would defeat the object and purpose of this treaty. This means that in addition to its obligations under the ICCPR, the USA should recognize the particular vulnerabilities of children, defined as those who are 17 and younger, and provide "special safeguards and care" in order to protect children from gun violence, including by preventing access to firearms, and supporting violence interruption and diversion programs.

High rates of gun ownership, weak gun violence prevention laws and readily available (often unsupervised) firearms, make US children much more vulnerable to death through gun violence than children in other high-income countries. To this end, US states with the highest rates of gun ownership also have the highest rates of gun death, including among children. The USA should adopt measures to reduce the impact

of firearm violence on children. At a minimum, safe storage and Child Access Prevention laws (“CAP laws”) which work to protect children from injuring themselves and others, by requiring gun owners to keep guns locked up and unloaded, with ammunition stored in a locked location separate from the firearm, are necessary. Despite evidence that CAP laws reduce the number of unintentional or self-inflicted gunshot deaths among children, 23 US states have failed to enact such laws.

## DOMESTIC VIOLENCE

Those suffering from domestic abuse and stalking, most of which are women, are also highly susceptible to gun violence. More than half of all women murdered in the USA are killed by current or former intimate partners and most intimate partner homicides are committed with guns.

The USA has not ratified any treaties that specifically address domestic violence or violence against women, although it is a party to the ICCPR, which guarantees the rights to life and security of the person. It has a due diligence duty to protect the right to life, and to prevent, investigate, and punish any act that would undermine that right, whether committed by its own agents or by private persons. The UN Human Rights Council has recognized that the right to life and security of the person has been significantly undermined by firearms misuse, and that inter-partner violence accounts for a significant number of such attacks. In a 2006 report, *Prevention of Human Rights Violations Committed with Small Arms and Light Weapons*, it noted that: “the State has particularly acute obligations when it comes to protecting the rights of vulnerable groups, including victims of domestic violence, who are most at risk from misuse of a gun in the home. The presence of a gun in the home can easily turn domestic violence into domestic homicide.”

In 1980, the USA signed the Convention on the

Elimination on all Forms of Discrimination Against Women (CEDAW), and although the USA has not ratified CEDAW, the USA still has an obligation to refrain from acts that would defeat the object and purpose of this treaty. The Committee on the Elimination of Discrimination against Women, which monitors implementation of the rights enshrined in the CEDAW, has recognized gender-based violence against women as a form of discrimination.

The current federal framework of firearms regulation addressing firearm possession in the domestic violence context does not extend protections to individuals who are not “the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.” Loopholes in this framework permit dating partners, those convicted of misdemeanor stalking, and those subject to temporary or permanent restraining orders to purchase and possess firearms, without offering any protection to individuals who may be at risk of gun violence from a domestic abuser or stalker, including women and those in the LGBTI community.

Unfortunately, even where protections and firearm-related safeguards exist to protect those experiencing domestic abuse, they are often not enforced or even enforceable. For example, the current federal framework does not provide any procedure/mechanism for the removal or surrender of firearms when a permanent restraining/protective order is issued. Similarly, 35 states and Washington, D.C. prohibit firearm possession by persons subject to a domestic violence-related restraining order, but only 27 of those states and Washington, D.C. also explicitly require or authorize relinquishment of firearms. The USA should close these loopholes and establish regulations to ensure that domestic abusers cannot purchase or possess firearms.

## ACCESS TO FIREARMS FOR INDIVIDUALS WHO MAY PRESENT A RISK OF HARM TO THEMSELVES OR OTHERS

In 2016, 22,938 people in the USA died from suicide by firearm – more than 62 a day. It is critical to examine access to firearms by those individuals who may present a recognizable risk of harm to themselves or others. Numerous mechanisms exist through which a state could take steps to reduce the likelihood that an individual at risk of harm could be prevented from accessing a firearm. These include instituting waiting periods for all individuals prior to firearm acquisition, counseling by health care and other professionals who offer guidance to individuals in crisis, and implementation of procedures through which firearms may be temporarily removed from the possession of these at-risk individuals.

Problematic correlations are often drawn between gun violence and mental health in public debates, wrongly implying that persons with psychosocial disabilities and those with mental health conditions are automatically prone to violence. These correlations and assertions ignore the range of possible mental health diagnoses and how mental health conditions might manifest differently for different individuals, depending on their particular circumstances. Furthermore, such assertions are unsupported by facts. A better framework for evaluating access to firearms is to take into account the broad range of factors that might contribute to an individual being at recognizable risk of self-harm or harming others.

The USA should consider implementing measures that reduce access to firearms for individuals who may present a risk of harm to themselves or others, including instituting adequate waiting periods for all firearms and ammunition purchases. Authorities in the USA should take steps to ensure that health workers are able to discuss all factors impacting their patients' health, well-being and safety, including the possession,

use and storage of firearms where relevant and should consider adopting procedures such as Extreme Risk Protection Orders (ERPOs) which provide for the temporary removal of access to firearms for individuals who may present a risk of harm to themselves or others. Such procedures should be implemented in a manner consistent with international human rights protections.

## GUNSHOT SURVIVORS

Gun violence is often characterized by those who have died from firearm-related injuries, but far more people are shot and survive, and for many, the cost of survival is high. More than 116,000 people were shot and injured by firearms in 2016. This is an underestimate, as injuries are not always recorded accurately, if at all. On average in 2016, more than 317 people were shot every day and survived – at least long enough to get to the hospital. For many gunshot survivors, the mental, physical, emotional, familial, and financial consequences of their injuries shape their lives, irrevocably. The toll that gun violence exacts on victims, family members and the medical services is a public health crisis of astonishing proportion – with remarkably little government response, given the life-long effects on many survivors.

In the Universal Declaration of Human Rights, proclaimed by the UN General Assembly in 1948, member states including the USA pledged to achieve “the observance of human rights and fundamental freedoms.” Included among those rights are health and medical care. Although it is not constitutionally protected, the USA does have international obligations regarding the right to health under the ICCPR, ICERD, and ICESCR. In 2016, the UN High Commissioner for Human Rights, when evaluating human rights and the regulation of civilian acquisition, possession and use of firearms, noted that: “Alongside preventive measures, states must provide victims of firearms violence with effective measures of protection and reparation, including access to adequate health



care to ensure that they have the best possible chances of survival and rehabilitation.”

The USA should guarantee the right to health and access to healthcare services for gunshot survivors. Access to affordable and quality health care services should include necessary long-term health interventions, rehabilitation services, mental health care, and long-term pain management. The USA should also ensure that health-related costs, including payments for medicines and health services, do not act as a deterrent for survivors of gun-related violence to access necessary care, and do not cause undue or catastrophic financial burdens to gunshot survivors and their families. Finally, services should be provided to support independent living for those disabled by gunshot injuries.

## CONCLUSION

These are just some of the ways that gun violence has permeated the lives of those living in the USA and has undermined international human right guarantees. Amnesty International recommends that the USA adopt measures to protect individuals and communities most at risk of gun violence in accordance with its obligation under international human rights law.

## THE US GOVERNMENT SHOULD TAKE STEPS TO REDUCE AND ADDRESS GUN VIOLENCE

The daily toll of gun violence on individuals across the USA has garnered international attention, particularly in recent years. Gaps in protection against gun violence by state agents and private individuals, and prevention of gun violence against individuals and communities must be primarily addressed through policy change. Yet, the USA has failed to pass meaningful federal legislation

addressing the issue, in the wake of numerous mass shootings and daily firearm related injury and death. Although over 100 pieces of federal legislation regarding gun violence have been introduced since the Sandy Hook school shooting, which took the lives of 20 children and six adults in 2012, the USA has failed to pass any meaningful federal law regulating firearms.

There have been some legislative advancements at the state level. For example, in response to the mass shooting on 1 October 2017 in Las Vegas, Nevada, which took the lives of 59 people, eight states have explicitly banned bump stocks, which when attached to a firearm can significantly increase its ability to release multiple rounds of ammunition in rapid succession, and a federal ban is also being considered. Additionally, since 14 February 2018, following the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, where 17 people were killed, eight states have passed ERPO laws aimed at temporarily reducing access to firearms from those who are likely to misuse them. Also, as of July 2018, six states have passed laws aimed at improving background checks and nine states took action to keep firearms away from domestic abusers. Eight states have also enacted legislations funding urban violence reduction programs. However, these states remain in the minority.

Amnesty International hopes that this report can contribute to and support the work of the many organizations and activists who have been at the forefront of efforts to reduce and eliminate injury and death due to gun violence in the USA. By supporting initiatives developed and directed by impacted communities, Amnesty International seeks to provide an additional platform for discussion about the impact of gun violence through the framework of human rights. To this end, grounded in analysis of international laws and standards, Amnesty International provides a clear set of criteria and recommendations for all

governments to address the impact of firearms violence in compliance with their human rights obligations. These recommendations are crucial in reducing gun violence and protecting the right to life, the right to security of person, and other human rights.

The report and accompanying campaign are intended to demonstrate to the international community the day-to-day experiences of individuals in the USA whose lives have been irrevocably changed by gun violence. Through its campaign, Amnesty International will engage in grassroots advocacy based on the recommendations contained in this report to amplify voices of marginalized and disproportionately impacted communities and provide further opportunity for effective policy change. While this report cannot provide a comprehensive picture of gun violence in the USA, it aims to reflect the determination and courage of individuals and communities nationwide striving for a future where their security, life, and human rights are protected.

## KEY RECOMMENDATIONS:

1) Federal, state, and tribal governments should introduce and strengthen gun laws and policies nationwide. Therefore, at a minimum:

- The US Congress should enact legislation requiring background checks on all firearm purchases and transfers, prior to carrying out any sale or other transfer. These background checks should be conducted indicating the absence of known risk factors for misuse;
- The US Congress should ensure that federal, state and local agencies are reporting records accurately, completely, and as soon as possible to the FBI for inclusion in the National Instant Criminal Background Check System (NICS);
- The US Congress should enact legislation mandating that firearms may only be obtained for

purchase or transfer with a valid firearms license and a credible justification for ownership and use;

- Firearm licenses should not be authorized unless the following minimum conditions are met:
  - › credible justification prior to purchase;
  - › in general, a minimum age of 21; and
  - › a background check has been conducted indicating the absence of known risk factors for misuse. Risk factors for consideration should include, at a minimum:
    - › prior criminal record, particularly for violent offences;
    - › being under indictment for a felony offence;
    - › history of gender-based, sexual or domestic violence;
    - › medical unfitness including history of drug/alcohol abuse or mental health issues which might lead to the harm of self or others. Each application should be reviewed on a case-by-case basis by competent authorities drawing on all available relevant evidence;
- The US Congress should enact legislation requiring the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to register all firearms in a central national gun registry, which is digitized and searchable, and should provide appropriate funding through the legislation to support ATF's ability to implement these systems;
- The US Congress should enact legislation prohibiting the carrying of firearms in public, whether open or concealed, unless there is a credible justification for doing so and should reject federal legislation which would override existing state laws where safeguards and processes are in place to curtail misuse related to concealed carrying of firearms;
- The US Congress should enact legislation requiring all lost and stolen firearms be immediately reported to local law enforcement officials;

- The US Congress must pass legislation banning the sale, transfer, and possession of semi-automatic assault rifles, semi-automatic shotguns, and semi-automatic submachine guns, as well as large capacity magazines, bump stocks, and other dangerous devices;
- The US Congress should acknowledge that firearm violence is a public health crisis, repeal the Dickey Amendment, and enact legislation allocating adequate funding to conduct evidence-based research on the causes and effects of gun violence, and to research and develop viable strategies for gun violence prevention to inform policy making aimed at reducing firearm related deaths and injuries.
- State legislatures should consider passing legislation to implement procedures, such as ERPOs, providing for the temporary removal of access to firearms for individuals who may present a risk of harm to themselves or others. Such procedures should be implemented in a manner consistent with international human rights protections;
- Federal and State authorities should ensure that survivors of gun-related violence have access to affordable and quality health care, which includes necessary, long-term health interventions, rehabilitation services, mental health care, and long-term pain management.

2) Federal, state, and tribal governments should introduce comprehensive and targeted gun safety measures to address the gun violence crisis in the USA by adopting measures to protect individuals and communities most at risk of gun violence in accordance with its obligation under international human rights law. Therefore:

- The US Congress should pass legislation which supports the implementation and sustained funding of evidence-based violence reduction and prevention programs;
- The US Congress should pass legislation requiring the safe and secure storage of all guns and ammunition, and state legislatures should pass stringent and comprehensive safe storage and Child Access Prevention (“CAP”) laws that mandate all individuals to store all firearms unloaded under the protection of a gun lock or safety device;
- The US Congress should amend the current federal framework of firearms regulation addressing firearm possession in the domestic violence context by closing all loopholes related to dating partners and adding misdemeanor and other stalking offenses as triggers prohibiting firearms possession and use; and state legislatures should pass and implement laws establishing a clear process for the immediate surrender by and removal of firearms from prohibited abusers;

# ACKNOWLEDGEMENTS



Amnesty International is indebted to all the survivors of gun violence and families who lost loved ones to gun violence, who courageously came forward to share their stories and to those who provided support to survivors and victims' families before and after they spoke with Amnesty International. This report seeks to represent the voices of survivors, advocates, community leaders and other individuals impacted by gun violence and is underpinned by a conviction that their perspectives must inform all actions taken to reduce and end gun violence in the USA.

This report cannot provide a full picture of the critical work survivors, advocates and community leaders are carrying out to reduce and end gun violence in the USA. Amnesty International hopes that the human rights framework offered by this report can support the work of gun violence prevention organizations who have been at the forefront of this movement for decades. As the USA takes steps to address this human rights crisis it is critical that initiatives developed and directed by impacted communities are supported and funded.

# GLOSSARY OF ABBREVIATIONS AND A NOTE ON TERMINOLOGY

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
AWB	The Federal Assault Weapons Ban of 1994 or The Public Safety and Recreational Firearms Use Protection Act, (a subsection of the Violent Crime and Law Enforcement Act of 1994)
CAP laws	Child Access Prevention laws
CDC	Centers for Disease Control and Prevention
CEDAW	Convention on the Elimination on all forms of Discrimination against Women
CPD	Chicago Police Department
CRC	Convention on the Rights of the Child
DoJ	US Department of Justice
ERPO	Extreme Risk Protection Order
ESC rights	Economic, Social and Cultural rights
FBI	Federal Bureau of Investigation
FFL	Federal Firearms License/Licensee
FOID cards	Illinois Firearms Owner Identification Cards
FOPA	Firearm Owners' Protection Act
ICCPR	International Covenant on Civil and Political Rights
ICE	Immigration and Customs Enforcement
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPV	Intimate Partner Violence
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NFA	National Firearms Act
NICS	National Instant Criminal Background Check System
NIH	National Institutes of Health
NOPD	New Orleans Police Department
NRA	National Rifle Association
OIG	Office of Inspector General
POC	Point of Contact
PLCAA	Protection of Lawful Commerce in Arms Act
PTSD	Post-traumatic stress disorder
UDHR	Universal Declaration of Human Rights

Amnesty International strives to use language that respects the wishes of the individuals or communities concerned. Recognizing that no single term is universally accepted, Amnesty International has used African American and black; Hispanic and Latino/a interchangeably throughout this report, particularly if it has been used in the studies cited. This is no way intended to minimize or ignore the complexity or the great diversity of ways in which people identify. Communities of color is a term used to generally

refer to areas of the USA where African American and Latino populations are highly concentrated.

In the context of this report, Amnesty International defines the term “gun violence” broadly, encompassing interpersonal and communitywide violence using firearms; implicit threats of violence that firearms represent in certain circumstances; misuse of firearms in the home; and acts of self-harm by firearms, including accidents and suicide.

# METHODOLOGY

This report is a critical assessment and analysis of laws, policies, existing research, and gun violence in the USA carried out between August 2016 and August 2018 by Amnesty International in consultation with individuals who have been impacted by gun violence. The analysis draws on Amnesty International's interviews with survivors of firearm violence and their families, activists, support workers, service providers and community advocates, including former perpetrators of gun violence.

A number of individuals spoke to Amnesty International on the condition that their anonymity was guaranteed and some have asked that certain details not be made public. In order to respect their wishes, details of names and locations on file with Amnesty International have been withheld. Amnesty International also interviewed officials across the USA, including municipal and federal officials, law enforcement officials, researchers and experts in the field and other individuals who address or respond to issues arising from gun violence. These interviews were conducted between October 2016 and July 2018.

Amnesty International reviewed and analyzed US federal and state case law and legislation governing the regulation of firearms and their acquisition, possession and use by private individuals, in the context of international human rights laws and standards in order to assess their compliance.

Amnesty International also conducted a review of existing government and non-governmental

reports, including studies conducted by the US Department of Justice (DoJ), the Centers for Disease Control and Prevention (CDC), academic journals and media reports of gun violence. Additionally, Amnesty International conducted detailed field research in three locations with different policies and challenges related to gun violence: New Orleans, Louisiana; Chicago, Illinois; and Oakland, California. Each location was selected for specific jurisdictional characteristics. New Orleans illustrates the challenges faced by a city in the southern region of the USA, with one of the highest rates of gun violence per capita, compounded by historical and systematic failures of both the federal and state government to provide basic human rights, particularly in the aftermath of natural disasters. Chicago, in the midwestern region of the country, demonstrates how lax laws and policies in neighboring states can contribute to high rates of gun violence in cities and states with comparatively strong regulations on firearms possession and use; it also offers perspectives on the intersection of economic, social and cultural rights with gun violence. In Oakland and the surrounding areas in the western region of the USA, numerous innovative gun violence prevention and reduction initiatives have proven effective and state-wide comprehensive gun violence prevention laws, coupled with a state-funded research center, have been viewed as a model nationwide, even in the face of persistent gun violence in some areas.

## CHAPTER 1

# FIREARM VIOLENCE: A HUMAN RIGHTS FRAMEWORK

The misuse of firearms has grave impacts on individuals, families and communities and can result in violations of the right to life and personal integrity. Firearms are used in ways which violate the right to life and other human rights in many different contexts: in conflict and post-conflict settings; in the context of law enforcement; and in violence perpetrated by non-state actors outside of conflict settings. Often, those disproportionately affected are the most disadvantaged communities. Persistent community-wide firearm violence can also undermine the enjoyment of economic, social and cultural rights, such as the right to health and the right to education.

The prevention of firearm violence can be seen through many lenses: in terms of safeguarding public health, individual safety or security more generally; or as a means of combating crime.

Applying a human rights framework to this issue, the Office of the United Nations High Commissioner for Human Rights in a 2016 report to the Human Rights Council concluded:

***“Given the potential harm and devastating impact of the misuse of firearms on the enjoyment of human rights, public policies with respect to civilian access to firearms should be reviewed and formulated through a human rights lens.”<sup>1</sup>***

A human rights perspective can capture the wide-ranging impacts firearms can have on different aspects of lives of individuals and communities who are living in conditions where the risk of violence is high. It enables specific state duties to reduce firearm violence to be clearly defined, bringing together international best practice on firearm regulation and violence prevention within a framework underpinned by international human



rights law. Finally, a human rights perspective can empower individuals and communities to join together to live in security and dignity in peaceful communities where they can enjoy a full range of human rights.

Amnesty International has analyzed international human rights laws and standards and developed a clear set of criteria for States to meet obligations to protect the right to life, the right to security of person, and other human rights, in the context of gun violence carried out by private individuals in non-conflict settings.

Amnesty International's framework to address the impact of firearm violence provides guidance on state human rights obligations in this context. These recommendations range from setting up systems of regulation to govern the acquisition, possession and use of firearms, as well as establishing measures to enable complex social interventions at the community level to reduce overall levels of firearm violence. States' responsibilities to prevent firearm violence, as part of their obligation to protect the right to life and other human rights, require two interrelated approaches: (i) Restricting access to firearms especially by those most at risk of misusing them; and (ii) Taking effective steps to put in place and implement violence reduction or protection measures where firearms misuse persists.

States should establish robust systems for the regulation of the possession and use of firearms and ammunition to prevent them from being used by private actors to abuse human rights. These systems should include measures to address: licensing, registration, restriction of certain weapon types, security of stocks, research and public policy development.

## 1.1 THE RIGHT TO LIFE

Codified in the Universal Declaration of Human Rights (UDHR), Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and regional human rights conventions, the right to life is the cornerstone of the international human rights system. State obligations include the obligation both to protect life and to prevent violations of the right to life. These obligations apply to the prevention of violations by state agents – for example military and law enforcement officials – as well as abuses by private actors.<sup>2</sup>

Under the ICCPR, states have a positive obligation of due diligence to prevent violations of the right to life by taking measures to address actual or foreseeable threats to the right to life. A failure to take effective measures to prevent violations of the right to life or the continuance and recurrence of such violations, including by adopting the necessary laws and practices, could be considered as a breach of the ICCPR.<sup>3</sup> States must also exercise due diligence to prevent, punish, investigate and redress not only violations by their own agents but abuses by private actors which would negatively impact the right to life.<sup>4</sup> This requires that they pay particular attention to the protection of those most at risk, be they individuals or marginalized communities.

## 1.2 THE RIGHT TO SECURITY OF PERSON

The right to security of person is set out in the Universal Declaration of Human Rights (UDHR) and in Article 9 of the ICCPR. According to the UN Human Rights Committee, the body of independent experts established to monitor states' compliance with the ICCPR, liberty and security of person are part of “the first substantive right

protected by the Universal Declaration, which indicates the profound importance of article 9 of the Covenant both for individuals and for society as a whole.”<sup>5</sup>

The Human Rights Committee, while focusing on the safeguards for the protection of liberty and security of person from violations by the state, also explicitly underlines that the right to personal security places an obligation on states to protect individuals from foreseeable threats to life or bodily integrity from private actors. This includes responding appropriately to “patterns of violence against categories of victims” including women experiencing domestic or other gender-based violence, children and those suffering violence on the basis of their sexual orientation or gender identity. In this connection, it explicitly states that states should also “protect their populations... against the risks posed by excessive availability of firearms.”<sup>6</sup>

This comment by the Human Rights Committee encapsulates a key human rights principle, with special relevance for the firearms debate; namely, that state obligations extend beyond the disciplining of its own agents to the prevention of violence by private actors in the wider community, which requires, among other things, the regulation of firearms. Only by ensuring safe environments through the regulation and restriction of access to lethal weapons by private individuals can states maximize the enjoyment of the rights of all.

### **1.3 THE RIGHTS TO LIFE AND TO SECURITY OF PERSON AND FIREARM VIOLENCE BY PRIVATE ACTORS AND IN THE COMMUNITY**

The due diligence obligations of states include

prevention of violence posing a threat to life or security of person. Some forms of firearm violence are to a large extent predictable, with foreseeable consequences. In some circumstances, high levels of firearm violence, often in poor neighborhoods which lack public services and are subject to criminal violence, can be persistent;<sup>7</sup> firearm possession in the home is a well-documented risk factor for all forms of firearm violence, including intimate partner homicide.<sup>8</sup>

If a state does not exercise adequate control over the possession and use of firearms by private actors in the face of clear evidence of persistent firearm violence, then they could be considered to have breached their obligations under international human rights law.

Broadly, states’ responsibilities to prevent firearm violence require two interrelated approaches: restricting access to firearms, especially by those most at risk of misusing them; and taking effective steps to put in place and implement violence reduction or protection measures where firearm misuse persists. States must implement legislation and take administrative measures to prohibit the possession of firearms and ammunition by private actors who represent a risk to public safety and protect those at most risk of being victims of firearm violence. At the community level, complex interventions mobilizing a range of state and non-state actors for violence prevention may be necessary.

Community-level firearm violence often happens in a context of dysfunctional relationships between state institutions and private actors, characterized by factors such as an erosion or absence of state institutions, a failure by the state to comply with its human rights obligations, an erosion of checks and balances on state power and institutional and systemic racism. State structures may be penetrated or displaced by organized crime – particularly associated with the traffic in illicit drugs, which often runs in parallel to the traffic in

illicit arms. Lack of accountability of state bodies and a failing criminal justice system, and the resulting impunity of both state and private actors, can provide a context for violent power struggles. And, as the community becomes trapped in cycles of state and criminal violence, economic decline and infrastructural degradation can ensue.

Tackling entrenched firearm violence in the community is a complex problem requiring active engagement and partnership with all relevant stakeholders – local authorities, law enforcement, civil society and community leaders.<sup>9</sup> Initiatives should be focused on those at most risk of perpetrating and being victims of firearm violence – often young males growing up in disadvantaged urban neighborhoods. Long-term, adequately funded, evidence-based projects, tailored towards specific social, economic and cultural contexts and working in partnership with the affected communities, are needed if sustained reductions in firearm violence are to be achieved.

## 1.4 A SYSTEM OF REGULATION BASED ON INTERNATIONAL GUIDELINES

In order to comply with their obligation of due diligence to protect the rights to life and to security of person and to prevent firearm violence by private actors and in the community, states must establish and enforce robust systems for regulating the possession of firearms and ammunition in order to prevent firearms being used by private actors to abuse human rights. Following recommendations made by the then Special Rapporteur to the UN Sub-Commission on Human Rights on the issue of preventing human rights abuses committed with small arms and light weapons<sup>10</sup> and established international guidelines,<sup>11</sup> these systems should include:

### LICENSING

The law should prohibit any possession of firearms without a license, with unlicensed possession treated as a criminal offense.

- A firearm license should not be authorized unless the following minimum conditions are met: a credible justification for possession; a minimum age requirement; and the absence of known risk factors for misuse. Risk factors for consideration should include, at a minimum: a prior criminal record – especially for violent behavior in the home or community; a history of gender-based, sexual or domestic violence (for more detail see below); medical conditions including a history of drug/ alcohol abuse or mental health issues which might lead to the harm of self or others.<sup>12</sup>
- Each application should be reviewed on a case-by-case basis by competent authorities drawing on all available relevant evidence.
- Licenses should specify conditions which the licensee must comply with, including conditions for secure storage and that it can be used only by the individual named on the license, and should be time limited. Compliance with license conditions should be regularly vetted as a condition of renewal. In the event of non-compliance with license conditions, firearm licenses should be revoked and the firearm immediately removed.
- States should enforce a mandatory requirement that before receiving a license, an individual must undergo rigorous training and show demonstrable competence in firearms law, safety, including safe storage, and first aid.

### REGISTERING

In order to control firearms proliferation, combat illicit traffic and maintain adequate records to be able to enforce all aspects of firearms law, states should register all firearms in accordance with established international guidelines.<sup>13</sup>

- At a minimum, registration should include: the firearm make, model, unique serial number, country

of manufacture and type and the name of the licensed holder.

- Any sale or other change of ownership should also be registered.

## RESTRICTED WEAPON TYPES

Firearms and ammunition which represent a high level of risk to public safety, including those likely to cause excessive or unintended injury, must be prohibited for use by private individuals.<sup>14</sup> These would include at a minimum: fully automatic firearms, self-loading semi-automatic firearms fed by a detachable ammunition magazine and armor-piercing ammunition.

## ILLICIT POSSESSION, TRANSFER AND USE

All states must establish effective criminal sanctions for any unlicensed or illicit possession, transfer or use of firearms.<sup>15</sup>

## SECURITY OF FIREARM STOCKS

In order to reduce the risk of misuse and the illicit possession of and trade in firearms, states must impose legal requirements on owners and dealers to ensure that all stocks of firearms and related ammunition are secure, with penalties for non-compliance.

## RESEARCH

States should collect high quality, systematic, disaggregated data on firearm violence, including firearm injuries, suicide and homicide; gender-based violence involving the use of firearms; illicit trafficking; and any other information that could be used to inform evidence-based policy making.

# 1.5 GENDER-BASED FIREARM VIOLENCE

Worldwide, violence within the family, including gender-based and sexual violence and homicide, are crimes that are most often directed towards women. In 2012, 43,600 women killed by intimate partners or other family members accounted for 47% of all female homicides.<sup>16</sup> Firearms are the principal mechanism of intimate partner homicide in countries with high rates of firearm ownership.<sup>17</sup> US-focused studies indicate that the presence of a firearm in the home substantially increases the risk of women being killed by intimate partners.<sup>18</sup>

Moreover, the implicit threat of firearm violence can have a disempowering and demoralizing effect on women and be used for psychological and/or sexual violence. Firearms can fatally escalate domestic disputes, turning a fit of anger into an act of extreme violence. States, therefore, have a particular responsibility to combat and reduce firearm violence, including threats, against women in the home. This should include the adoption of strict laws and practices to prohibit access to firearms in situations where there is a risk of domestic violence or intimate partner violence.

States should therefore link laws, policies and practices on domestic violence and intimate partner violence with those on access to firearms. Measures should include:<sup>19</sup>

- Prohibition of access to and possession of firearms for those with a history of actual or threatened violence towards a current or former family member or intimate partner; suspension of license and immediate removal of firearms from abusive individuals who already possess a firearm.
- Decisions to suspend or revoke a firearms license and remove a firearm should be taken by competent authorities on a case-by-case basis, taking into account all available evidence, including reports of threatening behavior, police call outs for domestic

disputes, any fears for safety on the part of the alleged victim, existing or pending restraining orders, domestic violence-related court proceedings or other domestic violence related sanctions. Such decisions should be implemented immediately to minimize risk.

- If there is any doubt as to the fitness of the alleged perpetrator to possess a firearm or about the safety of the alleged victim, the firearms license should be refused or revoked and firearms removed. An appeal mechanism should be in place to enable review of the decision but a challenge to the decision should not have suspensive effect on its implementation.
- States should undertake effective collection and storage of data on alleged perpetrators of gender-based violence and domestic violence that is shared with licensing authorities on a case-by-case basis when they are assessing license applications, with due regard to established principles of data protection including that individuals are entitled to know what data relating to them is stored and, if it is incorrect, can have it rectified.<sup>20</sup>

## GENERALLY, STATES MUST:

- Fully meet existing international norms and treaty law relating to gender-based violence.<sup>21</sup>
- Work proactively to discharge their due diligence obligations to combat, reduce and prevent gender-based violence in the home.
- Support women who are organizing to prevent firearm violence and promote women's equal access to political power, decision-making and resources.

## 1.6 SUICIDE AND ACCIDENTAL DEATH

While global data on suicide is uneven,<sup>22</sup> studies have indicated strong correlations between access to firearms and both the proportion of suicide deaths by firearm as well as elevated overall suicide rates.<sup>23</sup> Regions with high levels of

firearms possession also have high firearm suicide rates. For instance, in high-income countries in the Americas, 46% of suicides are carried out using firearms, while in high-income countries excluding the Americas the rate is just 4.5%.<sup>24</sup>

Access to the means of suicide is a strong risk factor for suicide death, especially in relation to firearms. Where suicide is a heat-of-the-moment event in response to an acute psychological crisis, the availability of firearms and their lethal nature greatly increases the risk of a fatal outcome.<sup>25</sup> Preventive measures involving restricting access to firearms by those at risk of self-harm and more stringent safety measures in the home have been shown to reduce the incidence of both firearm suicide and the overall suicide rate.<sup>26</sup>

The draft Human Rights Committee general comment on the right to life states: "While acknowledging the central importance to human dignity of personal autonomy, [States ...should recognize that] individuals planning or attempting to commit suicide may be doing so because they are undergoing a momentary crisis which may affect their ability to make irreversible decisions, such as to terminate their life." In these circumstances – which are typical of those attempting suicide by firearm – "States should take adequate measures...to prevent suicides." In this connection the Committee has specifically recommended restrictions on access to firearms and ending the storage of firearms in the home by those in the armed forces and the creation of a national registry of privately owned firearms.<sup>27</sup>

Likewise, the Committee on Economic, Social and Cultural Rights, expressing concern about reports that a large number of suicides are committed with easily accessible firearms, has recommended with regard to Switzerland that the state party should take effective measures to combat suicide, including "by restricting access to firearms kept at home in connection with service in the army."<sup>28</sup>

Similar considerations are also relevant regarding restricting access to firearms and ensuring secure storage and enhanced safety measures in relation to the prevention of accidental death/injury by firearm, particularly among children, teenagers and young adults.<sup>29</sup>

States must restrict personal possession of firearms by those at risk of self-harm and take other measures to reduce the risk of accidental death/injury by:

- Ensuring rigorous background checks, including assessments of psychological fitness for possession before an individual is given a license (see above);
- Instituting waiting periods for firearm and ammunition purchases;
- Enforcing stringent safety requirements including safe storage (for example, keeping firearms unloaded and under lock and key or offsite);
- Investment in research into improving firearms safety mechanisms; and
- Public education to raise awareness around the dangers of firearms in the home.

## 1.7 FIREARM VIOLENCE AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Human rights are universal, indivisible, interdependent and interrelated.<sup>30</sup> Violations of economic, social and cultural rights are often inextricably linked with violations of civil and political rights such as the right to life. Indeed, the right to life, in the sense of the right to live with dignity, could be seen as itself extending beyond civil and political rights into the realm of economic, social and cultural (ESC) rights.<sup>31</sup> The full enjoyment of all human rights requires a holistic approach which looks not just at individual violations, but also at patterns of violations embedded in specific socio-economic realities.<sup>32</sup>

The state has a duty to actively prioritize marginalized communities who face the biggest obstacles to realizing the full spectrum of their rights.

Firearm violence by private actors has a strong socio-economic dimension. It is typically concentrated in low income urban neighborhoods with high levels of crime, including trafficking in illicit drugs, lack of access to public services and inadequate policing or policing which does not comply with international standards on human rights and law enforcement. Easy access to and proliferation of firearms in these circumstances can have an impact on the community as a whole across the full range of human rights. Young males are at particularly high risk of firearm violence and homicide, especially where the dynamics of gang participation and violence are prevalent.<sup>33</sup> Women are often left to deal with the socio-economic aftermath of firearm violence as the sole breadwinner following the death or serious injury of their partners.

In terms of ESC rights, patterns of persistent firearm violence can both inhibit access to basic services, such as health and education, and entrench deprivation in the community which degrades those services over time. It can also impose significant economic costs<sup>34</sup> on already deprived communities, including loss of livelihood/income and the costs of medical/psychological care, impairment, long-term physical disability,<sup>35</sup> and mental health issues stemming from the effects of chronic exposure to trauma.<sup>36</sup>

While firearm violence can result in inadequate access to public services, the converse can also be true: in neighborhoods lacking public services, firearm violence and intimidation can more easily become entrenched and gaps left by the lack or inadequacy of a state presence – including in terms of human rights compliant policing – can be filled by armed gangs or organized crime.

### 1.7.1 FIREARM VIOLENCE AND THE RIGHT TO HEALTH

People living in communities in which there are high levels of firearm violence can find it difficult or dangerous to access local healthcare facilities. In some instances, the partitioning of neighborhoods by armed criminal gangs can obstruct access;<sup>37</sup> in others, frequent official or de facto curfews related to police interventions can close down health care services. In many countries, security concerns and associated costs impact staff retention among those working in essential services, further diminishing their capacity and effectiveness. In some instances, services may avoid locating in areas of high firearm violence because of issues associated with insecurity and poor staff retention.

Firearm violence can also cause long-term health problems throughout the affected community. Lack of day-to-day security can have profound psychological impacts, particularly for those who have witnessed shootings, and for the friends and family members of victims. Gunshot survivors can suffer severe and chronic physical and psychological effects,<sup>38</sup> and victims and their families often lack access to adequate psychological support and physical rehabilitation. There is a particular shortage of longer-term follow up programs to address physical and mental health issues.

### 1.7.2 FIREARM VIOLENCE AND THE RIGHT TO EDUCATION

Firearm violence can disrupt the functioning of schools and make trips to and from school dangerous. Lack of state resources for education and problems of recruiting and retaining teachers in neighborhoods wracked by firearm violence have a negative impact on education. Endemic firearm violence and associated insecurity can

have a particularly serious impact on children and adolescents, including by disrupting school attendance and retention, damaging the learning environment and reducing the efficacy of teaching, which in turn leads to poorer outcomes in terms of employment and income.<sup>39</sup> This in turn can perpetuate cycles of deprivation, poverty, crime and violence.

In order to comply with their due diligence obligations with regard to protecting the rights to life and to security of person as well as ESC rights, states must work to reduce persistently high levels of firearm violence in communities and the long-term socio-economic impacts, by:

- Taking measures to ensure a context of public safety supported by effective, human rights-compliant and accountable law enforcement agencies committed and trained to ensure the rule of law and prevent illegal acts, thereby reducing people's perceived need to protect themselves by resorting to firearms.
- Implementing effective firearms regulation and human rights compliant policing, and enforcing sanctions against those who use firearms unlawfully.
- Implementing evidence-based violence reduction programs in communities where there is a persistently high level of firearm violence. These could include:
  - › Active engagement and partnership with all relevant stakeholders – such as local authorities, including those providing public health and education services, law enforcement, civil society, local businesses and community leaders – on firearm violence reduction/prevention, focusing initiatives on those at most risk of perpetrating or becoming victims of gun violence.
  - › Implementing effective crime prevention and firearm reduction plans, community security projects and disarmament initiatives.
  - › Taking surplus firearms out of circulation by,

for example, regular firearms amnesties and buy-back programs.

- › Challenging stereotypes around guns and crime prevention and assuaging fear of violence that can lead to an escalation of gun ownership/ use.

While implementing violence prevention measures for communities impacted by persistent firearm violence states should also ensure the provision of adequate resources for those communities and in particular:

- Ensure full access to basic services (including health and education) is guaranteed.
- Address any specific issues where firearm violence is impeding access to basic services, such as by the disruption of the functioning of schools, the partitioning of neighborhoods by armed criminal gangs limiting access to health services, or the intimidation of staff charged with providing services.
- Address the physical and psychological health impacts of firearm violence through targeted healthcare response.
- Prioritize the allocation of public resources to basic services and infrastructure in communities where high levels of gun violence impact on service provision.

## 1.8 FIREARM MANUFACTURERS, DISTRIBUTORS AND DEALERS

Under international human rights law, states have a duty to protect against abuses by non-state actors, including companies. The UN Guiding Principles on Business and Human Rights (UN Guiding Principles)<sup>40</sup> expressly articulate that: “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including companies. This requires taking

appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>41</sup>

This entails regulating the conduct of arms manufacturers, distributors, dealers, and other actors in the supply chain<sup>42</sup> and includes adopting a regulatory framework that requires companies themselves to conduct human rights due diligence.

Under, the UN Guiding Principles all companies have a responsibility to respect all human rights – a responsibility which is independent of the state’s own human rights obligations. Specifically, the UN Guiding Principles state that companies should carry out human rights due diligence to prevent abuses of human rights throughout their operations, irrespective of legal obligations in the jurisdiction in which they are operating.<sup>43</sup> In other words, if necessary, in order to comply with their responsibility of human rights due diligence, companies may need to go beyond what is legally required in that jurisdiction.

Companies’ human rights due diligence should cover adverse human rights impacts that the company may cause or contribute to through its own activities or which may be directly linked to its operations, products or services, even if caused or contributed to by others. Companies should assess all aspects of their operations to ensure that they are not causing or contributing to human rights abuses, including in their value chains. Companies should work with federal and state governments to set uniform standards and ensure their effective implementation throughout the gun industry.

Companies manufacturing, distributing and dealing in firearms and related ammunition should adopt measures to minimize the risk that their products are used for human rights abuses. In some jurisdictions, this may be a matter of following existing law. In jurisdictions with weak and/or poorly implemented regulation of firearms,



the risk of human rights abuses resulting from the use of firearms is high. In these contexts, firearm companies need to take actions above and beyond their legal responsibilities to prevent irresponsible use of their products and to minimize the risk of their products being used to commit human rights abuses. If potential risks are identified, companies should take measures to eliminate or mitigate these risks. Measures of mitigation could include industry-wide initiatives to set standards on human rights compliance across a given sector.

Measures which companies should take to meet their responsibilities to respect human rights include enhanced record keeping; ceasing the manufacture, marketing and sale of certain types of particularly harmful weapon-types; ceasing distribution to problematic dealers; and introducing safety measures to prevent accidental death or injury.<sup>44</sup> Standards for dealers and others engaged in the sale of guns and ammunition should include universal background checks, waiting periods before sales become final and training and licensing requirements (as described above). Lobbying by firearms companies or by organizations linked to and funded by those companies, for relaxation of firearm regulation or against initiatives designed to reduce firearm violence would be inconsistent with their responsibility to respect human rights.

Companies manufacturing, distributing and dealing in firearms and related ammunition must adopt adequate human rights due diligence policies and practices regardless of whether they are required by national law, or that go beyond

the requirements of national law where the law is inadequate or these requirements are insufficient to effectively mitigate risks and prevent abuses. Such measures could include:

- Withdrawal of products from sale where risks of their misuse cannot be effectively mitigated, and restricting sales in circumstances where there is evidently a particularly high risk of misuse;
- Refraining from marketing/promoting products in such a way that might encourage misuse of firearms;
- Ceasing marketing and selling to private actors certain types of particularly harmful weapons, including at a minimum fully automatic firearms (including accessories/modifications for semi-automatic weapons which allow rapid firing functions akin to those of fully automatic firearms); self-loading semi-automatic rifles and shotguns fed by a detachable ammunition magazine, and armor-piercing ammunition;
- Putting in place robust measures to combat illicit sale or transfer of firearms and/or ammunition;
- Investing in research into measures to prevent accidental discharge of weapons, including improving reliability of traditional safety devices, and developing newer technologies such as personalized weapons.<sup>45</sup>
- Refraining from lobbying for relaxation of firearm regulation, where such a relaxation risks increased human rights abuses; or against initiatives which could reduce firearm-related abuses.<sup>46</sup>

# FIREARMS IN DOMESTIC LAW AND POLITICS

## 2.1 THE SECOND AMENDMENT

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

United States Constitution, Amendment II

The language of the Second Amendment of the United States Constitution has created considerable debate regarding the intended scope of the right to own and use firearms in the USA.

Some scholars, lawyers and jurists have argued that the Amendment creates an individual constitutional right for citizens to own and use firearms.<sup>47</sup> They argue that the Constitution restricts legislative bodies from prohibiting firearm possession or, at the very least, renders restrictive regulations unconstitutional.

Other scholars point to the reference to “a well regulated Militia” to argue that the Amendment intended only to restrict Congress from legislating away a state’s right to self-defense. Under this

“collective rights” theory<sup>48</sup> citizens do not have an individual right to possess guns outside of the context of militia service and, therefore, local, state and federal legislative bodies have the authority to regulate firearms without violating any individual constitutional right.

This collective interpretation of the Second Amendment was adopted by the US Supreme Court in its 1939 decision, *United States v. Miller*.<sup>49</sup> The Court was determining whether the National Firearms Act (NFA) violated the Second Amendment when two men were charged under the NFA for transporting a sawed-off shotgun between states. The Court determined that the Second Amendment does not guarantee an individual the right to keep and bear a sawed-off, double-barrel shotgun. It reasoned that the possession of such a weapon does not have a reasonable relationship to the preservation or efficiency of a well-regulated militia. This precedent-setting ruling stood for nearly 70 years, allowing the federal government, states and localities to place restrictions on the purchase and possession of firearms.

In 2008, the US Supreme Court revisited the

issue in *District of Columbia v. Heller*.<sup>50</sup> The challenge came from a District of Columbia law enforcement agent who applied to register a handgun he wished to keep at home, but was refused under a Washington D.C. firearm regulation. *Heller* challenged the law and the Supreme Court ruled that portions of the District of Columbia law violated the Second Amendment. It found, for the first time, that the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia and extended the right to include a right to keep a loaded handgun at home for self-defense.

The Supreme Court did state that this right is not without limitations. It is not a right “to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose”<sup>51</sup> and reasonable limitations can be placed on firearm purchase, possession and storage and the carrying of firearms in public. In its written opinion the Court provided some examples of laws it considered “presumptively lawful”, such as regulations that prohibit firearm possession by felons and the mentally ill; those that forbid firearm possession in sensitive places such as schools and government buildings; and those that impose conditions on the commercial sale of firearms. The Court also noted that the Second Amendment is consistent with laws banning “dangerous and unusual weapons”. This could include firearms that are used in a military context, for example automatic weapons. The Court also declared that its analysis should not be read to suggest “the invalidity of laws regulating the storage of firearms to prevent accidents.”<sup>52</sup>

Since the District of Columbia is a federal entity, the *Heller* decision only strictly applied to federal regulations on firearms. However, just two years later, the Supreme Court in *McDonald v. City of Chicago* evaluated whether or not the Second Amendment should be incorporated to states via the Fourteenth Amendment’s Due Process clause, which can be utilized to limit state power.<sup>53</sup> The majority of Justices in the *McDonald* case relied

on the *Heller* decision and its extensive review of the Second Amendment and held that the Second Amendment must be incorporated to the states.<sup>54</sup> In doing so, the court struck down handgun bans in Chicago and Oak Park, Illinois, on the basis of the Second Amendment. State and local governments may enact firearm laws and regulations, but they must comply with the Second Amendment and the Supreme Court decision in *Heller*. Local governments can enact laws that regulate the possession of firearms within their cities, except for those in states that have explicitly removed authority to regulate firearms and ammunition from local governments.<sup>55</sup>

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## FIREARM LEGISLATION AROUND THE WORLD

**While each jurisdiction<sup>56</sup> has different legislative and administrative procedures related to the acquisition, possession and use of firearms, most include certain basic restrictions aimed at preventing acquisition of firearms by those at risk of misusing them, preventing unauthorized use of firearms once acquired and restricting the types of firearms that individuals can lawfully acquire.**

**A Small Arms Survey study<sup>57</sup> which compared 43 jurisdictions in 28 countries spread across Africa, the Americas, Asia, Europe and Oceania, found that virtually all states in the sample implement a system of licensing users (with varying conditions) to prevent possession of a firearm by people deemed to be unsuitable, prohibit possession of automatic firearms, and restrict the possession of semi-automatic firearms. Many states require registration of firearms – most with centralized systems of data collection to track firearms within the jurisdiction.**

**A common feature of the licensing process in most countries around the world is a requirement to have a “genuine reason” (for example, hunting, target shooting, pest control and, in some instances, self-defense) for owning a weapon. In most countries individuals cannot simply have a handgun for personal use.**

**In all jurisdictions surveyed, firearm ownership was seen as aright only in the USA and Yemen.**

**The study concluded that: “national controls on civilian firearm access are generally three-pronged, simultaneously regulating the type of firearm civilians can possess, the user and the permitted use of firearms” and that “by and large, states share the same underlying objectives – to prevent gun misuse and improve public security.”<sup>58</sup>**

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The *Heller* decision was a monumental shift in legal jurisprudence on the Second Amendment and it has given rise to a rhetorical and political version of the Second Amendment that is very different from previous interpretations. In challenges to regulations under the Second Amendment, courts have focused on the *Heller* affirmation that the right to firearms is not unlimited and that a number of regulations are fully consistent with the US Constitution. As a result, despite more than 1,200 Second Amendment challenges to laws since *Heller* was decided, courts have upheld the vast majority of these laws.<sup>59</sup> Justice Stevens, who served on the Supreme Court during the *Heller* but has since retired, explained that “even as generously construed in *Heller*, the Second Amendment provides no obstacle to regulations prohibiting the ownership or use of the sorts of weapons used in the tragic multiple killings in Virginia, Colorado and Arizona in recent years. The failure of Congress to take any action to minimize the risk of similar tragedies in the future cannot be blamed on the court’s decision in *Heller*.”<sup>60</sup>

On the other hand, politicians, law makers, and organizations such as the National Rifle Association (NRA) have seized on the recognition of an individual Second Amendment right contained in *Heller* and have asserted an unlimited view of that right that is politically powerful if irreconcilable with the language of the

*Heller* decision itself. This rhetoric and language on the Second Amendment has thwarted progress and action in certain states to limit access and enact regulations to address gun violence in those communities.<sup>61</sup> It has also encouraged a “right to bear arms” mindset born of interpretations of the Second Amendment that threaten to upend any policy which at its core argues that firearm possession is not an automatic and unlimited right. The result is a situation where no reason is needed to legally possess a firearm and efforts to keep firearms out of the hands of those most likely to misuse them have been repeatedly frustrated.

## 2.2 THE IMPACT OF LOBBYISTS ON FIREARM LEGISLATION

Legislation regulating the use and possession of firearms dates back to before the Second Amendment was enacted in 1791.<sup>62</sup> In recent history, the push and pull surrounding federal and state firearm legislation has underscored the significant impact of both the gun lobby and the gun violence prevention lobby.

### 2.2.1 THE NATIONAL RIFLE ASSOCIATION

No single organization has been more influential in the formation of firearm legislation in the USA than the NRA.

***“The NRA, the foremost guardian of the traditional American right to ‘keep and bear arms,’ believes that every law-abiding citizen is entitled to the ownership and legal use of firearms.”<sup>63</sup>***

The NRA was established in 1871 to “promote and encourage rifle shooting on a scientific basis.”<sup>64</sup> In the beginning, it was actually a proponent of gun safety laws.<sup>65</sup> However, from

the 1960s onwards, this began to change. For example, many members vigorously opposed the Gun Control Law of 1968, which banned the sale of firearms to felons, drug users, those under 21 and the mentally ill. And while the law did eventually pass, the NRA was successful in blocking perhaps the most important part of the proposed law: the establishment of national registration of firearms.<sup>66</sup>

By 1977, the NRA had adopted a revised motto: “The Right of People to Bear Arms Shall Not Be Infringed”.<sup>67</sup> Since that time, the NRA has worked to overturn a wide variety of existing regulations and to prevent enactment of myriad bills at the local, state and federal levels – including laws that overwhelming majorities of Americans (including many gun owners and NRA members) support.<sup>68</sup>

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## WHO FUNDS THE NRA?

**There are several sources of funding for the NRA and its related entities. An evaluation of the NRA's state tax filings between 2005 and 2014, show that membership fees alone accounted for an average revenue of US\$125 million annually.<sup>69</sup> The remainder of its funding comes from contributions and grants from individuals, organizations and corporations, including gun manufacturers.<sup>70</sup> According to research by the Violence Policy Center, the gun industry, namely manufacturers and dealers, donated between US\$19.3 million and US\$60.2 million to the NRA between 2005 and 2013.<sup>71</sup>**

According to the NRA, they have a membership of nearly five million individuals.<sup>72</sup> The NRA is composed of several organization and entities, including the NRA Institute for Legislative Action (NRA-ILA), the NRA Political Action Committee (NRA-PAC or NRA-PVF), the NRA Freedom Action Foundation and NRA Media Outreach.<sup>73</sup>

The NRA's powerful lobbying arm, the NRA-ILA, was established in 1975. This lobbies for and against various laws and runs issue-based

campaigns.<sup>74</sup> The NRA-PAC or NRA-PVF was established in 1977 to “ensure pro-Second Amendment lawmakers are elected to office”. The NRA Civil Rights Defense Fund provides pro-bono legal work on cases related to Second Amendment rights.<sup>75</sup> The NRA Freedom Action Foundation is “dedicated to providing non-partisan Second Amendment education to all American Citizens”.<sup>76</sup> Their “Trigger the Vote” program is a “voter registration effort to ensure gun owners across the country are registered to vote”.<sup>77</sup> NRA Media Outreach works by targeting “strategic audiences to energize and activate the grassroots power of the public on Second Amendment issues”.<sup>78</sup>

For decades the NRA and these entities have been very influential in helping to elect certain candidates and defeating others and have worked to impact both federal and state firearm legislation.<sup>79</sup>

For example, the NRA was a key player in the enactment of the Firearm Owners' Protection Act (FOPA) in 1986.<sup>80</sup> FOPA amended, and functioned to undermine, the Gun Control Law of 1968, which had banned the sale of firearms to felons, drug users, those under 21 and the mentally ill.<sup>81</sup> It had also required firearm dealers to obtain licenses and imposed some restrictions on interstate transactions.<sup>82</sup> In 2001, the NRA stated unequivocally that FOPA “didn't just change the restrictive Gun Control Act of 1968, it overruled no fewer than six anti-gun Supreme Court decisions and about one-third of the hundreds of lower court rulings interpreting the Gun Control Act.”<sup>83</sup>

From 1987 to 1993, the NRA vigorously opposed the enactment of the Brady Handgun Violence Prevention Act (Brady Act).<sup>84</sup> The Brady Act was named after Jim Brady, the press secretary for President Reagan who was shot and paralyzed during an assassination attempt on the President. Among other things, it mandates and requires a National Instant Criminal Background Check to

be established under the law for every firearm purchased from a federally licensed gun dealer.<sup>85</sup> Soon after the Brady Act was passed, an NRA-backed lawsuit was filed which claimed that the requirements under the Brady Act infringed on states' rights.<sup>86</sup> The challenge was successful. In *Printz v. The United States*, the Supreme Court held that a federal law could not force state officials to administer or enforce a federal regulatory program and specifically to conduct background checks on potential handgun purchasers.<sup>87</sup> Rather, as it stands, background checks are completed by federally licensed gun dealers using federal databases, and where available, state databases. When enacted, the Brady Act included a five-day waiting period for handgun purchases, however this was eliminated with the implementation of instant background checks in 1998.<sup>88</sup>

In 2013, a bipartisan background check law went to the Senate for vote. At the time, background checks were supported by almost 90% of all Americans.<sup>89</sup> However, the measure failed to get the votes needed for it to pass into law.<sup>90</sup> Of the senators who voted against the expansion of background checks, 93% had received direct campaign contributions or independent expenditures from the gun lobby, primarily from the NRA.<sup>91</sup>

In 2017, the NRA spent US\$5,122,000 on lobbying related to 81 pieces of federal legislation and three in particular: the Hearing Protection Act of 2017, intended to make it easier to obtain silencers; the Concealed Carry Reciprocity Act, which would require states to allow individuals to carry guns in public if the individuals are legally allowed to carry a gun in any other state – no matter how different the two states' laws are (for more on Concealed Carry Reciprocity Legislation see Section 5.3.4);<sup>92</sup> and a resolution which would have overturned an Obama era law that expanded the federal background check system to include mental health records from the Social Security Administration.<sup>93</sup>

The NRA also fights against state firearm regulation around the country. For example, in March 2018, the NRA filed a lawsuit against the State of Florida opposing the raising of the minimum age for purchasing a firearm from 18 to 21.<sup>94</sup> The list of examples of state and federal laws that the NRA has worked aggressively to block include: laws requiring background checks, any and all assault weapon bans and gun-free zones. Federal laws that it has worked to get passed include stand your ground laws, concealed carry and reciprocity laws and carry on campus laws.<sup>95</sup> The NRA has also lobbied successfully to prevent the government from researching the causes, costs and prevention of gun violence in the USA.<sup>96</sup>

Many people from across the political spectrum have criticized the activity of the NRA and its impact on firearm legislation. In 1991 in an interview with PBS, retired Supreme Court Chief Justice Warren Burger, who was appointed by Richard Nixon in 1969 and retired in 1986, stated that the NRA had perpetrated “one of the greatest pieces of fraud – I repeat the word fraud – on the American public by special interest groups that I have ever seen in my lifetime... [The NRA] misled the American people and they, I regret to say, have had far too much influence on the Congress of the United States than as a citizen I would like to see. And I am a gun man.”<sup>97</sup>

In addition to the NRA, there are some smaller but still powerful, gun lobby organizations, such as the National Shooting Sports Foundation, a trade association with 12,000 members, and Gun Owners of America, which views “firearms ownership as a freedom issue.”<sup>98</sup>

## 2.2.2 THE GUN VIOLENCE PREVENTION LOBBY

Despite the power it wields, the NRA does not reflect the view of most Americans, or even most American firearm owners. It is true that gun

ownership in the USA has grown exponentially in the last 50 years. In 2012, the Congressional Research Service reported that there were more than 300 million guns in the USA, twice as many as recorded in 1968.<sup>99</sup> Surveys of gun owners across the USA indicate that most gun owners support policies regulating firearm acquisition and safety, in contrast with positions of the NRA.<sup>100</sup> In fact, polling following a 2018 mass school shooting in Parkland, Florida, revealed that between 65%-69% of registered voters supported stronger gun laws and<sup>101</sup> polls have shown that 90% of Americans “support universal background checks” for all firearm purchases including those involving private firearm sellers.<sup>102</sup> Similarly, organizations representing public health researchers,<sup>103</sup> mental health professionals,<sup>104</sup> doctors,<sup>105</sup> pediatricians,<sup>106</sup> law enforcement,<sup>107</sup> and educators<sup>108</sup> have all voiced their support for stronger firearm regulations.

The gun violence prevention lobby, championed by several organizations including the Brady Campaign to Prevent Gun Violence, Everytown for Gun Safety, Giffords and the Coalition to Stop Gun Violence, have become a platform for national, state and local firearm reform.<sup>109</sup> In addition to these groups, the recently launched Community Justice Reform Coalition, is a national advocacy coalition focused on promoting and investing in evidence-based policies and programs to prevent gun violence in urban communities of color.<sup>110</sup>

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### **THE BRADY CAMPAIGN TO PREVENT GUN VIOLENCE**

The Brady Campaign was founded in 1974 as the National Council to Control Handguns. It operated under the name Handgun Control, Inc (HCI) until it was renamed the Brady Campaign to Prevent Gun Violence, after Jim Brady and his wife Sarah Brady in 2001. The Brady Campaign was driving force behind the Brady Handgun Violence Prevention Act, passed in 1993.<sup>111</sup> Together with

its sister organization, the Brady Center to Prevent Gun Violence, the Brady Campaign focuses on education through public health and safety programs, affecting legislation, and legal action through the representation of survivors and victims of firearm violence in civil litigation against gun manufacturers and dealers.<sup>112</sup>

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### **EVERYTOWN FOR GUN SAFETY**

Everytown for Gun Safety (Everytown) was founded in 2013 when Mayors Against Illegal Guns and Moms Demand Action for Gun Sense in America joined forces.<sup>113</sup> Everytown, which currently has over 2 million members nationwide, is “dedicated to understanding and reducing gun violence in America.”<sup>114</sup> It focuses on “groundbreaking original research, developing evidence-based policies, and communicating this knowledge in the courts and the court of public opinion.”<sup>115</sup> Its Litigation and Enforcement group provides free legal representation and advice across the country.<sup>116</sup>

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### **GIFFORDS**

Giffords is comprised of a legal team, an advocacy arm and a political action committee and is led by former Congresswoman Gabrielle Giffords. She was shot and seriously injured in an assassination attempt in 2011 in Tucson, Arizona, in which six people were killed.<sup>117</sup> The Giffords’ team works to help write, enact, and defend state and federal gun violence prevention laws around the country.<sup>118</sup>

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### **THE COALITION TO STOP GUN VIOLENCE**

The Coalition to Stop Gun Violence (CSGV) believes that all Americans have a right to live in communities free from gun violence. Their policy, advocacy and strategic engagement teams work to draft, pass and implement evidence-based

legislation at the state and federal level. Among other areas, CSGV is seen as an expert in the development of laws that allow law enforcement and family members to temporarily remove firearms from a loved one in crisis.<sup>119</sup>

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### **THE COMMUNITY JUSTICE REFORM COALITION**

The Community Justice Reform Coalition (CJRC) is a national advocacy coalition whose work focuses on local, state, and federal issues of concern for communities of color impacted directly by gun violence. CJRC advocates for strategic long-term investments in evidence-based programs and policies that are developed and implemented by communities of color to prevent gun violence. CJRC utilizes evidence-based research, data, and analytics to drive the conversation around

injustices, especially those that disproportionately affect communities of color, highlighting the significance of investing in programs that promote the safety and security of all members of our society, and especially those on the margins.<sup>120</sup>

These organizations are joined by dozens of national, state and local organizations which work to encourage gun violence prevention in the USA. These include The Sandy Hook Foundation, the Newtown Action Alliance, the Center for American Progress, States United to Prevent Gun Violence, the LIVE FREE-PICO National Network, the Pride Fund to End Gun Violence, the Violence Policy Center, the National Coalition Against Domestic Violence, Moms Rising, Doctors for America, and Never Again MSD, among others.



# FAILURE TO PROTECT: THE GUN VIOLENCE CRISIS IN THE USA

Gun violence and firearm-related deaths and injuries in the USA affect people of every age, ethnicity, nationality, religion, sexual orientation, gender and gender identity. Gun violence affects those living in both rural and urban communities, the affluent as well as those living in poverty. However, Amnesty International has found that gun violence manifests and affects certain people and communities, in particular people of color, children and women, in wholly dissimilar and disparate ways. Others at heightened risk of death or serious injury from firearms include individuals who present a risk of harm to themselves or others.

The USA is failing to protect individuals and communities most at risk of gun violence, in violation of international human rights law.

Firearm homicide disproportionately impacts minority communities and is the leading cause of death for black men and boys aged 15-34.<sup>121</sup> A startling 14,415 people lost their lives in gun homicides in 2016. African Americans accounted for 58.5% of gun homicides nationwide, even though African Americans make up just 13% of

the US population.<sup>122</sup> Failure to address systemic discrimination; failure to ensure human rights compliant policing practices; failure to keep firearms out of the hands of those most likely to misuse them; and a failure to invest in gun violence prevention programs all contribute to this crisis.

Over 1,400 children die each year in the USA from gun-related homicides, unintentional shootings and suicides.<sup>123</sup> Unintentional shooting deaths and suicides by children who have access to guns could be prevented through the implementation of Child Access Prevention (CAP) laws requiring guns to be stored safely and securely. However, a staggering 23 US states have failed to enact any such laws. Age limits on gun sales should be implemented so that dangerous firearms like assault rifles cannot be legally purchased in general by individuals under the age of 21. Children should be safe in schools, yet between 2013 and June 2018, there were 316 incidents of gunfire on school grounds in the USA.<sup>124</sup> For students attending schools located in areas with high rates of gun violence, the path to and from school poses a very real threat to life.

Women are also at risk from gun violence due to significant loopholes in domestic violence and firearms protection laws. While federal law provides that an individual found guilty of a domestic violence crime may not legally own or acquire a firearm, if the relevant domestic violence records are not accurately and rapidly submitted for inclusion in state and federal databases, the individual could purchase firearms, without recourse or purchase one without a background check through a private sale or at a gun show. Even when a domestic violence protection order is granted, federal law does not require the removal or surrender of firearms and only 27 states require or authorize authorities do so, putting lives at risk.<sup>125</sup> Furthermore, current or former dating partners who did not have a child together and did not cohabit are excluded from the protection measures that are in place.<sup>126</sup> While some states have closed this so-called “boyfriend loophole”, 31 states do not currently have laws which prohibit those who have been convicted of crimes against dating partners from possessing firearms.<sup>127</sup>

In 2016, 22,938 people in the USA died by suicide using a firearm, an average of more than 62 a day.<sup>128</sup> There is a failure to ensure adequate reporting nationwide of those who are at risk of hurting themselves or others in the background check system, as well as a failure to enact additional policies that decrease the risk of firearms ending up in the hands of those likely to misuse them. For example, in addition to requiring the safe and secure storage of weapons, mandatory waiting periods are a potentially life-saving policy for individuals who present a risk of harm to themselves or others who may purchase a firearm impulsively. Other measures that are not implemented include Extreme Risk Protection Orders (ERPOs) which allow family members and law enforcement to petition a court to have a firearm removed from an individual who is felt to be likely to misuse it to harm themselves or others.

This chapter looks at the consequences for various groups in US society of the failure of authorities to fulfill their obligation to act with due diligence and take reasonable and timely measures to protect life and security of person.

## MASS SHOOTINGS

**Mass shootings are typically defined as shootings where four or more victims are killed.<sup>129</sup> Between 2009 and 2016 there were 156 mass shootings in the USA, in which a total of 848 people were killed and 339 injured.<sup>130</sup> More than half of mass shootings between January 2009 and July 2015 were domestic disputes in which four or more family members were killed.<sup>131</sup>**

**Public mass shootings account for less than 1% of gun deaths in the USA.<sup>132</sup> However, they have a profound emotional and psychological effect on survivors, families and communities and have created an environment in which people feel unsafe in public places such as churches, schools, concert venues and movie theaters.**

**The solutions to addressing mass shootings are the same as those identified to prevent other forms of gun violence: a national system of licensing, training and registration; comprehensive background checks; laws requiring the safe storage of firearms; stronger domestic violence protection laws; a ban on semi-automatic assault rifles, semi-automatic shotguns, semi-automatic submachine guns, high-capacity magazines, bump stocks, trigger locks, armor-piercing ammunition and other weapons/accessories; and Emergency Risk Protection Orders (ERPO). Mass shootings in schools are discussed in Section 3.2.3. See also: Domestic Violence (Section 3.3), Semi-automatic Assault Rifles and Shotguns, Large Capacity Magazines, Bump Stocks, Trigger/Gat cranks and Other dangerous devices (Section 5.5), and Access to Firearms for Individuals Who May Present a Risk of Harm to Themselves or Others (Section 3.4).**

## 3.1 URBAN GUN VIOLENCE

### 3.1.1: THE DISPARATE IMPACT OF GUN VIOLENCE ON COMMUNITIES OF COLOR

#### SHIRLEY CHAMBERS

Shirley Chambers has lost all of her four children to gun violence in Chicago.

Ronnie Chambers, a 33-year-old aspiring music producer, was shot in the head while sitting in a parked car on the West Side of Chicago on 26 January 2013. On a television talk show a few weeks earlier, he had explained that he was a former gang member who had been in and out of jail but was now mentoring young rappers, trying to keep them away from gang life.

Jerome Chambers, aged 23, had been shot and killed while using a payphone outside the Cabrini-Green Housing complex on 26 July 2000. Three months earlier, on 27 April, his 15-year-old sister, had been standing in the lobby of a Cabrini high rise building when she was shot and killed by a 13-year-old boy.<sup>133</sup>

Five years before that, on 28 November 1995, 18-year-old Carlos Chambers had been shot twice in the head by a classmate just blocks from their school, Jones Metropolitan High, in Chicago's South Loop.<sup>134</sup> According to court documents, the 16-year-old shooter bought the .25 caliber handgun the day before the shooting; Marshall and Chambers were affiliated with rival street gangs, and had fought earlier in the week.<sup>135</sup>

#### PHYLLIS GRAY

In Washington, D.C., Phyllis Phillips Gray also lost four children to gun violence.

Scorpio Phillips, aged 31, was one of two men killed when unknown assailants opened fire on a block party in southeast D.C. on 17 September 2016. At the time of writing, the case remained unsolved.<sup>136</sup>

Another son, Carlos Phillips, aged 26, was shot dead in his own apartment in November 2007.<sup>137</sup>

Fifteen years earlier, in February 2001, Phyllis Gray's 23-year-old son, Samuel Phillips, had been killed.<sup>138</sup> He had just been transferred from a federal prison to a parole preparation facility in Washington, D.C., and was shot in the street outside.<sup>139</sup>

Demetrius Phillips, aged 21, a key witness in the prosecution of his brother's alleged killer, was himself shot and killed in November 2003, shortly before the case was scheduled to go to trial.<sup>140</sup>

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Firearm homicides disproportionately impact African American and Latino communities, particularly young black men. A long and complex history of disadvantage and marginalization suffered by these communities; the lack of state support services; discriminatory policing practices and interventions; easy access to firearms; and, in some cases, disputes between established criminal gangs and drug crimes can create fertile ground for pervasive firearm violence.

In 2016, 14,415 people lost their lives in gun homicides. While African Americans represented approximately 13% of the US population in 2016,<sup>141</sup> they made up 58% of gun homicide victims nationwide.<sup>142</sup> Firearm homicide was the leading cause of death for black men and boys aged 15-34 in 2016; it was the second-leading cause of death for Latino men and boys in the same age range.<sup>143</sup> In 2016 alone, 5,366 black men and boys aged between 15 and 34 were victims of firearm homicide;<sup>144</sup> they were almost 20 times more likely to die from firearm homicide than white men and boys of the same age group and about six times more likely than Latino men and boys.<sup>145</sup>

Firearms violence and the toll it takes on communities of color in urban settings is a symptom of a broader problem, one rooted in failures of federal, state and local government

to address institutional racism and its multi-generational impacts. In the absence of jobs, investment in at-risk communities, adequately funded and resourced violence reduction and youth mentorship programs, and other support networks and services that can provide stability, gun violence remains prevalent. In addition to the loss of life, many are left injured or suffering from short and long-term health issues including anxiety, depression and post-traumatic stress (see Chapter 4: Gunshot Survivors). Persistent firearm violence has an impact on all aspects of community life; it can prevent people from accessing critical health care and other services; leave children without safe spaces for play or even safe routes to school; and leave local businesses unable to thrive, resulting in lack of economic opportunity.

Another critical factor at play in communities of color impacted by gun violence is the criminal justice system. Excessive use of force by police, racial profiling and low homicide clearance rates are all factors which contribute to a lack of trust between law enforcement and communities of color. The lack of trust also means that communities may be reluctant to cooperate with law enforcement in solving homicides that have taken place.

The disparate impact of gun violence on communities of color raises serious concerns about the protection of human rights including the right to life, to security of person, to freedom from discrimination and to equal protection of the law. The USA ratified the ICCPR and the ICERD, which explicitly protect these rights. It therefore has a legal obligation to respect, protect and fulfill these human rights.

The UN Working Group of Experts on People of African Descent has expressed concern over the lack of regulation of firearms in the USA and its impact on black communities.<sup>146</sup> The UN Human

Rights Committee and the Committee on the Elimination of All Forms of Racial Discrimination both highlighted the issue of gun violence in their most recent reports on US human rights compliance.<sup>147</sup> They remain concerned at the increasing numbers of gun-related deaths and injuries in the USA and the disparate impact on racial and ethnic minorities.<sup>148</sup> Both committees noted that the US government's failure to curb gun violence constitutes a violation of the rights to life and to non-discrimination under international law.<sup>149</sup>

For the USA to meet its human rights obligations, the government should tailor policies to tackle the multiple, reinforcing interactions and disadvantages that have led to this chronic insecurity, paying particular attention to the specific needs of these communities, including combating discrimination. It must also work to reduce persistently high levels of firearm violence in communities by taking measures to ensure public safety supported by effective, human rights-compliant policing and accountable law enforcement agencies, thereby reducing people's professed need to possess firearms for self-defense. Furthermore, it is critical that the government implements evidence-based violence reduction programs in communities where there are persistently high levels of firearms violence. The USA is currently failing to meet these human rights obligations.

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## **FAILURE TO ADDRESS SYSTEMIC/INSTITUTIONAL RACISM**

Communities of color have a long and complex history of disadvantage and marginalization in the USA, which contributes to the disparate impact of firearm homicides. Urban centers are largely populated by minority communities whose neighborhoods frequently lack economic opportunity and access to services and where

young people feel the need to protect themselves by carrying a firearm due to violence, lack of police protection and the presence of gangs.<sup>150</sup> While not all firearm homicides involve gang violence, high unemployment rates for young men of color (who increasingly have criminal records that prevent them from obtaining lawful employment) may contribute to individuals turning to criminal activity.

In terms of ESC rights, patterns of persistent firearm violence can both inhibit access to basic services, such as health, housing and education, and entrench deprivation, which degrades those services over time.<sup>151</sup> At the same time, firearm violence also causes a range of health problems throughout the affected community, increasing the burden on under-resourced services.<sup>152</sup> Victims of firearm violence and their partners and wider families often lack access to adequate psychological and physical care and proper follow up to address these issues. This could range from long-term medical and financial support for those with physical and psychological disabilities caused by firearm violence, to the provision of counseling for those traumatized by the effects of firearm violence on themselves, their friends, family and wider community.<sup>153</sup>

The full enjoyment of all human rights requires a holistic approach which looks not just at individual violations but at patterns of violations embedded in specific socio-economic realities.<sup>154</sup> The USA has a duty to ensure that it does not discriminate on any of the grounds protected by international law, that it prevents discrimination by non-state actors and that it takes measures to remedy the legacy of discrimination and ensure that rights are enjoyed equally by everyone. This includes actively prioritizing marginalized communities in order to remove obstacles to their realizing the full spectrum of rights.

According to a study that analyzed data from the US Census Bureau Historical Poverty Tables,

in 2016 (the most recent year for which data was available), about 22% of African Americans and 19.4% of Hispanics were living below the poverty line, compared with 8.8% of white Americans.<sup>155</sup> Access to housing and access to education are among the factors that contribute to huge disparities in income and wealth between white Americans, African Americans and Latino communities.<sup>156</sup>

Amnesty International took a deeper look at these issues in two communities ravaged by high levels of firearm homicide – New Orleans (Louisiana) and Chicago (Illinois). Louisiana has the third highest rate of gun homicide in the country, which disproportionately affects people of color, particularly men.<sup>157</sup> The rate of gun-related homicides for white men in Louisiana is four per 100,000, compared with 43 per 100,000 for black men.<sup>158</sup> Within the city of New Orleans, the rate of gun violence per capita is even higher – 149 per 100,000 in 2017.<sup>159</sup> Black men are disproportionately impacted by this violence.<sup>160</sup>

In Illinois, despite fairly strong firearm regulation policies, Chicago experiences high rates of gun-related deaths. In 2016, Chicago recorded 762 homicides, 90% of which involved a firearm.<sup>161</sup> In 2017, the rate of gun violence per capita in Chicago was 131 per 100,000.<sup>162</sup> This reality of constant firearm violence primarily impacts those living in low-income minority communities. According to a study conducted through the University of Chicago, African Americans accounted for about a third of Chicago's population, but almost 80% of homicide victims in both 2015 and 2016. Hispanics accounted for 16% of the homicide victims during these same years despite representing 29% of the city's population.<sup>163</sup> Moreover, African American men and boys aged 15-34 made up over half of the city's homicide victims although they account for just 4% of the city's population.<sup>164</sup> The historical context of communities of color and their

existence and structure within the city shapes the way they are impacted by gun violence. In the city of Chicago, black and white communities have historically been and remain largely segregated, with African Americans making up the vast majority of neighborhoods in the south and far west sides of the city, and whites comprising most of the north; while Latinos are somewhat more mixed between the two, often living in “buffer” communities between blacks and whites.<sup>165</sup> While Latino gangs and associated violence exists in Chicago, the gangs are not as fractured and have therefore not experienced the same street-to-street violence that has occurred between the largely African American gangs, despite showing similar levels of poverty and other economic and social issues within their community.<sup>166</sup>

As part of the strategy to address high levels of firearm violence in the USA, federal, state and local governments should tailor policies to tackle the multiple, reinforcing interactions and disadvantages that have led to this chronic insecurity, paying particular attention to the specific needs of these communities.

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## NEW ORLEANS

**In New Orleans about 60% of the population is African American.<sup>167</sup> According to the US Census Bureau’s 2012-2016 American Community Survey, the poverty rate for African Americans in New Orleans was 34%, compared with 13% for white residents.<sup>168</sup> Nearly half of the city’s black children live in poverty, compared to about 9% of the city’s white children.<sup>169</sup>**

**Access to education, allocation of education funds and resources, and the eradication of community-based schools continue to affect disadvantaged communities in New Orleans. Some reports praise the restructuring of the city’s school system and have found that New Orleans has achieved improvements in its education system since 2005 when Hurricane Katrina ravaged the region.<sup>170</sup> Others criticize the**

**fact that many children are being bused to far-off poor-performing sites, resulting in two-hour commutes and utilizing funds for transportation that could be directed toward teaching and other school programs.<sup>171</sup> Issues with teacher retention, declining funding for school resources, failure to provide services for students with disabilities and the eradication of community-based schools resulting in a lack of investment in at-risk neighborhoods, have also impacted students from low-income disadvantaged areas.<sup>172</sup> Further, school closures due to poor performance have negatively affected communities of color as they are often the most impacted.<sup>173</sup>**

**At 9%, the black unemployment rate in the city is more than double that of white residents (4%) according to the most recent data available.<sup>174</sup> The median income for African American families in New Orleans is estimated at US\$25,600, less than half the white family median income of US\$66,500.<sup>175</sup> Numerous factors contribute to disparities in employment and income between African American and white residents, including skills available in the labor pool, jobs paying minimum wage making it difficult for workers to support their families, and lack of access to employment for individuals with past felony convictions.<sup>176</sup> All of these factors contribute to New Orleans ranking third nationwide in cities with the largest income inequality rates between black and white communities.<sup>177</sup>**

**Poverty also affects access to quality health care. Medicaid covers pregnant women, children and elderly people who are poor, as well as some people with disabilities, and families of four who earn less than US\$34,000 a year or individuals who earn less than US\$16,000 a year.<sup>178</sup> Those who do not qualify for Medicaid may remain uninsured or have insurance plans that require high co-pays (out-of-pocket payments by the individual) for prescriptions and medical services, leading many people to delay or reduce needed treatment. African American communities in New Orleans have less access to**

quality health care than white communities in that there are very few health care services available for uninsured and low-income people in the city.<sup>179</sup> Recent data available from the US Census Bureau American Community Survey indicates that 12% of African Americans in New Orleans are uninsured, compared to 8.3% of the white population.<sup>180</sup> The stark impact of health inequality is illustrated by a 2012 study which found that residents in the city's poorest zip code have a life expectancy that is a full 25 years lower than the residents of the city's wealthiest zip code.<sup>181</sup>

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## CHICAGO

*"In Chicago, the job situation in hollowed-out West and South side neighborhoods is dire. Manufacturers left long ago. There are few retail and restaurant jobs. All the economic activity is located miles away in the Loop and elsewhere in metropolitan Chicago. Too many young people have inadequate job training and...nothing to do."*

Editorial Board, *Chicago Tribune*<sup>182</sup>

The vast majority of gun crime is concentrated in the South and West Sides of Chicago, home to predominantly African American and Latino communities which have higher rates of poverty and unemployment or underemployment than the white residents of Chicago.<sup>183</sup>

Among young African American adults, aged 20-24, about 51% of men and 43% of women were unemployed in 2016. About 35% of all Latinos in the same age group were unemployed, and about 24% of all white 20-24-year-olds.<sup>184</sup> Many of those who are working have minimum wage jobs that are unlikely to be enough to sustain a household or provide adequate benefits. In fact, about half of Latino workers, a third of black workers, and a sixth of white workers do not earn a living wage of at least US\$15 an hour in Chicago.<sup>185</sup>

Moreover, jobs are concentrated in the North Chicago area and access to those opportunities relies on mass transit, which is limited on the South and West Sides.<sup>186</sup> Lack of investment in historically segregated black and Latino communities leaves households with no consistent income source. High rates of violent crime further compound the problem, as the violence drives out potential businesses and opportunities for employment.<sup>187</sup>

School closures and failing schools contribute to low rates of employment by failing to educate and prepare students for the workforce.<sup>188</sup> In 2013, the Chicago Board of Education voted to close 49 public schools across Chicago, impacting 30,000 students, over 80% of whom were black.<sup>189</sup> Black students are less likely to have access to a neighborhood school with advanced academic courses than either white or Latino students.<sup>190</sup> Both African American and Latino students tend to attend schools that are segregated by race; in 2015, about half of all schools had a student body that was at least 85% black or 85% Latino. Struggling schools are overwhelmingly located in African American and Latino communities.<sup>191</sup>

Closures and limitations in state and municipal funding mean that many of those most at risk of gun violence do not have access to adequate health care facilities, particularly mental health care facilities. Residents of Chicago's predominantly white and affluent North Side, for example, have around 10 times as many health care provider options in or near their homes as residents of the South and West Sides.<sup>192</sup> In addition to lack of access to services due to location, lack of health insurance coverage is an issue.<sup>193</sup> Recent data from the US Census Bureau's American Community Survey indicates that Latino Chicagoans are more than twice as likely to be uninsured as both African American and white residents due to issues such as citizenship and types of employment.<sup>194</sup>

### 3.1.2 UNSOLVED HOMICIDES AND COMMUNITY MISTRUST

Another factor that drives and perpetuates gun violence is the failure to hold accountable those who are responsible for homicides within the community. Lack of accountability helps create a culture of impunity in which perpetrators are not deterred from engaging in further violence. Impunity has broader corrosive effects. It victimizes the community, replacing the rule of law with local systems of justice, which are often harshest on women and the more vulnerable. Disputes are settled on the street. Witnesses have no faith in the system and so do not cooperate with the police.

Evidence shows that police solve certain kinds of murders more effectively than others and that clearance rates are correlated with the ethnicity of the victim.<sup>195</sup> For example, data acquired from the New Orleans Police Department (NOPD) through a public records request demonstrated that police in New Orleans were significantly more likely to solve the murder of a non-African American man (clearance rate 38.2%) than the murder of a black man (clearance rate 26.2%) in 2016, the last year for which complete data has been released.<sup>196</sup>

In 2016, the Brennan Center for Justice identified significant disparities within the “uncleared” homicide rates across the USA. An analysis of the FBI’s expanded homicide data from 2014 revealed that police were not able to identify key traits of the offender in 40% of homicides where the victim was black, while the equivalent figure for white victims was around 22%.<sup>197</sup>

Experts point to several reasons for the exceptionally low clearance rates in cities such as Chicago, including high levels of mistrust among underrepresented groups, such as women and racial/ethnic minorities towards law enforcement which is perceived historically to support primarily the majority white population.<sup>198</sup> In addition,

most murders take place amid a “no snitch” culture and people fear retaliation if they come forward.<sup>199</sup> With respect to policing specifically, studies confirm that a lack of faith in the ability of law enforcement to protect at-risk neighborhoods reduces community respect and leads to lower levels of compliance with the law and cooperation with the police in fighting crime.<sup>200</sup>

### 3.1.3 EASY ACCESS TO FIREARMS

Easy access to firearms, with guns always at hand ready to be used in dispute resolution as well as in criminal activities, is one of the key drivers of gun violence. Gun homicides tend to be concentrated in urban areas of extreme deprivation, but even within those areas there are people and networks – usually known to the police and engaged in gang or other criminal activity – who are at particularly high risk of engaging in violence, and who are implicated in the majority of gun violence incidents.<sup>201</sup> In a 2014 study of one Chicago neighborhood, 41% of gun homicides occurred around a social network containing less than 4% of the neighborhood’s population.<sup>202</sup>

There are ways in which even those who are prohibited by law from possessing firearms can still get hold of them (see Chapter 5). Guns can be purchased through private party sales, which under federal law are not subject to background checks,<sup>203</sup> or obtained through a “straw purchaser” – someone who can successfully pass a background check and purchase firearms from licensed dealers with the intention of transferring them to another person who could not pass the check. Straw purchases are often made in bulk, with the firearms purchased then flooding the illegal market.

The failure to require reporting of the loss or theft of firearms also facilitates the illegal market and trafficking operations.<sup>204</sup> The US government’s Survey of Inmates in State and



Federal Correctional Facilities found that among inmates who had a gun when they committed a crime, 40% obtained their firearm from an illegal source while nearly 10% obtained their firearm through a retail store or pawn shop where the purchaser would have been required to undergo a background check. The remainder obtained their firearms through other means that would not have required a background check, such as from family or friends (37%) or at a gun show or flea market (less than 2%).<sup>205</sup>

### 3.1.4. GANGS AND GUN VIOLENCE

#### HADIYA PENDLETON

**On 29 January 2013, two members of the SUWU faction of the Gangster Disciples drove past Harsh Park, Chicago, a hangout of the rival 4-6 Terror faction. They saw a group of teenagers gathered under a canopy, sheltering from the rain. One of the men, Micheail Ward, left the car and opened fire, killing 15-year-old Hadiya Pendleton and wounding two others. It was a case of mistaken identity, none of the victims were gang members.<sup>206</sup> Hadiya Pendleton was an honors student and drum majorette who had just performed at President Barack Obama's inauguration. The killing made national headlines. Micheail Ward and Kenneth Williams were found guilty of first-degree murder in August 2018.<sup>207</sup>**

**Ward later told police: "Nobody...expected that girl to die, none of that... We didn't even know she was even from King [a local school] cause we're – King kids - cause Kenny used to go to King and they know they ain't supposed to be in that park."<sup>208</sup>**

**Both men were on probation for gun crime convictions at the time of the killing.<sup>209</sup> Ward, then 18, told police he wanted to retaliate for the killing of a friend by a member of the 4-6 Terror faction: "They murder my man cold-blooded. Police said [expletive] us in our face... So how we – what we supposed to do about that? And they come through killin' us every**

**day... We ain't got no choice if we out there getting killed every day."<sup>210</sup>**

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The Hadiya Pendleton case illustrates many of the key human rights issues underlying gang-related gun crime. The shooter and his accomplice were teenagers, had easy access to a gun and both were already on probation for gun-related offences. The children who were shot were within a few blocks of their high school, yet apparently "should have known" that they would not be safe in Harsh Park. The shooting was not targeted at a specific individual, but was meant to be a revenge killing for a gang dispute; the shooter claimed he had "no choice" but to retaliate because the police would not have investigated the killing of a gang member.

Most gang killings remain unsolved and unprosecuted, resulting in impunity for the perpetrators and feeding the cycle of gun violence. The Pendleton case, as police detectives themselves emphasized in their interrogation of one of the suspects, was a top priority for the Chicago Police Department (CPD), and did result in the unusually rapid arrest and arraignment of two suspects. However, even though additional police resources were devoted to resolving the case, the difficulties inherent in gang killing prosecutions have meant that the shooter and his accomplice were not convicted until August 2018, five years after Hadiya's death.<sup>211</sup>

Where justice for killings is either denied or long-delayed, retaliation killings are common and perpetrators feel secure and unassailable. Witnesses fear even talking to the police, much less coming forward to testify. Where the police have failed to gain the trust and cooperation of the community, they cannot solve crimes, further reinforcing the cycle of impunity and denying justice to the families of the victims.

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## WHAT IS A GANG?

According to the FBI, in 2015 there were at least 33,000 street, prison and motorcycle gangs with some 1.4 million active members in the USA.<sup>212</sup> Gangs are growing in number and scope. Criminal activity and the associated violence has likewise increased.<sup>213</sup> Neighborhood-based street gangs are the greatest threat and are largely responsible for urban gun violence. According to the National Gang Intelligence Center, gangs were responsible for an average of 48% of violent street crime in most jurisdictions in the country and up to 90% in a few jurisdictions with high gang concentrations.<sup>214</sup>

Street gangs are overwhelmingly urban, with more than 80% of their members found in large cities and their outlying suburbs, although street gangs have been moving increasingly into suburban and rural communities to “recruit new members, expand their drug distribution territories, form new alliances and collaborate with rival gangs and criminal organizations for profit and influence.”<sup>215</sup>

The term “gang” has a range of definitions, but no real consensus around what it means. According to the Department of Justice, a gang is an association of three or more individuals who adopt a group identity and use it to “create an atmosphere of fear or intimidation” and may use “a common name, slogan, identifying sign, symbol, tattoo or other physical marking, style or color of clothing, hairstyle, hand sign or graffiti.” The purpose of a gang is to engage in criminal activity and it uses “violence or intimidation to further its criminal objectives”. It may have an organizing structure and exercise control over a particular area, or “it may simply defend its perceived interests against rivals.”<sup>216</sup>

Such a broad and elastic description could cover a huge range of groups and associations. In urban areas, where most street-level gang violence occurs, the term “gang-related” has a tendency

to be broadly applied to gun crimes. There are also concerns that gang databases and gang stereotypes focus on black and Latino youth; law enforcement reports that about 46% of gang members are Latino, 35% are black and 12% are white, while studies based on how participants identify themselves indicate that about 25% of gang members are white, and gangs tend to be increasingly racially and ethnically mixed.<sup>217</sup> Gang databases held by law enforcement agencies can include individuals suspected of gang involvement because of uncorroborated intelligence, where they live and who they know, and generally provide no mechanism for removal.<sup>218</sup> In Chicago, for example, Wilmer Catalan-Ramirez was detained by Immigration and Customs Enforcement (ICE) agents in March 2017 because his name was in the gang database compiled by the CPD. He has no criminal record and, following a lawsuit, the city agreed in December 2017 to change its record to clarify that he was not a gang member. He was eventually released from ICE custody in January 2018.<sup>219</sup>

What is clear is that urban street gangs arise largely in areas of concentrated disadvantage, with poorly resourced schools and hospitals and high rates of unemployment, violence, drug addiction and incarceration, and where there is often a difficult relationship between the community and the police. The gang usually has a geographic focus – a territory – sometimes only a few blocks wide. Adolescent boys, and some girls, join gangs for status or protection, to intimidate others or to engage in crime, or sometimes because there is nothing else to do – no jobs, no after-school programs, no safe recreational spaces. Some are recruited by older siblings, relatives, or friends. And some people don’t join at all but are assumed to be part of a particular gang because of where they live and who they know.

A key issue for gang members is loyalty to one other and “respect”. In fact, getting respect or

recognition has repeatedly been cited as one of the key reasons for gang membership.<sup>220</sup> Any display of disrespect – which can simply include coming onto the territory of a rival – counts as a threat to the gang, and calls for a show of deadly force in response. Respect and status are intertwined, so “demanding respect”, usually through gun-enforced violence, often means gaining credibility and greater authority in the gang structure or hierarchy.

Street gangs are integral to the drug economy which drives gun crime between gangs. Gun crime also drives other parts of the drug trade, in which guns are a kind of currency. Addicts generally have to steal to support their habit – including by stealing or using guns, or even by exchanging them for drugs while dealers need them for protection.

In these circumstances, guns are an essential part of daily life. “Birdman”, a Gangster Disciple in Chicago who had recently been shot 13 times, explained: “it’s like putting your clothes on...that gun go on your hip like you putting your belt on. The last thing you do is worry about the police. I rather do three years in the penitentiary than life in the cemetery.”<sup>221</sup> In New Orleans, a former drug dealer told Amnesty International: “I wasn’t thugging so much that I needed a gun on me all the time, but I always had a couple stashed around me.”<sup>222</sup>

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## CHICAGO

Gangs and gang violence in Chicago have a long and complex history. A 2007 report by the Justice Policy Institute described how the introduction of segregated low-income housing in the 1960s and 1970s cut off black and Latino communities from better-resourced schools and good job opportunities, creating an environment in which gangs flourished, gaining unprecedented power over the next 20 years.<sup>223</sup> During the 1980s, the large gang population in state and federal prisons

drove the separation of the Chicago-based gangs into two large alliances, the “Folk Nation” and the “People Nation”.<sup>224</sup>

In the mid-1990s, gangs were intensively targeted and federal prosecutors in cities like Chicago removed much of the leadership and fractured the organization of the most powerful gangs. At the same time, the city demolished its largest public housing projects, dispersing thousands of families and gang members throughout the city; these two events fragmented traditional centralized gangs.<sup>225</sup>

According to the 2018 Chicago Gang Book, Chicago now has 59 active street gangs, but more than 2,000 semi-autonomous cliques or factions. Most still identify notionally as either Folk or People, but are prone to disputes and rivalries even within the alliance. There are an estimated 100,000 gang members, more than half in three gangs: the Gangster Disciples, Latin Kings and Black P Stones.<sup>226</sup> Violence still erupts over tiny patches of turf, minor disputes and long-standing feuds. Cliques seldom have enough of a structure to negotiate or enforce a truce, so the violence is often ended only by attrition.<sup>227</sup> The FBI reported that the 762 homicides and more than 4,000 shootings in Chicago in 2016 were “primarily gang-related”.<sup>228</sup>

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## NEW ORLEANS

In New Orleans, where there is not such a long history of organized gang activity, street gangs are still a key driver of gun violence. The murder rate in New Orleans, Louisiana (NOLA), which fell back slightly in 2017, remains one of the highest in the country.<sup>229</sup> In the city’s 6<sup>th</sup> District, it rose again in 2018, which police Commander Ronnie Stevens linked to “an uptick in gang activity”.<sup>230</sup> Both community workers and police told Amnesty International that gangs in NOLA, with a few exceptions, used to be loosely structured and neighborhood-based. More recently, police say they believe that more organized factions are

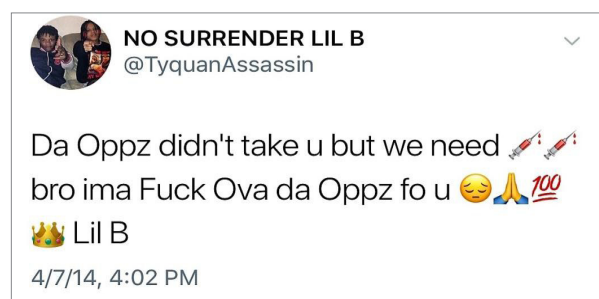
beginning to control much of the city's drug dealing and the drug trade drives much of the city's record-high violence. In May 2018, for instance, nine members of "D Block" gang were detained (along with a total of 15 guns) and indicted on drug and RICO (Racketeer Influenced and Corrupt Organizations) charges by local and federal law enforcement.<sup>231</sup>

A former drug dealer told Amnesty International: "The killing is mostly over drugs... Deal gone bad, territory, whatever. Then it's beef: over drugs, over a girl, or over nothing at all. Then just wrong place wrong time. I knew kids who used to compete to rally up their kill count."<sup>232</sup>

Dr. Peter Scharf, an expert on criminal justice in New Orleans, has long held that the city's focus on breaking down its gang culture should begin with targeting the highest risk youth, and providing educational and vocational alternatives to drug and gang life.<sup>233</sup> "We've failed our kids," he explains, "we failed to control the drug markets, failed to control violent crime, failed to control gun availability. You have to get kids out of these dope markets, out of these gangs, and back to a mainstream life."<sup>234</sup>

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## GUN VIOLENCE AND SOCIAL MEDIA



One of the key elements in the rise of gang-related shootings in Chicago, New Orleans and other urban areas over the five years between 2012 and 2017 (when there was a slight reduction) has been the proliferation of social media. In Chicago, where the murder rate increased by 58% in 2016

alone, Police Superintendent Eddie Johnson believes that social media has altered Chicago street gang culture.

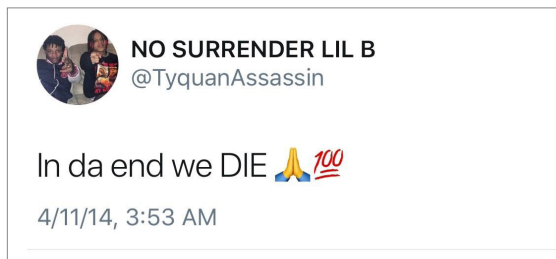
In a May 2017 interview, Johnson recounted his own experience of policing gang violence in Chicago. Thirty years ago, he said, "mano a mano" gang fights were common. Now, he said, "they just go straight to a firearm and they resolve disputes with a weapon... So they'll get on social media and disrespect each other, and a lot of times give each other's locations. And when they do that, that rival will go to that location, and gunplay will be the result of it."<sup>235</sup>

Gangs were enthusiastic adopters of social media, initially to facilitate drug dealing, but increasingly as a kind of promotional platform. Some have websites, fan followings and Facebook pages and members have individual accounts where they post messages, photos and videos related to themselves, their local community and the drug business, as well as taunts and barbs aimed at their adversaries. Some produce elaborate drill rap videos focused around provoking or threatening members of other gangs, or livestream themselves walking through rival territory or "disrespecting" rival gang signs or symbols. In 2016, when Chicago pastor Corey Brooks brokered a truce between factions of the Black Disciples and the Gangster Disciples, he insisted on a moratorium on social media taunts and exchanges. An 18-month truce resulted.<sup>236</sup>

Dr. Desmond Patton of Columbia University's School of Social Work has been studying the way social media, particularly Twitter, has been used to fuel and escalate gang violence in Chicago. In an article for *The Trace*, he charted the Twitter profile of Gakirah Barnes, a gang member and alleged killer who was herself shot dead at the age of 17. She used tweets to express her own grief and anger when friends were killed or injured, as well as to goad and threaten her rivals.<sup>237</sup>

Retaliation did not even have to be direct. In April 2014, after a friend was apparently killed in an

encounter with police, Gakirah Barnes posted a message mourning his death. Shortly afterwards, she posted another, promising to go after gang rivals in retaliation, even though they had not been responsible for the killing: “Da Oppz [the opposition] didn’t take u but ... bro ima Fuck Ova da Oppz fo u.” Her rivals duly responded, daring her crew to “come on our block suckas we want dis shit.”<sup>238</sup> Late in the afternoon of 11 April 2014, Gakirah Barnes and two friends were walking down South Eberhart Avenue, on their way to a barbeque near her home, when she was shot nine times; she died an hour later. Her two companions suffered minor injuries. In a tweet apparently posted that morning, she had written: “In da end we DIE.”<sup>239</sup>



Anyone who has ever watched a Twitter spat unfold knows that arguments carried out via 140 (or even 280) characters invariably escalate. Social media provides the means and opportunity to respond to any slight or insult instantly, in the heat of the moment, without pausing to consider the consequences or to attempt de-escalation. And on Twitter, everyone can watch and even join in, making any “disrespect” public and hard to ignore. When the protagonists have, as one federal agent put it, a “gun in one hand, a smartphone in the other,” there can be a very short time between insult and shootout.<sup>240</sup>

In New Orleans, a youth worker explained that the social media culture of tit-for-tat disrespect and retaliation went beyond gangs and was fast becoming entrenched in everyday urban street life. “Used to be when a kid said he was gonna fight you after school, you said ‘yeah, bring it’. By the end of the day you forgot. But now you call

them out on Twitter, and everyone sees it and you know you have to do it. And you have a gun in your hand, and you wanna use that gun, cause you know he got a gun too.”<sup>241</sup>

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## GANGS AND GUNS: PREVENTING AND REDUCING GUN-RELATED GANG VIOLENCE

Where gangs operate, their members – armed or with ready access to firearms – are responsible for much of the gun violence affecting the community. Boys, and to a lesser extent girls, often join local gangs for their own protection – another sign of the widespread lack of confidence in the ability of the state to ensure their safety.

Law enforcement and city officials must have the capacity and willingness to proactively address and prevent gang violence and the misuse of firearms, while building trust, ensuring transparency and accountability, and providing enhanced community-informed support programs for at-risk youth and adults seeking refuge from the violence in their neighborhoods. Gang-related violence is a major problem requiring the solution of long, complex structural issues, which may differ from place to place. While Amnesty International suggests a few ways in which the USA could take steps to reduce gun-related gang violence, a deeper analysis of this issue is beyond the scope of this report, but warrants further research.

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## POLICING

Many minority communities do not feel that the police are committed to protecting their safety and security. In 2016, the Chicago Police Accountability Task Force released a report which found that there was a “widely held belief the police have no regard for the sanctity of life when it comes to people of color.” The Task Force also found that the community had reached “a breaking point with the entire local

law enforcement infrastructure” partly because of latent and overt racism (over one three-month period, 72% of the people stopped in the street were African American, although African Americans make up less than 32% of the city’s population), and partly because the police had failed to “make accountability a core value”.<sup>242</sup>

Figures from 2017 appeared to show that the CPD had hit a new low in clearance rates, solving fewer than one in five of the murders committed that year, a 5% drop on 2016. The CPD’s own figures, which include murder clearances from murders committed in previous years, give a clearance rate of 34%, a 5% improvement on 2017. The CPD pointed out that the city has an exceptionally high rate of gun homicides – which leave less evidence – and a gang culture that discourages witnesses from cooperating with the police.<sup>243</sup> And where people are too frightened to cooperate with the police, gangs get stronger, further eroding confidence in the police.

The police are well aware of the challenges they face. New Orleans Deputy Chief Paul Noel believes his city has had the best results with a multi-prong approach: “There are different drivers, we’re not going to solve this with more policing and more prosecution, we need community programs to help resolve the social and economic issues at the root of the violence. Poverty, sometimes multi-generational, is a key issue. Kids don’t have many examples of ways out, and they want instant gratification, so the instant solution is often violence. They have guns, they use them. They need a path out of the life.”<sup>244</sup>

***“If we only look at crime at the point of arrests, where we’re going out arresting people over and over again, if we don’t do something to prevent our kids from getting into gang life, we are perpetuating a system that is failing.”***

- Glen Brooks, the Police Department’s area coordinator for Chicago Alternative Policing Strategy.<sup>245</sup>

## EXPANDING EMPLOYMENT OPPORTUNITIES

**VICTOR RODRIGUEZ**  
**SAFER FOUNDATION, CHICAGO**

**On 24 September 1993, Victor Rodriguez was driving his car with three other members of a gang.<sup>246</sup> They got into a fight with two young men who they thought were from a rival gang, who were in the car behind them. The two tried to drive off but were caught at an intersection. Rodriguez and the three other men, got out of the car and attacked the stopped vehicle; one of the victims was fatally shot in the back. Victor Rodriguez was sentenced to 40 years in prison for his part in the killing. He served half of this time and was released in September 2013.**

**Victor Rodriguez told Amnesty International that his family helped him find a temporary job at a warehouse but he was unable to keep it because of his criminal record. He learned about Chicago’s Safer Foundation through a friend and signed up for a job readiness class, learning how to draft a resume, how to behave in an interview and how to dress and present himself. With the support of the Safer Foundation, he found a series of increasingly responsible jobs, received additional training, and eventually started working with the Council of Thought and Action (COTA), a program with the city and the Safer Foundation.**

**Today, Rodriguez counsels other justice-involved individuals at an Adult Transition Center. He helps them set goals for themselves, stay employed, and build up their résumés. He says he is motivated by his understanding of the challenges faced by those newly released.**

**“If you don’t have a job and support and all you know is the streets, you are forced back out into it, that is why the recidivism rate is so high.”<sup>247</sup>**

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St Sabina Church on Chicago’s South Side runs an Employment Resource Center which provides local residents with training and education to help them

gain financial literacy and stable employment. The church also runs an anonymous gun buy-back program. Father Michael Pflieger, who has been the parish priest for over 40 years, believes the two are closely related. “Look around,” he told Amnesty International. “There is double-digit unemployment, poor schools, recidivism; we are creating communities of hopelessness and then infiltrating them with guns... I had a young man come into this church, he wants to quit the gang life, but he can’t get a job. If you really want to stop this epidemic of violence, the best way to stop a bullet is with a job.”<sup>248</sup>

State, local and federal support for job skills and employment readiness programs, which offer support and opportunities for former gang members and those at risk of joining criminal gangs including students in junior and senior high school, is a critical step towards reducing gun violence and would help the state curb persistently high levels of firearm violence in impacted communities.

In 2011 and 2012, the University of Pennsylvania and the University of Chicago Crime Lab conducted a study on the impact of summer jobs on arrests for violent crime with two groups of local high school students. The first group secured part-time summer jobs through the One Summer Chicago Plus internship program.<sup>249</sup> The second group did not. For the group that secured jobs, there was a 43% reduction in violent crime arrests over a period of 16 months.<sup>250</sup> In 2013, the program received 67,000 applications for 20,000 employment opportunities.<sup>251</sup> The city increased the available places in its summer youth employment program to 25,000 by 2016<sup>252</sup> and 32,000 in 2018,<sup>253</sup> but there are still twice as many applicants as opportunities.<sup>254</sup>

The National Council for Crime Prevention found underfunding of school programs to be a barrier to reducing youth gang involvement. Yet support for programs aimed at preventing or reducing gun violence has been both inconsistent and

inadequate at all levels – federal, state and local.<sup>255</sup>

There have been opportunities at the federal level to pass legislation that would fund evidence-based programs designed to address gun and gang violence among young people, but Congress has failed to act to provide the support and funding needed to develop these programs. The Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support and Education Act (Youth PROMISE Act), would implement the most comprehensive approach to youth violence intervention and prevention and provide funding for evidence-based practices that address juvenile justice and criminal activity. This bi-partisan piece of legislation was first introduced back in 2007 and at the time of writing had been languishing in Congress for over a decade.<sup>256</sup>

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## **VIOLENCE PREVENTION AND INTERVENTION STRATEGIES**

Examples of successful strategies for addressing gun and gang violence include the Chicago and Boston Ceasefire programs (see Section 3.1.5).<sup>257</sup> Another model that has focused specifically on gang violence is Project Longevity, which originated in New Haven, Connecticut, and has since spread to Hartford and Bridgeport.<sup>258</sup>

Project Longevity targets the relatively small number of people who account for the majority of gun violence. The potential participants are invited to a “call-in”, a meeting with law enforcement, social service providers and community members, who explain the program’s key components: a “credible law enforcement message about the consequences of further violence” and a “genuine offer of help for those who want it”.<sup>259</sup> Participants are effectively invited to choose between putting down their guns and receiving concentrated support with education, mental health and social services and job training; or rejecting the program and being subjected to the equally concentrated

attention of local and federal law enforcement agencies. The program operates alongside an intensive community policing initiative that includes daily meetings with members of the community, increased information sharing and measures – like use of body cameras – to improve police accountability.<sup>260</sup>

By 2013, a little more than a year into the program, the number of homicides in New Haven fell from 34 to 20<sup>261</sup> and by 2017 there were five fatal shootings, the lowest number for decades.<sup>262</sup> A study by Yale University confirmed that the implementation of Project Longevity and the community policing reforms has contributed to the reduction of gang violence in the city.<sup>263</sup> Their findings are part of a growing body of research that supports focused deterrence approaches to reducing gun violence.

Initiatives like Project Longevity require long-term, reliable engagement in order to build and sustain the trust between the participants that makes the program effective. Architects of the numerous violence intervention models, including David Kennedy and Gary Slutkin, emphasize that their approaches are not one-size-fits all and that every city and community faces its own underlying issues that must be addressed in developing a comprehensive, tailored program.<sup>264</sup>

The evidence clearly shows that gang-related gun violence could impact substantially fewer people and communities if federal, state and local authorities focused resources on addressing gaps in services for at-risk communities, initiatives and intervention programs to interrupt violence and offer alternatives, community-based policing and comprehensive youth-centered treatment and prevention models and job placement opportunities.

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## GANGS AND TRAFFICKED WEAPONS

Reducing access to firearms is a key element in reducing gang violence. Firearms used in violent crimes across the USA, including those used by gangs, have often been trafficked. Gun trafficking is the deviation of firearms out of the legal commerce stream and into the illegal market. The most common channels by which firearm trafficking occurs are: sales made by and through private sellers without background checks; transfers via straw purchasers; theft of firearms; licensed dealers who sell guns off the books to traffickers; and bulk purchases of firearms (see Chapter 5). Federal data shows that at least 50,000 crime guns are diverted across state lines every year, though the true number is far higher as most remain undetected.<sup>265</sup>

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) traces hundreds of thousands of crime guns every year, including 408,000 in 2017 alone. A firearm can be tracked from its manufacturer or importer through the distribution chain, helping to identify both criminal suspects and potential traffickers and identifying patterns in the selection, acquisition, and use of crime guns.<sup>266</sup>

In urban areas like New York and Chicago, where gun laws are fairly stringent, trace studies indicate that most guns used in violent crime originated from outside the state and very few were purchased from federally licensed dealers.<sup>267</sup> In Chicago for example, between 2009 and 2013, 60% of the crime guns recovered were first purchased outside Illinois, with almost 20% coming from nearby Indiana.<sup>268</sup> In New York and New Jersey, which have similarly restrictive gun laws, about 75% of crime guns came from out of state.<sup>269</sup> Guns purchased or trafficked from other states and used in gang-related violence present ongoing challenges to law enforcement at the city, state and federal level.



***“We border Indiana and Wisconsin, which have really lax gun laws. We know that people from Chicago go across the border, fill up gym bags with illegal weapons from gun shows and things of that nature and they come back here and sell them to the gangs.”***

Superintendent Eddie Johnson, Chicago Police Department<sup>270</sup>

Gangs themselves are often involved in firearm trafficking. According to the 2015 National Gang report, there was a high or moderate level of street gang involvement in weapons trafficking in more than half of the reporting jurisdictions.<sup>271</sup> In addition, hundreds of thousands of privately owned guns are stolen every year, mostly from private homes, but the number of firearms thefts from cars has been steadily increasing since 2014.<sup>272</sup> In Chicago, a national hub for railroads, hundreds of guns have been stolen from cargo trains at rest in freight yards.<sup>273</sup> Similarly, theft from federally licensed firearms dealers continues to increase. In 2017, more than 8,100 firearms were stolen from gun dealers, more than double the number stolen in 2013.<sup>274</sup> These thefts are facilitated by a failure to mandate secure storage of firearms by dealers. Under federal law, dealers are not required to have security or theft reduction measures in place.<sup>275</sup> (For further information on gun trafficking, see Section 5.4.)

### **3.1.5 COMMUNITY-BASED INTERVENTION STRATEGIES**

Successful evidence-based violence intervention and prevention programs are being implemented in communities across the USA, particularly in urban areas where they have proved vital, when effectively implemented, in decreasing rates of firearm-related violence and homicides.<sup>276</sup> It should be noted that greater research and more detailed evaluations of existing group-violence intervention models are critical in assessing potential

challenges and gauging success. While the implementation of evidence-based group violence intervention models have decreased gun violence in certain cities such as Oakland, California; New Haven, Connecticut; and New York, New York, they have not always been successful. In Baltimore, Maryland, for example, the implementation of Ceasefire in 2014, proved unsuccessful in reducing gun violence. The failures were attributed to a lack of adequate resources for program participants, staff turnover and tensions between community and law enforcement officials.<sup>277</sup>

By focusing efforts on a concentrated group of perpetrators and victims – engaging community members, offering support, direct services and mentorship to individuals at high-risk for engaging in gun violence – several cities have provided alternatives to violence. Most importantly, they have been able to combat and reduce gun violence while simultaneously providing life-altering opportunities for individuals living in high-crime neighborhoods.

It is critical that states and localities implementing violence intervention programs do so with an eye toward reducing rates of incarceration for communities of color.<sup>278</sup> Implementing evidence-based violence reduction programs in communities where there is a persistently high level of firearm violence should include active engagement and partnership with all relevant stakeholders – such as local authorities, including those providing health and education services, law enforcement, civil society, local businesses and community leaders – regular evaluation of impact, and a commitment to consistent, stable funding for firearm violence reduction/prevention.

Between October 2016 and February 2017, Amnesty International interviewed the Program Manager and the Director of Cure Violence in Chicago, the Program Director of Operation Ceasefire in Oakland, the creator of Operation Peacemaker/the Richmond Fellowship Model in

Oakland, a Violence Interrupter from Youth Alive in Oakland, and a street outreach worker and former participant from Ceasefire New Orleans.<sup>279</sup> It is important to note that these community advocates, street outreach workers, violence interrupters, program managers, directors and participants indicated that violence reduction initiatives are most effective when members from impacted communities, many of whom have been perpetrators and/or victims of gun violence themselves, are involved in the development and implementation of the programs.

***“Quality partnerships matter. We need partners with a common goal and clear role. We need to involve the community.”***

Reygan E. Harmon, Ceasefire Program Director, Oakland Police Department<sup>280</sup>

Tackling entrenched firearm violence in the community is a complex problem.<sup>281</sup> Initiatives should be focused on those at most risk of perpetrating and being victims of firearm violence – often young males growing up in deprived urban neighborhoods. Research indicates that long-term, adequately funded, evidence-based projects, tailored towards specific social, economic and cultural contexts and working in partnership with the affected communities can achieve sustained reductions in firearm violence.

The following are examples of some strategies that are reported to have been effective in countering gun violence.

- **Operation Ceasefire, Focused Deterrence Group Violence Intervention Model:**<sup>282</sup>

This problem-oriented strategy was created by criminologist David Kennedy, who now leads the National Network for Safe Communities. Through implementation of the program, the city of Boston decreased its youth murder rate by 61%.<sup>283</sup>

Operation Ceasefire and other programs affiliated with the National Network for Safe Communities work with community members, local officials, law enforcement, direct service providers and others

to identify a small group of individuals most at risk of being involved in gun violence, whom they then invite to scheduled “call-ins,” which are in-person meetings. During the meetings, community members, victims of gun violence, direct service providers and law enforcement officials speak with participants about gun violence and its impact, offering Operation Ceasefire benefits and programs to those who agree not to engage in further gun-related activity.

Individuals who choose not to participate in the program or not to refrain from engaging in gun violence are made aware that future involvement in gun-related violence will be met with swift legal action. The US Department of Justice National Institute of Justice gave Operation Ceasefire its highest rating for effectiveness,<sup>284</sup> but has not increased the funding required for the program to be implemented by cities that desperately need it.<sup>285</sup>

However, the program is not without its critics, who cite its use of police data and arrest records to target individuals, use of aggregated data to target individuals for arrests rather than focusing on rehabilitation, and challenges with implementation in communities where community trust in the police is already strained.<sup>286</sup>

- **The Cure Violence public health approach to gun violence:**

The Cure Violence model utilizes a public health framework to assess gun violence. Created by Dr. Gary Slutkin, a physician who studied infectious diseases, the program aims to treat gun violence like an epidemic, by focusing on the way violence is spread from person to person and interrupting violent cycles proactively. The most recent 2014 study of the program’s efficacy indicated a 31% reduction in homicides and a 19% decrease in shootings in districts served by the program in Chicago over the course of the evaluation period (October 2012- September 2013).<sup>287</sup>

The program offers rehabilitation opportunities both for the “violence interrupters”, often former gun violence perpetrators themselves, and for individuals seeking an alternative to violence. The program has been criticized for failing to

provide information to law enforcement regarding investigations and potentially furthering police-community mistrust.<sup>288</sup> Proponents of the program argue that the firewall between law enforcement and program staff is critical to ensure the safety of workers, the effectiveness of the strategy and trust by community.

Cure Violence also experienced funding constraints, with the Chicago program losing US\$1,000,000 in funding from the City of Chicago in 2013. Due to the Illinois state budget impasse and freeze in 2014, Ceasefire's budget was cut from the allocated US\$4.7 million to US\$1.9 million in 2015 – resulting in most of its operations effectively shutting down.<sup>289</sup>

- **Hospital-based trauma/violence intervention:**

This approach is based on the premise that patients admitted to the hospital for gunshot wounds, particularly those who are repeat admissions, may be at high risk of being victims or perpetrators of future gun violence and are likely to be open to modifying their behaviors. With adequate support, connection to direct services, and counseling, these patients leave the hospital with a tailored plan for alternatives to gun violence.

In one of the few control group studies conducted on such programs, the R Adams Cowley Shock Trauma Center in Baltimore, Maryland, carried out a targeted study of two groups totaling 100 patients, admitted to the Trauma Center between 1999 and 2001, all of whom had previously been hospitalized for a violent injury and had prior involvement with the criminal justice system. One group received intervention services, the other did not. The study demonstrated that the group who received hospital-based intervention services was six times less likely to be hospitalized for a subsequent violent injury than those patients in the group without intervention. Additionally, individuals in the group without intervention were three times more likely to be arrested for violent crimes than those who had received hospital-based intervention services.<sup>290</sup>

- **Richmond Fellowship model:**

This model, created by community activist and lawyer DeVone Boggan, involved the creation of the Office of Neighborhood Safety, which is

independent from the Police Department, but works collaboratively with police in the initial phases of identifying high-risk individuals for targeted outreach and support.<sup>291</sup>

Those who choose to participate are offered the opportunity to enroll in a fellowship program, known as Operation Peacemaker, which provides an intensive, comprehensive, strategy for connection with social services, treatment, counseling, educational and professional development training and financial incentives.<sup>292</sup> The innovative program has been very successful in decreasing gun violence, homicide rates and shootings in Richmond<sup>293</sup> and has garnered national recognition for its unconventional approach to gun violence, providing holistic support for impacted individuals, offering financial stipends for individuals who reach benchmarks and achieve personal goals and investing in the short and long-term success and growth of individuals, who in turn change the community.<sup>294</sup> The program is now being implemented in other areas through the organization Advance Peace.<sup>295</sup>

Despite the success and numerous available models for these programs, lack of funding and lack of political will have prevented the kind of long-term consistent implementation these programs need. Even in cases where the models have drastically reduced gun violence, community leaders face challenges in maintaining them, sometimes leading to a devastating reversal of the program's gains, and a return to previous higher levels of gun violence.<sup>296</sup>

The USA has a duty to take positive action to address gun violence, especially where models exist that could reduce it while making a long-term and life-changing impact on marginalized individuals. Although widely supported, some advocates fear that data gathered through the programs to target individuals most at-risk of being involved with gun violence could also be used by law enforcement officials to target these individuals through data-driven policing, for other types of law enforcement, including involvement in gangs.<sup>297</sup> The design and implementation

of these programs must include human rights safeguards including the right freedom from discrimination, the right to privacy and the right to due process.

### **3.1.6. FAILURE TO ADDRESS RACE-BASED POLICING**

Research data indicates that people of color in the USA, specifically African Americans and Latinos, have a long history of being disproportionately stopped, frisked, arrested, and subjected to use of force by police.<sup>298</sup>

In the months and years following Hurricane Katrina for example, the NOPD was found by the US Department of Justice (DoJ), to have engaged in a pattern and practice of discriminatory policing.<sup>299</sup> The DoJ investigation into unlawful actions by the NOPD led to the implementation of a Consent Decree, a tool the DoJ and the courts use to reform police departments seen as violating civil rights through assorted police misconduct uncovered through the DoJ investigation.<sup>300</sup>

While continued reforms are needed, the Consent Decree and court oversight of the NOPD have led to changes in recruitment and hiring, training, supervision and transparency; worked to address issues previously identified through implementing a community policing program, increasing training on crisis intervention and better documenting of police use of force; and putting in place a peer intervention program, the first of its kind, and an early intervention system, among other developments.<sup>301</sup>

A 2017 DoJ evaluation of the CPD found that officers “use force almost ten times more often against blacks than against whites.”<sup>302</sup> The report also details race-based incidents in policing by law enforcement officers, including picking up young black men and boys, attempting to solicit information from them and threatening to drop them in rival gang territory if they did not cooperate, or offering not to pursue charges

against individuals for minor offences if they went out and brought guns back to the officers, a practice known in the community as “guns for freedom”.<sup>303</sup>

Eradicating race-based policing practices and restoring community trust in law enforcement is the first step in creating an environment where individuals do not feel compelled to arm themselves for personal safety. In communities where gun violence is high, people often say that they carry firearms because they feel unsafe and do not believe the police will protect them.<sup>304</sup>

Despite its repeated introduction in Congress since 2001, however, the USA has failed to pass the End Racial Profiling Act, which prohibits racial profiling by a federal, state, local, or tribal law enforcement agency or agent, including, “the practice of relying on actual or perceived race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation in making a routine or spontaneous law enforcement decision.”<sup>305</sup> Under the legislation, the DoJ may bring a civil action for enforcement and US law enforcement agencies are required to implement policies and practices that eliminate racial profiling through training, data collection and complaint mechanisms.

Passage of the legislation which would address a key element of biased treatment and race-based policing by law enforcement, is a critical step in helping to restore confidence in law enforcement among communities of color.<sup>306</sup>

### **3.1.7 INCARCERATION: RATES AND CONSEQUENCES**

African Americans are incarcerated at an overall rate about five times higher than that of the white population and double the rate of Latinos.<sup>307</sup> In 2016, African Americans made up 13% of the US population and 33% of the prison population; Latinos were 16% of the US population and 23% of the prison population; whites were about 64%

of the US population, and 30% of the prison population.<sup>308</sup> In 11 states at least one in 20 adult black males is in prison.<sup>309</sup>

A study undertaken by the Sentencing Project identified three major reasons for the disparity: policies and practices, such as harsh sentences for drug-related crimes, that disproportionately affect African Americans; implicit racial biases and stereotypes that affect decision-makers; and structural disadvantages that affect African Americans before they enter the criminal justice system.<sup>310</sup>

Once released from prison, ex-offenders find reintegration extremely difficult. Jobs are particularly hard to get and keep and earning a living wage is challenging. A recent study evaluating ex-offenders in the labor market found that only 55% of ex-offenders had reported any earnings in the first year of their release, with 32% earning between US\$500 and US\$15,000.<sup>311</sup> People with criminal records face a series of legal and practical barriers, including restrictions on attaining professional licenses, lack of training and support opportunities, and the reluctance of employers to hire; most described finding work as “very difficult or nearly impossible.”<sup>312</sup> In one study, nearly two thirds of ex-offenders surveyed were still unemployed or underemployed five years after being released from prison.<sup>313</sup> Lack of access to steady employment is one of the key predictors of recidivism.<sup>314</sup> Many former offenders also have significant physical and mental health issues, which may go untreated due to lack of health care coverage and access to health care, potentially increasing the rates of recidivism.<sup>315</sup>

Access to services is an integral component to prevent recidivism, including for crimes linked to gun violence. A RAND Corporation report analyzing the impact of education and job skills programs for prisoners found that those who participated in educational programs while incarcerated were 43% less likely to reoffend than those who did

not have access to these programs, a difference of 13%.<sup>316</sup> The SAFER Foundation of Chicago has been providing these services in Illinois since 1972.<sup>317</sup> SAFER Foundation’s Adult Transition Centers enabled 307 residents to gain industry-recognized credentials between 2013–2017. Participants in these programs had a re-arrest rate of about 10%, well below the national rate of 40%.<sup>318</sup> The foundation’s training programs have served 307 clients between 2013 and 2017, 74% of whom entered employment, with a nine percent recidivism rate between 2015 and 2017.<sup>319</sup>

Effective services that address challenges like transition, re-entry post-incarceration, job readiness, job placement, and mental health can reduce gun violence, but programs rely on municipal, state and federal funding that can be inconsistent, sometimes leaving even successful initiatives inadequately resourced and under capacity.<sup>320</sup> For example, while the Illinois state legislature passed a state budget in 2017, for the three years prior, Illinois was operating with no state budget.<sup>321</sup> As a result, many direct service and social services programs, including those providing mental health care and prisoner re-entry programs, had to downsize and close certain sites.<sup>322</sup>

## POLICE USE OF LETHAL FORCE

**While this report primarily focuses on gun violence by private individuals (non-state actors), it should be noted that nearly 1,000 individuals are also killed each year by law enforcement officials (state actors) with firearms.**<sup>323</sup>

**African Americans, who make up just 13% of the US population, are disproportionately impacted by the police using firearms. In 2017, 987 people were killed in confrontations with law enforcement officials, 223 (23%) were African American.**<sup>324</sup>

**US law enforcement officers operate within the ever-present reality that their next interaction with a**

member of the public may involve a firearm. Over the past decade, an average of about 50 officers a year have been shot and killed across the USA and its more than 18,000 local and state law enforcement agencies: 44 were shot dead in 2017, and 28 in the first five months of 2018.<sup>325</sup>

The pervasiveness of firearms among the general population means that officers have to be prepared for the worst when confronting a suspect. An unexpected movement can be mistaken for someone reaching for a firearm even if the suspect is unarmed. However, any use of a firearm by law enforcement must be regulated by specific provisions of the law, establishing a more specific set of rules than for other forms of use of force.

International human rights standards provide that law enforcement officers should only use force when there are no other means that are likely to achieve the legitimate objective and that the amount of force must be proportionate to the seriousness of the harm it is aiming to prevent, and designed to minimize damage and injury. Officers may use firearms only as a last resort when strictly necessary to protect themselves or others against the imminent threat of death or serious injury. The intentional lethal use of firearms is justified only when “strictly unavoidable in order to protect life.”<sup>326</sup>

Amnesty International reviewed US state laws – where they exist – governing the use of lethal force by law enforcement officials and found that all 50 states and Washington, D.C. fail to comply with international law and standards. All states should revise, or introduce, laws that are in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials to ensure that their laws are compatible with the USA’s obligations under international law. For more detailed information, see Amnesty International’s report, *Deadly Force: Police use of lethal force in the United States*.<sup>327</sup>

## 3.2 CHILDREN

### EIGHT-YEAR-OLD KILLED, MAINE

On 24 July 2018, an eight-year-old boy, scheduled to begin fourth grade in the fall, shot and killed himself while handling his father’s shotgun. According to law enforcement, the boy, who had been shot in the head, was handling his father’s 12-gauge shotgun inside a closet in his parents’ second-floor bedroom and the gun went off. The gun was loaded with eight shells in the magazine. Police reported that no charges would be filed.<sup>328</sup>

### THREE-YEAR-OLD KILLED, LOUISIANA

A three-year-old girl’s father kept eight guns at home. On 9 February 2015 he cleaned them but did not put them all away before going to work. When his wife and children returned home, the three-year old girl picked up a semi-automatic Glock pistol and shot herself in the head. She died instantly.<sup>329</sup>

Guns impact children all across the USA in their homes, neighborhoods and schools, through unintentional or accidental incidents, self-harm or violent acts, including homicide. According to a recent study, firearm injuries were the third leading cause of death among children in the USA between 2002 and 2014.<sup>330</sup> The study found that during this time period, on average, nearly 1,300 children were killed by firearms and another 5,790 children were treated for injuries caused by firearms.<sup>331</sup> These numbers have not gone down; in fact in 2016, the last year for which data is available, 1,637 children died from gun violence in the USA.<sup>332</sup>

*“U.S. Children are 13 times more likely to die from a firearm homicide and eight times more likely to die of a suicide than children of comparable developed nations. There is no evidence that U.S. children are more careless, suicidal, or violent than children in*

**other high-income nations. Rather, what distinguishes children in the United States from children in the rest of the developed world is the simple, devastating fact that they die – mostly by firearms – at far higher rates.”**

Daniel Webster and Jon S. Vernick, *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*<sup>333</sup>

While guns affect all children and their communities to some degree, factors such as race, ethnicity and gender impact the type of violence they experience as well as the rate at which they experience gun violence. Children in suburban and rural areas are more likely to die through unintentional shootings or suicides carried out by firearm.<sup>334</sup> In urban areas, children are at higher risk of dying from gun-related homicides, which are more common in urban areas and which account for most firearm deaths of children;<sup>335</sup> African Americans children are disproportionately impacted. Children all over the country are also at risk of gun violence in their schools. Since, 2013, there have been 344 incidents of a firearm being discharged on a school campus in the USA as of August 2018.<sup>336</sup>

The causes of gun deaths and injuries among children remain complex and diverse. High rates of gun ownership, weak gun violence prevention laws and readily available (often unsupervised) firearms, make US children much more vulnerable to death through gun violence than children in other high-income countries. To this end, US states with the highest rates of gun ownership also have the highest rates of gun death, including among children.<sup>337</sup>

In 1995 the USA signed the Convention on the Rights of the Child (CRC), a comprehensive international human rights agreement on children’s rights. Although the USA is the only country in the world that has signed but has

not ratified the CRC, it still has an obligation to refrain from acts that would defeat the object and purpose of this treaty.<sup>338</sup> This means that in addition to its obligations under the ICCPR and the American Declaration of the Rights and Duties of Man,<sup>339</sup> the USA should recognize the particular vulnerabilities of children, defined as those who are under 18, and provide “special safeguards and care” in order to protect them from gun violence, including by preventing access to firearms and supporting violence interruption and diversion programs.<sup>340</sup> This chapter looks at how the USA is failing to fulfill its duty to protect children from gun violence.

### **3.2.1 PREVENTABLE, UNINTENTIONAL DEATHS AND SUICIDES OF CHILDREN**

#### **14-YEAR-OLD GIRL, NEW ORLEANS, LOUISIANA**

**In July 2017, a 15-year-old boy bought a 9mm, semi-automatic handgun on the street in New Orleans; he reportedly said it was for protection after a local “beef” had left him fearing for his life. He was at home with his 14-year-old younger sister, when he accidentally fired the gun, hitting her behind the ear. She was rushed to hospital, where she died in surgery. The boy was charged with negligent homicide and juvenile possession of a firearm, and taken to a juvenile detention center. He said: “I miss her a lot. I’m gonna always miss her. That’s my little sister. I’m not gonna stop missing her.”<sup>341</sup>**

Data from the Centers for Disease Control (CDC) indicates that more than 1,200 children died in unintentional shootings between 2004 and 2016; over half were under the age of 15.<sup>342</sup> In the first six months of 2018, there were at least 88 unintentional shootings by children.<sup>343</sup> However, this data may fail to capture the full extent of the problem.<sup>344</sup> A 2013 *New York Times* investigative report found that unintentional shootings

“occurred roughly twice as often as the official records indicate” in part because the data comes from death certificates and police reports, which often list the cause of death as a homicide even when it is accidental.<sup>345</sup> No surveys to date have incorporated a comprehensive, uniform national data system to analyze fatal unintentional child shootings.

The human cost of these unintentional shootings cannot be overstated, and they take place with predictable regularity and all around the country. For example, In January 2018, at least six children in the USA were killed in unintentional shootings:

- **1 January 2018:** A seven-year-old boy in Concord, Alabama, came across a gun in a bedroom. He began handling it, causing it to discharge. The boy was rushed to a hospital but died from his injuries.<sup>346</sup>
- **14 January 2018:** A 13-year-old girl unintentionally shot herself with a gun while she was hunting with her father and two family friends in Genoa, Nebraska. She was transported to a hospital but died from her injuries.<sup>347</sup>
- **21 January 2018:** A man was preparing to take his two children outside for target practice with a .22-caliber revolver in Campbellsburg, Indiana. While he answered a phone call, the man’s teenage daughter unintentionally fired the weapon, shooting her 14-year-old brother. The man drove his son to a local hospital, but the boy died from his injuries.<sup>348</sup>
- **24 January 2018:** A three-year-old boy discovered a shotgun and died after shooting himself in the head in Fort Worth, Texas.<sup>349</sup>
- **27 January 2018:** A four-year-old boy was found dead after he found a small handgun in his grandmother’s bedroom and accidentally shot himself in Texas City, Texas.<sup>350</sup>
- **28 January 2018:** A six-year-old boy staying at an older sister’s apartment found an unsecured 9mm pistol inside a bedroom and accidentally shot himself while his family slept in Jersey City, New Jersey. The boy was pronounced dead at a nearby hospital.<sup>351</sup>

These cases are devastating and numerous, even though they do not take into account the children who were unintentionally or accidentally shot but survived.

Child suicides by firearm also account for a devastating loss of life. In 2016 alone, 633 children died by firearm suicide.<sup>352</sup> As is the case with adults, the availability of firearms and their lethal nature greatly increases the risk of a fatal outcome in child suicide.<sup>353</sup> (For more on firearm suicide, please see Section 3.4 on Access to firearms for individuals who may present a risk to themselves or others.)

An analysis of suicides and unintentional firearm deaths in 1999 concluded that more than 75% of the firearms used in youth suicide attempts and unintentional firearm injuries were obtained from the home of the victim or the victim’s family/friends.<sup>354</sup> Numerous studies indicate that the risk of firearm-related suicides increase substantially in households where guns are unlocked and loaded.<sup>355</sup>

Shockingly, a study published by American Academy of Pediatrics in 2018 found that within a sample of parents who owned guns, only one third stored all household firearms locked and unloaded.<sup>356</sup> It is impossible to know the exact number, but a survey released in 2018 concluded that an estimated 4.6 million children live in homes where firearms are stored loaded and unlocked.<sup>357</sup>

Both unintentional shootings and suicides by firearms can be prevented. The USA must establish policies and laws which require the implementation of gun safety precautions, mandate safeguarding of weapons and ammunition and impose liability for lack of parental oversight concerning access to firearms. Federal, state and local governments must fund and support targeted research and education about the risks associated with children and access to guns.

While federal law generally prohibits the sale,



transfer, or delivery of a handgun and/or its ammunition to a juvenile, except in certain limited circumstances,<sup>358</sup> it does not impose any further obligations on gun owners, although licensed importers, manufacturers and dealers of handguns are required to provide “secure gun storage or safety devices” to purchasers.<sup>359</sup> However, private sellers and unlicensed sellers are not subject to these restrictions. Guns can be secured through easily attainable locking containers like gun safes or through gun locks, both of which require a key or combination to which only the direct owner has access. Although not as common, personalized smart guns, which use technology to prevent discharge by anyone but the authorized user, are also secure.

Safe storage laws work to protect children from injuring themselves and others by requiring gun owners to keep guns locked up and unloaded, and ammunition stored in a locked location separate from the firearm. These laws are imperative because safe storage saves lives. A nationwide study of over 100 unintentional firearm deaths in the USA between 2012 and 2013 found that 70% of unintentional child shootings could have been avoided if the weapon used had been safeguarded – locked or without ammunition.<sup>360</sup>

Child Access Prevention (CAP) laws go one step further by imposing criminal liability to ensure that owners are held accountable for the security of their weapons. State CAP laws vary but share some general characteristics. The most comprehensive and stringent laws, such as those in California, assign criminal liability when firearms are stored negligently (where a minor could gain access to them), regardless of whether the access actually occurs.<sup>361</sup> The least stringent laws, for example those in Utah, only restrict a parent or guardian from knowingly providing a gun to a minor.<sup>362</sup>

Other states fall somewhere in between. Some impose criminal liability only where negligent storage resulted in actual harm; others where guns are stored in a way that could be considered reckless, deliberate or purposeful.<sup>363</sup>

Although significant research has not been carried out for several years, studies published in 1997 and 2004 demonstrated that CAP laws were effective in reducing child and youth suicides and unintentional deaths caused by firearms. The 1997 study found that in the 12 states where CAP laws were enacted between 1990-1994, for children under 15 years old, unintentional shooting deaths were reduced by 23%.<sup>364</sup> The 2004 study found that CAP laws were associated with an 8.3% decrease in suicides for children aged 14-17.<sup>365</sup> Despite this evidence that CAP laws reduce the number of unintentional or self-inflicted gunshot deaths among children, 23 US states have failed to enact any such laws.

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#### STATES WITHOUT ANY CHILD ACCESS PREVENTION LAWS

**Alabama, Alaska, Arizona, Arkansas, Idaho, Kansas, Louisiana, Maine, Michigan, Montana, Nebraska, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Vermont, Washington, West Virginia, Wyoming**

Gun safety counseling for parents, who are responsible for keeping firearms out of the hands of children, is also critical. With so many firearm-related deaths and injury, guns are a major threat to health and safety in the USA, and doctors are uniquely placed to advise their patients on how to reduce risk and prevent injury to themselves and their families through common sense measures including safe storage. A study published in 2003

in the journal of the American Board of Family Practice found that most of the patients (64%) who were given advice about safe gun storage by their family doctor went on to make key safety changes at home, with parents twice as likely to store guns unloaded, locked and out of reach.<sup>366</sup> Despite indications of the success of this medical advice model, some states have attempted to prevent doctors from asking families about safe storage of weapons, citing privacy concerns.<sup>367,368</sup>

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### UNINTENTIONAL SHOOTINGS INVOLVING CHILDREN IN LOUISIANA

From 2005 to 2014, Louisiana had the highest rate of gun deaths among all US states – almost double the national average.<sup>369</sup> The rate of fatal gun accidents between 2005 and 2014 was four times the national average.<sup>370</sup> According to a study published in 2017, Louisiana had the second-highest rate of child firearm mortality in the country between 2010 and 2014.<sup>371</sup>

As part and parcel of this, children in Louisiana are more susceptible to injury or death caused by unintentional shootings than children in other parts of the country. An analysis of data between 1 January 2014 and 30 June 2017 revealed that Louisiana had the nation's second highest rate of accidental shootings of children, with at least 9.42 incidents per one million people. Shockingly, this is almost three times the national average of 3.41 per million.<sup>372</sup>

Louisiana has very weak firearm regulations. The state was listed among the 10 states with the weakest gun laws in 2015 by the Center for American Progress.<sup>373</sup> Giffords Law Center awarded a grade “F” to Louisiana, ranking it 43rd out of all 50 states, in its “Annual Gun Law Scorecard”.<sup>374</sup> Louisiana has no storage or CAP laws.

#### **New Orleans, Louisiana**

On 2 August 2016, a nine-year-old boy found a loaded handgun in his mother's bedroom closet and accidentally shot his five-year-old brother in the head. The boy died immediately. His death was at least the third unintentional fatal shooting of a child in the New Orleans area already in that year.<sup>375</sup>

#### **Laplace, Louisiana**

On 21 May 2016, a five-year-old girl shot herself in the chest while playing with her father's handgun, which had not been stored in a secure location. Her father was in the shower when the incident occurred. She died at the hospital later that day.<sup>376</sup>

#### **Shreveport, Louisiana**

In 2015, a four-year-old boy and his six-year-old brother were playing in a hotel room. One of their mother's friends had left a .40-caliber pistol where the six-year-old was able to pick up the gun. He shot his brother, who was taken to the hospital but pronounced dead shortly afterwards.<sup>377</sup>

### 3.2.2 CHILDREN AS THE VICTIMS OF CRIMINAL FIREARM VIOLENCE



*Memorial to more than 100 children and young adults of the St Sabina Community in Chicago who have been killed by gun violence*

Children in the USA are not immune from criminal firearm violence. Whether children are caught in

the crossfire of rival groups engaged in criminal activity, killed as part of a domestic violence incident or shot by a classmate, children across the country are all too often the victims of firearm violence. In fact, most child firearm deaths are homicides.

In 2016, the most recent year for which data is available, 862 children died in gun homicides.<sup>378</sup> Additionally, according to a 2017 study by the CDC, an average of 5,790 children a year are treated in emergency rooms for injuries inflicted by firearms.<sup>379</sup> Nationwide, between 2% and 7% of all injuries treated at pediatric trauma centers are gun related. Moreover, it has been found that between 2009 and 2016, 25% of all mass shooting fatalities were children<sup>380</sup> and 40% of all fatalities in domestic violence-related mass shootings were children.<sup>381</sup>

***“Too many children have died or are traumatized by gun violence... The impact of gun violence on children is a serious public health problem.”***

Dr. Mark Slidell, Director of Pediatric Trauma at Comer Children’s Hospital on Chicago’s South Side, speaking to news outlet *Chicago Tonight*.<sup>382</sup>

Most children who are victims of firearm homicide are from minority communities. In 2016, of children who died in gun homicides, 513 (almost 60%) were black, 152 were Hispanic and 168 were white.<sup>383</sup> Homicide is the second leading cause of death among black children and 65% of those killings are committed with guns.<sup>384</sup> The firearm homicide rate among black male teens aged 13 to 17 in 2016 was over 16 times higher than that of their white non-Hispanic counterparts.<sup>385</sup>

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## CHILDREN AS VICTIMS OF CRIMINAL FIREARM VIOLENCE IN CHICAGO

**Children in Chicago, particularly on the South and**

**West Sides of the city, which are generally racially segregated and impoverished, suffer the impacts of gun violence from an early age and across all aspects of their lives.**

**Dozens of children are killed each year in Chicago. Many are directly targeted; others are hit by stray shots or ricochets. Data tracked by the *Chicago Tribune* showed that in 2017, 246 children under the age of 17 were shot and 38 of these children died.<sup>386</sup> At the Comer Children’s Hospital in the South Side of Chicago, however, gun injuries represent 17%-18% of all injuries being treated at the pediatric trauma unit.<sup>387</sup> The types of gun-related injuries doctors see vary but virtually all have a long-lasting mental impact on the children involved.**

### 15-YEAR-OLD LATINO BOY, GUN VIOLENCE VICTIM, CHICAGO, ILLINOIS

**“They should be more careful with who they shoot at. It’s not fair. He was innocent. He didn’t do anything bad and it’s not fair that they could just take his life like that... I don’t know how people have the heart to kill people just like that.”**

- Victim’s sister<sup>388</sup>

**According to media reports, a 15-year-old Latino boy was delivering newspapers to earn money for a birthday present for his sister.<sup>389</sup> On the morning of Sunday, 17 December 2017, he and his mother’s boyfriend were attacked. A white van rear-ended their vehicle, flashed its lights, and then a man hanging out of the passenger window opened fire on the car.<sup>390</sup> One of the bullets struck the boy in the head. He was driven to a nearby gas station, where he was pronounced dead.<sup>391</sup> Police believe the shooting could have been a case of mistaken identity and potentially a retaliatory shooting that went wrong.<sup>392</sup>**

**12-YEAR-OLD GIRL, GUN VIOLENCE VICTIM,  
CHICAGO, ILLINOIS**



*Takiya Holmes, Photo Credit: Family photo<sup>393</sup>*

On Saturday, 11 February 2017, 11-year-old Takiya Holmes was sitting in a car with her mother, brother and aunt waiting for her mother's co-worker on the South Side of Chicago.<sup>394</sup> Her mother Naikeeia Williams had just parked the car when she heard gunfire.<sup>395</sup>

Once the shooting had stopped, Naikeeia went to the back of the car and saw that Takiya had been shot in right side of her head and wasn't moving.<sup>396</sup> Naikeeia believes that the last of three to five bullets came through the back window and hit Takiya, although Takiya did not make a sound.<sup>397</sup>

Takiya was transported to the hospital and was soon after declared brain dead. She died on 14 February 2017.<sup>398</sup> It is Naikeeia's understanding that the bullets were intended for some kids on the corner nearby.<sup>399</sup> When speaking about her daughter Naikeeia said: "She had a heart of gold. Takiya's organs were donated because that is what she would have wanted. She was an angel on earth. It is heartbreaking that her life was taken and they weren't even shooting at us."<sup>400</sup>

The shooter, just 19-years-old at the time of the shooting, has been charged with the murder of Takiya Holmes and is being held without bond pending his trial.<sup>401</sup>

Naikeeia has returned to work but continues to suffer from post-traumatic stress disorder, depression and anxiety.<sup>402</sup> Her greatest fear, however, is that her son, just three years old at the time of the shooting, will suffer long term effects from the shooting and the violent loss of his sister.<sup>403</sup> When asked about the violence in Chicago, Naikeeia responded: "The violence is ridiculous. More women and kids get killed here than anything. It didn't used to be like that. Women and kids were safe."<sup>404</sup>

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**12-YEAR-OLD GIRL, GUN VIOLENCE VICTIM,  
CHICAGO, ILLINOIS**

Less than half an hour before Takiya Holmes was shot, a 12-year-old girl was playing basketball when she too was hit by a bullet intended for someone else. She was rushed to Stroger Hospital on the West Side of Chicago.<sup>405</sup> The bullet had struck the base of her head, tearing through her uppermost vertebrae and causing severe brain damage.<sup>406</sup> She was pronounced dead four days later, on 14 February 2017.<sup>407</sup>

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**14-YEAR-OLD BOY, GUN VIOLENCE VICTIM,  
CHICAGO, ILLINOIS**

On 5 September 2017, just after 5pm, a 14-year-old boy was standing on the sidewalk in his South Side neighborhood when an individual approached him and shot him in the stomach and leg. He was rushed to Comer Children's Hospital but died the following day.<sup>408</sup> Reports indicate that there was a fight which preceded the shooting and that police believed that the shooting was gang-related. Family members said the child was never in a gang but had been harassed by members of a gang in the neighborhood.<sup>409</sup>

## CHICAGO: SAFE PASSAGE ROUTES



Source: Getty Images (Safe Passage Worker at CPS) <sup>410</sup>

In May 2013, Chicago announced the closure of 49 public elementary schools in the city.<sup>411</sup> This represented one of the largest wave of school closures in US history, encompassing 10% of all public schools in the city.<sup>412</sup> Nearly 30,000 students, approximately 90% of whom were African American, were affected.<sup>413</sup> The closures meant longer journeys to school and, because of the prevalence of gangs and criminal activity in many of these communities, this posed an increased risk of violence as children had to travel from one gang-controlled neighborhood to another and also resulted in increased fear, stress and concern for the children and their parents.

The school closures prompted the Midwest Coalition for Human Rights to make a submission to the Office of the UN High Commissioner for Human Rights requesting an investigation to address the potential human rights violations that could result from the school closures, including the rights to non-discrimination, life, security of the person and education. Notwithstanding the concerns raised by human rights organizations, parents, students, teachers and community organizations, the Chicago Board of Education continued with the closures.<sup>414</sup>

In an attempt to address the fears of parents and children who were forced to travel to a school from one gang-controlled neighborhood to another, the city implemented Safe Passage routes. Each school has tailored routes, patrolled by approximately 1,400 unarmed workers city wide who have been trained to stand watch as students travel to and from their schools.<sup>415</sup>

By 2018, the Safe Passages had expanded to 14 additional schools, bringing the total number of schools served to 160.<sup>416</sup> According to Chicago Public Schools, crime has reduced along dangerous routes by 32%, but issues still exist.<sup>417</sup> According to data collected by the Chicago Tribune, as of September 2017, only one shooting occurred on a Safe Passage route in the 2017-2018 school year, but 860 shootings took place during that same period during school hours in Chicago. Many of the shootings were adjacent to or near schools and Safe Passage routes.<sup>418</sup>

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Sadly, even if a child survives a gun-related incident, long-term exposure to gun violence

can lead to numerous developmental problems, including impairment of brain function, inability to focus, trouble following directions, difficulties retaining and utilizing memory and difficulties engaging in organizational and decision-making tasks.<sup>419</sup> Children raised in turbulent and violent climates, whether related to domestic violence, physical abuse, or community violence, have been found to be more likely to engage in violence and anti-social behavior, including crime, drug abuse, and domestic violence. They are also more susceptible to a range of mental health issues such as anxiety, post-traumatic stress disorder and depression.<sup>420</sup> If not adequately addressed, these issues often cause long term problems including performance issues at school, issues with finding and keeping a job, physical health problems, trust issues in developing relationships, and violent and aggressive behavior.<sup>421</sup> This means that untreated trauma further facilitates a cycle of violence that can have a multi-generational impact.

#### **17-YEAR-OLD BOY, GUN VIOLENCE SURVIVOR, NEW ORLEANS, LOUISIANA**

**“I got shot when I was 15 over something stupid. I was walking – me and my friend we were walking...a guy came out with a gun and started shooting at us. Everyone here has a gun. My friend had a gun, so he shot back a couple of times. The whole thing happened so fast and then we started running. And I looked down and I realized while I was running that I had been shot... The bullet had gone right through my leg. Every day when I wake up I can’t forget that night. I think about it every day. While I was at the hospital, detectives questioned me. No one at the hospital gave me any information about support or what I could do next. I was in shock, but not scared. No police ever followed up with me after that night about the shooting.**

**Being shot has impacted me because I feel like you have to be more careful. I worry about my brothers and sisters...**

**If I could recommend one thing – we need to change the way we live. People have a gun because they need to feel protected... It is hard to find a job that pays well here. We have more gun violence because people are just giving up. We feel like we can’t do anything about the violence. I want to live in a place like Beverly Hills. People in Beverly Hills – they have a better life than us – police will protect them.**

Amnesty International interview with 17-year-old African American youth, New Orleans, Louisiana, February 2017<sup>422</sup>

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Access to mental health care and counseling in schools is insufficient to address the short and long-term trauma suffered by children faced with gun violence on a regular basis.<sup>423</sup> In Chicago, for example, local residents have repeatedly urged the city to do more to address the mental toll of gun violence on young people in the city, particularly on the South and West Sides. Students and community members have asked for increased mental health resources, more counselors and social workers in each school, reopening of mental health clinics – like six of the 12 city-run mental health clinics (mostly on the South and West Sides) that were closed in 2012 – and more funding for direct services/not-for-profit organizations that offer mental health care treatment and programs to children and young people.<sup>424</sup>

***“By closing half of the city’s mental health centers and 50 schools...the mayor has chipped away at these sources of resilience, making future generations more susceptible to PTSD [post-traumatic stress disorder] and other mental illnesses.”***

*Jonathan Foiles, Mental Health Professional based in Chicago.*<sup>425</sup>

### 3.2.3 CHILDREN WHO COMMIT FIREARM VIOLENCE

Children can also be the perpetrators of firearm violence. The factors that contribute to a child picking up a gun are varied and often poorly understood. However, in the context urban communities, youth violence can be associated with fear, need for protection, distrust of police due to entrenched discrimination and discriminatory policing, and desire for peer respect and approval, as well as involvement in criminal activities.

In areas where the trust between communities and police is broken, crime is rampant and poverty is prevalent, youth gun violence and “street justice” are often the response.<sup>426</sup> For example, young minorities in Chicago and Louisiana told AIUSA about the distrust with which many members of the community regard law enforcement and how they feel that officers are not there to protect their safety and security in the same way that police protect more affluent, white neighborhoods (see Section 3.1).

***“You have to understand, our children are suffering. We need social services and counseling for youth. How can we expect them to survive and excel in this climate? When a child is killed – at most the school will bring in a counselor for one day. If they treated us like Sandy Hook – things would be different. When lives were taken in that community, they brought in counselors for a year to work with the kids – our kids go through this every day. Our community is not valued by America. They don’t feel like we are worth the counseling or support.”***

Pam Bosley, whose son was shot and killed in 2006 and whose murder remains unsolved, and Coordinator with Purpose Over Pain, Chicago<sup>427</sup>

Youth gun violence is not inevitable. Evidence suggests that community-based, comprehensive and holistic partnerships can decrease gun violence and improve the lives of vulnerable and at-risk youth. Minimizing the causes and

circumstances that foster childhood violence requires coordinated efforts by law enforcement, parents/guardians, faith leaders, school officials, community-based organization and other adults. There are examples of programs and initiatives that promote education, treatment, support and rehabilitation that have been shown to offer effective long-term results for high-risk and violent youth involved in gun violence.

For example, Story Squad, a 16-week, curriculum-based program of the YMCA of Metropolitan Chicago’s Youth Safety and Violence Prevention program, serves young people (19 and under) in neighborhoods with some of Chicago’s highest rates of gun violence. The program focuses on “developing self-reflection, critical thinking, self-efficacy, and audio production and storytelling skills.” The idea is that by telling their own stories, young people develop the social and emotional skills necessary to process their own experiences with violence and to understand their own experiences in the context of broader structural inequalities.<sup>428</sup> (For more information on gun violence prevention programs see Section 3.1.)

### 3.2.3 GUN VIOLENCE IN SCHOOLS



Joseph Warren Elementary School<sup>429</sup>

**JOSEPH WARREN ELEMENTARY SCHOOL,  
CHICAGO, ILLINOIS**

*“This makes me sick that kids are having an end-of-the-year picnic and they have to get shot at,” Chicago Police Supt Eddie Johnson<sup>430</sup>*

On 16 June 2017, the Joseph Warren Elementary School in Chicago’s South Side held a picnic to celebrate the end of the school year. According to media reports, some former students were outside the school grounds when a black vehicle drove by and someone inside started shooting at them. Two schoolchildren were hit as they ran away toward the playground—a seven-year-old girl was shot in the leg, and a 13-year-old girl was shot in the hand.<sup>431</sup> Teachers reportedly ushered screaming children inside the school where they dropped to the floor to avoid the windows. An 18-year-old man and two boys aged 16 and 17 were subsequently arrested and charged with attempted murder and firearms offences. At the time of the shooting, Joseph Warren Elementary School did not have a Safe Passage program; it entered the program in January 2018.<sup>432</sup>

**MARJORY STONEMAN DOUGLAS HIGH SCHOOL,  
PARKLAND, FLORIDA**

On 14 February 2018, 17 people, among them 13 students, were killed when Nikolas Cruz, a 19-year-old former student, walked into Marjory Stoneman Douglas High School, in Parkland, Florida, armed with a semi-automatic rifle and opened fire.<sup>433</sup>

Nikolas Cruz, who reportedly had a long history of violent and erratic behavior, had been expelled from the school the year before. According to the FBI, numerous complaints had been made to local law enforcement and a specific tip sent to the FBI on 5 January 2018, about “Cruz’s gun ownership, desire to kill people, erratic behavior, and disturbing social media posts, as well as the potential of him conducting a school shooting.” Nikolas Cruz was able to legally purchase and possess an AR-15, the

semi-automatic rifle that he used in the shooting.<sup>434</sup>

The shooting at Marjory Stoneman Douglas High School was one of the 10 deadliest mass shootings in modern US history and it occurred less than five months after the most deadly, the shooting at the Route 91 Harvest Music Festival, an outdoor music concert in Las Vegas, Nevada, and the shooting at the First Baptist Church in Sutherland Springs, Texas.<sup>435</sup>

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Between 2013 and June 2018, there were 316 incidents of gunfire on school grounds in the USA.<sup>436</sup> Incidents of children bringing guns to school are even more common. There were 1,576 reported firearm possession incidents at schools across the country during the 2015-2016 school year, the most recent year for which US Department of Education data is available.<sup>437</sup> However, this only takes into account firearm possession during school hours or when school activities or events were in session and does not include unreported incidents of firearm possession on school grounds, which may well account for even more than reported incidents.<sup>438</sup>

Not surprisingly, unsecured firearms in the home play a role in school shootings. A recent study by the Wall Street Journal indicated that most guns used in school shootings come from home. The analysis showed that of the 32 school shootings from 1990 through the Parkland shooting where there were three or more casualties, 25 cases involved teenagers or younger students as the active shooter. Of those 25 cases, only 20 records stated where the gun came from. Of those 20, 17 of the students got the guns from home or from a relative.<sup>439</sup>

A study by the Brady Campaign to Prevent Gun Violence using data from the CDC’s Youth Risk Behavior Survey from 1993 to 2013 concluded that CAP laws contributed to a 13% reduction in the number of students carrying guns and an 18% reduction in students reporting threats or



injuries resulting from firearms on school grounds. CAP laws also resulted in fewer students being absent from school due to fears for their safety. Accordingly, the introduction of CAP laws is one method states are considering as a potential deterrent to school shootings.<sup>440</sup>

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## LAWS REGULATING FIREARMS ON SCHOOL CAMPUSES

### Federal laws

**Two federal laws govern the presence of firearms in US primary and secondary schools, kindergarten through 12<sup>th</sup> grade (K-12).**

- **The Gun-Free Schools Act prohibits students in K-12 schools from bringing firearms to school. Schools must expel, track and report students who violate this law.<sup>441</sup>**
- **The Gun-Free School Zones Act states that K-12 schools shall be “gun-free zones”, with certain exceptions. Most notably, the law does not cover individuals licensed by the state to possess or carry a handgun. Other exceptions include exemptions for unloaded and locked firearms stored in a motor vehicle and/or firearms utilized in conjunction with an approved school program or activity.<sup>442</sup>**

### State laws

**Forty-seven states and Washington DC have specific laws prohibiting guns in K-12 schools.<sup>443</sup> Hawaii and Wyoming have no relevant statute and New Hampshire<sup>444</sup> allows guns in K-12 schools (except for students who are prohibited under federal law).**

**Forty of these states also prohibit concealed carry weapon permit holders from carrying firearms in elementary, middle and high school.<sup>445</sup> Kansas allows individual schools to decide whether concealed carry permit holders can carry guns in the school.<sup>446</sup> Arizona prohibits concealed carry firearms in public K-12 schools, but allows private schools to create their own policies on the matter.<sup>447</sup>**

**Eight states either authorize (or fail to prohibit) the carrying of firearms by individuals with concealed carry permits in K-12 schools.<sup>448</sup>**

A 2018 analysis by the *Washington Post* found that between the Columbine school shooting on 20 April 1999 and 23 March 2018, more than 187,000 students from at least 193 primary or secondary schools had experienced a shooting on campus during school hours.<sup>449</sup> This does not include the school shooting in Santa Fe High School in Santa Fe, Texas, on 18 May 2018 in which 10 people were killed. It is not surprising that with so many mass shootings taking place at schools around the country, adults rank school violence and gun violence as their top concerns for the health of children in the USA.<sup>450</sup>

Gun violence in schools does not only affect the shooter and victims, rather it has far-reaching ripple effects. Students who attend schools in areas of high gun violence are subject to constant fear and stress triggers: the journey to school may be dangerous; students may arrive in a state of anxiety at a school building that is fortified or guarded, increasing the perception that it is not a place of safety. Students in such surroundings experience lower graduation rates, increased dropout rates and absences, and lower test scores. The mere existence of a gun carried by a student creates a perception of danger and the need to protect oneself, even without any violence occurring.<sup>451</sup>

Like firearm violence generally, incidents of gunfire at schools occur most often at schools with a high proportion of students of color.<sup>452</sup> In Chicago, a city ravaged by gun violence for the past few years, children who were exposed to a recent intentional killing in their neighborhood had decreased performance levels, trouble focusing attention, and other difficulties compared to other students from the same area, but evaluated at different times.<sup>453</sup> The impact of persistent gun violence on students can be long lasting and severe.<sup>454</sup>

Children who are traumatized do not flourish at school, and are more likely to engage in violence and other anti-social behavior – virtually all of the children held in state juvenile detention facilities have trauma-related mental health issues.<sup>455</sup>

Therefore, while the state’s primary goal should be to prevent or reduce gun violence before it occurs, the need for support and care for those who have been affected by gun violence in the school, home or community must also be a priority.

The New Orleans *Times-Picayune* recently investigated the effects on children of chronic exposure to violence, focusing on Central City, an area with particularly high poverty and gun violence rates.<sup>456</sup> Children in Central City regularly witness shootings, assaults, domestic violence and substance abuse; more than half have lost someone they know to murder. They have been conditioned to view the world as an exceptionally dangerous place and are hyper-vigilant to any perceived threat.

When children live in a constant fight or flight state – due to chronic exposure to violence – they never get a chance to return to a normal physiological state. The effects, according to medical and mental health experts interviewed by the *Times-Picayune*, can cause long-term brain damage, especially those regions responsible for emotions, learning and memory. Traditional school discipline and punishments exacerbate stress conditions, leaving children frustrated, angry, confused, and prone to lashing out.

Local initiatives, like the “Sad not Bad” campaign, aim to raise awareness about the prevalence and consequences of chronic trauma and emphasize the need for understanding, early diagnosis and treatment. There are increasing numbers of “trauma-informed schools”, which

follow policies and practices aimed at recognizing and defusing stress, working with mental health professionals where possible, although there is a severe shortage of mental health care for children in Louisiana.<sup>457</sup> But such programs are largely grant-funded, not run by the city or the state, and so are not available to many of the children most in urgent need of treatment and support.

Oakland-based Youth Alive’s Teens on Target Program began in 1989 at Castlemont High School, often referred to as “the killing fields”, by locals. The organization’s flagship peer-to-peer program continues to address gun violence among children, targeting youth in middle school. It offers a six-part anti-violence curriculum focusing on the root causes of violence, alternatives to violence, family violence and dating violence. Each year, 25 high-school students are trained to incorporate their own stories into their work as mentors and leaders and to present the curriculum to hundreds of middle school students.<sup>458</sup>

### 3.2.4 AGE LIMITS AND ACCESS TO GUNS

Federal law distinguishes between handguns and long guns (rifles and shotguns), between gun possession and gun sales, as well as between sales conducted by federally licensed dealers (FFLs) and by private individuals. In terms of possession, federal law prohibits possession of a handgun by anyone under the age of 18.<sup>459</sup> However, there is no minimum age for the possession of long guns or long gun ammunition acquired through unlicensed entities or private persons. As it stands, federal law and the laws in most states continue to allow unsupervised access to certain firearms by children and young adults.<sup>460</sup>

## FEDERAL LAW AGE REQUIREMENTS FOR SALES AND TRANSFERS

	Handguns	Long guns (rifles and shotguns)
<b>Federally licensed dealers (FFLs)</b> <sup>461</sup>	FFLs are prohibited from selling or delivering a handgun (or ammunition for a handgun) to any individual whom the dealer has “reasonable cause to believe” is under <b>21</b> . <sup>462</sup>	FFLs are prohibited from selling or delivering a long gun (or ammunition for a long gun) to any individual whom the dealer “knows or has reasonable cause to believe” is under <b>18</b> . <sup>463</sup>
<b>Unlicensed entities, e.g. private persons</b>	<p>Unlicensed entities or persons are prohibited from selling, delivering, or otherwise transferring a handgun (or handgun ammunition) to any individual whom the transferor “knows or has reasonable cause to believe” is under <b>18</b>.<sup>464</sup></p> <p>(Federal law provides exceptions for the temporary transfer and possession of handguns and handgun ammunition “in the course of employment,” ranching, farming, target practice, and hunting.<sup>465</sup> In these circumstances, there is no minimum age restriction.)</p>	Unlicensed entities or persons are permitted to sell, deliver, or otherwise transfer a long gun or long gun ammunition to an individual of <b>any age</b> .

However, while many states have set their own minimum age laws that limit the purchase of firearms, the majority of states do not regulate the age at which a child can possess a firearm. As the director of the Johns Hopkins Center for Gun Policy and Research, Daniel Webster, points out: “If dad wants to give his son a rifle or a shotgun on his 13th or 14th birthday, he’s pretty much free to do that in most states.”<sup>466</sup>

Twenty-seven states do not have laws regulating the minimum age at which people are permitted to possess long guns.<sup>467</sup> Of those that do have minimum age restrictions, several allow children as young as 14 or 16 to possess long guns. In Alaska, for example, the minimum age for possessing a long gun is 16 and no parental consent is required.<sup>468</sup> In Massachusetts the minimum age is even lower, at 15, but parental consent is required until the child reaches the age of 18.<sup>469</sup> Minnesota permits children as young as 14 to possess long guns with firearms safety certificates, but those over 16 do not need to obtain a certificate.<sup>470</sup>

The minimum hunting age in the USA is decided by individual states, not federal law. The vast majority of states make exceptions in their minimum age provisions for minors if they are engaged in hunting. For example, in Idaho, 10-year-old children are allowed to hunt under the supervision of adults.<sup>471</sup> Alaska does not require a license for hunters under the age of 15.<sup>472</sup> In Arizona, 14-year-old children are allowed to own a gun if they are engaged in hunting or shooting.<sup>473</sup>

Many states do not impose any additional restrictions on the temporary transfer of firearms to minors for use in target practice or firearm safety training, other than those that exist under federal laws. These exceptions to the general rules for firearm possession by minors have made it possible, for instance, for some gun ranges to offer children’s birthday parties.<sup>474</sup> Other shooting ranges set height requirements, for example allowing anyone over 48” in height to use both rifles and handguns, as long as accompanied by a parent or guardian.<sup>475</sup>

### 3.2.5 GUN VIOLENCE AMONG CHILDREN: AN UNDER-RESEARCHED PUBLIC HEALTH ISSUE

The USA devotes billions of dollars in funding and resources to develop research around the root causes of child death and injury. The leading causes of accidental and consumer death among children across America receive the attention and focus they deserve so that strategies can be implemented to develop public awareness, education, prevention measures, safety precautions and treatment. For example, the potential dangers of items such as unstable domestic furniture and potentially dangerous domestic appliances are studied by dedicated teams of researchers within the CDC and the Consumer Product Safety Commission.<sup>476</sup>

The deaths of children killed by guns, however, do not receive the same level of attention. Despite the daily loss of life from gun-related injuries, no agency or federally funded researchers investigate these incidents with the same level of concern or dedicated resources as other public health concerns.<sup>477</sup> This is because 20 years ago, the House of Representatives cut US\$2.6 million from the CDC's budget – precisely the amount that had been allocated for research into deaths from firearms – after a CDC-funded study was published which found that gun ownership was a risk factor for homicide in the home.<sup>478</sup>

So, while the past two decades of research have resulted in marked improvements and reductions in other causes of child deaths, the CDC has failed to investigate, document and publicize, or post even the most basic information about, firearm-death reduction, particularly for the most vulnerable victims, children, on its website.<sup>479</sup>

In addition to research, studies illustrate that public awareness and education campaigns have successfully modified patterns of behavior among youth in the past, such as for example in the cases of tobacco use and drunk driving.<sup>480</sup> Given this successful model, the USA should consider

creating and expanding public education and awareness campaigns around child deaths due to unintentional shootings and firearm safety. (See Section 5.8 for more information on lack of research on gun violence in the USA).

## 3.3 DOMESTIC VIOLENCE AND FIREARM

### BETHANY NOELLE SCHUCH

**On 8 March 2018, in West Linn, Oregon, David Cote shot and killed his former girlfriend, Bethany Noelle Schuch, and then killed himself.<sup>481</sup> Bethany Schuch had been granted a restraining order against him in November 2017, but the authorities were not able to locate him to serve it, which means it could not be enforced.<sup>482</sup> In the request for the restraining order, Bethany Schuch explained that she was fearful, outlined specific threats David Cote had made and noted that he had access to a firearm.<sup>483</sup>**

**In 2014, David Cote spent 45 days in jail after he pleaded guilty to misdemeanor stalking and menacing.<sup>484</sup> The woman who filed these charges against him told local reporters that he had stalked her and threatened her and her family.<sup>485</sup> On hearing about the shooting on 8 March 2018, she said:**

***"[The officer] said David Cote had killed someone and himself...and I couldn't stop shaking because I was not surprised and that's what broke my heart, because it was something I expected."*<sup>486</sup>**

**There was no bar on firearm possession for those convicted of misdemeanor stalking in Oregon at the time of the shooting.<sup>487</sup> In March 2018, Oregon enacted a bill to expand the prohibition of gun ownership to people convicted of domestic violence against non-married intimate partners and block people convicted of misdemeanor stalking from owning a gun. The law comes into effect in January 2019.<sup>488</sup>**

According to the National Coalition Against Domestic Violence, “domestic violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another.”<sup>489</sup> One in three women and one in ten men in the USA experience intimate partner physical violence, intimate partner sexual violence, and/or intimate partner stalking in their lifetimes.<sup>490</sup>

Domestic violence perpetrators regularly use firearms to control, to abuse and to murder. Some 4.5 million American women alive today have been threatened by an abuser with a firearm; 1 million of those have been shot and injured or shot at without injury.<sup>491</sup> A survey conducted by the National Domestic Violence Hotline found that 67% of respondents whose abusers possessed firearms believed their abusers were capable of killing them.<sup>492</sup>

Unfortunately, existing studies on the relationships between firearms and female homicides related to intimate partner violence (IPV) are limited. Studies on this issue are urgently needed. However, from the data that does exist, the relationship between access to firearms and intimate partner homicides is quite clear; the risk increases dramatically when there is a firearm in the home.<sup>493</sup> More than half of all women murdered in the USA are killed by current or former intimate partners and most intimate partner homicides are committed with guns.<sup>494</sup> According to two separate studies on the risks of firearms in the home, women living with a gun in the home were nearly three to five times more likely to be murdered than those with no gun in the home.<sup>495</sup>

## **KATE RANTA**

**On 2 November 2012, Thomas Maffei shot his way into the apartment in Coral Springs, Florida, where his estranged wife, Kate Ranta, lived with their four-year-old son. Kate Ranta was shot twice and injured. Her 68-year old father was shot at point-blank range, causing permanent damage to his arm.**

**Kate Ranta told Amnesty International that Thomas Maffei then walked over to their son and knelt down beside him, still pointing his gun at her, while her son pleaded, “Don’t do it Daddy. Don’t shoot Mommy.”<sup>496</sup>**

**She said that her husband had become abusive several years earlier and she had been granted a temporary restraining order requiring her husband to surrender his six guns and ammunition in January 2011.<sup>497</sup> However, when the officers seized the guns, they warned her that her husband could go out the next day and buy another gun legally since neither Federal law nor Florida law prohibit sales of firearms solely on the basis of a Temporary Protection Order and the order from the judge only applied to weapons and ammunition currently in Thomas Maffei’s possession.<sup>498</sup>**

**Kate Ranta withdrew the protection order during a short-lived reconciliation attempt and the guns were returned.<sup>499</sup> Although she made several subsequent attempts to obtain restraining orders, these were not successful. In any case, neither federal law nor Florida state requires the removal of weapons after a temporary restraining order.**

**She understood from her attorney that denial was due to insufficient evidence.<sup>500</sup> Meanwhile, her husband’s behavior became increasingly erratic: he broke into her home, vandalized her car, cyber-stalked her and hired a private investigator to locate and video her.**

**Only after Ranta had been shot did a judge finally grant a permanent protection order in her case.<sup>501</sup> In April 2017, a jury sentenced Thomas Maffei to 60 years in prison for the attempted murders of Kate Ranta and her father.<sup>502</sup>**

There are profoundly inadequate legal protections in place for people who are at risk of domestic violence from armed and abusive current or former intimate partners. Federal and state laws provide some basic protections, but many of these are undermined by loopholes and omissions.

In 1994, Congress included a provision in the Violence Against Women Act prohibiting certain persons subject to final domestic violence protective orders from possessing firearms and ammunition. In 1996, Congress passed the “Lautenberg Amendment”, prohibiting certain individuals convicted of the misdemeanor crime of domestic violence or subject to a final domestic violence protection order from possessing firearms and ammunition.<sup>503</sup> Between 1998 and 2014, these laws resulted in more than 160,000 denied purchases of firearms.<sup>504</sup> Individuals convicted of felony stalking or other acts that rise to the level of felony offenses are prohibited from purchasing or owning firearms under the Gun Control Act of 1968.<sup>505</sup>

However, for federal laws to be enforced effectively, state legislatures need to pass laws which provide for mechanisms to enforce the federal protections. Many states have failed to translate federal protections into state law. In addition, despite these prohibitions, the USA has not provided sufficient protection for individuals at risk of domestic violence. Under federal law, those who are explicitly prohibited from owning a firearm due to domestic violence are not required to surrender their guns and only 27 states and Washington, D.C. require or authorize authorities to order that firearms be relinquished or surrendered.<sup>506</sup> Inadequate recordkeeping and the fact that the private sales of guns do not require background checks means that even if they do surrender their firearms, they are able to go and buy another one. As a result, people most likely to misuse firearms often remain armed and dangerous.

The UN Human Rights Council has recognized that the right to life and security of person has been significantly undermined by firearms misuse, and that inter-partner violence accounts for a significant number of such attacks.<sup>507</sup> In a 2006 report, *Prevention of Human Rights Violations Committed with Small Arms and Light Weapons*, it noted that: “the State has particularly acute obligations when it comes to protecting the rights of vulnerable groups, including victims of domestic violence, who are most at risk from misuse of a gun in the home. The presence of a gun in the home can easily turn domestic violence into domestic homicide.”<sup>508</sup>

The USA has not ratified any treaties that specifically address domestic violence or violence against women. In 1980, the USA signed the Convention on the Elimination on all Forms of Discrimination Against Women (CEDAW). Although the USA has not ratified CEDAW, the USA still has an obligation to refrain from acts that would defeat the object and purpose of this treaty.<sup>509</sup> The Committee on the Elimination of Discrimination against Women, which monitors implementation of the rights enshrined in the Convention, has recognized gender-based violence against women as a form of discrimination.

However, as a party to the ICCPR, it has a due diligence duty to protect the right to life and to prevent, investigate, and punish any act that would undermine that right, whether committed by its own agents or by private persons. It has a similar due diligence obligation with regard to the protecting the right to security of person. The Inter-American Commission on Human Rights found a similar duty with regards to domestic violence under the Inter-American Convention on Human Rights.<sup>510</sup> The state is also enjoined to pay particular attention to the protection of those most at risk of harm. The USA's failure to take reasonable measures to reduce preventable gun-related domestic violence is a violation of obligations under international human rights law.

### 3.3.1 THE “BOYFRIEND LOOPHOLE”

Gaps in the current legal framework that prohibit the purchase and possession of firearms when a person is convicted of crimes related to domestic violence or is subject to a qualifying protective order – commonly referred to as the “boyfriend loophole” – leave many intimate partners without adequate legal protection.

According to federal law, a “domestic violence misdemeanor” is a crime “committed by an intimate partner, parent, or guardian of the victim.”<sup>511</sup> An “intimate partner” is defined as “the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.”<sup>512</sup> This excludes current or former dating partners who did not have a child together and did not cohabit.<sup>513</sup> Some states have closed the “boyfriend loophole” by enacting state laws which cover dating partners. According to Everytown for Gun Safety, 29 states and Washington, D.C. have laws which prohibit those who have been convicted of crimes against dating partners from possessing firearms.<sup>514</sup> In some states, the “boyfriend loophole” has been partially closed; however, unequal protections remain.<sup>515</sup>

Federal data collection, research, and firearm policies around intimate partner violence need to be updated to more fully take into account different types of dating relationships to more accurately identify those individuals not currently protected by federal law. A 2018 study examining assaultive behaviors by the type and status of the relationship (current spouse, former spouse, current boyfriend or girlfriend, and former boyfriend or girlfriend), in Philadelphia, for example, concluded that “gun use was similar across relationship types.”<sup>516</sup>

Domestic violence also occurs within the LGBTI community. It is not clear from the limited data

that does exist how the “boyfriend loophole” affects LGBTI individuals in the context of domestic violence and firearms. It is critical that in closing the “boyfriend loophole” those in LGBTI relationships are also provided protection from firearm violence in the domestic violence context.

### 3.3.2 THE “MISDEMEANOR STALKING” LOOPHOLE

#### YVONNE FLORES

**On 7 July 2010 in Leadville, Colorado, Anthony Medina shot and killed his neighbor, Yvonne Flores, in her driveway before turning his .38 Taurus revolver on himself.<sup>517</sup>**

**Yvonne Flores, aged 58, and her husband had been stalked by their neighbor, for two years before the shooting. According to law enforcement, Anthony Medina was increasingly infatuated with Yvonne Flores. He would walk slowly by her home, look through her windows, watch her leave home and then follow her, approaching her on the street in town.**

**Yvonne Flores complained to law enforcement that Anthony Medina was stalking her, touching her and making inappropriate comments. Medina was arrested on 22 June 2010 for stalking her and was released on US\$2,500 bail without first seeing a judge.<sup>518</sup> A week before the shooting occurred, on 24 June, Yvonne Flores obtained a temporary restraining order.<sup>519</sup>**

**In 2012, Colorado signed into law “Vonnie’s Law” named after Yvonne Flores. The law states that an accused domestic violence offender or stalker must have a bond hearing before a judge and be issued a written restraining order before release from jail. It also requires the stalker to be told the terms and seriousness of the protection orders against them so as to prevent them feigning confusion. The law was extended in 2015 to protect sexual assault survivors as well.<sup>520</sup>**

Current federal law prohibits the purchase and possession of firearms by individuals convicted of a felony crime,<sup>521</sup> including felony stalking, and misdemeanor crimes of domestic violence, but does not prohibit the purchase and possession of firearms by persons convicted of misdemeanor stalking. However, the demarcation between misdemeanor and felony stalking often does not reflect the actual threat.

The distinction between felony stalking and misdemeanor stalking charges varies from state to state. In some states, such as California, the distinction depends on whether or not the perpetrator was violating a protection order.<sup>522</sup> In other states, stalking becomes a felony when a party makes “credible threats with the intent to place person in reasonable fear of death or bodily injury.”<sup>523</sup> In other states, stalking is automatically a felony, there is no misdemeanor crime of stalking.

Misdemeanor stalking is a crime in 42 states, in only 19 of them are those convicted of misdemeanor stalking prohibited from owning a gun.<sup>524</sup> A 2014 report by the Center for American Progress surveying data from 20 states found that at least 11,986 people convicted of misdemeanor stalking offenses would not have been prohibited from possessing a gun because of gaps in federal and state law.<sup>525</sup>

The failure to remove firearms from those convicted of misdemeanor stalking is especially troubling given that stalking behavior can easily escalate to physical attacks.<sup>526</sup>

### **3.3.3 DOMESTIC VIOLENCE PROTECTION ORDERS AND FIREARMS POSSESSION**

#### **STEPHANIE GOODLOE**

**On 18 June 2016, in Washington, D.C., Stephanie Goodloe, the director of a church youth ministry at Mt. Gilead Baptist Church and a mother of one, was**

**shot and killed in her home by her ex-boyfriend, Donald Hairston.<sup>527</sup>**

**Earlier that month, after an incident which included Donald Hairston slashing the tires of her vehicle, Stephanie Goodloe obtained a temporary restraining order.<sup>528</sup> She filed two police reports about his threats in the two weeks prior to her murder and also, because he had again violated the order, visited the police station to file a report the day before she was killed.<sup>529</sup>**

**According to the police records, her ex-boyfriend threatened her and said he that he planned to cause her harm.<sup>530</sup> The law in Washington, D.C. does not bar those subject to a temporary restraining order from possessing a firearm.<sup>531</sup> Donald Hairston was convicted of murder in May 2018.**

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#### **LORI JACKSON**

**In early 2014, Lori Jackson separated from her husband Scott Gellatly.<sup>532</sup> He had physically assaulted her and tried to prevent her from leaving their home on previous occasions. Lori Jackson obtained a temporary restraining order to seek protection for herself and her small children. Scott Gellatly was also charged with domestic violence and an arrest warrant was issued.<sup>533</sup>**

**On the morning of 7 May 2014, Scott Gellatly arrived at Lori Jackson’s parent’s home. AIUSA spoke with her mother, Merry Jackson who described how: “Lori screamed ‘Mommy Mommy Scott is that the door... He proceeded to break in and we had nothing to protect ourselves. We were in an embrace, we were hugging each other... he pulled the gun out of the pocket...and started shooting.’”<sup>534</sup>**

**Merry Jackson was shot four times: in the face, right hand, left arm and back. She described that she “just laid still because I knew I was shot and I didn’t want to bleed out. I didn’t know I was shot in the face.... I didn’t see him shoot Lori. I must have blanked out... I didn’t realize my head was resting on Lori. They moved her and I asked them if that was my daughter**



and they said ‘yes’ and I said ‘is she dead?’ and they said ‘yes.’...Once he pulled the gun it was a losing battle, we had nothing to protect ourselves with.”<sup>535</sup>

**Scott Gellatly had purchased the .38 caliber handgun used in the attack in Virginia despite the fact that at the time, there was a warrant out for his arrest for domestic violence in Connecticut and he was subject to a temporary restraining order. The hearing for a final protection order would have been heard the following day. Obtaining a final order would have triggered the necessary court-ordered mechanism to require him to surrender his gun.<sup>536</sup> Scott Gellatly pleaded guilty to murder and attempted murder and was sentenced to 45 years in prison.<sup>537</sup>**

**Connecticut passed a law in 2016 that requires a person to surrender their firearms if they are subject to a temporary restraining order. It further bars them from re-acquiring those guns until there is a court hearing.<sup>538</sup>**

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The most dangerous time for someone in an abusive relationship is when they have just left or are in the process of leaving the abuser.<sup>539</sup> Often, this coincides with the request for a domestic violence protection order. The time between being granted a temporary protection order and the hearing for a final protection order can be extremely dangerous. According to one 10-city study of intimate partner homicides, a fifth of intimate partner homicide victims with temporary protection orders were murdered within two days of obtaining the order; a third were murdered within the first month. Nearly half of all of these homicides (46.2%) were committed with a firearm.<sup>540</sup>

Many survivors of domestic violence may not obtain protective orders at all. According to a 2013 study by the DoJ, no more than 22% of women who reported their abuse to police secured protective orders.<sup>541</sup> Researchers found that among a sample of migrant women who sought

services for domestic violence, 61% had no prior knowledge of protective orders. Those who do know about orders may not seek them for myriad reasons including reluctance to reveal intimate details in open court, the time-consuming steps that may be needed to secure orders, or their perceptions about the hostility of court personnel, including judges as well as other issues, such as financial limitations, lack of access to legal services more generally or distances they must travel to access legal services that do exist if they live in rural areas. Many more were prevented due to the limited reach of the protective order regarding their relationship status. For the LGBTI community, 54.4% of LGBTI survivors who sought protective orders were unable to secure them.<sup>542</sup>

Federal law prohibits the possession of firearms by those subject to a *final* domestic violence protection order but provides no restriction in the case of a temporary restraining order.<sup>543</sup> Only a handful of states, including California, Illinois, Massachusetts, Texas, and West Virginia, extend this prohibition to instances of temporary protection orders. A number of other states allow judges to write into the protective order whatever measures they deem necessary to protect the victim, including removal of firearms.<sup>544</sup>

The most dangerous time for a person leaving an abuser is during those initial stages, so removal of the firearm, if even for a short time, may be critical to prevent further violence or harm. New Orleans Civil District Court Judge Bernadette D’Souza told Amnesty International that in her court, when she issues a protective order and there are allegations of abuse or assault involving the use or threatened use of a gun, she also makes an order to suspend the defendant’s gun possession. “The complainant is then allowed to leave the court”, she explained, “but I do not allow the defendant to leave. My deputy is given an order to take him home and retrieve the guns in the house, and they remain in our hands for

the duration of the order, which is usually 18 months.” The subject of the order is prohibited from possessing any weapons, not just the ones he has in his possession at the time, and must also enroll in a 26-week intervention program. If the defendant attempts to purchase a firearm from a licensed firearms dealer, they will be flagged by the National Instant Criminal Background Check System (NICS). However, it will not prevent them from purchasing a firearm at a gun show or from a non-licensed dealer.<sup>545</sup>

### 3.3.4 PROHIBITED POSSESSORS AND THE SURRENDER OF FIREARMS

Although federal law prohibits certain domestic abusers from possessing firearms, it does not require prohibited abusers to transfer their firearms to law enforcement or another third party. In 23 states, individuals convicted of a misdemeanor crime of domestic violence or subject to a final domestic violence protection order who are prohibited from possessing firearms are nevertheless able to remain armed because there is no mechanism under state law to remove their weapons.<sup>546</sup> Yet evidence suggests that laws requiring prohibited abusers to surrender their firearms (“surrender laws”) are effective at reducing gun-related intimate partner homicide.

A 2017 study of the FBI’s Uniform Crime Reports found a 14% reduction in intimate partner firearm homicides in states with surrender laws.<sup>547</sup> Twenty-eight states and Washington, D.C. prohibit firearm possession by persons convicted of an IPV-related misdemeanor, but only 14 of those states also explicitly require or authorize relinquishment of weapons. Similarly, 35 states and Washington, D.C. prohibit firearm possession by persons subject to an IPV-related restraining order, but only 27 of those states also explicitly require or authorize relinquishment of firearms.<sup>548</sup>

In California, for example, abusers subject to

protective orders are required to transfer their firearms to law enforcement or to a federally licensed firearms dealer within 24 hours of being served with a protective order. They are required to provide a proof of transfer form to the court within 48 hours of the order being served. If they fail to comply, courts are authorized to issue a warrant for law enforcement to confiscate any firearms in their possession.<sup>549</sup>

In Louisiana, the Sheriff’s Office of Lafourche Parish introduced its own mechanism to remove firearms from individuals prohibited from possessing firearms due to domestic violence convictions or final protection orders in 2010, eight years before the state passed legislation to require surrender. In May 2018, the Louisiana legislature, building on the Lafourche model, passed a bill to establish a statewide process to ensure firearms are transferred out of the possession of prohibited individuals. The policy change will take effect in October 2018.<sup>550</sup>

In a 2013 *New York Times* investigation, researchers combed through criminal databases, records of domestic violence protection orders and related crimes involving a firearm in order to assess whether failure to require the surrender of firearms had any bearing on subsequent violence.<sup>551</sup> They found numerous instances in which a prohibited abuser who was not being required to surrender their firearms, used a gun to injure or kill their victim. In Washington state, for instance, the researchers found that during the previous decade, at least five women had been shot dead less than a month after obtaining protection orders and dozens more were victims of gun-related assaults.<sup>552</sup>

#### MORGAN ROGERS

**In January 2015, Morgan Rogers filed a criminal complaint against her boyfriend, Stafford Leo Shaw.<sup>553</sup> She also requested a civil protection order. In her supporting affidavit, she said: “Stafford**

Shaw attacked me in the face. He hit me with the butt of the gun, all while my daughter Leah Rogers lay in the room across the hall.”<sup>554</sup> The protection order was granted. Stafford Shaw pleaded guilty to a misdemeanor domestic assault charge and was ordered to serve a weekend jail term.<sup>555</sup> Virginia law did not require him to surrender firearms that he already owned.<sup>556</sup> On 29 May 2015, he shot Morgan Rogers and their one-year-old daughter while they were lying in bed, killing both of them, and then killed himself.<sup>557</sup>

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These killings, and many others, could potentially have been prevented if individuals who were legally prohibited from possessing firearms had been required to relinquish their weapons at the time they were served with temporary protection orders, or on conviction of a domestic violence charge.<sup>558</sup>

### 3.3.5 INADEQUATE REPORTING OF PROHIBITED INDIVIDUALS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

#### FIRST BAPTIST CHURCH IN SUTHERLAND SPRINGS, TEXAS

On 5 November 2017, Devin Patrick Kelley opened fire on a congregation at the First Baptist Church in Sutherland Springs, Texas, killing 26 people and injuring 20 more.<sup>559</sup>

Devin Kelley should not have had access to a firearm. While serving in the Air Force in 2012, he had been convicted and sentenced to a year’s confinement for assaulting his first wife and her son. Before his domestic violence conviction, he had been found sneaking firearms onto an Air Force base and making threats against commanders, as well as threats of self-harm.<sup>560</sup> He was reportedly deemed to be a threat to himself and others and was admitted for several weeks to a mental health facility by the Air Force.

It is unclear if his time in the mental health facility would have been sufficient to deem him a “prohibited person” under federal law.

However, it is clear that Devin Kelley’s domestic violence conviction should have prevented him from buying guns, but the Air Force authorities never reported it to the FBI.

The case prompted legislators to introduce bipartisan legislation enhancing incentives for state and federal agencies to report records to the FBI, providing for greater transparency and accountability in reporting, and increasing technical assistance and support for states looking to implement improved reporting systems.<sup>561</sup> The legislation, known as Fix NICS,<sup>562</sup> was passed as part of the Omnibus Appropriations Bill in March 2018 and offers an opportunity for the USA to enhance the comprehensiveness, accuracy and effectiveness of NICS databases, while decreasing the likelihood that firearms will end up in the hands of those likely to misuse them. States should mandate compliance with reporting requirements, ensuring real-time and accurate transmission of data and implementation systems to facilitate this process with judicial, health care, administrative and law enforcement entities.

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The National Instant Criminal Background Check System (NICS) was created in 1998 as part of the Brady Handgun Violence Prevention Act. Licensed gun dealers are required to conduct background checks on all potential buyers. Many checks are processed in minutes, but if the seller does not hear back within three days, the seller may go ahead and transfer the weapon to the purchaser. Between 2006 and 2015, 30% of denials of purchase due to domestic violence-related prohibitions were issued more than three days from the date the check was requested. In other words, some 6,700 firearms were transferred to prohibited individuals because the background check took too long.<sup>563</sup>

If the FBI does not respond within three days, but later determines that the individual in question was a prohibited purchaser, the case is referred to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), who may then attempt to recover the gun. However, ATF officials may not recover every gun that was identified as being turned over to a prohibited purchaser.

The Office of Inspector General of the DoJ conducted an audit of the handling of firearms purchase denials through the NICS in 2016. It reviewed a sample of 125 transactions where firearms were transferred to prohibited persons and required recovery by the ATF. Of the sample of 125 cases reviewed, the audit determined that the ATF was able to recover 116, or 93% of the firearms. Of the remaining nine firearms that were not recovered from this sample, the audit found: five cases where the subjects could not be located, two cases where the subjects had already sold the firearms purchased, one case where the matter was referred to local authorities after the subject was arrested by them on unrelated charges, and one case where the ATF office explained that due to competing priorities it did not have the resources to retrieve the firearm.<sup>564</sup> However, even with a 93% retrieval success rate overall, hundreds of firearms may remain in the hands of prohibited purchasers – also during the time in which the retrieval process is ongoing, prohibited purchasers already have access to a firearm. In 2016, for instance, the FBI referred 4,170 firearm retrieval actions to the ATF.<sup>565</sup>

The FBI conducts background checks for guns purchased through federally licensed firearm dealers, by consulting three main databases: (1) the Interstate Identification Index (III), a database of criminal records; (2) the National Crime Information Center (NCIC), a database of individuals subject to restraining orders or orders of protection; and (3) the NICS Index, a database of persons who are prohibited from possessing

firearms under state or federal law.<sup>566</sup> These three databases comprise the NICS background checks system (see Chapter 5).

A July 2016 study and report by the US Government Accountability Office examined how data could improve background checks involving domestic violence records.<sup>567</sup> It highlighted a number of resourcing problems that prevented protection orders being consistently included in the NCIC, such as states lacking staff and funding to enter into the system the information needed for protective orders against people other than family members as they require additional details which may not be known such as a social security number or date of birth.<sup>568</sup> A report by the National Consortium for Justice Information and Statistics found that only 60% of protective order records in state databases were also housed in the NCIC.<sup>569</sup>

Although the NICS Index was designed to house information on individuals not otherwise available at the national level that would disqualify them from purchasing a firearm, due to the voluntary reporting structure of the system, most states do not submit domestic violence records to the NICS Index which would flag the subject as being prohibited from possessing firearms. Research shows that domestic violence arrests can be one of the most difficult federal firearms prohibitions to establish because state or local records often do not indicate whether a particular assault meets the federal definition for domestic violence.<sup>570</sup>

Instead, the state and local authorities will rely on the individuals being flagged through the NCIC or the III which may not contain all of the information needed to determine whether the person is prohibited or not, and require further investigation by federal authorities. According to the most recent data available, as of 30 September 2015, only 37 states had reported domestic violence misdemeanor conviction records to the NICS.<sup>571</sup> And of those 37 states, only five

appear to be submitting reasonably complete records related to domestic violence misdemeanor convictions. This can cause delays in determining whether someone is prohibited from purchasing a firearm rather than being immediately identified as a prohibited purchaser when a licensed dealer checks the NICS. As mentioned above, the III and NCIC may not contain all the information needed to determine whether the record would prohibit a firearm transfer.<sup>572</sup>

The DoJ has also identified several major challenges in identifying prohibited abusers through the NICS, including incomplete records and records that do not clearly state the relationship between the victim and the perpetrator. When incomplete or missing records fail to flag an individual who should be prohibited from purchasing a firearm, the result can be deadly.<sup>573</sup>

Moreover, neither the FBI nor the ATF is required to notify local authorities when a prohibited possessor attempts to purchase a firearm and fails a background check, often called a “lie and try” attempt. In March 2018, a bipartisan federal “lie and try” bill was proposed in Congress, which would require federal law enforcement to alert state authorities within 24 hours when individuals who are legally prohibited from purchasing a firearm (such as convicted felons, fugitives and domestic abusers) try to buy a gun but fail an NICS background check so that authorities may pursue criminal charges under state law.<sup>574</sup> The bill also provides for the notification of local law enforcement and prosecutors in order to alert them to the attempt since an attempt to purchase a firearm is often an indication that an abuser could escalate the violence. The bill was pending at the time of writing. Some states such as Washington and Hawaii enacted laws in 2017 to ensure that “lie and try” attempts are effectively followed up and Louisiana enacted a “lie and try” provision

as part of the bill that requires the surrender of firearms upon the issuance of a domestic violence protective order in 2018.<sup>575</sup>

### 3.3.6 THE “GUN SHOW” LOOPHOLE AND PRIVATE SELLERS

#### ZINA DANIEL

**On 21 October 2012, Radcliffe Haughton opened fire with .40-caliber semi-automatic handgun at the Azana Salon & Spa in Brookfield, Wisconsin, killing four people and injuring four others. Among those killed in the shooting was Radcliffe Haughton’s wife, Zina Daniel.**

**Just a few weeks earlier on Monday, 8 October, Zina Daniel submitted a written request for a restraining order against her husband. She was granted the restraining order by 18 October 2012, just days before the shooting. The request for the restraining order detailed that her husband threatened to kill her if she ever left him or called the police on him. Radcliffe Haughton had been arrested a few weeks prior to the shooting for slashing Zina Daniel’s tires.<sup>576</sup>**

**As there was a restraining order against him, Radcliffe Haughton was prohibited from purchasing or owning a firearm. In October 2015, Zina Daniel’s daughter filed a lawsuit against Armslist – a website for private buyers and sellers – from whom Radcliffe Haughton purchased the handgun without a background check. The lawsuit stated the website shares responsibility for the shooting by encouraging illegal buyers to get their guns online,<sup>577</sup> that the site allows people to limit searches to private sellers who don’t have to conduct background checks, and that users don’t have to register their account with the website.**

**Initially, the lawsuit was dismissed by Milwaukee County Judge Glenn Yamahiro. He cited federal law in his dismissal stating website operators are not liable**

for publishing information provided by someone else. On 29 April 2018, the 1<sup>st</sup> District Court of Appeals reversed the decision and the lawsuit was reinstated.<sup>578</sup> At the time of writing, the lawsuit is ongoing.

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Federal law does not require unlicensed private gun sellers to carry out any kind of background checks on their customers. This is often referred to as the “gun show loophole”, although it encompasses all private transfers and the transfer of firearms via gift and from one family member to another. In most states, the “gun show loophole” makes it possible for prohibited individuals against whom domestic violence protection orders have been issued or with convictions to obtain firearms without any official record of the transaction.

Although 19 states and Washington, D.C. require background checks for at least some private sales, most do not.<sup>579</sup> According to an analysis of FBI data on women killed by armed intimate partners from 2008 to 2012, in states where background checks are required for *all* handgun sales, 46% fewer women were shot to death by an intimate partner.<sup>580</sup>

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## HATE CRIMES

**The term ‘hate crime’ is applied to criminal acts against people based on their real or perceived membership of a particular group, such as caste, religion or ethnicity. The Center for American Progress (CAP) analyzed data from the National Crime Victimization Survey conducted by the Bureau of Justice Statistics and observed that between 2010 and 2014, approximately 43,000 reported hate crimes involved a firearm. This means that more than 8,500 hate crimes per year, or more than 23 per day, involve a firearm.<sup>581</sup> Despite these facts, there is no federal law prohibiting those convicted of misdemeanor hate crimes from purchasing or possessing a firearm. A federal “Disarm Hate**

**Act,” which would include such restrictions, was introduced in 2017, but has since stalled in the US Congress.<sup>582</sup> In October 2017, California passed “The Disarm Hate Act” which prohibits those convicted of hate crime misdemeanors from purchasing, possessing or accessing lethal weapons within 10 years of conviction, unless there is a determination by a court that the individual is not a threat to public safety.<sup>583</sup> Delaware,<sup>584</sup> Maryland,<sup>585</sup> Massachusetts,<sup>586</sup> Minnesota,<sup>587</sup> New Jersey,<sup>588</sup> and Oregon,<sup>589</sup> have enacted similar laws preventing those convicted of violent misdemeanor hate crimes from possessing and purchasing guns. Proposed laws are pending in other states including in New York.<sup>590</sup> However, as of July 2018, in 43 states those convicted of misdemeanor hate crimes can still purchase and possess firearms.**

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## 3.4 ACCESS TO FIREARMS FOR INDIVIDUALS WHO MAY PRESENT A RISK OF HARM TO THEMSELVES OR OTHERS

States should take action to prevent access to firearms for individuals who may present a recognizable risk of harm to themselves or others. Numerous mechanisms exist through which a state could take steps to reduce the likelihood that an individual at risk of harm could be prevented from accessing a firearm. These include instituting waiting periods for all individuals prior to firearm acquisition, counseling by health care and other professionals who offer guidance to individuals in crisis, and implementation of procedures through which firearms may be temporarily removed from the possession of these at-risk individuals.

Problematic correlations are often drawn between gun violence and mental health in public debates, wrongly implying that persons with psychosocial

disabilities and those with mental health conditions are automatically prone to violence. These correlations and assertions ignore the range of possible mental health diagnoses and how mental health conditions might manifest differently for different individuals, depending on their particular circumstances. Furthermore, such assertions are unsupported by facts. In an article published in 2015, researchers analyzed statistics from the National Center for Health Statistics, which tracks gun homicides, and found that less than 5% of the 120,000 firearm-related killings in the USA between 2001 and 2010 were carried out by people who had been diagnosed with mental illness.<sup>591</sup> A better framework for evaluating access to firearms is to take into account the broad range of factors that might contribute to an individual being at recognizable risk of self-harm or harming others. These include, for example, emotional issues, patterns of substance abuse, mental health conditions and other circumstances which may be temporary or prolonged, but which impact an individual's likelihood of misusing a firearm. According to data from the CDC, in 2016, 38,658 people died from firearm injuries in the USA: 59.3% of these deaths were suicides and 37.2% were homicides.<sup>592</sup> Approximately half of all reported suicides in the USA are carried out with a firearm.<sup>593</sup>

The regulatory framework governing the sale and use of firearms should account for particular circumstances where factors may increase the likelihood that an individual is at risk of harming themselves or others in a manner consistent with international human rights law. This section discusses possible responses, and provides examples of regulatory and policy interventions that may be effective in reducing this risk:

### **3.4.1 MANDATORY WAITING PERIODS**

Some states impose mandatory waiting periods on certain types of firearm purchases. These

laws mandate time between the decision to purchase a firearm and acquisition of that firearm. For example, ten states and Washington, D.C. impose waiting periods on certain types of firearm purchases.<sup>594</sup> Thirteen states require that a firearm purchaser obtain a permit, license or safety certificate prior to obtaining or possessing a gun.<sup>595</sup> Mandatory waiting periods are a positive policy intervention that have the potential to greatly improve the safe use of fire-arms in general, and are discussed in more detail in section 5.2 on Training, Licensing, and Registration.

Research indicates that mandatory waiting periods can be effective in reducing gun-related suicides. States with waiting periods on gun purchases experienced 51% fewer gun suicides than states with no waiting periods for gun purchases<sup>596</sup> and that the longer the waiting period the greater the reduction in suicide rates.<sup>597</sup> Conversely, research has found that in states where waiting periods on firearm purchases have been repealed, there was an increase in firearm-related suicides.<sup>598</sup> States should impose mandatory waiting periods prior to the purchase of any firearm by all individuals. This policy is particularly relevant in the context of preventing access to firearms for individuals at risk of harming themselves or others.

### **3.4.2 RESTRICTIONS ON HEALTH CARE PROVIDERS**

Where mental health care and counseling may be available, some states have restricted mental health care providers from inquiring about firearms and discussing gun safety with their patients. In Montana, a health care provider may not “inquire about a person’s ownership, possession, or use of firearms as a condition of receiving health care.”<sup>599</sup> Missouri prohibits requiring that health professionals collect or record firearm information, but with an exception “if such inquiry or documentation is necessitated

or medically indicated by the health care professional's judgment". Minnesota prohibits collection of firearm information by its state health commissioner.<sup>600</sup> In October of 2017, the US Court of Appeals for the Eleventh Circuit deemed a law in Florida, which would have levied penalties against doctors for discussing gun safety with patients, as unconstitutional.<sup>601</sup>

Such laws are unduly restrictive. Health care providers must be able to discuss the presence of firearms in the home, gun safety and safe storage with the gun owner and/or others within the household. Strengthening health care practitioners' knowledge, skills and training to provide "lethal means safety counseling" can assist with preventative care for individuals at risk for attempting suicide with access to firearms and/or guide at risk individuals away from life-threatening situations. Lethal means safety counseling includes assessing whether a person at risk for suicide has access to a firearm or other lethal means and working with them and their family and support system to limit their access until they are no longer at elevated risk.<sup>602</sup>

### 3.4.3 MECHANISMS TO TEMPORARILY REMOVE ACCESS TO FIREARMS FOR INDIVIDUALS AT RISK OF HARMING THEMSELVES OR OTHERS

Procedures providing for the temporary removal of access to firearms for individuals who may present a risk are critical to reducing gun violence. Mechanisms known as Extreme Risk Protection Orders (ERPO) and Gun Violence Restraining Orders (GVRO), offer one potential legal avenue through which family members and law enforcement can petition the court to have a firearm temporarily removed from an individual who possesses one and is felt to be likely to misuse it to harm themselves or others. This is a route open to family members of people who

may be at risk harming others or themselves. When an ERPO expires, the person may regain access to their firearms, so long as they are able to pass a background check and are not otherwise prohibited from purchasing or possessing firearms. These orders are a relatively recent development and there is little research on their effectiveness. However, a study evaluating a similar law in Connecticut estimated that over a period of 14 years between 38 and 76 suicides were prevented by these orders.<sup>603</sup> Any procedure through which a firearm is temporarily removed from an individual at risk of harming themselves or others must be implemented in a human rights compliant manner.

#### JANET DELANA

**In 2012, Janet was living in Missouri with her husband and her 38-year-old daughter. Her daughter had a psychosocial disability and was diagnosed with several mental health conditions. However, Janet told Amnesty International that her daughter's access to adequate health care was limited, because of the cost of care. For example, she did not have health insurance and her prescription medicines were often too expensive to afford. One morning in 2012, Janet noticed that her daughter seemed particularly anxious, "I always knew when she was sick, because she would not bathe or put on make-up. So then on Wednesday morning, I woke up and I went to say goodbye and I saw her and I knew something was off", she told Amnesty International. Later, when she was at work, she received a message from her daughter saying, "Dad is dead". She rushed home to find that her daughter had purchased a gun that morning and shot her husband. Regulations in Missouri allowed Janet's daughter to purchase a gun without a license, without any mandatory waiting periods, and without being stopped by a background check. Janet has spoken out on several occasions about the need for stronger gun regulation and for improved access to quality mental health care, which she strongly believes would have prevented what happened to her daughter and her husband. "Every**



time I see a shooting on the news I think, I mean I wonder, if it was someone like [my daughter] and if their family went through what we went through," she told Amnesty International.<sup>604</sup>

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## 3.5 FIREARMS AND TRIBAL NATIONS

The full scope and impact of firearms on Native American and Alaska Native communities is not clear and needs to be examined further. There has been no comprehensive study of firearm violence on tribal land, yet the impact of firearm violence on tribal communities is apparent and must be addressed. Specifically, the prevalence of firearm violence in the context of suicides, domestic violence and the use of deadly force by law enforcement, highlight the fact that comprehensive tribal firearm violence prevention laws are needed.

The suicide rate among Native Americans aged 15 to 34 is 1.5 times higher than the national average for the same age group.<sup>605</sup> In 2014, of the Native Americans who took their own lives, more than a third used a firearm.<sup>606</sup> As with any community susceptible to suicide, access to firearms is a key issue that must be addressed and mitigated (see Section 3.4).

Native American women experience domestic violence and sexual violence at much higher rates than other women in the USA.<sup>607</sup> According to US government statistics, Native American and Alaska Native women are 2.5 times more likely to be raped or sexually assaulted than other women in the USA. According to the DoJ, in at least 86% of reported cases, survivors state that the perpetrators are non-Native men.<sup>608</sup> According to a National Institute of Justice study, more than four in five American Indian and Alaska Native women (84.3%) have experienced violence in

their lifetime, this includes 55.5% who have experienced physical violence by an intimate partner. Given the concerning intersection between firearms and violence against women (see Section 3.3), and the high rates at which Native American and Alaska Native women are impacted, this issue warrants further study and solutions need to be urgently identified.

Native Americans have been disproportionately affected by the use of deadly force by law enforcement.<sup>609</sup> In 2014, the Center on Juvenile and Criminal Justice found that between 1999 and 2011 Native Americans made up less than 1% of the US population, but accounted for almost 2% of all police killings.<sup>610</sup> This means that during this time period, Native Americans were more susceptible to the use of deadly force by law enforcement than any other racial group.<sup>611</sup> This problem is reflective of the need for the USA, and also for tribal governments, to introduce laws which limit the use of lethal force by law enforcement to those instances in which it is a last resort to protect against the threat of death or serious injury.

### 3.5.1 TRIBAL FIREARM LAWS

To address gun violence, it is critical that all tribal governments should review their laws, codes and regulations to ensure that they are meeting their obligations under human rights law to protect their communities from gun violence.

In 1968, by and through the Indian Civil Rights Act, certain provisions of the US Constitution were extended to tribal governments. However, the Second Amendment right to keep and bear arms was not included.<sup>612</sup> This means that tribal governments, as sovereign nations, regulate and restrict the right to bear arms on tribal land.<sup>613</sup> As such, there is no uniform firearm law framework across the 566 federally recognized Native American tribes.<sup>614</sup> And while there has been no

comprehensive study or evaluation of the existing tribal firearm laws in these 566 tribes, a review of the laws available does provide some insight.

It is not clear how many Native American tribes have included in their tribal code a right to bear arms. However, the Navajo Nation, which is the biggest tribe in the USA in terms of land mass and population, provides a right to bears arms via its tribal code as follows: “The right of the people to keep and bear arms for peaceful purposes, and in a manner which does not breach or threaten the peace or unlawfully damage or destroy or otherwise infringe upon the property rights of others, shall not be infringed.”<sup>615</sup>

Most tribal governments with published codes or laws have enacted some form of regulations relating to the use, possession, or ownership of firearms.<sup>616</sup> Some have laws which restrict the types of weapons allowed on tribal land.<sup>617</sup> Others regulate the sale or transfer of firearms and some require background checks.<sup>618</sup> Tribal governments have enacted laws relating to firearms in the context of hunting and fishing<sup>619</sup> and regulate the presence of firearms on or around schools and in tribal casinos.<sup>620</sup> However, the most prevalent regulations on firearms appear to be those related to concealed carry<sup>621</sup> and some bar all concealed carry of guns on tribal land.<sup>622</sup> Some tribal governments have enacted laws concerning firearms used in a domestic violence situation.<sup>623</sup> For example, under the White Mountain Apache Criminal Code, an officer “may remove any weapons or firearms that are in plain view or discovered during the domestic violence related investigation.”<sup>624</sup>

Significantly, in 2015, as part of a federal government focus on curbing gun violence around the country, the DoJ amended the regulations implementing the NICS and authorized tribal criminal justice agencies to have access to the NICS for purposes of issuing firearm-related permits and licenses.<sup>625</sup> Currently,

tribal governments and tribal police may use NICS, but are not obliged to do so.<sup>626</sup> Similarly, tribal governments are not required to provide information to the NICS for background checks across the country. As Judge Richard Blake, President of the Board of Directors of the National American Indian Court Judges Association explained, the “lack of entry of tribal protection orders in state and federal databases is a national crisis.”<sup>627</sup>

## RECOMMENDATIONS

### URBAN GUN VIOLENCE

#### Federal:

- The US Congress should create a commission to investigate, analyze and develop policy recommendations to address the disparate impact of gun violence on communities of color.
- The US Congress should pass legislation which supports the implementation and funding of evidence-based violence prevention programs, including the Youth Promise Act.
- The US Congress should pass the End Racial Profiling Act.

#### State:

- State and local authorities must implement and provide sufficient and sustained funding to support community-involved, evidence-based group violence intervention and reduction strategies that have proven effective in decreasing gun violence in communities where there are persistently high levels of firearm violence.
- State and local authorities must invest in areas of economic deprivation, including through creating job programs, attracting and incentivizing businesses to the area, and offering educational, mentorship and job readiness programs.

- States and local law enforcement agencies and authorities should promptly investigate all firearm-related deaths and hold those found responsible accountable.
- State and local authorities should support the reintegration of formerly incarcerated individuals to reduce recidivism, including for crimes linked to gun violence, by allocating funding for job readiness, job placement and mental health support services and by removing barriers to employment.
- States must ensure that those affected by gun violence are offered opportunities for treatment of trauma, and social, emotional and psychological counseling through victim support offices, direct service organizations, schools and hospitals.
- State and local authorities should take immediate action to halt human rights violations by police officers. They should make clear that abuses including racial profiling and unlawful use of lethal force by police officers will not be tolerated, that officers will be held accountable for their actions and that those responsible for abuses will be brought to justice. International human rights standards should be fully incorporated into police codes of conduct and training.

## CHILDREN

### Federal:

- The US Congress should pass legislation requiring the safe and secure storage of all guns. All licensed gun dealers and private dealers should be required to provide secure gun storage or safety devices upon the sale of all guns, not just handguns.
- The US Congress should pass legislation imposing minimum age of 18 on possession and purchase from licensed dealers or private sellers of long guns, including rifles and shotguns.
- The US Congress should amend the Gun-Free School Zones Act to close the loophole for concealed carry permits and should not allow weapons to be on school property, including in cars and vehicles.

- The US Congress should provide funding to state, local and tribal authorities to ensure that mental health care services are made available for children and families exposed to gun violence and trauma.
- The federal government should launch, and sufficiently fund, a public education and awareness campaign around firearm safety and child deaths due to suicide and unintentional shootings.

### State:

- State legislatures should pass stringent and comprehensive Child Access Prevention Laws that mandate all individuals to store all firearms unloaded under the protection of a gun lock or safety device.
- State legislatures should pass legislation imposing a minimum age of 18 on possession and purchase from licensed dealers or private sellers of long guns, including rifles and shotguns.
- State legislatures should prohibit guns in K-12 schools and no exceptions should be granted to individuals who have a concealed carry permit or a firearm stored in their vehicle.
- State and local authorities and agencies should encourage health professionals to offer health and safety education to parents with firearms in the home.

## DOMESTIC VIOLENCE

### Federal:

- The US Congress should amend the Violent Crime Control and Law Enforcement Act of 1994 (18 USC 921 (a)(32)) to revise the definition of “intimate partner” to include dating partners.
- The US Congress should amend the Violent Crime Control and Law Enforcement Act of 1994 (18 USC 922(g)(8)) to include *ex parte*/temporary protective orders as the type of court issued orders that prohibit offenders from possessing firearms.
- The US Congress should amend the Violent Crime Control and Law Enforcement Act of 1994 (18 USC 922(g)) to include the misdemeanor crime of

stalking as an offense that prohibits offenders from possessing firearms.

**State:**

- State legislatures should pass and implement laws prohibiting all those convicted of misdemeanor domestic violence and those subject to protection or restraining orders, including emergency, temporary (*ex parte*) and final orders, from possessing guns.
- State legislatures should pass and implement laws establishing a clear process for the immediate surrender by and removal of firearms from prohibited abusers.
- States and local authorities should provide adequate resources to ensure all local protective order and conviction records are submitted to state databases and that records in state databases are submitted to the federal NICS background check database.

## **ACCESS TO FIREARMS FOR INDIVIDUALS WHO MAY PRESENT A RISK OF HARM TO THEMSELVES OR OTHERS**

- States should consider implementing measures that reduce access to firearms for individuals who may present a risk of harm to themselves or others, including instituting adequate waiting periods for all firearms and ammunition purchases.
- Authorities in the US should take steps to ensure that health workers are able to discuss all factors impacting their patients' health, well-being and safety, including the possession, use and storage of fire-arms where relevant.

- States should consider adopting procedures such as ERPOs which provide for the temporary removal of access to firearms for individuals who may present a risk of harm to themselves or others. Such procedures should be implemented in a manner consistent with international human rights protections.

## **TRIBAL NATIONS**

- Tribal governments could consider reviewing and revising their tribal codes and laws to ensure that they comply with the obligation to protect and promote human rights, including the right to life and security of person. This would include, at a minimum, comprehensive background checks for every gun sale or transfer, training, licensing and registration requirements for the purchase, possession and open and concealed carry of firearms, the establishment of mechanisms with human rights safeguards to remove firearms from those at demonstrable risk of hurting themselves or others and banning semi-automatic assault rifles, semi-automatic shotguns, semi-automatic submachine guns, large-capacity magazines, bump stocks and other dangerous devices.
- Tribal governments could consider working with the federal government to provide timely and accurate information to the NICS system, and in parallel, the federal government should provide assistance and funding to facilitate this process.
- The federal government should provide sufficient funding to tribal nations to address the impact of firearm violence.

# GUNSHOT SURVIVORS

## 4.1 GUNSHOT INJURY: THE DEVASTATING HUMAN COST

Jamie Williford was 16 years old when her life was turned upside down: “I heard three shots before I realized they were shooting at us, and I tried to duck under the dashboard, but I got hit in the back and that’s the bullet that paralyzed me.”

Derrick Strong was 25 when he was shot nine times: “he hit me in both legs, my right arm, my gut, my chest, my back. I remember just hoping he didn’t hit me in the head. Everywhere else was completely busted open.” Anthony Davis, now 33, has been shot a total of six times on two separate occasions, the first when he was 15: “I still got a bullet in my hip, and it still hurts like shit...my arm cramps up. I can tell when it’s gonna rain”.<sup>628</sup>

***Like most people who are shot, they survived. Gun violence tends to be counted in homicides, but far more people are shot and live. For many, the cost of survival is high.***

Across the country, according to the CDC, more than 116,000 people were shot and injured in 2016 (the last year for which data is available).<sup>629</sup> This is an underestimate, as injuries, unlike homicides, are not always recorded accurately, or

at all.<sup>630</sup> This means, on average in 2016, more than 317 people were shot every day and survived – at least long enough to get to the hospital. If they are lucky, they will be within an hour of a level one trauma center, equipped to resuscitate, stabilize and treat critically injured patients, with a team of trauma specialists available 24 hours a day. Most are in urban areas; Baltimore, for instance, has two level one trauma centers, which together treat an average of three gunshot patients a day.<sup>631</sup> When gunshot victims are treated in these specialized units, their survival rates increase by about 25%.<sup>632</sup>

Dr. Jennifer Avegno, Clinical Associate Professor of Emergency Medicine at the University Medical Center (UMC) New Orleans, South Louisiana’s only level one trauma center, said that 649 gunshot victims were brought through their doors in 2017. About one in 10 die as a result of their injuries.<sup>633</sup> Over a third are treated in the emergency room and released, with injuries that don’t warrant hospitalization – they may have graze wounds, flesh wounds, or broken bones that don’t require immediate surgery. The rest are admitted to the hospital; “most of them get their urgent surgeries and are out within five days or a week. They are mostly young otherwise healthy people,” she

points out, who heal fast, at least superficially. “But some are here for months and months and months.”<sup>634</sup>

Once a patient has reached the trauma center, they are stripped and examined and the wounds are counted, prodded, and assessed by the trauma team. Patients tend to be in agonizing pain, especially when shot in the abdomen, but the examination has to be quick and thorough. The type and trajectory of the bullet or bullets is crucial. Any bullet can move unpredictably once it enters the body, ricocheting off bones or smashing through them, and it is often a matter of luck where it ends up. But some weapons simply cause much greater damage than others.

Modern medical technology —partly informed by advances in battlefield medicine – is racing to keep up with the technology of killing. Some 30 years ago, the handgun of choice for most assaults was a .22 or .25 caliber.<sup>635</sup> Handguns have become deadlier, with 9mm and .40 caliber handguns now the most commonly used in criminal assaults – they are larger, faster and can be equipped with extended magazines, known as “extendos”, which can triple the normal capacity of 9-18 shots.<sup>636</sup>

With the greater capacity seems to have come a greater tendency for victims to be shot repeatedly. “Anecdotally,” Dr. Avegno said, “I feel like we are seeing more holes...it’s probably fewer than half who come in with a single gunshot wound.”<sup>637</sup> Dr. Thomas Scalea, Director of the R. Adams Cowley Shock Trauma Center in Baltimore, agreed: “It’s getting more complicated. We are seeing multiple trajectories, five or six holes or more, some with high velocity, though I don’t think our survival rate for people who actually make it to the hospital is less.”<sup>638</sup>

The greatest damage is caused by high-velocity weapons, like the AR-15.<sup>639</sup> The bullet is relatively small, but travelling at such velocity that it can pulverize even the thick bones of the upper leg,

let alone softer organs and tissue. “Imagine a cavity the size of your fist where everything that should have been there no longer is. How do you fix that?” asked one trauma surgeon.<sup>640</sup> A direct hit to a major organ is invariably fatal, and the “cavitation” effect, which causes a cone of destruction around the path of the bullet, can itself cause severe injuries. So even if the bullet doesn’t hit them directly, the force of the shot can shred tissue, burst arteries or break bones, and bullet and bone fragments can create secondary “missiles” which cause additional damage.

Dr. Heather Sher, a trauma radiologist in Florida, notes that this is very different from low-velocity handgun injuries which tend to “leave entry and exit wounds and linear tracks through the body that are roughly the size of the bullet. If the bullet does not directly hit something crucial like the heart or the aorta...the chances are that we can save him.”<sup>641</sup>

The damage to internal organs from a low-velocity bullet can often be repaired; a bone struck by such a bullet might be broken or displaced, but it won’t be irreparably shattered into hundreds of tiny pieces. Most of the victims who survive long enough to make it to the trauma center are shot with handguns.<sup>642</sup>

## 4.2 INTERNATIONAL STANDARDS: HEALTH AND HUMAN RIGHTS<sup>643</sup>

*The policies pursued over the past year seem deliberately designed to remove basic protections from the poorest, punish those who are not in employment and make even basic health care into a privilege to be earned rather than a right of citizenship.*

Philip Alston, UN Special Rapporteur on extreme poverty

In the Universal Declaration of Human Rights, proclaimed by the UN General Assembly in 1948, member states including the USA pledged to achieve “the observance of human rights and fundamental freedoms.” Included among those rights are health and medical care. Article 25 of the UDHR affirms that: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”. Although it is not constitutionally protected, the USA does have international obligations regarding the right to health.<sup>644</sup>

The USA has ratified the International Convention on the Elimination of All Forms of Racial Discrimination. Under article 5, it must eliminate racial discrimination and guarantee the right to equality before the law for everyone in the enjoyment of “the right to public health, medical care, social security and social services”. The USA has also signed and ratified the International Covenant on Civil and Political Rights (ICCPR), which protects the right to life. The UN Human Rights Committee has recognized the strong link between the rights to life and health, noting, for instance, that “it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy...”<sup>645</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” As a signatory to the ICESCR, the USA “is obliged to refrain from acts which would defeat the object and purpose” of the treaty.

The UN High Commissioner for Human Rights 2016 report on “Human rights and the regulation of civilian acquisition, possession and use of

firearms”, also noted that: “Alongside preventive measures, States must provide victims of firearms violence with effective measures of protection and reparation, including access to adequate health care to ensure that they have the best possible chances of survival and rehabilitation.”

## 4.3 EMERGENCY TRAUMA CARE

### JAMIE WILLIFORD

**Jamie Williford was shot in the back, with a handgun, through a car’s rear window. She heard shots and the sound of the glass breaking, then felt a blow to her back that sucked the wind completely out of her and left her gasping for breath on the floor of the car. She was hit twice more and police later recovered 19 shell casings at the scene. The driver, who had also been hit three times, managed to get them to a nearby hospital. She remembers very little of what happened after they pulled her, screaming in pain, out of the car. She woke up in a hospital bed, unable to move her arms or legs.**<sup>646</sup>

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For those who survive, says Dr. Avegno, the first hour is crucial. “When you get shot,” she explains, gesturing around at the empty trauma room, “EMS [Emergency Medical Services] calls us on the way so we are waiting here for you: emergency physicians, nurses, respiratory, blood bank, trauma surgeons, an anesthetist, so pretty much anything that needs to be done short of a CAT scan or an open surgery can be done in this room. There is the concept of the critical hour in trauma: when you get shot that first hour is life or death, so the quicker you get here, the higher your chances of survival.”<sup>647</sup>

In general, trauma doctors have found that a series of shorter operations are better tolerated

by seriously injured and/or multi-shot patients than one long procedure.<sup>648</sup> They start with the measures necessary to save a life: stemming blood loss, opening airways and controlling other potentially fatal internal damage, like bowel leakage. Other injuries, such as shattered bones and more superficial wounds, can be immobilized or patched and repaired comprehensively at a later date.

The key to saving a gunshot victim is usually to stop the internal bleeding, often from multiple sites inside the chest and abdomen. This is one reason why survivors of a gunshot to the trunk typically have such large scars – running from the base of the sternum, around the belly button to just above the pubic bones – they need to be split open for the surgeon to get the best view of all possible sites of blood loss. Damage to the intestines is common, and dangerous; a perforated intestine can spill its contents into the abdominal cavity, possibly leading to a lethal infection. The abdomen may be left open between procedures, to facilitate further surgery, to prevent infection or because it is too swollen to close.

#### **ANTONIUS WIRIADJAJA**

**Antonius Wiriadjaja was shot in Brooklyn, New York, in July 2013: “a bullet entered my chest between two ribs, destroyed my spleen, hit my pancreas and lodged itself in my stomach. I was cut open and my guts were pinned down while they repaired my stomach, removed the top of my pancreas and took out my spleen. In the process of surgery they had to reconstruct my diaphragm, put a breathing tube in my left chest below the armpit and place me in a four-day coma.”<sup>649</sup>**

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It may take days or weeks to stabilize a patient, and the follow-up operations and procedures can go on for months or even years. A limb can be permanently damaged by extreme blood loss

during emergency surgery; when the blood supply to the brain and heart has to be maintained, it can be lost to the lower extremities, where tissue can die, causing gangrene and eventual amputation.<sup>650</sup> Infections are commonplace; problems with scar tissue impede healing; internal organs need further repair; shattered bones and shredded tissue might require a series of reconstructive procedures. Many gunshot victims end up with a colostomy; some can be reversed, but it may take a year or more for incisions to heal and edema to resolve before reversal surgery can safely be carried out.

Operations and complications continue long after the initial discharge from the hospital. Some patients have so many follow up surgeries that they lose count. Derrick Strong had “at least eight or nine, maybe more. They had to put a rod in my left leg, and they had to remove bullets from my left arm and fix the fracture. I had about seven operations alone on my kidney and bladder, not to mention another one on my intestine where they had to cut me open the first time, then another to get bullets out of my back. I think that’s all. But I still got one bullet left, in my hip.”<sup>651</sup>

Even a shot to an arm or leg, regarded as non-life threatening, can result in protracted recovery and multiple surgeries. Elijah J, aged 17, spoke to Amnesty International six months after he was shot in the leg and was then on his fifth surgery. He has had a plate inserted into his lower leg to hold the bones together, as well as procedures for skin grafts, tissue infection and vascular reconstruction. He is not sure he will ever be able to move his ankle properly, much less run or play basketball and doctors have warned him that one leg may be shorter than the other. His mother said, “they told me he was shot, and when I heard it was only in the leg, I was able to breathe again, but I didn’t know then he could be in so much pain.”<sup>652</sup>



## 4.4 THE LONG RECOVERY

***“Getting shot without access to long-term health care is the beginning of a rapid descent in a person’s health”***

Dr Jooyoung Lee<sup>653</sup>

Not all damage to muscles, nerves, bones and organs can be fully repaired, resulting in long-term complications and consequences, including: weakness, loss of use, liver and kidney issues, chronic unremitting pain and the ever-present risk of infection (which often then becomes antibiotic resistant, leading to a host of new problems). For those without access to ongoing medical treatment and rehabilitation, the long-term effects of gunshot wounds are likely to transform their physical and mental health.

Provision of rehabilitation services is patchy, particularly for the majority of gunshot survivors who rely on Medicaid or who are uninsured and few have access to the kind of long-term therapies needed to achieve and maintain the best possible outcomes.

### **JAMIE WILLIFORD**

**Jamie Williford was in the hospital for months after being shot before she regained the use of her arms and could begin the process of learning the independent living skills she would need, like self-catheterization, and how to transfer herself in and out of the wheelchair, that “literally becomes another part of your body.” She had to build up her upper body strength, she recalls, and “there were a lot of falls.” But the rehabilitation ended before she felt she was ready and able to take care of herself: “I should have had a more expansive rehab,” she says now, “I feel they just kind gave up on me. But I think I could have done more.” In the nine years since, Williford has had no rehabilitation follow-up or ongoing physical therapy.**

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### **DERRICK STRONG**

**Derrick Strong was unable to find a rehabilitation center that would accept his insurance and so had to create his own program, which he based on t'ai chi. “I’m getting that bounce back,” he says, “I had faith in myself because I’m used to changing things in my own life, it wasn’t like I got shot and turned over a new leaf. Anyway, I still have some problems with my shoulder, and my elbow, and my left foot won’t be as good as new, but they’re all better than they were... And my roundhouse kick is amazing.”<sup>654</sup> The secret to his success may be his perseverance as he has been working steadily on his own recovery for over a year.**

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### **DANIELLA SANTORO**

**Daniella Santoro, who has carried out a long-term study of New Orleans residents with violently acquired spinal cord injuries, has noted that some of the patients in her study received less than two weeks of in-patient rehabilitation.<sup>655</sup> Under Medicaid, physical and occupational therapy are “optional” benefits, which a state may choose whether or not to cover. Where coverage is available, on both Medicaid and Medicare (and often on private insurance), there are yearly service caps, typically around US\$2,000,<sup>656</sup> and coverage stops as soon as the patient is able to reach basic targets.**

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Even relatively minor injuries can be life changing, and some patients enter a downward spiral as soon as they leave the hospital. A few have jobs that provide sick leave, and insurance that covers medical expenses; insurance is sometimes available through a parent, for those up to 25 years of age. But most of the young male gunshot victims treated in Baltimore and New Orleans were not insured and not in steady or formal employment, with many working in temporary or casual jobs before their injury.<sup>657</sup> For those whose existence is already precarious, even a minor

change of economic capacity can eliminate their margin of survival.

“I have one guy,” said Dr. Scalea, “had multiple shots. I’ve operated on him maybe 15 or 20 times in 18 months, because he had a lot of problems, he was really sick. But I got him through it and we closed his colostomy and he is fixed and he is known as a ‘great save’. Except, except -- he was also shot in the arm, and has severe nerve damage and he made a living moving stuff, picking things up and you need two arms to pick things up, so he is disabled and he cannot work... And that’s it, there is no re-education or training. And in order to get disability you have to be able to negotiate the health care system, and that’s hard enough for me to do, so how do you think it’s going to work out for him?”<sup>658</sup>

Even those able to find work after recovery are not always able to keep it. Some are afraid to tell their employers about medical problems they may be facing, or to ask for workplace accommodations or time off for a doctor’s appointment, as they fear they will be viewed with suspicion because they’ve been shot.<sup>659</sup> Some cannot manage regular work schedules because their condition is so unpredictable. Anthony Davis works as an Uber driver on days when he’s not in too much pain, but says the neuropathy in his leg and shoulder is exacerbated by sitting too long in the car: “some days I can’t even work long enough to cover my gas money”.<sup>660</sup>

Chronic pain syndrome commonly results from traumatic injury and nerve damage and some gunshot survivors suffer constant and debilitating pain which is difficult and frustrating to manage. “It’s a big issue for our patients,” says Dr. Scalea. “If you get shot, and end up with a chronic pain syndrome, you can’t work, or you do but you hurt all the time, and we don’t have great medicines for that. Most don’t have any insurance so the chronic pain people won’t see them, and they don’t have access to acupuncture or alternatives

that may give them some relief... Even if you have insurance they might not pay, or they will only pay for this much oxy, and if you’ve still got pain after that – and you will – you are screwed, you pay for your own or you go out on the street. And guess what? Heroin is a pretty good pain medicine. So this is kind of a predictable trajectory.”

In some cases, even where patients have access to medication and ongoing medical care, the long-term pain of a gunshot wound simply cannot be managed. Joshua Nowlan was shot in the leg during the 2012 Aurora Colorado theater shooting and sustained critical injuries. A series of surgeries appeared to have repaired much of the damage, and he was eventually able to walk and even run again. But after more than five years, and despite trying “so many different types of pain medications that it was hard to keep count”, he continued to be in such excruciating pain that he and his doctors decided to amputate his lower leg.<sup>661</sup>

In some cases, gunshot victims are unable to access necessary follow-up procedures. Those who suffer intestinal perforation, for instance, often undergo colostomies, which allow their feces being redirected to a bag worn around the waist. Gunshot victims are largely young men, who find using the colostomy bag a particularly traumatic and shameful experience; they need to eat soft, easily digested foods and the bags are difficult to conceal, prone to leakage, and may need to be changed several times a day.<sup>662</sup> For some, the procedure can be surgically reversed after the intestines heal, but Medicaid in some states and some private insurance providers do not always cover the reversal surgery; other insurance providers cover surgical costs but require a substantial co-payment.<sup>663</sup> Longer term use of the bag is not only emotionally debilitating, but can leave the patient open to a host of additional complications, including infections, and generally results in a drastically reduced scope of recovery and ability to work.

Colostomy maintenance can also be expensive, as many insurance programs limit the number of bags and other supplies covered, while the uninsured can be looking at costs running into the thousands of dollars per year. Some patients attempt to improvise solutions, which are often ineffective – further reducing their mobility and employability, and putting them at risk of infection. Some patients take to the internet for help; there are dozens of requests on “GoFundMe” for support with colostomy reversal and for assistance with the substantial cost of colostomy and drainage bags and other supplies.

## 4.5 RETAINED BULLETS

Gunshot survivors frequently retain bullets or bullet fragments. Surgeons are reluctant to operate for the sole purpose of removing them as they generally pose no immediate threat and surgical attempts to extricate them may cause further damage, complications and risk of infection. Victims are far less sanguine about the continued presence of bullets in their bodies; some insist that they are the cause of ongoing pain, and some live with a constant fear that migrating bullets will cause further internal damage or worse.<sup>664</sup>

The bullet that paralyzed Jamie Williford is now in her neck and she fears both leaving it in and having it taken out: “when I first got shot it was a third of an inch from my heart and now it’s moved up higher. They say there’s a risk that taking it out could paralyze me from the neck down and I don’t want to go through that again... But if I had a fall or if something fell on me, that bullet in me could kill me”. Williford has been told that she needs a specialist opinion on the bullet removal surgery, but cannot find a specialist who will take her insurance. Derrick Strong still has one bullet in his hip, but worries that keeping it will eventually cause more pain and removing it will set back his recovery: “It would put me back in a wheelchair

and I can’t have that right now. It ain’t causing so much trouble, but there’s no telling what it can do in the future. But as of right now, I can walk and I can climb stairs, so I don’t want to mess with that.”<sup>665</sup>

## 4.6 SPINAL CORD INJURY

No one knows how many gunshot victims have been left fully or partially paralyzed, as countrywide statistics on violently acquired spinal cord injuries are not compiled. Studies indicate that well over 100,000 people are living with paralysis caused by violence and are either bedridden or confined to a wheelchair.<sup>666</sup> In New Orleans in 2017, for instance, 17 gunshot victims left the hospital with permanent spinal cord injuries.<sup>667</sup> Although this is a very small percentage of overall gunshot injuries, it would still indicate several thousand new cases every year nationwide.<sup>668</sup>

Adapting to life with a spinal cord injury is challenging even in ideal circumstances, where the patient has a good support network, the resources to adapt their home, vehicle, and perhaps even their workplace, and access to long-term rehabilitation and ongoing medical and mental health care. But most gunshot survivors return to a home environment far from this ideal. Many live in older, smaller, rented houses and apartments, where the doors and hallways are too narrow and the bathrooms and bedrooms too confined for wheelchair access. Countertops in kitchens and bathrooms are too high to reach, stairways are hard to negotiate. Some people have to rely on family members to carry them up and down the stairs, others learn to pull themselves up and down the stairs dragging their wheelchair behind them; some simply spend most of their time indoors and isolated.<sup>669</sup>

Survivors of spinal cord injury are vulnerable to a series of chronic secondary complications,

any one of which has the potential to deteriorate very quickly. Skin infections are common; they get pressure ulcers because they can't feel them developing, and then can't feel when they get infected, sometimes leading to sepsis. They frequently have respiratory complications that can lead to pneumonia, cardiovascular, urinary and bowel complications from lack of movement and issues with catheters and colostomy bags; they are susceptible to blood clots, chronic pain syndromes, osteoporosis and bone fractures. Frequent and painful muscle spasms affect many people with spinal cord injury, and seriously impair their ability to work and function. Those who use manual wheelchairs often suffer repetitive strain and muscle issues with arms and shoulders.

Survivors often have to gain a lot of medical knowledge quickly, learn and be rigorous with daily care techniques, like self-catheterization, and become their own best advocates. Jamie Williford explains how even minor complications can snowball: "I spent most of last year in the hospital. First I had a pressure sore on my foot and I went into the hospital and they gave me IV antibiotics, which caused me stomach problems, and then 'cause it knocked out the good bacteria it caused C diff, and the C diff kept coming back all year, and they don't know why. And now I have ulcers in my stomach and ulcers and polyps in my colon. ... I've had really really bad leg spasms since I was shot, and I take medicine for that. I have insomnia, so I take medicine for that. I have bad anxiety so there is medicine for that; there is a lot of pain and I take medicine for that; I take medicine to eat the acid out of my stomach, I take nausea medicine, I take anti-inflammatory medicine. I am antibiotic resistant, so everything I do, I've got to really watch it, be so so careful, because I could put myself right back in the hospital."<sup>670</sup>

Francis Falls was 33 when he was shot in the head, thrown off a bridge and left for dead on the tracks below, where a train ran over his arm. He

regained consciousness six days later in Charity hospital, New Orleans. He was paralyzed from the waist down, and his left arm had been amputated at the elbow. "When I woke up everybody was standing around looking at me and I told my auntie I was going out to smoke, and she was like you can't get up no more, and I was trying to reach for a cigarette until I saw my arm was gone, and my legs weren't moving. I thought I was going crazy... I went through a lot of not accepting it." Thirteen years later, Falls uses his one arm to maneuver his electric wheelchair around the city. "I get out and about every day, it's not good to be stuck inside." A carer comes every morning to help him with washing, dressing and medical management. "I have a lot of medical problems and need a lot of medicines, so I have to know my body. Like I'm a chronic osteomyelitis patient so I have to know the symptoms of when the infection is about to come on and I go straight to the emergency room. I go to wound care every Monday, I don't miss it."<sup>671</sup>

Many gunshot patients with spinal injury from gunshots do not do well, however, and Dr. Scalea explains that it is not realistic to think that they will. "There is no cure for spinal cord injury, their lives are never going to be the same. Most of them will never work. They go to rehab, but rehabilitation for spinal cord injury is really about living with your new normal... Many of them grew up around violence and drugs, it's a very tough place to grow up. And they go back to the same environment – the old normal – where they can't do what is possible in order to do as well as possible with a spinal cord injury... it's not surprising that a 20-year-old, any 20-year-old, doesn't want to stay in the house all day and rotate his pressure points. They got shot, they didn't have a personality transplant."<sup>672</sup>

Dr. Avegno agrees: "They keep coming back. They have major issues with wounds, recurrent infections, bladder stasis, osteomyelitis; just in the last week I've had two or three come back for

complications. It's the same kinds of things you see with stroke patient, but these are 25-year-olds. Even when they have people at home to turn them over and help them, it's incredibly difficult; they need one-on-one 24-hour care. The ones that don't get it get septic and die pretty quickly."<sup>673</sup>

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#### **WHEELCHAIR LIFE:**

***“Daily life requires great patience, strength, creativity and sometimes radical survival. The refrain ‘wheelchair life’ is used to punctuate otherwise indescribable, painful, or absurd aspects of life: inaccessible sidewalks, bar rooms, or transportation create unnecessary obstacles. The needs of catheters and colostomy bags create challenges in public spaces... And some residents avoid public places altogether for fear of gun violence – if a shooting broke out they wouldn’t be able to run.”<sup>674</sup>***

-Daniella Santoro

## **4.7 LACK OF ACCESSIBLE HOUSING AND INAPPROPRIATE INSTITUTIONALIZATION**

There is an acute lack of accessible and/or adapted housing for those who have acquired permanent disabilities but are capable of living independently. Jamie Williford had been a runaway from foster care when she was shot and when she was discharged from rehabilitation, there were no wheelchair accessible foster homes available. She was eventually consigned to a nursing care facility in Baton Rouge, where most of the residents were elderly or suffering from intellectual or developmental disabilities. Although she was still 16, she was not placed in school or provided with home-based learning opportunities, and there was no continuing rehabilitation or specialized counseling to support her adjustment to life in a

wheelchair. No one explained to her how medical insurance or disability benefits worked, she was simply told she would live in the facility, where most of the adult residents who weren't bedbound spent their days in a document destruction warehouse, shredding paper. Mainly through persistence, a bit of “snooping” in the paperwork and “paying attention to everything that went on around me” she learned enough to take over her own disability payments and sign herself out of the home when she turned 18. If she had not been so observant and so determined, she says, she would still be there today.

The state of Louisiana had an obligation to ensure that Jamie Williford was able to participate in mainstream schooling on an equal basis with other children, or be provided with reasonable alternative accommodation based on her individual learning requirements. In addition, the state should have recognized that institutionalization in a facility that did not meet her particular needs was not in her best interests, particularly given the lack of access to education, rehabilitation and transitional support.

People with traumatic injury are likely to be institutionalized in Louisiana, because state practice – fostered by an influential nursing home lobby – favors funding places in private nursing homes over providing home and community-based care.<sup>675</sup> There is a lack of accessible housing nationwide, but it is at a particular premium in Louisiana, with tens of thousands of people on waiting lists. Francis Falls was also placed in a nursing home for more than two years, and says he has been on a housing waiting list since 2007.

Jamie Williford is not even sure it is worth applying: “There’s not enough housing, there’s not enough counseling, there’s not enough training, they say they have programs to help you but every time you call they are out of funding or there’s a waiting list. There’s just not enough of anything.”<sup>676</sup>

## 4.8 FINANCIAL BURDEN OF GUN INJURIES: THE COST OF CARNAGE

Comprehensive data on the cost of gun injuries is scarce, largely because of the lack of federal funding for any research related to gun violence. The research that does exist shows that gun violence is an enormous drain on public funds, amounting to direct costs of over US\$3 billion a year, most of it borne by the government, and indirect costs of up to US\$222 billion (enough to fund the Supplemental Nutrition Assistance Program or “SNAP” – once known as “food stamps” – three times over<sup>677</sup>). Effective prevention would drastically reduce this economic burden on both the victims and the state.

In a recent review of more than 150,000 hospital emergency room admissions for gunshot injuries, researchers at Johns Hopkins University determined that hospital costs for those who were treated and admitted to hospital averaged US\$95,887 per incident, rising to US\$179,565 for patients who were discharged to additional care, such as rehabilitation.<sup>678</sup> For those who suffer the most severe injuries, including head trauma or spinal cord injury, individual costs can easily exceed US\$1 million for initial hospitalization.<sup>679</sup> Costs for those who were treated and discharged from the emergency room without admission to the hospital averaged US\$5,254. This amounts to about US\$3 billion per year in direct initial medical costs.<sup>680</sup>

Although the figure is staggering, it covers only initial hospitalization and so significantly understates the overall medical cost of treating gunshot injuries. Many gunshot victims need extensive outpatient rehabilitation and suffer long-term health consequences and complications that require repeat hospital readmission and ongoing medical care. Mental health costs – immediate and ongoing – are likewise not factored into these calculations, but are likely to be massive

and very difficult to quantify. Gunshot injuries can leave permanent psychological scars, often resulting in post-traumatic stress disorder, which is significantly underreported and undertreated.

One way or another, the government ends up covering the bulk of these medical costs. Only one in five gunshot victims, on average, is covered by private insurance. More than 40% of the initial hospital bills are paid directly by the state through Medicaid (34.8%) and Medicare (6%). About 25% of the victims were uninsured, so likely to have already been struggling financially, and unable to pay enormous hospital bills, the costs of which are often unrecovered. Moreover, the hospitals that treat the largest numbers of gun violence victims are the urban safety net hospitals, which often provide unreimbursed care to the uninsured or underinsured. In Baltimore, for instance, more than US\$80 million was spent at hospitals caring for patients shot in gun crimes between 2011 and 2016.<sup>681</sup> A complex web of federal, state and local funding covers some of their costs, and some unrecoverables can be written off as losses, which in turn add to the indirect costs to government.

In addition, many gunshot survivors are left with chronic medical issues and will need increased access to medical care for the rest of their lives. Medicaid does cover short-term rehabilitation, but rates are generally lower than private insurance rates so there are fewer providers willing to take Medicaid patients.<sup>682</sup> Some find the process of finding a provider and processing the paperwork so discouraging that they give up and never get rehabilitation support, while many of the uninsured cannot afford rehabilitation at all. Without rehabilitation, it is less likely that patients will make a full recovery and more likely that they will need ongoing medical care, at additional cost.

Beyond the costs of ongoing, long-term medical care, there is a more substantial but less tangible financial burden related to lost work and productivity following a gun injury.<sup>683</sup> These

costs are more difficult to calculate as they are so variable, but include lost or reduced wages for the victim and for any family members who take on care responsibilities, sometimes over a lifetime; other in-home care; medical equipment; and modifications. These broader costs have been estimated at anywhere between US\$44 billion per year – when focusing on more immediate lost wages – and up to US\$222 billion – when long-term medical and mental health care and the broader direct costs of police investigations, trials and incarceration for the perpetrators are also factored in.<sup>684</sup>

## 4.9 POST-TRAUMATIC STRESS DISORDER:

***“Once you’ve looked at another human being trying to take your life from you, and once you’ve had that fear, that pain, introduced to your life, it will make you a different person.”***

Jamie Williford

Shooting victims also face a lifetime of mental health consequences which are often ignored or left untreated. Many go on to develop full blown post-traumatic stress disorder (PTSD) and hospital studies have found that being shot is more likely to cause acute psychological distress than any other form of traumatic injury or illness.

Symptoms of PTSD vary both in intensity and duration. The most common include re-experiencing the traumatic event through flashbacks or nightmares, and hyperarousal – constantly feeling on edge, sometimes irritable or aggressive. Panic attacks and physical sensations – headaches, dizziness, stomach aches and pain – are all common. Some people feel guilt and constantly run the experience over and over in their heads, trying to see where they went wrong and what they could have done to prevent it. Others try to avoid the pain and numb themselves emotionally, often with the help of alcohol or

drugs. They avoid people and places that remind them of the shooting or their recovery, leading to isolation and withdrawal.

In addition, many of the shooting victims from cities like New Orleans and Baltimore are young black men from deprived neighborhoods and poverty-stricken homes where they have already been exposed to drug and alcohol abuse and violence at home and in the streets – a lifetime of repetitive trauma. Dr. Avegno told Amnesty International: “They are completely wired and in a heightened state of arousal all the time, which can permanently alter your response and levels of cortisol and other neurotransmitters. When it continues for long enough, you can’t back down... you never go back to a normal baseline. You live in a fight or flight state and every time you hear a car backfire, let alone a gunshot, the whole thing returns.”

The majority of these young men are uninsured or reliant on Medicaid, so among the least able to access the services they need. In Dr. Avegno’s experience, “mental health care is a huge issue for gunshot survivors. Our violence intervention team consistently identifies it as one of the most critical needs of their clients. My team had to cold call every mental health outpatient clinic in the city to see if they would accept Medicaid or uninsured to work out some sort of pathway, and they managed to narrow it down to two or three that would.” Even then, a caseworker explained, “if the doc’s across town, and you have to go through another Ward on a bus, feeling weak, you ain’t going to be too relaxed about it.”

Even where the possibility of mental health care exists, gunshot victims are exactly the population least likely to seek treatment, to make and keep appointments, to do self-care and follow up and to wade through the reams of paperwork needed to support Medicaid and non-payer claims. In some situations, where being shot is seen as a symbol of “resiliency, toughness, and mettle”, the victim is careful not to do anything that might undermine

that status, such as be seen to be asking for help in dealing with their fears and anxieties.<sup>685</sup> Dr. Jennifer Hughes, a trauma psychologist who works with gunshot survivors in New Orleans, has likewise noted “that there continues to be such a stigma around accessing mental health services, and a perception that if you develop PTSD after getting shot that you’re weak and vulnerable.”<sup>686</sup>

Victims stress that although their shooting was “one little second in time”, it was enough to irrevocably change their lives.

### **SARA CUSIMANO**

**Sara Cusimano was 13 years old in August 1994 when she was kidnapped, raped and shot in the head. “It felt like being hit with a sledgehammer...he was close enough for me to have gun powder burns on my face.”<sup>687</sup>**

**She was in the hospital for two to three months, regaining the use of one arm – which had been paralyzed – and relearning how to walk and talk. “There was a disconnect between physical and emotional recovery,” she said. “They didn’t focus at all on your emotional health”. She had some rape counseling at 15 or 16, but her symptoms of PTSD, and the ongoing effects of the attack, went unrecognized and untreated.**

**Sara Cusimano is now studying for a doctorate in special needs education, she says she connected with people with disabilities because of her own brain injury.<sup>688</sup> She has suffered lasting physical effects, including so many ongoing surgeries and procedures that she “has lost count”. But it is the emotional impact that has been hardest to process; she still feels vulnerable, still thinks about the attack “multiple times” every day. “People think recovery means getting over it...but this has had a long-term impact on every aspect of my life, every cell of my being...you can’t experience trauma like this without it making you a very different person.”**

**She also feels that the wider effect on families has been ignored. Her brother, she thinks, “was**

**destroyed” by his feelings of guilt around not being there to protect his little sister. When her own children found out about the shooting, “the youngest wouldn’t let me out of her sight. She has panic attacks.”**

**“For me it was not a single incident... Every day,” she says, “I have to be a survivor”.**

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Gunshot survivors often find their physical injuries are so overwhelming that the psychological impact gets pushed aside, at least initially. Two months after he was shot, Antonius Wiradjaja wrote: “I’m lucky to have survived. But it’s beginning to get harder and harder to deal with the wounds... I’m still in shock. I’m sometimes in denial. And the reason that I survived and recovered so quickly was because I put aside all these emotions – this grieving – until now. My first priority was to survive and get out of the hospital, which I did. Now, I have to live with the consequences of surviving... And it’s not easy. But fortunately, I have a good psychiatrist, a good therapist, a good physical therapist and a good general practitioner. All of them care about my mental health as well as my physical well-being. If you are a victim of trauma, my advice is to immediately understand that your body will heal. That’s what it’s good at. But your mind may not heal as quickly, or you may not recognize that it’s also injured...”<sup>689</sup>

Over the next couple of years, Antonius Wiradjaja continued to blog about his recovery and the difficulties he was facing in coming to terms with the mental health impact of his injury, even with good medical and mental health care and a network of support. He frequently referred to particularly difficult issues or events and analyzed his own reactions and feelings about how he dealt with them. As time went on, there appeared to be fewer unexpected triggers, but they had by no means disappeared.

***“380 days since the shooting. It was a fun and relaxing day for the most part. I did freak out a little***



***because some idiots were playing with fireworks in the middle of the day. Then we went to Fremont flea market and I saw tons of bullet necklaces and antique guns for sale. I didn't know whether they were functional but it was enough to be reminded of the trauma."***

***"760 days since the shooting. Some days I feel so tired. But at night I become restless. Today I had another PTSD trigger. I was laying down and I felt like I did when I was shot and bleeding out. I had to get out of bed."***

***"1461 days since the shooting... I have healed to the point where I can say the shooting is in the past. The pain still comes and goes. But I don't let it shape me."***

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For many gunshot survivors, the mental, physical, emotional, family and financial consequences of their injuries do shape their lives, irrevocably. The toll that gun violence exacts on victims, family members and the medical services is a public health crisis of astonishing proportion – and astonishingly little government response, given the life-long effects on many survivors.

Sara Cusimano, shot over 20 years ago, still suffers chronic migraine, back and neck pain, still faces further surgery and still worries that the “bullet that didn’t kill me then, still might.”<sup>690</sup> In the meantime, she says, “there are ways to channel that emotion and anger in positive ways,” and she keeps working “to change the direction we are headed... We don’t need the city to throw another BBQ, we need a sincere effort to recognize that gun violence comes out of a dark place, and to focus help on that anger and depression and on the lack of jobs and skills and opportunities.”

Francis Falls agrees: “I had to accept this wheelchair life, you know what I’m saying? I had no choice. But now I’m an advocate for disability. I brought a lawsuit against this city and now they have to make bus stops and the St. Charles streetcar accessible for wheelchairs... Things need

to change for people with long-term injuries, and I mean to keep rollin’ in that lane. .... Every year, on the anniversary of my shooting, I go back to the bridge they threw me off and I raise my one hand up to god and shout, ‘I am still here’, and for me that’s a victory.”<sup>691</sup>

## RECOMMENDATIONS

Amnesty International calls on US federal and state authorities to:

- Ensure that survivors of gun-related violence have access to affordable and quality health care, which includes necessary, long-term health interventions, rehabilitation services, mental health care and long-term pain management.
- Ensure that health-related costs, including payments for medicines and health services, do not act as a deterrent for survivors of gun-related violence to access necessary care and do not cause undue or catastrophic financial burdens for gunshot survivors and their families.
- Ensure that gunshot survivors are fully informed about all health care and support benefits they are eligible for, depending on their specific health needs, and have the assistance they require – ideally through a dedicated case manager – to access, obtain and manage those benefits.
- Build an evidence-based approach to gun violence prevention. Restore robust funding and training into all public health aspects of gun violence prevention (including through the National Institutes of Health and the Centers for Disease Control and Prevention); gather comprehensive national data that tracks gun-related deaths and injuries, evaluates safety interventions and assesses the impact of measures to reduce the incidence of gun violence over time.
- Ensure that services are available to support independent living for those disabled by gunshot injuries, according to individual needs, including personal assistance, provision of necessary medical equipment and supplies and support with adapting homes and workplaces for wheelchair access and the use of other necessary medical equipment.

## CHAPTER 5

# FAILURE TO PREVENT: INADEQUATE GUN LAWS AND POLICY

The lack of gun safety laws and regulations is a nationwide problem. While some states offer stronger protections than others, all fail to ensure adequate protection against gun violence. The current patchwork of federal, state and local laws addressing firearm violence falls short of international law and standards.

Federal and state laws related to background checks; licensing, registration and training; the carrying of firearms in public; reporting of lost and stolen firearms; regulation of semi-automatic assault rifles, semi-automatic shotguns and semiautomatic submachine guns; and “Stand Your Ground laws” all create an environment where gun violence is preventing people from enjoying their human rights.

The USA has an obligation to protect human rights, including the rights to life and security of person. Adopting and enforcing minimum standards for the regulation of firearms to prevent them from being used by individuals to abuse human rights is an important step toward fulfilling that obligation. The USA must take

steps to urgently reform its regulatory system for the acquisition, possession and use of firearms to ensure that they meet these international standards.

## 5.1 BACKGROUND CHECKS

***“[T]he Human Rights Committee has found that the obligation to effectively protect also requires efforts to curb violence that include the continued pursuit of legislation requiring background checks on all private firearm transfers ... in order to prevent possession of arms by persons recognized as prohibited individuals under the law...”United Nations Human Rights Council, Human Rights and the Regulation of Civilian Acquisition, Possession, and Use of Firearms.***

Report of the UN High Commissioner for Human Rights<sup>692</sup>

**VALARIE JACKSON**

**On Saturday, 8 August 2015, Valarie Jackson, along with Dewayne Jackson and six children aged between**

**six and 13, were allegedly shot by Jackson's former partner, when he broke into a home through an unlocked window.<sup>693</sup> All eight individuals were killed. One of the children was the alleged shooter's own child.<sup>694</sup>**

**According to media reports, the alleged shooter previously served at least five years in prison for five felonies, including armed robbery. Valarie Jackson was granted a protection order when he threatened her with a knife and he was sentenced to nine months in jail.<sup>695</sup> On 9 July 2015, the month before the mass killing,<sup>696</sup> police issued an arrest warrant for the alleged shooter after he slammed Valerie Jackson's head into a refrigerator while he was trying to beat her 10-year-old son with a belt.<sup>697</sup> He evaded arrest and law enforcement had no indication of his whereabouts until the night of the killing.<sup>698</sup>**

**Because of his criminal record, the alleged shooter would not have cleared the necessary background checks to buy a firearm through a federally licensed dealer. Instead, he purchased a 9mm handgun over the internet through a private sale.<sup>699</sup> The capital murder case against the alleged shooter was pending at the time of writing.<sup>700</sup>**

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Background checks prior to firearm purchases are a crucial safeguard against firearms ending up in the hands of those likely to misuse them.

Under federal law, specifically the 1993 Brady Act<sup>701</sup> (see Chapter 2), all federal firearms licensees (FFLs) – more commonly known as federal firearms dealers – must conduct comprehensive background checks prior to the sale of a gun. They can use the National Instant Criminal Background Check System (NICS), through the FBI, to search three separate national databases to check on potential purchasers' mental health and criminal histories and any relevant civil orders.<sup>702</sup> Since 1998, when the NICS system became operational, the FBI has processed more than 257 million online

background checks<sup>703</sup> and, as a result, almost 3 million people have been stopped from obtaining a firearm through an FFL.<sup>704</sup>

However, unlicensed dealers, private parties and private sellers at gun shows and on internet platforms such as Armslist<sup>705</sup> who sell and transfer firearms fall outside the scope of the Brady Act and are not required to conduct a background check prior to the sale of a firearm. This creates a dangerous loophole. Nineteen states and Washington, D.C. have enacted laws which require background checks on some, or in nine states, all, private sales of firearms.<sup>706</sup> Thirty-one states have no such requirement.<sup>707</sup>

There are four ways an individual purchasing a firearm may circumvent a legally required background check: (1) by arranging a purchase through a private seller rather than an FFL; (2) if the background check takes more than three working days; (3) if they have a firearm permit from a state where such a permit overrides the federal requirement to pass a background check; or (4) by presenting false or forged identification documents which are not required to be verified at the point of sale.<sup>708</sup> Purchasers may also avoid background checks in numerous other ways, including by using a straw purchaser (someone who buys a gun for someone else), purchasing from a "dirty dealer" (dealers who intentionally violate or fail to comply with the law)<sup>709</sup> or by purchasing firearm parts separately and building a "ghost gun" (a self-manufactured firearm without a serial number).

Surveys and research have established that large numbers of gun owners in the USA have not undergone a background check at the point of sale<sup>710</sup> and that, in general, where background checks have been carried out in accordance with federal or, where applicable, state law, there are reduced levels of gun violence.<sup>711</sup> For more on failure to address loopholes in the federal background check system, see Section 4.1.6.

Despite this clear evidence, however, the USA has yet to modify requirements on background checks for firearm purchases to address dangerous gaps in security and screening for those attempting to acquire guns. The USA should require that background checks on all firearm purchases and transfers be conducted prior to sale or transfer of possession to confirm the absence of known risk factors for misuse. Risk factors for consideration should include, at a minimum: (i) prior criminal record, particularly for violent offences; (ii) being under indictment for a felony offence; (iii) a history of gender-based, sexual or domestic violence; and (iv) medical conditions, including history of drug/alcohol abuse or if the person presents a heightened risk of harm to themselves or others, based on a case-by-case basis review by competent authorities drawing on all available relevant evidence.

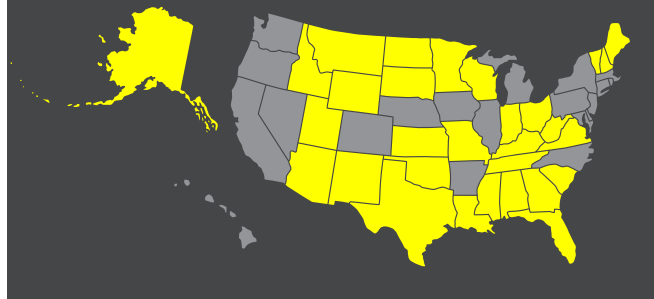
### 5.1.1 BACKGROUND CHECK FAILURE #1: EXEMPTION FOR PRIVATE SALES

The most frequently exploited gap in federal law governing background checks on firearms is the failure to require unlicensed sellers, private individuals and others not classified as FFLs to conduct background checks on potential purchasers.

In 2017 Harvard and Northeastern University researchers examining various aspects of firearm acquisition via surveys conducted in April and November of 2015, concluded that 22% of firearms in the USA were transferred without a background check.<sup>712</sup> The acquisition of guns from private parties and at gun shows is a well-known source of guns used in crimes,<sup>713</sup> jeopardizing public safety and the lives of people across the country.

Most states do not require background checks for gun purchases from unlicensed sellers.

#### STATES THAT DO NOT REQUIRE BACKGROUND CHECKS ON ANY GUN PURCHASES FROM PRIVATE SELLERS:



Nineteen states and Washington, D.C. have regulations that require background checks for at least some private sales.<sup>714</sup> Ten of those (California, Colorado, Connecticut, Delaware, Nevada, New York, Oregon, Rhode Island, Washington, and Washington DC) require universal background checks at the point of sale for all sales and transfers of all classes of firearms, regardless of whether they are purchased from an FFL or an unlicensed private seller.<sup>715</sup>

Maryland and Pennsylvania require point of sale background checks only for handguns but not for long guns, like rifles and shotguns.

Four states (Hawaii, Illinois, Massachusetts, and New Jersey) require all firearm purchasers to obtain a permit, issued after a background check, in order to buy any firearm, instead of a point of sale background check.

Four states (Iowa, Michigan, Nebraska, and North Carolina) have this permit and background check requirement, but only for the purchase of handguns, not long guns.

In addition, Illinois requires a point of sale background check whenever a firearm is sold at a gun show.

Online marketplaces also provide a channel through which firearms can be purchased without a background check. If online gun purchases are conducted through FFLs, background checks will still be required. However, if conducted between

private individuals whether a background check is required will depend on the location of the buyer and seller. A background check may not be required at all if they are both in one of the 31 states that does not require a background check between private parties.<sup>716</sup> If they are in different states, the purchased firearms would have to be received by an FFL, where a background check would be conducted before the purchaser could receive it.<sup>717</sup>

An undercover investigation in 2011 by the Office of the Mayor of New York City found that 62% of online sellers are willing to supply firearms to individuals who admitted they could not pass a federal background check.<sup>718</sup>

Evidence suggests that private sellers were the primary source of guns used to commit crimes by people who were prohibited purchasers at the time they acquired the gun. A 2012 study of people imprisoned for firearm-related offenses in 13 states found that 96% of those surveyed and who would have been deemed “prohibited persons” at the time of the purchase, obtained the gun with which they committed the crime through a private seller, thereby evading a background check.<sup>719</sup>

Evidence also suggests that guns purchased privately in the USA may also be used in criminal activity in neighboring countries. A 2018 study by the Center for American Progress noted: “from 2014 to 2016, across 15 countries in North America, Central America, and the Caribbean, 50,133 guns that originated in the United States were recovered as part of criminal investigation... Put another way, during this span, US--sourced guns were used to commit crimes in nearby countries approximately once every 31 minutes.”<sup>720</sup>

The USA should require that all private sellers of firearms perform background checks through FFLs, so that a record of sale is made and a background check is conducted by an independent and licensed dealer.

## 5.1.2 BACKGROUND CHECK FAILURE #2: CHECKS THAT TAKE LONGER THAN THREE DAYS

### EMANUEL AME CHURCH IN CHARLESTON, SOUTH CAROLINA

**In 2015, Dylann Roof, who had a criminal record, shot and killed nine African Americans at the Emanuel AME Church in Charleston, South Carolina.<sup>721</sup> Although he should have been a prohibited buyer, he had been able to purchase the gun two months earlier; his background check was not processed within the requisite three business days, so the seller proceeded with the sale of the gun later used in the mass shooting.<sup>722</sup>**

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Under federal law, if an FFL initiating a background check is not informed within three business days that the sale would violate state and/or federal law, the dealer may proceed with the sale<sup>723</sup> without informing the FBI or ATF.<sup>724</sup> This gap is often referred to as “default proceed” sales.<sup>725</sup>

While default proceed sales represent only a small percentage of all firearm sales by FFLs, around 300,000 in 2016,<sup>726</sup> the danger resulting from these sales is clear. This is particularly so in the case of domestic violence where a recent government report confirmed that FBI agents take longer to complete background checks where there have been domestic violence convictions than with other prohibited buyers.<sup>727</sup> Default proceed sales that were subsequently denied following delayed background check information allowed 6,700 individuals convicted of domestic violence to obtain guns between 2006 and 2015.<sup>728</sup>

The ATF is the organization tasked with retrieving of guns obtained through default proceed sales which are later denied. Unfortunately, the ATF is reportedly seriously understaffed and underfunded.<sup>729</sup>

***“If we don’t link what ATF does with reductions in gun violence, how can you measure effectiveness? There are stories of subjective victories, but there are also roadblocks to effectiveness: look at the resources given to ATF. The budget is just over two billion dollars. The NRA does not want ATF to go away, but they don’t want them to be effective... We have about 5000 employees, about 2600 of them are officers, so it is smaller than – for example – the Washington, D.C. Police Department.”***<sup>730</sup>

Amnesty International interview with David Chipman, former ATF Special Agent, 7 December 2017

In fact, in its 2016 Congressional Budget Submission, the ATF explained that despite a budget that has remained relatively stagnant for 10 years, its “workload and mission requirements have exponentially increased.”<sup>731</sup> In 2018, the ATF budget was increased slightly from US\$1,258,600 (in 2017) to US\$1,293,800.<sup>732</sup> And yet, according to the ATF, there have been significant increases in the firearm industry and commerce in recent years, including a substantial number of new FFL applications which require thorough inspections. There has also been a significant increase in National Firearms Act applications for “machine guns, silencers, short-barreled rifles, short-barreled shotguns, destructive devices, and certain concealable weapons classified as “any other weapons”.”<sup>733</sup> Additionally, in 2017, the FBI issued 6,004 requests to retrieve guns from prohibited buyers who had acquired them through default proceed sales.<sup>734</sup>

Each of these tasks is important and yet, because of funding and staffing issues, the ATF has admitted that it “has had to make difficult resource decisions and implement reductions to lower-priority infrastructure and programs in order to maintain productivity.”<sup>735</sup>

***“Instead of spending valuable ATF resources on recovering weapons from prohibited individuals, Congress should give our federal law enforcement***

***agencies the resources and tools they need to proactively stop these dangerous individuals from getting guns in the first place.”***

Amnesty International interview with David Chipman, former ATF Special Agent, 7 December 2017

The FBI is aware of the concerns about timely completion of background checks for FFLs and the potential danger posed by default proceed sales.<sup>736</sup> The prohibited buyer may be in possession of a gun for months before anyone is able to track them down, putting themselves and others at increased risk of death or injury. Multiple reports note the need for more time to determine complicated case histories as background checks are processed.<sup>737</sup> Only 17 states have either extended the three-day federal background check timeframe or required that no firearm sale by an FFL may proceed without the completion of a background check.<sup>738</sup> For example, California requires that all firearm transfers be subject to a 10-day waiting period, with the potential for an extension. However, the majority of states have failed to take action to close this potentially dangerous loophole.

The USA should abolish the three-day federal background check waiting period. No firearm sale or transfer should take place without a background check having been completed.

### **5.1.3 BACKGROUND CHECK FAILURE #3: INDIVIDUALS EXEMPT FROM FEDERAL BACKGROUND CHECKS**

In some states, individuals who have been granted specific firearm licenses or permits by local or state authorities, for example a concealed carry permit, may be able to forego federally mandated background checks when purchasing a firearm from an FFL. These states are called “Brady exempt” states.

According to ATF regulations, an individual

is exempt from a NICS background check if they have a license or permit allowing them to “possess, acquire, or carry a firearm” that was issued within the five years prior to the attempted purchase and where the state or local license or permit required an investigation that satisfies federal, state, and local law.<sup>739</sup> The idea is that when state or local law enforcement issue a license or permit, they are performing the same check that the FBI would perform at the point of sale so that they are essentially equivalent and are therefore “Brady exempt.” The final determination of whether a state or local investigation is “Brady exempt” is ultimately made by the ATF.<sup>740</sup> These determinations are subject to judicial review<sup>741</sup> and the ATF is able to grant or revoke state license or permit exemptions based on court decisions and state legislative action.

For example, when the Brady Act came into effect in 1998, Illinois Firearm Owner Identification Cards (FOID cards) were a valid Brady alternative.<sup>742</sup> However, in 2008 an Illinois appellate court decided that state police had abused its discretion in denying a FOID card to a plaintiff who had been convicted of several federal crimes.<sup>743</sup> As a result, the ATF made a determination that FOID cards were no longer compliant with federal background check standards as set out in the Brady Act. The ATF issued a letter notifying FFLs that FOID cards would no longer qualify as a Brady alternative.<sup>744</sup> The effect of the ATF determination and the state law is that gun purchasers must register for a FOID card under state law, and then FFLs must contact Illinois State Police to verify that the purchaser’s FOID card is valid at the time of purchase.<sup>745</sup> The background check must be completed by the Illinois State Police by accessing the NICS system.<sup>746</sup>

In contrast, in 1998, Louisiana did not have any state permit exemptions.<sup>747</sup> However, in 2015, the ATF notified FFLs that it “ha[d] reviewed

Louisiana’s concealed handgun permit and ha[d] determined that the permit qualifies as an alternative to the background check required by the Brady law”.<sup>748</sup> Louisiana’s concealed handgun permit includes a NICS check and the submission of fingerprints to the FBI.<sup>749</sup>

As of 5 July 2018, 27 states issue firearm licenses or permits that, according to the ATF, subsequently exempt the holder from a federal background check before a firearm purchase in that state.<sup>750</sup>

Some advocates argue that licenses and permits actually help to increase the effectiveness of screening potential firearms purchasers as they are issued by local law enforcement who may be aware of issues with individuals and some licenses and permits require character references and other types of supporting evidence, which may deter a potential purchaser.<sup>751</sup>

However, licensing and permit requirements vary significantly from state to state. Moreover, an individual may have committed a crime in another state of which local law enforcement may not be aware. For these reasons, a comprehensive, updated and accurate federal background check database is critical. While the FBI’s existing background-check database catches many potential offenders,<sup>752</sup> it is missing millions of records of criminal convictions, mental illness diagnoses, and other flags that may be known to local law enforcement agencies but are not reported to NICS.<sup>753</sup>

The information which local law enforcement agencies submit to the FBI databases varies across the country,<sup>754</sup> but regardless of the state, domestic violence, mental health and drug abuse violations remain underreported.<sup>755</sup> Since these violations are not reported often to NICS, law enforcement may not know that an individual from another state has a prohibiting criminal history. Even in states which conduct local and

state background checks in addition to the NICS background check, crimes committed in another state are not likely to show-up.<sup>756</sup>

Also, there is no national system to ensure that the license or permit is properly revoked and ensure that in future the prohibited purchaser becomes subject to a background check. Enforcement of revocation checks is not uniform and subject to personnel, funding and political restrictions.<sup>757</sup> Local permit issuing agencies may perform “revocation’ checks...to determine if the permit holder remains eligible to possess the firearm permit” at any time.<sup>758</sup> For example, between gaining its Brady state permit exemption in 2015 and the end of 2017, Louisiana issued and renewed 87,983 concealed carry handgun permits and revoked 442.<sup>759</sup>

The exclusion of state license and permit holders, including those who may have subsequently become prohibited purchasers, from NICS background checks at the point of sale from FFLs is a significant loophole. The safest method for ensuring that firearms do not end up in the hands of those likely to misuse them is through a comprehensive screening process, which would always require both a license or permit to purchase and a mandatory comprehensive background check for each and every purchase of a firearm.

#### **5.1.4 BACKGROUND CHECK FAILURE #4: FAILURE TO CHECK IDENTIFICATION**

Under federal law, FFLs must require that individuals present valid photo identification issued by a government entity before the purchase or transfer of a firearm takes place.<sup>760</sup> However, there is no process mandated through which an FFL must validate a purchaser’s identification documents.

An independent government investigation in

five states (Virginia, West Virginia, Montana, New Mexico and Arizona) from 2001, found that the NICS system was unable to identify buyers with false identification documents when there was no criminal records attached to those identifications.<sup>761</sup> A 2012 study also found that non-criminal disqualifying records were often not forwarded to the NICS system by individual states.<sup>762</sup> Because the NICS system performs negative checks, looking only for disqualifying information, there is no way to flag a false identification that appears to meet the federal law requirements.<sup>763</sup> Worryingly, a 2017 gap analysis of the NICS system found that it did not track failed prior attempts to purchase a firearm, allowing a prohibited person to keep trying their luck at different dealers.<sup>764</sup>

Trace data provides a mechanism to identify ‘straw purchasers’ by following the chain of possession of the firearm, but purchases made through a false identification are much more difficult to track.<sup>765</sup> Federal law groups both straw purchasing and purchasing a gun with false identification into a single statute, making it unlawful to “make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive” an FFL in order to obtain a firearm or ammunition.<sup>766</sup> Between 2013 and 2017, there were 533 federal prosecutions based on this statute.<sup>767</sup>

Federal prosecutions for all denials of prohibited persons attempting to purchase firearms have fallen sharply since 2003.<sup>768</sup> This is particularly surprising given the expansion of the prohibited categories since the early 2000s as well as the increase in number of guns in the USA over that same period.<sup>769</sup> Unfortunately, it is impossible to know how many firearms are actually purchased using fraudulent or false identification because it is likely that many of these purchases go unnoticed or unreported.



In order to combat the use of fraudulent identification in firearm purchases, FFLs should be required to verify the identification of a purchaser by linking to state motor vehicle databases.

### **5.1.5 BACKGROUND CHECK FAILURE # 5: INCOMPLETE DATA IN FEDERAL DATABASE**

In conducting a background check on potential purchasers, the FBI draws from three main databases: (1) NICS; (2) the Interstate Identification Index; and (3) the National Crime Information Center.<sup>770</sup>

A key criticism of the NICS system is consistent underreporting by state and local agencies, either by failing to report relevant records at all, or by failing to report complete records, making the database incomplete and potentially ineffective. For example, a 2017 Bureau of Justice Statistics report noted that there were 7.8 million active warrant records in state databases by the close of 2014, but only 2.1 million documented in the NICS database.<sup>771</sup> In other words nearly 70% of warrant records are not available in the NICS database.

States have the option of having FFLs conduct background checks through the FBI or their own local and state agencies. However, currently, 29 states and Washington D.C. rely solely on the FBI to conduct background checks and do not require any additional background checks to address the disparity in records.<sup>772</sup>

States which rely on their own local or state agencies to conduct background checks are called “Point of Contact” (POC) states. In POC states, background checks often involve searches in local and state databases and do not rely solely on federal databases. As a result, POC states have access to records that may not have been reported

to federal sources, for example mental health records and domestic violence orders.

States may call for additional background checks to be run when an individual purchases a firearm from an FFL, but only 21 states require this additional precaution.<sup>773</sup> If the background check is not cleared, the sale is denied. However, if more information is needed, the case is referred to the FBI’s Criminal Justice Information Services division, which then requests the additional information from local and state law enforcement agencies in order to make a final determination on the individual purchaser. As discussed above, if this process takes longer than three business days,<sup>774</sup> then, depending on the state, either a default proceed sale is allowed (see Section 5.1.2) or state law may grant additional time.

The USA should ensure that federal, state and local agencies are reporting records accurately, completely and as soon as possible to the FBI for inclusion in the NICS. It should also ensure that adequate funding and technical support have been put in place to facilitate improvements in state systems for reporting (for example by creating systematic and comprehensive methods for automated entry of eligible records) and to penalize federal agencies that do not report records.

### **5.1.6 BACKGROUND CHECK FAILURE #6: FAILURE TO ADDRESS LOOPHOLES IN THE FEDERAL BACKGROUND CHECK SYSTEM**

While data is relatively limited, one study found that all states with universal handgun background checks experienced rises in number of homicides between 2009 and 2016, yet the overall average for those states decreased in terms of homicides caused by firearm. These states also had lower levels of gun violence across the board than states

that deferred to the federal standard, with 47% fewer women killed in firearm-related violence by an intimate partner and 53% fewer police officers killed on duty.<sup>775</sup>

Also, taking population disparities into account, states with universal background check requirements for firearm purchases from private sellers, encountered significantly less firearm trafficking<sup>776</sup> and substantially fewer suicides using firearms.<sup>777</sup>

In 2007, Missouri repealed a permit-to-purchase licensing law which for over 90 years had required firearms dealers to perform a background check on anyone purchasing a handgun in the state. Researchers studied and tracked firearms-related homicides and violent crimes in the state following the repeal and found that the murder rate in Missouri increased by 14% between 2007 and 2012 and the firearm homicide rate rose by 25%.<sup>778</sup> In the same period, the rate of suicide committed by firearms grew by 16%.<sup>779</sup> Bordering states did not experience similar increases; in fact, the US murder rate actually declined over those five years.<sup>780</sup> Most significantly, research demonstrated that twice as many recently purchased “new” firearms were being recovered from crimes<sup>781</sup> and that the number of crime guns originating from within the state of Missouri had exponentially increased.<sup>782</sup>

There is broad public support for universal background checks on all firearm sales.<sup>783</sup> Up to 97% of all Americans<sup>784</sup> and up to 85% of all gun owners surveyed<sup>785</sup> have supported universal background checks. Support for universal background checks also extends to organizations representing public health researchers,<sup>786</sup> mental health professionals,<sup>787</sup> doctors,<sup>788</sup> pediatricians,<sup>789</sup> law enforcement,<sup>790</sup> and educators.<sup>791</sup>

Despite this widespread support and the compelling evidence that background checks can reduce gun violence, the USA has failed to

address the deadly loopholes in federal gun laws discussed in this section.

The USA should fund agencies like the CDC to research the impact of background checks on the sale and transfer of firearms and to research and develop viable strategies for gun violence prevention related to these policies.

## 5.2 TRAINING, LICENSING AND REGISTRATION OF FIREARMS

***“In order to ensure the protection of human rights by preventing small arms violence by private actors, Governments shall incorporate into their national laws licensing requirements to prevent possession of arms by persons who are at risk of misusing them... Before issuing a licence, Governments shall require training in proper use of small arms, and shall take into consideration, at a minimum, the following factors: age, mental fitness, requested purpose, prior criminal record, and prior acts of domestic violence. Governments shall require periodic renewal of licences”.***

*Prevention of human rights violations committed with small arms and light weapons, Final report submitted by Barbara Frey, Special Rapporteur, 8 August 2006, para. 10<sup>792</sup>*

Almost all countries around the world regulate the acquisition, possession and use of firearms. The USA, however, has not adopted a nationwide comprehensive system for training, licensing or registering individuals who purchase, possess or carry firearms. Indeed, federal law specifically prohibits the establishment of “any system for the registration of firearms, firearm owners, or firearm transactions or dispositions”.<sup>793</sup> And as a result, firearms are ending up in the hands of those who are at risk of misusing them. The USA is failing to fulfill its due diligence obligations to protect the right to life and the right to security of person, as

is required under international human rights law.

It should be noted that the terms “license” and “permit” are used interchangeably in this context. In some states, prior to purchasing a firearm, an individual must obtain a license from the state. This licensing comes in various forms, depending on the state and includes, for example, a license to own a firearm, permit to purchase a firearm, safety certificates or registration requirements that are effectively licenses. Additionally, in some states an individual is required to obtain a permit in order to carry (openly or concealed) a firearm. These permits are also classified in various ways, depending on the state (for example, concealed handgun licenses and concealed carry permits). While Amnesty International recognizes that many states use these terms interchangeably, international standards require licenses for the purchase or carrying of any firearm by a private individual.

Training, licensing, and registration in relation to firearms are regulated by states and vary greatly. Some states require an individual to obtain a license or permit to purchase a firearm. Concealed carry (carrying a concealed firearm) is legal in all states, but only some states require a concealed carry license or permit. Open carry (carrying an unconcealed firearm in public) is legal in many states and only some of those states require a license or permit. Some states require firearms to be registered with law enforcement agencies, although most do not. Some states require training on how to use firearms, but most do not. Some states require training prior to issuance of open carry or concealed carry permits. And 12 states require no permits, licensing, training, registration or background checks (other than those required by federal law) prior to purchase of a firearm.<sup>794</sup>

The huge variation in state approaches means that even if certain states manage to enact fairly robust and strict training, licensing and registration obligations before allowing an individual to have

access to a firearm, lax laws in other states undermine the impact of these measures. For example, California has some of the most stringent firearm laws, but neighboring Nevada has some of the least restrictive gun laws in the country. Nevada does not require firearms training, licensing or registration.<sup>795</sup>

Available data indicates that where registration laws have been combined with licensing and training of firearm owners, it is more difficult for criminals and individuals at risk of misusing a firearm to access one.<sup>796</sup> Implementing these safeguards and procedures enhances accountability for firearms and their use, aids law enforcement in disarming prohibited persons and those in illegal possession of firearms, and contributes to investigations of firearm-related crimes.

### 5.2.1 TRAINING ON THE USE OF FIREARMS

Training for those wanting to own, use, or carry a firearm on how to load, operate and store it is a critical step in ensuring public safety. And yet, in a recent study conducted by researchers at Harvard and Northeastern Universities, only 61% of gun owners surveyed had undergone any firearm training, even though 80% of gun owners surveyed indicated that they agree an individual should undergo firearm training before operating a firearm.<sup>797</sup> As reflected in the table below, only seven states require some form of firearm training prior to purchasing a firearm.<sup>798</sup>

States should mandate firearms training and testing, before an individual may receive a license to purchase a firearm. At a minimum, the individual seeking to purchase a firearm should be able to show competence in use of the gun, gun safety and safe storage, as well as first aid and demonstrate knowledge of applicable firearms laws.

States should also require additional training and testing prior to issuing a license to carry a firearm. An individual seeking to carry a firearm in public should receive live fire training as well as effective judgment training and verbal resolution and don't shoot/shoot scenarios. These are particularly important where individuals may be carrying a firearm in public, whether they carry their weapon openly or in a concealed manner, because of the increased risk of accident, mishandling or misuse in public. Judgment training is especially critical as it focuses on teaching students how to make vital decisions if they are attacked, or threatened with attack, including when they might need to use a gun in self-defense and on how to limit avoid the use of lethal force with a firearm unless it is absolutely necessary<sup>799</sup>

Twenty-four states and Washington, D.C. with concealed carry permit systems impose live fire training requirements for their own residents.<sup>800</sup> Six of these states (Connecticut, Illinois, Maryland, New Jersey, Rhode Island and Minnesota) require both residents and concealed carry permit holders from other states to complete live firearm training.<sup>801</sup> However, currently, 26 states require no live fire training experience before issuing concealed carry permits.<sup>802</sup> Only 15 states require a license or permit to openly carry a firearm and of these, only eight with open carry laws require live fire training.<sup>803</sup> This means that in most states a person who can carry a firearm, whether concealed or open carry, may have never had any actual live training on how to use, handle, load, and unload their firearm.

Inter-state recognition or reciprocity agreements grant reciprocity for concealed permits between states. These reciprocity agreements mean that even states with adequate or comprehensive training requirements may face challenges in ensuring training requirements are met as residents can avoid regulations and requirements by obtaining permits from states with weaker

standards. For example, residents from North Carolina seeking to obtain concealed carry permits are required to complete a training course that includes a live firearm session,<sup>804</sup> but media reports suggest that many obtain permits from neighboring Virginia, where training is not required.<sup>805</sup> In fact in 2013, over 370 North Carolina residents had obtained concealed carry permits from Virginia.<sup>806</sup>

There is also proposed federal legislation which would mandate national concealed carry reciprocity. This would require all states to adopt the weakest standards in the country, including standards related to training obligations, when issuing concealed carry firearm permits. (For more on concealed carry see Section 5.3.)

## 5.2.2 FIREARM LICENSES

Federal law does not require licensing of gun owners or purchasers and most states do not require a permit or license to purchase or possess a gun. Those licensing laws that do exist vary from state to state, but usually fall into four basic categories:

- Permits to purchase firearms (requiring individuals to obtain a permit prior to purchasing a firearm);
- Licenses to own firearms (requiring the individual's license to remain valid so long as they own the firearm);
- Firearm safety certificates issued when an individual is licensed to purchase a firearm and has completed requisite safety training; and
- Registration laws that require licenses.

Licensing laws are a critical element in ensuring that individuals who possess a firearm are doing so legally.<sup>807</sup> A common feature of the licensing process in most countries around the world is a requirement to have a "credible justification" for owning a weapon, such as hunting, target

shooting, pest control and, in some instances, self-defense. Licenses should only be granted where there is a credible justification prior to purchase.

While personal protection as a justification could be applied in highly exceptional circumstances where a specific threat could be identified, it should not be used as a generalized justification for firearms possession. Examples could include people working in potentially high-risk situations in remote areas, not readily covered by law enforcement. In most contexts, the USA should ensure that personal protection is guaranteed by law enforcement officials creating secure environments.

Licenses should be time-limited and subject to expiry/renewal. The requirement that firearm purchasers and users obtain and renew licenses regularly protects against firearm use by unauthorized individuals or those who have become prohibited persons under federal law.<sup>808</sup> Moreover, licensing laws can ensure that even individuals who do not purchase their firearms

from FFLs have passed a background check.

Licensing has a clear impact on gun violence. States like California and Connecticut, as well as Washington, D.C. have thorough licensing mechanisms.<sup>809</sup> In Connecticut, for example, a permit-to-purchase law was passed in 1995. A 2016 study found that in the following 10 years there was a 40% drop in firearm-related homicides in the state.<sup>810</sup> Conversely, a 2014 study of the impact of Missouri's decision to repeal its permit-to-purchase law showed an increase in firearm-related homicide rates of 25% in the first three years and four months following the policy change.<sup>811</sup>

The US should ensure that firearms can only be purchased or transferred with a valid firearms license. Moreover, state firearm licenses should not be authorized unless the following minimum conditions are met: (i) credible justification prior to purchase; (ii) in general a minimum age of 21; and (iii) a background check has been conducted indicating the absence of known risk factors for misuse.

## SUMMARY OF CURRENT STATE LAW REGARDING FIREARM LICENSING & SAFETY TRAINING<sup>812</sup>

State	License Req'd	Type of License				Safety Training Req'd	Duration of License
		Permit to Purchase	License to Own	Firearms Safety Certificate	Registration		
Alabama							
Alaska							
Arizona							
Arkansas							
California <sup>813</sup>	Yes-All firearms			X		Yes <sup>814</sup>	5 years <sup>815</sup>
Colorado							
Connecticut <sup>816</sup>	Yes-All firearms	X				Yes	5 years
Delaware							
District of Columbia <sup>817</sup>	Yes-All firearms				X	Yes	3 years
Florida							
Georgia							
Hawaii <sup>818</sup>	Yes-All firearms	X				Yes (on hand gun)	10 days for hand gun;
						No (on long guns)	1 year for long guns
Idaho							
Illinois <sup>819</sup>	Yes-All firearms		X			No	10 years
Indiana							
Iowa <sup>820</sup>	Yes- on hand guns	X				No	5 years
Kansas							
Kentucky							
Louisiana							
Maine							
Maryland <sup>821</sup>	Yes- Hand gun	X				Yes	10 years
Massachusetts <sup>822</sup>	All firearms & ammunition devices	X	X			Yes	6 years
		(Hand gun only)					10 Days (Hand gun only)
Michigan <sup>823</sup>	Yes- Hand gun	X <sup>824</sup>				No	30 days
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska <sup>825</sup>	Yes- Hand gun	X				No	3 years
Nevada							

State	License Req'd	Type of License				Safety Training Req'd	Duration of License
		Permit to Purchase	License to Own	Firearms Safety Certificate	Registration		
New Jersey <sup>826</sup>	Yes-All firearms	X <sup>827</sup>				No	As long as eligible 90 days (hand guns) <sup>828</sup>
New Mexico							
New York <sup>829</sup>	Yes- Hand gun <sup>830</sup>		X			No	5 years
North Carolina <sup>831</sup>	Yes- Hand gun	X				No	5 years
North Dakota							
Ohio							
Oklahoma							
Oregon							
Pennsylvania							
Rhode Island <sup>832</sup>	Yes- Hand gun	X				Yes	No specified length of time
South Carolina							
South Dakota							
Tennessee							
Texas							
Utah							
Vermont							
Virginia							
Washington							
West Virginia							
Wisconsin							
Wyoming							

### 5.2.3 REGISTRATION OF FIREARMS

Currently there is no federal law governing firearm registration or requiring the registration of firearm owners and their weapons, with the exception of some very narrowly defined types of firearms, such as machineguns.<sup>833</sup> Indeed, federal law has barred a national registry of almost all firearms.<sup>834</sup>

State laws and policies on whether registration is required and what types of weapons must be registered vary. Only Hawaii and Washington,

D.C. require all firearms to be registered.<sup>835</sup> New York requires all handguns to be registered.<sup>836</sup> Six states require certain types of dangerous and restricted weapons to be registered (such as assault rifles/pistols and 50 caliber rifles).<sup>837</sup> Eight states prohibit firearm registration within their borders.<sup>838</sup>

All firearms in the USA should be registered,<sup>839</sup> in line with the findings and recommendations of the Special Rapporteur to the UN Sub-Commission on Human Rights on the issue of preventing human

rights abuses committed with small arms and light weapons<sup>840</sup> and established international guidelines outlined in the International Small Arms Control Standards.<sup>841</sup> At a minimum, this registration would include information on the manufacturer and model, caliber, serial number, (importer if applicable), the source of the firearm, the name of the licensed holder, and any sale, transfer or other change of ownership, including loss or theft.

The USA should ensure that all existing firearms are registered through the creation of a central national firearm registration system, which records every transfer of possession, including loss or theft; which is digitized and searchable; which is readily accessible to law enforcement agencies; and which requires states to track and register any sale or transfer of ownership of firearms that they would be required to report for inclusion in the federal register.

Firearm registration including this information would enable federal and state actors to track

firearms, combat illicit trafficking, disarm individuals who have become prohibited purchasers or are in illegal possession of a firearm, and maintain adequate records so that firearms legislation may be adequately enforced. It discourages illegal sales and transfers, allows for enhanced tracking of restricted weapons and increases owner accountability. If firearm ownership and licenses were tracked in a comprehensive registry, as motor vehicles licenses are, law enforcement officials could quickly and efficiently trace and identify the owner of a particular recovered weapon utilized in a crime.

In addition to registration, the USA should limit the number and types of firearms that can be possessed by individuals in keeping with the principles of necessity and credible justification. Currently, under federal law, the ATF receives a report when a person buys more than a single handgun from the same dealer during a five-day period,<sup>842</sup> but there is no limit on the amount and type of firearms an individual may purchase.

## SUMMARY OF CURRENT STATE LAW REGARDING FIREARM REGISTRATION<sup>843</sup>

State	Registration Required for ALL Firearms	Registration Required for Handguns	New Residents Must Report Firearms	Registration Req'd of Pre-Ban Assault Weapons or 50 Caliber Rifles <sup>844</sup>	Prohibit Registration or creation of registry
Alabama					
Alaska					
Arizona					
Arkansas					
California			X <sup>845</sup>	X (Assault Weapons & 50 caliber rifles) <sup>846</sup>	
Colorado					
Connecticut				X (Assault Weapons & Large-Capacity Magazines) <sup>847</sup>	



State	Registration Required for ALL Firearms	Registration Required for Handguns	New Residents Must Report Firearms	Registration Req'd of Pre-Ban Assault Weapons or 50 Caliber Rifles <sup>844</sup>	Prohibit Registration or creation of registry
Delaware					X <sup>848</sup>
District of Columbia	X <sup>849</sup>				
Florida					X <sup>850</sup>
Georgia					X <sup>851</sup>
Hawaii	X <sup>852</sup>			X (Assault Pistols) <sup>853</sup>	
Idaho					X <sup>854</sup>
Illinois					
Indiana					
Iowa					
Kansas					
Kentucky					
Louisiana					
Maine					
Maryland			X (Hand guns & Assault Weapons) <sup>855</sup>	X (Assault Pistols) <sup>856</sup>	
Massachusetts					
Michigan					
Minnesota					
Mississippi					
Missouri					
Montana					
Nebraska					
Nevada					
New Hampshire					
New Jersey				X (Assault Weapons) <sup>857</sup>	

State	Registration Required for ALL Firearms	Registration Required for Handguns	New Residents Must Report Firearms	Registration Req'd of Pre-Ban Assault Weapons or 50 Caliber Rifles <sup>844</sup>	Prohibit Registration or creation of registry
New Mexico					
New York		X <sup>858</sup>		X (Assault Weapons) <sup>859</sup>	
North Carolina					
North Dakota					
Ohio					
Oklahoma					
Oregon					
Pennsylvania					X <sup>860</sup>
Rhode Island					X <sup>861</sup>
South Carolina					
South Dakota					X <sup>862</sup>
Tennessee					
Texas					
Utah					
Vermont					X <sup>863</sup>
Virginia					
Washington					
West Virginia					
Wisconsin					
Wyoming					

## 5.3 REGULATING THE CARRYING OF FIREARMS IN PUBLIC



The Honor Guard places five large portraits of the officers killed in last week's sniper shooting targeting police during a 'Dallas Strong' candlelight vigil outside City Hall in Dallas, Texas, on July 11, 2016, AFP Photo, Laura Buckman, Getty Images<sup>864</sup>

### DALLAS POLICE DEPARTMENT AMBUSH ATTACK

On 7 July 2016, five Dallas Police Department officers were killed by Micah Johnson, in what was described as an ambush attack on police working during a protest in the city. Nine other law enforcement officials were wounded. It would later be determined that the attack was carried out by a lone gunman. But early accounts reported multiple shooters.

Dallas Police Chief David Brown described how the presence of 20 to 30 people openly carrying AR-15 rifles contributed to the chaos. Dallas Mayor Mike Rawlings went further:

**“This is the first time – but a very concrete time – that I think a law can hurt citizens, police and not protect them. I think it’s amazing when you think that**

**there is a gunfight going on, and you are supposed to be able to sort who the good guys are and who the bad guys are.”<sup>865</sup>**

**It is legal to openly carry a loaded firearm in public in Texas.**

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“Open carry” refers to the practice of carrying a gun, loaded or not, in plain sight in public locations. “Concealed carry” refers to the practice of carrying a concealed, or hidden, gun, loaded or not, in public spaces.

Individuals can lawfully carry concealed firearms in public in every state and can lawfully and openly carry firearms in public in most states. Most states regulate concealed and open carry by requiring a license or permit, but in “permitless carry” states, you can openly carry or concealed carry any legal firearm in public without any license or permit.

***“It is estimated that 9 million U.S. adult handgun owners, or about 1 in 4, carry loaded handguns monthly, and 3 million do so every day.”***

Source: American Journal of Public Health<sup>866</sup>

The justification frequently given for allowing open or concealed carry of firearms in public is self-defense. However, the principle of self-defense, as an internationally recognized exemption from criminal liability in certain restrictively defined circumstances, is not inconsistent with the state’s due diligence obligations to regulate civilian possession of small arms in order to keep weapons out of the hands of those most likely to misuse them.

States have an obligation to ensure that possession of firearms is authorized for specific purposes only. This obligation also extends to laws regulating the right to carry firearms in public. The mere presence of a loaded firearm

in a public space, such as a park, grocery store, movie theater or restaurant, can act as a force multiplier, given its inherent lethality, increasing the potential for injury or death and jeopardizing public safety. For this reason, individuals must, at a minimum, have a credible justification not only for owning or possessing a firearm, but also for carrying a firearm in public. The USA has a duty to ensure that it is maximizing the protection of the rights of all to security of person, by requiring strict regulation of the possession and carrying of firearms in public.

In the USA, the Supreme Court has established that: “Like most rights, the right secured by the Second Amendment is not unlimited.” It is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose... Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”<sup>867</sup>

The two most significant legal cases on firearms in the USA, *DC v. Heller* and *McDonald v. Chicago*, explicitly allow for virtually all serious firearm control solutions short of a complete ban on firearms (see Chapter 2).<sup>868</sup> This extends to open and concealed carry of firearms in public.

In the absence of a federal law governing either open or concealed carry, whether an individual may carry a loaded firearm in public is a question that has been left up to states. A wide and varied spectrum of state laws govern the carrying of firearms. Generally, however, open and concealed carry is permitted as follows:

- All 50 states and Washington, D.C. allow for some form of the concealed carrying of firearms in public.
- 12 permitless carry states allow individuals to carry concealed weapons in public without a permit.

- 30 states allow the open carrying of a handgun in public without a permit.<sup>869</sup>
- 11 states have laws that mandate that public colleges or universities must allow concealed carry of guns on campuses.<sup>870</sup>

All states have a duty to have laws and policies through which they ensure that firearms do not end up in the hands of private individuals likely to misuse them. In all states, local and state authorities have a responsibility to establish a system of stringent regulations which require that anyone seeking a permit or license to carry a firearm in public must satisfy certain requirements including, but not limited to, the establishment of a credible justification. This is because states have an obligation take extra precautions to ensure that armed private individuals carrying firearms in public do not pose a threat to the safety of others.

Anyone carrying a loaded firearm in public poses a potential threat to the safety and security of others. The USA is failing to protect the right to life and the right to security of person by allowing individuals to purchase, possess and carry firearms in public without ensuring a credible justification for doing so. Moreover, there have been recent efforts to enact federal concealed carry legislation which would override existing state laws where more stringent regulations are in place to restrict the carrying of firearms in public (see Section 5.3.4).

### 5.3.1 PERMITLESS CARRY

There are 12 permitless carry states: Arizona, Arkansas, Idaho, Kansas, Maine, Mississippi, Missouri, New Hampshire, North Dakota, Vermont, West Virginia and Wyoming. Residents of these states are allowed to carry weapons, either openly or concealed, without first obtaining a license of any kind. No steps are taken to ensure that

those carrying firearms in public have passed a comprehensive background check, have been trained on how to properly and safely handle a firearm, or have a firearms license. The failure to establish a system to regulate open/concealed carry in these states is a clear violation of international human rights standards.

Many law enforcement officials and state legislators oppose permitless carry because of the lack of safeguards and procedures in place to ensure that individuals carrying a firearm are not likely to misuse it. Law enforcement officials from across the country, including in Alabama, Georgia, Indiana, Kentucky, Montana, New Mexico, South Carolina, South Dakota, Texas, Wisconsin have all spoken out against permitless carry policies, citing increased danger to law enforcement and the public at large.<sup>871</sup>

***“While I fiercely defend the 2<sup>nd</sup> Amendment rights of our citizens, I cannot support an absurd concept that threatens the safety of our communities by not providing for the basic fundamentals of gun safety or mental health screening.”***

Montana Governor Steve Bullock, 2017<sup>872</sup>

### 5.3.2 OPEN CARRY IN PUBLIC



Advocating for the rights of gun owners, a group of demonstrators stage a counter-protest near a March for Our Lives rally on March 24, 2018 in Killeen, Texas. More than 800 March for Our Lives events, organized by survivors of the Parkland, Florida school shooting on February 14 that left 17 dead, are taking place around the world to call for legislative action to address school safety and gun violence. (Photo by Scott Olson/Getty Images).<sup>873</sup>



*A protester open carries a rifle during clashes with counter-protesters at Emancipation Park, during the 'Unite the Right' Rally in Charlottesville, Virginia.<sup>874</sup>*

Forty-five states currently allow open carry of firearms in public in some form. Some states impose restrictions on who may openly carry firearms, what type of gun may be subject to open carry, permitting requirements and/or restricted zones where open carry is not permitted.<sup>875</sup>

The premise for allowing open carry of loaded firearms is that they are purportedly needed for self-defense and defense of others in dangerous situations. However, having and displaying a firearm may in fact escalate a disagreement, threat or altercation, leading to a deadlier encounter.

Moreover, firearms visibly carried in public can be a source of confusion, and used as a means of intimidation, and as such can be an obstacle to the enjoyment of the rights to life, security of person, freedom of movement and freedom of association. For example, in January of 2016, leaders of the Ohio and Kentucky chapters of Moms Demand Action, a gun violence prevention non-profit organization, had to walk through a group of men openly carrying guns. The men were standing outside of the Covington public library in Kentucky, where a new member orientation for Moms Demand Action was taking place. The armed open carry advocates then sat in on the women's presentations. Open carry is permitted in all public buildings in Kentucky.<sup>876</sup>

**“The armed men were not arrested for carrying firearms into a public library. In fact, they weren’t even asked to leave. Thanks to a law passed in 2013 that allows firearms to be openly carried in any city-owned facility in Kentucky – including family-oriented places like libraries and parks – there was nothing the police could do to stop the men who carried guns into a library to disrupt our meeting and intimidate us.”<sup>877</sup>**

Similarly, reports of firearms at polling places during elections were accompanied by questions of voter intimidation in the 2016 national and presidential election.<sup>878</sup> Only six states enforce an absolute ban on firearms at polling places.<sup>879</sup>

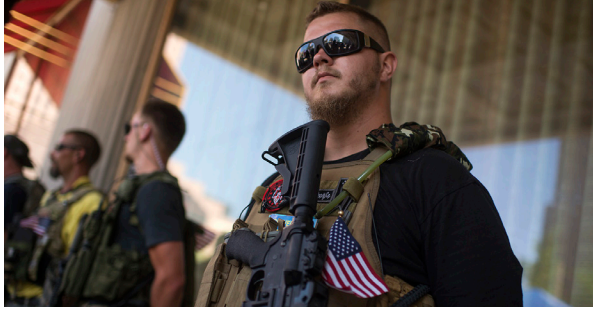
Law enforcement is also affected by open carry and have on occasion requested temporary suspension of open carry policies during particular events because of their concerns about the safety of officers tasked with policing events where individuals may be armed.<sup>880</sup> After police ambushes in both Baton Rouge, Louisiana, and Dallas, Texas, media outlets reported that law enforcement officers were struggling with the dangerous implications of open carry.

**“When you have all these people running around with guns and rifles, you don’t know who the bad guy is.”**

Steve Loomis, President, Cleveland Police Patrolmen’s Association<sup>881</sup>



*Jonathan Ames (C) and other gun rights advocates shout ‘U.S.A.’ at protesters across the street during an Open Carry rally on May 20, 2018 in Seattle, Washington. The rally was led by Joey Gibson, leader of the Patriot Prayer group, who is running for US Senate as a Republican. (Photo by Karen Ducey/Getty Images)<sup>882</sup>*



Members of the West Ohio Minutemen practice their right to carry firearms near the Republican National Convention at the Quicken Loans Arena in Cleveland, Ohio, July 19, 2016. (Photo By Tom Williams/CQ Roll Call)<sup>883</sup>

All states should prohibit the carrying of firearms in public unless there is a credible justification for doing so. All states must require a license or permit for open carry in public to ensure that individuals carrying firearms openly in public places have passed a comprehensive background check; have been trained on and demonstrated

competence in use of the firearm, safety, storage, and first aid; and have received live-fire training, effective judgment training, verbal resolution and shoot/don't shoot scenarios training

### 5.3.3 CONCEALED CARRY IN PUBLIC

Concealed carry laws now exist in all 50 states and Washington, D.C., although the standard required to legally carry a concealed firearm varies greatly from state to state.<sup>884</sup> Since the 1980s many states have weakened their concealed carry laws, expanding both who can carry a concealed weapon, as well as where they can be carried.<sup>885</sup> In fact before 1980, only five states permitted concealed carry of firearms.<sup>886</sup> Twelve states allow individuals to carry concealed weapons in public without a permit.<sup>887</sup>

## CONCEALED CARRY IN US STATES AS OF JULY 2018

States that allow individuals to carry concealed weapons in public without a permit	“Shall Issue” states that provide no discretion to the issuing authority	“Shall Issue” states that provide the issuing authority a limited amount of discretion	“May Issue” states that grant the issuing authority wide discretion to deny a concealed carry permit to an applicant
Alaska	Florida	Alabama	California
Arizona	Kentucky	Arkansas	Connecticut
Idaho	Louisiana	Colorado	Delaware
Kansas	Michigan	Georgia	District of Columbia
Maine	Nebraska	Illinois	Hawaii
Mississippi	Nevada	Indiana	Maryland
Missouri	New Mexico	Iowa	Massachusetts
New Hampshire	North Carolina	Minnesota	New Jersey
North Dakota	Ohio	Montana	New York
Vermont	Oklahoma	Oregon	
West Virginia	South Carolina	Pennsylvania	
Wyoming	Tennessee	Rhode Island	
	Texas	South Dakota	
	Washington	Utah	
	Wisconsin	Virginia	

“Shall issue”, or right to carry states, are states where the issuing authorities are generally required to issue a permit to anyone who meets certain minimal statutory requirements. Half of the 30 “shall issue” states provide the issuing authority no discretion to deny a permit if the person meets these requirements. In contrast, the other 15 states have “shall issue” statutes that give issuing authorities a narrow degree of discretion to deny a permit if, for example, there is reasonable suspicion that the applicant is a danger to themselves or others.

Eight states and Washington, D.C. have “may issue” laws, which grant the issuing authority wide discretion to deny a permit to an applicant. In these states there are varied requirements including minimum ages, training/safety classes and comprehensive background checks.<sup>888</sup> Seven of these states (California, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, and New York) require gun owners seeking concealed carry permits to demonstrate their need to carry a gun in public. In Connecticut there is no requirement for a demonstrated need to carry a concealed firearm in public.<sup>889</sup> However, you must be 21 years of age, have completed a safety/training course, submit to a background check, including criminal history, and provide fingerprints and photographs.<sup>890</sup>

In Washington, D.C., the application for a concealed carry permit used to require that you had a good or proper reason for permit.<sup>891</sup> However, in 2017, the D.C. Circuit Court in *Wrenn v. District of Columbia* held that the “good reason” law was categorically barred by the Second Amendment and a permanent injunction was placed on the enforcement of the good reason requirement.<sup>892</sup> Washington, D.C. still requires training, a statement of eligibility and an authorization to disclose mental health records.<sup>893</sup>

The failure to establish uniform stringent laws concerning concealed carry means that there is

no guarantee that those individuals who legally carry concealed firearms in public have passed a comprehensive background check; have been trained on how to properly and safely handle a firearm; have been licensed; have received additional enhanced training including live fire, effective judgment training, verbal resolution, and shoot/don’t shoot scenarios training; or have credible justification for carrying a firearm in public.

Conversely, many states have dismantled their permitting systems, removing background check requirements and other critical precautionary steps. In some states systems are ineffective, resulting in permits being issued to individuals prohibited from possessing firearms, including people convicted of felonies, with outstanding criminal warrants, with domestic violence injunctions and others at risk of misusing a firearm.<sup>894</sup> For example, in 2011 an audit of North Carolina’s permitting system revealed that the state failed to track and revoke the concealed carry permits of individuals who became ineligible to carry a concealed loaded firearm because of convictions for felonies, violent misdemeanors and domestic violence.<sup>895</sup>

Data and research, both at the state and national level, on the impact of concealed carry legislation is scarce due to numerous state policies that block public access to concealed carry permit holders’ identities and records.<sup>896</sup> The failure of all states to enact stringent concealed carry laws affects the safety and security of all individuals, putting lives at risk and jeopardizing law enforcement officers tasked with protecting against the misuse of weapons and guarding the public.

### 5.3.4 CONCEALED CARRY RECIPROCITY LEGISLATION

The USA is currently considering federal legislation mandating national concealed carry

reciprocity. The Concealed Carry Reciprocity Act (H.R.38) passed the House of Representatives in 2017 and is currently pending with the Committee on the Judiciary.<sup>897</sup> The 2017 Constitutional Concealed Carry Act (S.446) is still being considered by the Committee on the Judiciary as of the release of this report.<sup>898</sup>

This proposed federal legislation would mean that gun owners who are allowed to carry a concealed firearm in their own state without a permit would be allowed to do so in any state, even in states with stringent concealed carry standards. For example, under H.R.38, a California resident who is prohibited from carrying a concealed firearm in their home state, or even from purchasing or possessing a firearm, could obtain a permit from another state with lax regulations and then force California to allow them to carry a concealed weapon in public, directly contradicting state law. This could include, for example, those convicted of misdemeanor domestic abuse, stalking,<sup>899</sup> or a misdemeanor hate crime<sup>900</sup> or those subject to protective orders.

State concealed carry laws also diverge on age requirements on concealed carry. Most states across the USA issue concealed carry permit only to adults aged 21 and older, but states such as Utah issue concealed carry permits to individuals as young as 18. The proposed legislation would require all states to honor the concealed carry permits of other states, even those with low thresholds for age requirements.

Nationwide, law enforcement groups – including the International Association of Chiefs of Police, the Police Foundation, and Major Cities Chiefs Association, which includes the Chiefs of Police and Sheriffs of the 66 largest law enforcement organizations in the country – have vehemently opposed concealed carry reciprocity.<sup>901</sup>

***“While I support Second Amendment rights for all law-abiding citizens, I strongly oppose to***

***the Concealed Carry Reciprocity Act because it endangers the public and law enforcement. This legislation would override state laws that determine who is qualified to carry a concealed firearm – laws that take into account the distinctive circumstances and needs in each state. No state should be forced to accept a person carrying a concealed [firearm] that does not meet the standards the state has set for its own citizens. This legislation, if passed, would severely interfere with local law enforcement’s ability to prevent gun violence and safeguard the public.***

IACP President Louis M. Dekmar, Chief of the LaGrange, Georgia, Police Department<sup>902</sup>

Law enforcement officers and organizations have noted that law enforcement officers would have to become versed in the laws of all 50 states regarding concealed carry overnight as their own state’s rights regarding concealed carry were encroached upon and overridden.<sup>903</sup> Also because there is no national database of concealed carry permits, it would be almost impossible for law enforcement to check the validity of an out-of-state permit. This is troubling because in recent history thousands of permits have been revoked around the country.<sup>904</sup> The proposed legislation also contains a provision whereby gun owners can sue law enforcement officials for questioning their right to carry.<sup>905</sup>

By removing safeguards intended to protect the public against potential harm by armed private individuals, the USA is jeopardizing universally recognized human rights, including the rights to life and security of person, thereby violating obligations under international law.

### **5.3.5 CAMPUS CARRY**

Policies on the carrying of firearms on college and universities campuses, or “campus carry”, have traditionally been left to the states. Laws passed in the early 1990s<sup>906</sup> creating gun-free school zones and restricting the presence of firearms in elementary, middle and high schools, were



followed by a reduction in gun violence on these campuses.<sup>907</sup>

However, the current trend is towards allowing a greater presence of guns on college and university campuses. There were no college/university campus carry laws prior to 2010. However, after the 2010 mass shooting on the campus of Virginia Tech, which left 32 people dead, campus carry laws were quickly adopted by state legislators.<sup>908</sup> That same year, Utah was the first state to pass a campus carry law.<sup>909</sup> As of 2018, 12 states mandate public universities to allow guns on campus.<sup>910</sup> Another 21 states<sup>911</sup> leave the decision of whether or not to allow concealed carry firearms on campus to individual colleges and universities. Seventeen states and Washington, D.C. have banned the carrying of a concealed weapon on college campuses.<sup>912</sup>

There is concern that the recent trend of allowing guns on college campuses can create a climate of intimidation among some students and staff. The implied threat of violence can curb open and free discussion of controversial issues; introduce the possibility of deadly force into an environment where individuals are already more prone to risky behavior due to their young age; and act as a barrier to education, barring students from learning and teachers from teaching. For example, a month after Texas Senate Bill 11 (S.B.11), also known as “Campus Carry”, went into effect making it permissible for students at 38 public universities to carry concealed guns on campus legally, faculty members at the University of Texas at Austin found threatening messages with bullet casings in Parlin Hall, an academic building.<sup>913</sup>

***“Allowing guns in the classroom will hinder our ability to teach about controversial subjects such as state surveillance, sexuality, race and racism and radical social movements. We chose our profession believing that, while we might encounter resistance to new ideas, we could safely push our students to think more deeply about their inherited beliefs and***

***assumptions. Campus carry undermines this kind of critical debate.”***<sup>914</sup>

Professor Minkah Makalani, University of Texas at Austin, who lost his brother to gun violence

Increasing the number of firearms on college campuses also causes additional security costs for these institutions. In many cases these additional costs are not allocated in state budgets and require institutions to re-allocate funding from other sources. For example, a report by the *Houston Chronicle* estimated that campus carry would cost the University of Texas and University of Houston US\$47 million over six years to provide the required security enhancements to accommodate campus carry including gun safes and lockers, additional administrative personnel and de-escalation and judgment training for personnel and on-site security.<sup>915</sup>

Higher education leaders nationwide have spoken out against campus carry. In 2014, the policy was opposed by 95% of US college presidents<sup>916</sup> as well as by the American Association of State Colleges and Universities.<sup>917</sup>

***“None of the presidents and chancellors thought it would make campuses safer. If you’ve got more guns on campus, you create a much more complicated environment for law enforcement to function in, and then you increase the odds that a gun will be used to wound or kill innocent people.”***<sup>918</sup>

Joel Anderson, Chancellor, University of Alabama at Little Rock

Given the increased risks to security of person resulting from allowing firearms on college and university campuses, and weighing concerns regarding the implied threat of violence and its impact on academic discourse and the likelihood that individuals on college campuses may be more prone to risky behavior, all states in the USA should ban the carrying of firearms on college and university campuses, in order to ensure a secure environment and afford comprehensive protection to all members of the academic community.

## 5.4 LOST AND STOLEN FIREARMS

### 13-YEAR-OLD BOY, SOUTH STOCKTON, CALIFORNIA

**On the morning of 23 February 2015, a 13-year-old boy was shot dead outside his home in South Stockton, California.<sup>919</sup> According to the San Joaquin County District Attorney, the semi-automatic pistol used to kill him was legally registered to Stockton Mayor Anthony Silva.<sup>920</sup> It had reportedly been stolen from Anthony Silva's home during a burglary which was reported on 22 March 2015, 27 days after the boy's death.<sup>921</sup>**

**Police responding to a domestic disturbance call in Stockton on 9 June 2016, located the stolen Beretta.<sup>922</sup> It was taken as evidence and preliminary tests determined that the Beretta was used in the killing of the child as well as another incident that occurred on 15 January 2015. His murder remains unsolved.<sup>923</sup> Anthony Silva was not charged.**

**In November 2016, California enacted a new law requiring gun owners to report firearms as lost or stolen within five days of the time they knew, or should have known, that the firearm was lost or stolen. The requirement became effective in July 2017.<sup>924</sup>**

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Stolen guns fuel the underground illicit gun market, allowing prohibited purchasers and others to obtain guns used to carry out violent crimes. They not only facilitate human rights violations, but also hamper the ability to hold those responsible to account. A stolen firearm is difficult to trace, preventing law enforcement from promptly identifying potential suspects and so impeding their investigation. Often, stolen guns are not recovered and remain on the illegal market, sometimes reappearing at the scene of a violent crime or in the possession of a prohibited purchaser.

***“Those that steal firearms commit violent crimes with stolen guns, transfer stolen arms to others who commit crimes, and create an unregulated secondary market for firearms.”***

*2012 Report of Firearms Reported Lost and Stolen*, US Bureau of Alcohol, Tobacco, Firearms, and Explosives (June 2013)<sup>925</sup>

The scale of firearm theft in the USA is staggering and available data suggests that it is on the rise. Since the ATF began tracking burglaries and robberies of gun stores in 2012, both the number of thefts and the number of stolen weapons have increased substantially.<sup>926</sup> The volume of guns stolen from both individuals and gun retailers varies from state to state and region to region. Currently, according to researchers at the Center for American Progress, the states with the highest number of stolen firearms (both private individuals and gun retailers) are: Alabama, California, Florida, Georgia, North Carolina, Ohio, South Carolina, and Texas.<sup>927</sup>

Because reporting by private individuals of lost or stolen firearms is not mandatory under federal law, there is no precise data for the number of firearms lost or stolen nationwide. However, according to the FBI, an estimated 1.4 million firearms were stolen from private individuals between 2005 and 2010,<sup>928</sup> and 31,500 from gun stores between 2012 and 2016.<sup>929</sup>

These numbers are substantial and yet neither includes the substantial number of firearms lost or stolen each year that are not reported.<sup>930</sup> In a study published in 2017, researchers from Harvard and Northwestern Universities estimated that 380,000 guns are stolen from private individuals each year.<sup>931</sup>

The process to report a lost or stolen firearm has two paths, one for FFLs under federal law and one for private citizens under state law.<sup>932</sup> FFLs are supposed to call their local law enforcement agency and then contact the ATF for

the appropriate paperwork. Private citizens are supposed to contact local law enforcement. If a private individual needs assistance in obtaining the serial number of their lost or stolen firearm, they must contact the firearms dealer from whom they purchased the firearm, the dealer is tasked with assisting the private owner in filing a proper trace request.<sup>933</sup> If the private owner is unable to make contact with their firearms dealer, they are to contact local law enforcement.<sup>934</sup> Only 11 states and Washington, D.C. have laws requiring the mandatory reporting of lost or stolen firearms by private individuals.<sup>935</sup>

Reporting, investigation and tracking of lost or stolen firearms are critical in recovering lost and stolen firearms and preventing them from entering the illegal market and ending up in the hands of individuals likely to misuse them. The USA has an obligation to require that all lost and stolen firearms be immediately reported to local law enforcement officials. It also has a duty to ensure that law enforcement, state and federal officials investigate, track and recover lost or stolen firearms promptly. Gun dealers, sellers and owners must be required to properly secure firearms to prevent theft.

### **5.4.1 GUN TRAFFICKING AND STRAW PURCHASES**

Gun trafficking is the diversion of firearms from the legal commerce stream into the illegal market. Stolen firearms are one of the most common channels through which firearm trafficking occurs.<sup>936</sup> Once stolen, firearm traffickers may erase serial numbers, purchase “ghost guns” without serial numbers,<sup>937</sup> or steal pre-serialized firearms from manufacturers<sup>938</sup> in an attempt to thwart law enforcement efforts to trace guns.

While scientists have developed novel methods of circumventing this problem,<sup>939</sup> these methods still have relatively low success rates.<sup>940</sup> Federal

statutes criminalizing the obliteration of serial numbers<sup>941</sup> and the possession of guns with tampered serial numbers have decreased the frequency of these offenses.<sup>942</sup> Increasingly common is the rapid transfer of guns, moving them quickly from one buyer to the next, without background checks, to make crime guns more difficult to trace.<sup>943</sup> From 2012-2016, the national time to crime (meaning the time between their purchase and subsequent recovery by law enforcement) for FBI trace guns dropped more than 1.3 years. While the time to crime decreased 0.3% between 2012 and 2013, the decrease was a staggering 7% between 2015 and 2016 meaning that lawfully purchased firearms were being used at a more rapid rate in a subsequent crime (see Section 5.4.4).<sup>944</sup>

Currently, there is no federal statute criminalizing gun trafficking.<sup>945</sup> Only a third of US states have laws that penalize those who purchase firearms with intent to traffic them.<sup>946</sup> Because there are so many gaps in federal and state laws, firearms can be moved illegally from states with inadequate laws to states with stronger gun laws.<sup>947</sup> For example, firearms stolen from individual gun owners’ residences are regularly trafficked through the “Iron Pipeline”, a term used to describe the flow of firearms from southern states, which have more lax gun laws, to northeastern states, where gun laws are more stringent.<sup>948</sup> Georgia has long been considered a source state for gun trafficking,<sup>949</sup> and recent data confirms that rates of gun theft in Atlanta, Georgia, especially from vehicles and individual gun owners have increased significantly.<sup>950</sup>

Another avenue through which a prohibited purchaser may access a firearm is through a “straw purchase” – the intentional purchase of firearms for an individual who is seeking to avoid undergoing a required background check prior to owning or transferring a firearm.<sup>951</sup> By obtaining a firearm through a straw purchase, and individual can evade a firearm from being traced back to

them. Straw purchases are often used to supply prohibited purchasers with firearms.

The acquisition of a firearm, with the requisite intent to transfer possession to another individual without undergoing a background check and/or the solicitation of an individual to acquire possession of a firearm by proxy to circumvent a required background check should be prohibited under state law. Currently however, only a handful of states have enacted laws to address straw purchasing of firearms.<sup>952</sup> All states should enact legislation to address this avenue for funneling firearms to individuals likely to misuse them who are prohibited from acquiring firearms under federal law.

#### **5.4.2 THE FAILURE TO MANDATE THE REPORTING LOST OR STOLEN FIREARMS**

Current federal law requires FFLs who have knowledge of the theft or loss of firearms in their inventory to report it to the ATF within 48 hours of discovering it.<sup>953</sup> FFLs are the only entities under federal law required to report lost or stolen guns to law enforcement or government officials; unlicensed dealers and individual gun owners are not obliged under federal law to do so.

Only 11 states (California, Connecticut, Delaware, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island) and Washington, D.C. have adopted laws requiring gun owners to report lost or stolen firearms to law enforcement.<sup>954</sup>

According to a 2010 study by Everytown for Gun Safety, those states that do not implement reporting requirements for lost or stolen guns export firearms used in crime 2.5 times more than states requiring gun owners to alert the authorities when firearms in their possession are missing or stolen.<sup>955</sup>

Immediate and mandatory reporting is necessary to give law enforcement the best possible chance of recovering lost or stolen firearms before they fall into the hands of those at risk of misusing them.<sup>956</sup> Immediate, because the longer an individual waits to report a firearm stolen or lost, the more time the weapon has to change hands and potentially endanger the public. Mandatory, because it ensures that individuals who traffic guns or regularly purchase large quantities of firearms for other individuals are easier to identify and can be held accountable if they are required to report lost or stolen firearms or face civil or criminal liability. In addition, gun owners who become prohibited purchasers through their involvement in criminal or dangerous activity would no longer be able to avoid police retrieving their weapons by claiming that they no longer had them.

#### **5.4.3 ENSURING SECURE STORAGE TO REDUCE THE RISK OF THEFT**

Available data demonstrates that state laws requiring gun dealers and stores to safely secure weapons are successful in reducing thefts and burglaries. However, at the federal level, the ATF has no power to require gun dealers to take safety precautions; it can only make recommendations.

Only eight states (California, Connecticut, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, West Virginia) and Washington, D.C. impose mandatory safety precautions on gun dealers. These precautions include such things as burglar alarms and after-hours display and storage requirements.<sup>957</sup> Data collected by the ATF shows that gun stores in states requiring certain security precautions experience far fewer, if any, gun thefts. For example, in 2015, New Jersey, one of the nine states requiring gun stores to secure their merchandise, did not have a single gun-store

burglary.<sup>958</sup> And California, which has over 8,000 licensed gun dealers, recorded only 14 thefts from FFLs in 2015.<sup>959</sup>

In contrast, Texas, a state with some of the least restrictive gun laws, experiences some of the highest nationwide rates of stolen guns. In 2015, three locked semi-trailers were robbed in the unloading area of Academy Sports + Outdoors, an FFL in Katy, Texas.<sup>960</sup> Seventy-two firearms were stolen and by 2017 only seven had been recovered.<sup>961</sup> Soon after the robbery, police arrested two of the men allegedly responsible for the theft, but the others believed to have been involved remain at large.<sup>962</sup>

Worryingly, this was not an anomaly. In 2017, Texas filed more burglary, robbery, and loss reports than any other state.<sup>963</sup> The ATF's Houston Field Division investigated 32 FFL burglaries and seven robberies in 2017.<sup>964</sup> This included four investigations regarding break-ins during Hurricane Harvey, which resulted in approximately 109 firearms being stolen in Houston alone.<sup>965</sup> During Hurricane Harvey, 84 guns were stolen from a single store.<sup>966</sup> Of the total 109 guns stolen in the city, only half were recovered and, according to the ATF, the remaining guns are now in the hands of criminals.<sup>967</sup>

#### **5.4.4 REGULAR AUDITS AND OVERSIGHT OF GUN DEALERS AND STORES**

The ATF is tasked with overseeing FFLs nationwide and yet federal law does not allow the ATF to conduct more than one annual audit of each FFL without a warrant.<sup>968</sup> Moreover, due to lack of capacity and resources, ATF investigators are unable to perform all of these yearly audits. In the fiscal year 2017, the ATF conducted compliance inspections of merely 8.2% of all FFLs.<sup>969</sup> On average, each FFL is inspected once a decade,<sup>970</sup> even though available data suggests

that compliance may be an issue. For example, a 2013 review by the Office of the Inspector General for the DoJ indicated that only 62% of FFL dealers were found to be in compliance with federal laws.<sup>971</sup> Despite the rampant lack of compliance, the ATF rarely revokes dealers' licenses. In 2017, for instance, less than 0.5% of FFLs were revoked.<sup>972</sup>

In 2017, the ATF reported that more than 21,535 firearms from FFL inventories could not be accounted for.<sup>973</sup> That is a marked increase from the 18,394 firearms missing from FFL inventories reported in 2016.<sup>974</sup> According to the ATF, of the 137,464 registered FFLs in 2017, 102 were responsible for 40% of all lost or stolen firearm reports and 10 FFLs were responsible for almost 15% of lost or stolen firearm reports.<sup>975</sup> To put that in perspective, 0.007% of FFLs were responsible for 14.6% of all lost and stolen firearms.<sup>976</sup>

Mandatory inventories would encourage FFLs to maintain better control of their firearms, identify employee theft and help prevent corrupt dealers from trafficking weapons.<sup>977</sup> At present, the ATF does not have the power to require gun dealers to keep complete and updated inventories.<sup>978</sup>

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#### **CHICAGO CASE STUDY**

**In 2017, the City of Chicago, the CPD and University of Chicago Crime Lab analyzed available firearm trace data between 2013 and 2016 to identify the largest sources of guns illegally possessed, used or suspected of being used in the furtherance of a crime or "crime guns" being trafficked into the city, contributing to more than 500 deaths.<sup>979</sup>**

**The study showed that between 2013 and 2016, the top 10 gun stores sourcing guns used in crimes were in either Illinois or Indiana, with six of them located in the suburbs bordering Chicago.<sup>980</sup> Two retailers in particular were the source of one in every 10 firearms recovered in crimes across the city.<sup>981</sup>**

**The “time to crime” of the traced crime guns from these top 10 retailers (meaning the time between their purchase and subsequent recovery by police) was particularly brief or less than a year, between 5-45% of the time depending on the retailer. A shorter timer to crime indicates the likelihood that straw purchases or illegal transfers may have occurred shortly after the gun was obtained.**<sup>982</sup>

An essential factor in reducing crime and ensuring that firearms are not accessed by individuals likely to misuse them is the requirement that ATF agents, state and local authorities engage in annual audits and inspections of gun dealers to enforce compliance with regulations and safeguards as well as the prohibition on gun sales to straw purchasers and other illegal transfers. In addition to more audits of FFLs by the ATF, federal law must be amended to mandate that all FFLs keep complete and updated inventories in order to keep their licenses.

### **5.4.5 SAFE STORAGE BY INDIVIDUAL GUN OWNERS**

In the absence of mandatory reporting of lost or stolen firearms by individuals, there is no precise data on the number of lost or stolen firearms in the USA. However, law enforcement officials across the country are reporting increases in gun theft from individual owners.<sup>983</sup> And in a study published in 2017, researchers from Harvard and Northwestern estimated that on average, over a five-year period, 380,000 guns are stolen from private individuals annually.<sup>984</sup> The same researchers also found that gun owners who possess multiple firearms, who carry their firearms with them and who do not implement safe storage of guns are more likely to be victims of gun theft.

People who stored their firearm in a car were more likely to have their guns stolen than those who did not.<sup>985</sup> A study of gun thefts in 25 major cities nationwide by the *Trace* found that thousands

of firearms are stolen from gun owners who keep guns in their cars and that gun thefts from vehicles are steadily increasing.<sup>986</sup>

***“Most of our criminals, they go out each and every night hunting for guns, and the easiest way to get them is out of people’s cars.”***

Sgt Warren Pickard,  
Atlanta Police Department<sup>987</sup>

Only one state, Massachusetts, requires firearms to be stored in a locked place. Another three (California, Connecticut and New York) require gun owners to secure their weapons by locking them up when around individuals who the owner knows (or reasonably should know) are not permitted to lawfully possess them, to prevent loss or theft.<sup>988</sup> The other 46 states and Washington, D.C. have no law requiring that firearms be stored in a locked place to prevent loss or theft.<sup>989</sup>

All states should require firearm owners to keep firearms locked and unloaded and safely stored in locked boxes or firearm safes, out of plain sight, with ammunition stored separately from the firearm, in their home or vehicle.

### **5.4.6 FAILURE TO RECOVER LOST OR STOLEN WEAPONS**

Once a gun is stolen from an FFL or a gun owner, law enforcement may request assistance from the ATF in tracing the firearm in question. The 1968 Gun Control Act gave the ATF the authority to regulate FFLs and established the National Tracing Center where ATF agents investigate the source of crime guns by searching FFL records. In 1978, however, attempts by the ATF to require quarterly reports of gun dealer sales were blocked and the ATF’s budget was subsequently cut.<sup>990</sup> In 1986, the Firearms Protection Act was adopted, further preventing oversight and auditing of gun sellers by banning the ATF from creating a central registry of gun owners, sales and sellers.<sup>991</sup>

Without a central federal registry, state and federal law enforcement must piece together state records of gun ownership. However, individual state requirements for recordkeeping differ widely, making tracing the ownership and possession of a gun ultimately used in a crime or trafficked, particularly challenging.<sup>992</sup> In 2017, ATF agents processed 408,000 trace requests, working with police and authorities to track down the sources of firearms used in crimes nationwide.<sup>993</sup> Each trace might require them to check through thousands of boxes of paper records or microfilm.<sup>994</sup> This clearly has a negative impact on the speedy pursuit of criminal investigations.

Through legislation known as the “Tiahrt Amendments” the ATF is specifically prohibited from releasing identifying information regarding firearm ownership, possession or transfer, to anyone other than law enforcement or prosecutors.<sup>995</sup> This legislation is a major obstacle to meaningful comprehensive research on issues such as straw purchasers, trafficked and stolen guns and the impact of preventative gun-related policies; it should be repealed.



Charles Houser, Division Chief ATF National Tracing Center stands by boxes of gun retailer’s paper records.<sup>996</sup>

The FBI’s Uniform Crime Report is the most comprehensive federal source for data on guns stolen nationwide, although the failure to report and underreporting of lost or stolen firearms means that it is far from a complete record. On the basis of analysis of available Uniform Crime Report data, researchers estimate that between

2012 and 2016 only around 11% of stolen firearms were recovered nationwide.<sup>997</sup>

## 5.5 SEMI-AUTOMATIC ASSAULT RIFLES AND SHOTGUNS, LARGE-CAPACITY MAGAZINES, BUMP STOCKS, TRIGGER/GAT CRANKS AND OTHER DANGEROUS DEVICES<sup>998</sup>

### ROUTE 91 MUSIC FESTIVAL SHOOTING, LAS VEGAS, NEVADA<sup>999</sup>



People take cover at the Route 91 Harvest country music festival after apparent gun fire was heard on October 1, 2017 in Las Vegas, Nevada. There are reports of an active shooter around the Mandalay Bay Resort and Casino. (Photo by David Becker/Getty Images)<sup>1000</sup>



A man lays on top of a woman as others flee the Route 91 Harvest country music festival grounds after a active shooter was reported on October 1, 2017 in Las Vegas, Nevada. A gunman has opened fire on a music festival in Las Vegas, leaving at least 2 people dead. Police have confirmed that one suspect has been shot. The investigation is ongoing. The photographer witnessed

*the man help the woman up and they walked away. Injuries are unknown. (Photo by David Becker/Getty Images)<sup>1001</sup>*

**Stephen Paddock opened fire on Route 91 Harvest Music Festival concertgoers on 1 October 2017, killing 59 people and injuring 700 more. He was armed with 23 firearms. It was the worst mass shooting in modern US history.<sup>1002</sup>**

**Among his arsenal were at least 13 semi-automatic AR-15 rifles, most of which were outfitted with bump stocks (which effectively mimic automatic fire) and held large-capacity magazines equipped with 25 to 100 rounds of ammunition.<sup>1003</sup> Due to the strength and volume of fire with which he was equipped, Stephen Paddock was able to endanger the lives of the over 20,000 individuals attending the concert from 1,200 feet away.**

**US federal law does not ban or regulate semi-automatic assault rifles, large-capacity magazines or accessories like bump stocks.**

**Nevada law does not require a permit to purchase rifles, handguns or shotguns. It does not require registration of firearms, licensing of owners or a permit to carry rifles and shotguns. Nevada does not ban semi-automatic firearms or regulate magazine capacity and it places no limit on the number of firearms that may be purchased at one time.<sup>1004</sup>**

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Shooters using semi-automatic assault rifles with large-capacity magazines can kill many people in a matter of minutes and pose a significant threat to public safety. Accessories such as bump stocks, which transform semi-automatic weapons so that they mimic the firing of a fully automatic weapon;<sup>1005</sup> trigger or gat cranks, which accelerate the firing speed of a semi-automatic weapon; and other accessories enabling rapid fire also increase the lethality of firearms enormously.

Although most mass shootings are carried out with conventional firearms, assault rifles have been used in a series of high-profile public mass

shootings over recent years: 20 children and six staff killed at Sandy Hook in 2012; 49 night clubbers dead at the Pulse in Orlando in 2016; 58 concertgoers killed in Las Vegas in 2017; 26 church members killed in Sutherland Springs in 2017; and 13 students and four adults shot dead at Marjory Stoneman Douglas High School in 2018. In a review of 56 mass shootings between 2009 and 2015, it was found that in mass shootings where assault weapons or large-capacity ammunition magazines were used, more than 13 people were shot, compared to five for other incidents, and on average around eight people died, compared to five fatalities for other incidents.<sup>1006</sup>

Assault rifles, for example, are particularly lethal as rounds fired typically achieve a velocity of over 3,000 feet per second, inflicting catastrophic wounds when compared to handguns that fire rounds closer to 1,000 feet per second.<sup>1007</sup>

Medical care providers have explained that unlike wounds caused by bullets from a handgun, high velocity bullets cause damage that extends beyond the bullets path, causing more damage and increasing the lethality (see Section 4.1).<sup>1008</sup>

Semi-automatic assault rifles, semi-automatic shotguns, semi-automatic submachine guns<sup>1009</sup> and large-capacity magazines also pose a significant threat to law enforcement officers seeking to protect the public in an armed attack or live shooting incident.<sup>1010</sup> The International Association of Chiefs of Police has recommended that the USA enact legislation banning military-style assault weapons so that law enforcement officers are not faced with shooters armed with military-grade weapons.<sup>1011</sup>

Despite the dangers posed by these types of weapons and accessories – namely their ability to injure and kill large volumes of individuals in a matter of moments – exponentially increasing potential violations of the rights to life and to security of person and the long-lasting effects



on victims, survivors and witnesses, there is no federal law regulating them. A handful of states and cities do regulate these weapons, ammunition and/or firearm accessories, but there is no uniform national framework governing their possession, use or inventory.

Semi-automatic assault rifles and semi-automatic shotguns among other firearms were designed specifically to allow users to hit their targets with rapid fire and precision and were originally intended for military use.<sup>1012</sup> Firearms that met the definition of “assault weapons” were banned in the USA from 1994 to 2004 under the Violent Crime and Law Enforcement Act of 1994 (Assault Weapons Ban, AWB).<sup>1013</sup>

The AWB banned certain features on firearms, commonly found on semi-automatic assault weapons, which encompassed several classes of semi-automatic rifles, pistols and shotguns.<sup>1014</sup> It also banned the transfer or possession of any ammunition magazine which would hold in excess of 10 rounds.<sup>1015</sup> The AWB expired in 2004 and, since that time, the USA has failed to renew the law or to pass a new assault weapons ban.

Moreover, in the landmark 2008 gun rights case (*District of Columbia v. Heller*), the Supreme Court<sup>1016</sup> provided examples of potential restrictions on the individual right to possess firearms and referred to bans and regulations on “dangerous and unusual weapons”.<sup>1017</sup> In keeping with the language of *Heller*, courts across the US have upheld state laws banning or regulating assault weapons. In failing at the federal level to regulate weapons which pose such a major threat to human rights, including the rights to life and security of person, the USA is failing to uphold its obligations under international human rights law to protect its citizens from preventable gun violence and loss of life.

## 5.5.1 WEAPONS DESIGNED FOR MILITARY USE

Assault rifles were first developed and used as weapons of war during the Second World War.<sup>1018</sup> The USA created the AR-15 (“Armalite Rifle” referred to by the military as the M-16) in the late 1950s.<sup>1019</sup> It was designed for combat, with fully automatic capability, and was used by soldiers during the Vietnam War.<sup>1020</sup> Designed for maximum lethality, the M-16 quickly became the military’s preferred combat rifle.<sup>1021</sup> Today, the military standard for the USA is the more compact M-4 carbine.<sup>1022</sup>

Modern assault rifles, such as the M4, no longer have the capability to go fully automatic. This is because aimed semi-automatic fire is more effective and lethal. As stated in the US Army Field Manual:

***“it is surprising how devastatingly accurate rapid semiautomatic fire can be. At ranges beyond 25 meters, rapid semiautomatic fire is superior to automatic fire in all measures: shots per target, trigger pulls per hit, and time to hit.”***<sup>1023</sup>

The AR-15, the semi-automatic civilian version of the M-16, was not mass produced until the mid-1980s when its original patent expired, opening up the potential for numerous companies to manufacture the weapons.<sup>1024</sup> Today the AR-15 Sporter, or the “modern sporting rifle” as it is described by gun manufacturers, is the most popular civilian assault rifle on the US market.<sup>1025</sup> The National Shooting Sports Foundation, a firearms trade group, contends that AR-15s “are not assault weapons, but rather semi-automatic civilian sporting firearms.”<sup>1026</sup>

The distinction between the terms “assault rifle” and “assault weapon” is critical to understanding the confusion and in some cases, misinformation surrounding these weapons. The

term “assault rifle”, as defined by the US Army, as short, compact, selective-fire weapons that fire a cartridge intermediate in power between submachinegun and rifle cartridges.<sup>1027</sup> However, when the AR-15 was released in its civilian use form, it did not have the capability of selective fire, rather it was limited to semi-automatic fire, meaning it released one bullet per trigger pull.<sup>1028</sup> The term “assault weapon” is a largely political term that is more broad and commonly refers to specific types of firearms, including assault rifles, assault pistols and assault shotguns, banned by the AWB.<sup>1029</sup> Gun rights advocates and the NRA claim that the civilian AR-15 is a semi-automatic weapon and should not be confused with the M-4 military-grade assault rifle, which is semi-automatic with a 3 round burst option.<sup>1030</sup>

Fully automatic weapons, like machine guns,<sup>1031</sup> acquired after 19 May 1986, are prohibited under US law and the USA, via the ATF, regulates those that pre-date the ban.<sup>1032</sup> Almost 300,000 pre-ban machine guns are registered under the NFA and available for purchase in accordance with state laws.<sup>1033</sup> While civilian use AR-15s are not fully automatic, the AR-15 and similar firearms, can accept large-capacity magazines which increase the number of bullets that can be fired in rapid succession before they need to reload with more ammunition.<sup>1034</sup> The standard AR-15 magazine is 30 rounds, however 80 and 100-round magazines have been used in several mass shootings, including those in Las Vegas and Aurora.

Accessories like bump stocks can alter a semi-automatic rifle to give it essentially the same effect as a fully automatic firearm without technically meeting the legal definition of an automatic weapon.<sup>1035</sup>

Although the definitions may be the subject of debate, what is beyond doubt is that firearms like the AR-15 semi-automatic rifle, outfitted with the right accessories and/or large-capacity magazines,

can allow an armed individual to kill and maim large numbers of people very quickly. Even without the use of accessories like bump stocks, semi-automatic assault rifles have the capacity to rapidly fire ammunition.<sup>1036</sup> Their ease of use, even for smaller individuals, and potential for causing fatal and life-changing injuries, makes them particularly dangerous.<sup>1037</sup> The USA, therefore, has an obligation to ensure that these types of firearms are banned.

### **5.5.2 REGULATION OF SEMI-AUTOMATIC ASSAULT RIFLES, SEMI-AUTOMATIC SHOTGUNS, SEMI-AUTOMATIC SUBMACHINE GUNS AND HIGH-CAPACITY MAGAZINES**

Since the AWB expired in 2004, there has been no federal legislation in place specifically governing semiautomatic assault rifles, semi-automatic shotguns, semi-automatic submachine guns and high capacity magazines.

Attempts to evaluate the effect on gun violence of the AWB and the subsequent federal ban on semi-automatic assault weapons and large-capacity magazines were inconclusive.<sup>1038</sup> Studies found that the ban’s effects would likely occur gradually and may be ineffective for two main reasons: (1) because of the way in which the legislation was drafted, grandfathering (allowing in) millions of pre-ban assault weapons (which could be owned and transferred legally)<sup>1039</sup> and firearms with large-capacity magazines;<sup>1040</sup> and (2) due to the use of similar weapons and ammunition, which employed modified characteristics, that were not covered by the ban.<sup>1041</sup> In addition, the AWB regulated three separate but distinct and particularly lethal classes of firearms: assault rifles, assault pistols and assault shotguns (among other weapons/accessories), and defined specific military characteristics and features that rendered a weapon “prohibited” (like pistol grips or folding

rifle stocks). This enabled firearm manufacturers to circumvent the ban by modifying designs to have the same impact but avoid falling within the restricted class of weapons.<sup>1042</sup>

Even though the AWB may have been limited in its effect due to these loopholes, the underlying premise – reducing loss of life and injury resulting from assault weapons and large-capacity magazines – continues to warrant action by federal and state actors.

The federal government must enact laws banning semi-automatic assault rifles, semi-automatic shotguns, semi-automatic submachine guns and large capacity magazines. In 2017, Senator Diane Feinstein introduced the Assault Weapons Ban of 2017, which would ban the sale, transfer, manufacture and importation of military-style assault weapons, including assault rifles, and high-capacity ammunition magazines.

The legislation would also:

- ban any assault weapon that accepts a detachable ammunition magazine and has one or more military characteristics;
- ban magazines and other ammunition feeding devices that hold more than 10 rounds of ammunition without the need to reload;
- require a background check on any future sale, trade or gifting of a weapon covered by the bill;
- prohibit the transfer of high-capacity ammunition magazines; and

- ban bump-stocks and other devices that allow semi-automatic weapons to fire at fully automatic rates.

However, this proposed legislation, like the AWB, would allow those assault weapons *already owned* to remain in circulation and to be legally possessed and transferred, likely rendering it ineffective (although owners of military-style assault weapons would be required to store them using a secure gun storage or safety device like a trigger lock). And while the NRA has estimated that there are 15 million AR-15s in circulation, the actual number of assault weapons in the USA is unknown.<sup>1043</sup> According to Jan Kemp, spokeswoman for the ATF: “Those numbers don’t exist because there’s no national registry... Because by law, we are not allowed to have a national registry.”<sup>1044</sup>

Since its introduction in the Senate, there has been no movement on this piece of federal legislation.

As of June 2018, only seven states<sup>1045</sup> and Washington, D.C. had laws barring or prohibiting possession or transfer of firearms included in the definition of assault weapons. Two states, Minnesota and Virginia had enacted regulations governing assault weapons. State laws can be characterized based on their definitions of assault weapons, whether they allow grandfathered weapons and the registration, licensing, transfer and location limitations on grandfathered weapons.

## STATE LAWS REGULATING ASSAULT WEAPONS

State	Barred By Listing Specific Weapon Name <sup>1046</sup>	Regulate (do not prohibit) Assault Weapons	Prohibition Defined by Specific Features of Weapon	Registration of Grandfathered Weapons Required	Transfer of Grandfathered Weapons Prohibited	License Required for Grandfathered Weapons	Location limitations on Grandfathered Weapons
Alabama							
Alaska							
Arizona							
Arkansas							
California <sup>1047</sup>	X		YES (one feature)	YES	YES	YES	YES
Colorado							
Connecticut <sup>1048</sup>	X		YES (one feature)	YES	YES	YES	YES
Delaware							
District of Columbia <sup>1049</sup>	X		YES (one feature)	The District of Columbia did not grandfather pre-ban assault weapons.	The District of Columbia did not grandfather pre-ban assault weapons.	The District of Columbia did not grandfather pre-ban assault weapons.	The District of Columbia did not grandfather pre-ban assault weapons.
Florida							
Georgia							
Hawaii	Assault Pistols Only <sup>1050</sup>		YES (two features)	YES	YES	NO	NO
Idaho							
Illinois							
Indiana							
Iowa							
Kansas							
Kentucky							
Louisiana							
Maine							
Maryland	X <sup>1051</sup>		YES (two features)	NO <sup>1052</sup>	NO	NO	NO
Massachusetts	X <sup>1053</sup>		YES (two features)	NO <sup>1054</sup>	YES	YES	NO
Michigan							
Minnesota		X <sup>1055</sup>					
Mississippi							
Missouri							
Montana							
Nebraska							
Nevada							

State	Barred By Listing Specific Weapon Name <sup>1046</sup>	Regulate (do not prohibit) Assault Weapons	Prohibition Defined by Specific Features of Weapon	Registration of Grandfathered Weapons Required	Transfer of Grandfathered Weapons Prohibited	License Required for Grandfathered Weapons	Location limitations on Grandfathered Weapons
New Hampshire							
New Jersey	x <sup>1056</sup>		NO- one feature test only for shotguns.	YES	NO	YES	NO
New Mexico							
New York	No. Assault Weapons banned generally as defined by characteristics of weapon <sup>1057</sup>		YES (one feature)	YES	YES	NO	NO
North Carolina							
North Dakota							
Ohio							
Oklahoma							
Oregon							
Pennsylvania							
Rhode Island							
South Carolina							
South Dakota							
Tennessee							
Texas							
Utah							
Vermont							
Virginia		x <sup>1058</sup>					
Washington							
West Virginia							
Wisconsin							
Wyoming							

### 5.5.3 LARGE-CAPACITY MAGAZINES (AMMUNITION)

Under the AWB, “large capacity magazines” were defined as: “large capacity ammunition feeding device” as “a magazine, belt, drum, feed strip, or similar device...that has a capacity of, or that can be readily restored or converted to

accept, more than 10 rounds of ammunition.”<sup>1059</sup> Federal regulation on large-capacity ammunition magazines also lapsed with the expiry of the AWB.<sup>1060</sup> Many researchers evaluating the impact of assault weapons and firearm lethality have concluded that perhaps a better measure of the dangerousness of a semi-automatic rifle lies in the capacity of its magazine; that is, how much

ammunition it can hold. The larger the magazine, the more shots a shooter can take without having to reload his weapon. Whether used with a rifle or a handgun, these magazines increase lethality and suffering.

For example, the shooter in the 2017 Sutherland Springs mass shooting in Texas was armed with a semi-automatic assault rifle and fifteen 30-round magazines capable of holding a total of 450 rounds of ammunition, allowing him to fire rapid rounds of ammunition in a matter of minutes, killing 27 and injuring 20 others. Once a rifle has the ability to accept a 10-round detachable magazine it can also accept a 100-round magazine.

Research demonstrates that the use of large-capacity magazines in crimes declined following the enactment of the AWB<sup>1061</sup> and states with bans on large-capacity magazines experience fewer mass shootings than those that permit them.<sup>1062</sup> In fact, crime data suggests that a prohibition on such magazines would have a greater impact on gun crime than a ban on assault weapons alone.<sup>1063</sup>

Gun rights advocates and the NRA argue that

large-capacity magazines or magazines holding more than 10 rounds of ammunition are standard with any semi-automatic firearm and should therefore be permitted.<sup>1064</sup> Researchers and gun violence prevention advocates counter with the argument that whether they are standard or not, large-capacity magazines exponentially increase the potential lethality of a firearm and should therefore be regulated to ensure they do not end up in the hands of those likely to misuse them.<sup>1065</sup>

The USA should ban high-capacity magazines for all firearms. Possession, sale, purchase, transfer, manufacture and/or distribution of these items should be prohibited for private individuals.

Currently, only eight states and Washington D.C. have enacted laws banning either the sale and/or possession of new or old large-capacity magazines.<sup>1066</sup> State laws governing the ban of large-capacity magazines are generally defined by the number of rounds in the prohibited magazine; whether the magazine ban applies to use with all firearms; restrictions and prohibitions of activity involving large-capacity magazines; and whether pre-ban large-capacity magazines are permitted.

## STATE LAWS REGULATING LARGE-CAPACITY MAGAZINES

State	LCAM Banned	LCAM Ban extends to:	Permissible Magazine Capacity	LCAM restrictions include:	Pre-Ban LCAM Permitted	Pre-Ban LCAM NOT Permitted
Alabama						
Alaska						
Arizona						
Arkansas						
California	x <sup>1067</sup>	All Firearms	10 rounds	No manufacturing, No importation, No maintaining possession for sale, No offering and advertising for sale, No gifting, and lending, No possession		X (as of July 1, 2017).
Colorado	x <sup>1068</sup>	All Firearms	15 rounds	No sale No transfer No possession	X	

State	LCAM Banned	LCAM Ban extends to:	Permissible Magazine Capacity	LCAM restrictions include:	Pre-Ban LCAM Permitted	Pre-Ban LCAM NOT Permitted
Connecticut	x <sup>1069</sup>	All Firearms	10 rounds	No distribution No importation No maintain possession for sale No offering and advertising for sale No purchase No possession	X (but must be registered)	
Delaware						
District of Columbia	x <sup>1070</sup>	All Firearms	10 rounds	No possession No sale No other transfer		x
Florida						
Georgia						
Hawaii	x <sup>1071</sup>	Handguns only	Rounds	No Manufacture, No possession, No sale, No barter, No trade, No gifting, No transfer, and No acquisition		x
Idaho						
Illinois						
Indiana						
Iowa						
Kansas						
Kentucky						
Louisiana						
Maine						
Maryland	x <sup>1072</sup>	All Firearms	10 rounds	No Manufacture, No sale, No offering for sale, No purchase, No receipt and No transfer	X (No ban on possession)	
Massachusetts	x <sup>1073</sup>	All Firearms	10 rounds	No sale, No offering for sale, No transfer, No possession	X	
Michigan						
Minnesota						
Mississippi						

State	LCAM Banned	LCAM Ban extends to:	Permissible Magazine Capacity	LCAM restrictions include:	Pre-Ban LCAM Permitted	Pre-Ban LCAM NOT Permitted
Missouri						
Montana						
Nebraska						
Nevada						
New Hampshire						
New Jersey	x <sup>1074</sup>	All Firearms	15 rounds	No Manufacture, No transportation, No shipment, No sale, No disposal, and No possession		x
New Mexico						
New York	x <sup>1075</sup>	All Firearms	10 rounds	No Manufacture, No transportation, No disposal and No possession		x
North Carolina						
North Dakota						
Ohio						
Oklahoma						
Oregon						
Pennsylvania						
Rhode Island						
South Carolina						
South Dakota						
Tennessee						
Texas						
Utah						
Vermont						
Virginia						
Washington						
West Virginia						
Wisconsin						
Wyoming						

### 5.5.4 BUMP STOCKS AND TRIGGER/GAT CRANKS

Certain accessories accelerate a weapon’s rate of fire to mimic that of a fully automatic weapon. For example, bump stocks are accessories that attach

to a firearm and can significantly increase its ability to release multiple rounds of ammunition by allowing the trigger to be engaged with exponential speed, shooting in rapid succession. Stephen Paddock used firearms equipped with bump stocks, enabling him to fire nine shots per



second, to kill 58 people and wound more than 500 others in Las Vegas on 1 October 2017.<sup>1076</sup> Similarly, trigger/gat cranks affixed to a firearm's trigger guard also allow firing in rapid succession.

These accessories are not regulated or banned by federal law. As of 15 July 2018, only 10 states (California, Connecticut, Delaware, Florida, Hawaii, Maryland, Massachusetts, New Jersey, Vermont, and Washington) have explicitly banned bump stocks.<sup>1077</sup> In December 2017, Columbia, South Carolina, became the first city to ban bump stocks. Denver, Colorado, has also banned bump stocks and it appears that several other cities are set to follow suit.<sup>1078</sup>

On 20 February 2018, President Donald Trump directed Attorney General Jeff Sessions to issue regulations to ban bump stocks in the USA.<sup>1079</sup> The ATF has since issued the proposed rule that would ban bump stock-type devices under the National Firearms Act, which was open to public comment.<sup>1080</sup> The comment period concluded in June 2018 and the ATF is now considering the final rule, which must be approved by both the DoJ and the Office of Management and Budget before being published in the Federal Register.<sup>1081</sup>

The regulation or banning of accessories that carry such a clear intensification of the threat to human rights, including the right to life and security of person is essential if the USA is to honor its obligations under international human rights laws and standards.

### 5.5.5 GHOST AND 3D GUNS

Ghost guns (also called unfinished receivers, 80% receivers or home-built firearms) are guns made by individuals using gun components and, more recently, using 3D printing technology and computer-numerical-controlled mills.<sup>1082</sup> In September 2015, New York Attorney General Eric Schneiderman described ghost guns as “the new frontier of illegal firearms trafficking”.<sup>1083</sup> These guns have no serial numbers, are essentially

untraceable<sup>1084</sup> and can be used to circumvent federal, state and local firearm laws.

While it is a felony to sell or trade such a weapon,<sup>1085</sup> it is legal, and not particularly difficult, to purchase and assemble them.<sup>1086</sup> Stores are permitted to sell the necessary tools and gun components allowing consumers to build assault weapons without a federal background check. Moreover, a person may build an assault weapon in a jurisdiction that does not permit the possession of such a weapon. Similarly, an unlicensed individual can build a firearm even where licensing is obligatory.

Assault rifles that were ghost guns were used in two separate mass shootings in California (Tehama County in 2017 and Santa Monica in 2013) which, combined, took the lives of 11 people. Both shooters were prohibited from possessing firearms.<sup>1087</sup> From 2019 onwards, those who own or create homemade firearms in California will have to apply for a serial number, which will need to be permanently affixed to the weapon.<sup>1088</sup> However it is unclear whether this legislation will be sufficient to curb this trend.

Unfortunately, at a federal level there has been a significant step backwards. In 2018, the US State Department settled a lawsuit with a company which had posted online the first manual with directions on how to assemble a 3D printed gun.<sup>1089</sup> In 2013, the State Department had opined that this manual was a violation of international export law.<sup>1090</sup> At the time, members of the distributing group claimed that the file had been downloaded, in locations around the world, more than 100,000 in just two days.<sup>1091</sup> Following the settlement, as of August 2018, the 3D-printed firearm blueprints were to be published online legally, allowing anyone with access to a 3D printer to manufacture a completely untraceable firearm.<sup>1092</sup> In response, 19 states and Washington D.C. filed a lawsuit seeking a permanent ban on the distribution of these blueprints. On 27 August 2018, a federal judge issued a temporary

injunction blocking the release of the blueprints online.<sup>1093</sup>

With the establishment of state, and hopefully, federal laws regulating semi-automatic assault rifles, semi-automatic shotguns and semi-automatic submachine guns, a parallel increased market for ghost guns can be expected. It will be imperative that there is an extension of the Brady Act so that the obligations of FFLs apply also to sellers of firearm components in order to guarantee proper regulation and to ensure that prohibited purchasers are not able to acquire a homemade firearm.

### **5.5.6 LITIGATION TO HOLD MANUFACTURERS OF SEMI-AUTOMATIC ASSAULT RIFLES AND LARGE-CAPACITY MAGAZINE ACCOUNTABLE**

Firearms manufacture and sales are thriving parts of the US economy. A 2014 industry report estimated the domestic retail market to be worth around US\$1.5 billion.<sup>1094</sup> As with any industry, potential liability is an important consideration and mechanism to deter firearms manufacturers from irresponsible advertising or product development. Without any framework for culpability or responsibility, there is little to discourage gun manufacturers from enhancing the militaristic features of their civilian use firearms or rolling out irresponsible advertising which emphasizes the lethality and military grade impact of their rifles.<sup>1095</sup>

The Protection of Lawful Commerce in Arms Act (PLCAA), which was passed in 2005, generally shields licensed firearms and ammunition manufacturers, dealers and sellers and trade associations from civil liability “resulting from the criminal or unlawful misuse” of a firearm or ammunition, with limited exceptions.<sup>1096</sup> Thirty-four states have very similar legislation or have legislation that bars cities, state or other local government entities from filing civil lawsuits

against certain gun industry defendants.<sup>1097</sup>

The PLCAA and similar state legislation have had a chilling effect, discouraging lawyers from taking action against the gun industry.<sup>1098</sup> Not surprisingly, since the PLCAA was enacted, most lawsuits against the gun industry are dismissed.<sup>1099</sup>

Civil litigation and the transparency it assures have contributed to improvements in product safety and quality in other industries.<sup>1100</sup> However, the unprecedented insulation from liability afforded by the PLCAA means there is no such incentive for the firearms industry to develop or implement safety improvements. Moreover, there is no federal agency tasked with overseeing and ensuring the safe design of firearms. Indeed, the Consumer Product Safety Commission is forbidden from regulating firearms.<sup>1101</sup>

In a lawsuit brought on behalf of the families impacted by the Sandy Hook Elementary School shooting in December 2012 against Remington Outdoor Co., Inc. (Remington), respondents argue that the AR-15 should not be entrusted to the general public due to the military purpose for which it was designed.<sup>1102</sup> The lawsuit lays out the hours of training required by soldiers entrusted with these types of weapons in combat, in stark contrast to the fact that civilians can purchase these weapons without training; in some states they may even be lawfully possessed by minors.<sup>1103</sup> Respondents allege that Remington knew that the nature of the weapon’s design would enable the firearm to rapidly fire ammunition. At Sandy Hook, Adam Lanza fired 154 rounds of ammunition in just 264 seconds, killing 20 first grade children and six of their teachers.<sup>1104</sup> The Connecticut Superior Court dismissed the case, finding that the broad immunity granted by the PLCAA shielded the gun manufacturer from liability.<sup>1105</sup> The Connecticut Supreme Court took the case on appeal in November 2017. However, on 25 March 2018, Remington filed for Chapter 11 bankruptcy and the case was stayed.<sup>1106</sup> On 17 May 2018,

the stay was lifted.<sup>1107</sup> At the time this report was published, the case was pending before the Connecticut Supreme Court and no trial had been scheduled.<sup>1108</sup>

The USA should repeal the PLCAA. Firearms manufacturers, distributors and dealers should adopt adequate due diligence policies and practices, regardless of whether they are required by law or that go beyond the requirements of the law where these are poor or insufficient to effectively mitigate risks and prevent abuses.

## 5.6 STAND YOUR GROUND LAWS

Stand Your Ground laws essentially allow an individual to use force, including lethal force, to defend him or herself without any obligation to retreat to a place of safety, so long as they are in place they have a right to be and are not engaged in illegal activity. Unlike most defenses to criminal acts, Stand Your Ground laws in effect presume the individual is acting in self-defense if such an assertion is made unless there is specific evidence to the contrary. The burden is shifted to law enforcement and prosecutors to prove that the individual did not act in self-defense. In fact, in some states, a case can be dismissed by a judge based on the Stand Your Ground defense before it ever reaches a jury.<sup>1109</sup>

Stand Your Ground laws were first enacted in Florida in 2005<sup>1110</sup> and 13 states enacted similar statutes to Florida's in 2006 alone.<sup>1111</sup> Thirty-five states have adopted some form of Stand Your Ground law.<sup>1112</sup> In March 2018, Idaho became the most recent state to enact a Stand Your Ground law.<sup>1113</sup> There has been an effort to curtail or repeal Stand Your Ground laws in several states, however, none of these efforts have been successful.<sup>1114</sup>

Under international human rights law, no one may

be arbitrarily deprived of his or her life and states have an obligation to establish a legal system in which there is a general duty to avoid the use of force where non-violent means of self-protection are reasonably available.<sup>1115</sup> Furthermore, the use of lethal force is lawful only if, at the time of its use, it is "strictly unavoidable" in order to protect against an "imminent threat of death or serious injury" in self-defense or defense of others.<sup>1116</sup> "Imminence" is a concept that has been defined in international law as being highly limited – a response to an offensive act already in motion.

While Stand Your Ground laws are not firearm laws specifically, they are often invoked in cases of firearm violence. These laws are inconsistent with international human rights law and standards. They violate the principles of necessity and proportionality when using deadly force in self-defense and may be applied or utilized in a discriminatory manner.

### 5.6.1 FAILURE TO LIMIT SELF-DEFENSE

Self-defense is a "justification" defense in criminal law in all US states. This means that it is not a crime to defend oneself, even with deadly force, if the force used is **reasonable** and **strictly necessary** to protect against an **imminent threat**, and the force used is **proportionate** to the perceived threat, which, in the case of use of lethal force means a threat of death or serious injury. The majority of US states apply an objective reasonableness standard to the exercise of self-defense. This means that a person does not necessarily need to be correct in the assessment of the imminence, necessity or proportionality of the threat, but they must be objectively reasonable in their assessment of these elements.

However, with self-defense comes a "duty to retreat," which means that an individual has a duty to retreat before using lethal force against an assailant. The underlying purpose

of the duty to retreat rule is to reserve the use of force to incidents where there was no other safe alternative. There are a few very specific exceptions to this duty to retreat. For example, there is generally not duty to retreat when defending yourself and your property while in your own home. This is generally referred to as the “Castle Doctrine”. In some US states, the Castle Doctrine exception has been extended to the land surrounding the home and even automobiles.<sup>1117</sup>

Stand Your Ground laws, however, broaden the concept of self-defense beyond even the Castle Doctrine by allowing an individual to use force, even lethal force, without any obligation to retreat, even if it is possible to do so, in any location, whether public or private. This means that under Stand Your Ground laws, a party can claim that they were acting in self-defense without meeting any of the basic requirements of a self-defense claim, completely distorting and broadening the concept of self-defense. Moreover, this effectively allows private individuals to be held to a lower standard on the use of deadly force than law enforcement officials.<sup>1118</sup>

Moreover, effective judgment training in relation to firearm use is not required in any state. This is especially troubling in Stand Your Ground states where this training is necessary to ensure that those who are armed are trained on how to use a gun in self-defense and on how to limit the use of lethal force with a firearm to what is absolutely necessary.<sup>1119</sup>

### **5.6.2 STAND YOUR GROUND LAWS: INCREASED HOMICIDES AND DISCRIMINATION**

While everyone has the right to self-defense, evidence suggests that passing Stand Your Ground laws has led to increases in justifiable homicide, homicide and firearm homicide. A 2016 study published in the *Journal of the American*

*Medical Association* found that when compared to the period 1999-2005, before the Stand Your Ground law was enacted in Florida, and the period 2006-2016 after the law was passed, there was a 24.4% increase in homicides overall and a 32% increase in firearm-related homicides specifically.<sup>1120</sup> In a follow up study by the same researchers, published in 2017, there was a 75% increase in justified homicides (or the lawful use of lethal force) in Florida during the same time periods.<sup>1121</sup>

Data indicates that Stand Your Ground laws may violate not only the right to life but also the right to be free from discrimination. For instance, a study of criminal justice data from 23 states with Stand Your Ground laws, which looked at all cases of homicide, found white homicide defendants with black victims were more likely to have their homicides ruled justified than black defendants whose victims were white.<sup>1122</sup> The American Bar Association’s 2014 National Task Force found that the application of Stand Your Ground laws is “unpredictable, uneven, and results in racial disparities.”<sup>1123</sup> The Task Force found evidence that self-defense related homicides, particularly interracial homicides, spiked in the 33 states that had Stand Your Ground laws at the time.<sup>1124</sup>

International human rights bodies have already raised the issue of Stand Your Ground laws with the US government. In its September 2014 concluding observations on the USA’s compliance with ICERD, the UN Committee on the Elimination of Racial Discrimination noted:

***“The Committee is concerned at...the proliferation of ‘Stand Your Ground’ laws, which are used to circumvent the limits of legitimate self-defense, in violation of the State party’s duty to protect life, and have a disproportionate and discriminatory impact on members of racial and ethnic minorities.”<sup>1125</sup>***

The Committee urged the US government to “take effective legislative and policy measures to fulfill

its obligation to protect the right to life and to reduce gun violence, including by...reviewing the Stand Your Ground laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when deadly force is used for self-defense.”<sup>1126</sup>

All state legislatures should repeal Stand your Ground laws.

## 5.7. SMART GUNS AND GUN SAFETY TECHNOLOGY

***“If a child can’t open a bottle of aspirin, we should make sure that they can’t pull a trigger on a gun.”***

President Barack Obama, Remarks by the President on Common-Sense Gun Safety Reform, 5 January 2016<sup>1127</sup>

There are a range of potential gun safety mechanisms available to secure firearms, including locks. Smart guns potentially offer a new method. All approaches need to be analyzed for evidence-based policy making aimed at reducing firearms violence. In the same way that the car industry has looked into mechanisms, such as seat belts, to reduce loss of life associated with motor vehicle deaths, new methods and technologies related to gun safety should also be explored as they develop.

Smart guns, however, take security to another level by incorporating technology – proximity sensors, biometrics, magnets, radio-frequency identification (RFID) and/or microchips – to prevent the use of firearms by unauthorized users and/or by making firearms traceable. While smart gun technology is unlikely to be the solution to root issues of widespread gun violence, it has the potential to materially reduce the number of victims of gun violence caused by both accidental shootings and stolen firearms.<sup>1128</sup> Gun safety technology has evolved rapidly in recent years and entered many of the mainstream debates about stemming gun

violence.<sup>1129</sup> A report by the US Departments of Justice, Homeland Security and Defense found that the “technology holds great promise”.<sup>1130</sup>

Manufacturers and developers have pursued two primary methods of using gun safety technology: user-authorization technology, which limits who can fire a gun; and electronic recovery technology, which makes it possible to identify the location of a lost or stolen gun.<sup>1131</sup>

There are variations of user-authentication technology.<sup>1132</sup> Biometric readers verify identity, such as fingerprint sensors built into the grip of the gun.<sup>1133</sup> Proximity devices, such as wristbands, rings or badges worn by the user, involving RFID require proximity to activate.<sup>1134</sup> These technologies could be integrated into the initial development and manufacture of the devices or retrofitted into existing models.<sup>1135</sup>

A gun requiring the user to wear an RFID chip to fire – such as a pistol developed by the German-based company Armatix which requires a PIN code to be keyed into an RFID wristband in order to fire<sup>1136</sup> – would prevent a child from accidentally firing a weapon. A gun functional only with a registered biometric match could also be used to prevent a troubled family member, or any unauthorized user, from firing it.<sup>1137</sup> User-authorization would likely discourage theft of firearms, subsequently reducing the supply of stolen firearms.<sup>1138</sup> In the context of law enforcement, smart gun technology could reduce the risk of accidental off-duty discharge of service weapons and protect law enforcement officers from being targeted with their own weapons.<sup>1139</sup>

Conversely, electronic recovery technology works by collecting real-time data on the location and use of firearms through an embedded computer chip. These models are targeted towards the identification of lost and stolen firearms. For example, the Beretta i-Protect system, currently in a testing phase, integrates motion sensors

into law enforcement firearms.<sup>1140</sup> Such sensors would trigger when drawn from the holster or when fired, transmitting data, including location, video and audio, to the officer's smart phone and police operations centers, making the firearms easy to track.<sup>1141</sup> In addition to facilitating law enforcement, these technologies allow for the tracking of any stolen firearms and aid in ensuring the accountability of the officers carrying the firearm.

Manufacturers are also developing smarter and safer mechanisms for gun storage that require a unique PIN code and/or a fingerprint or contactless transponder to release the firearm.<sup>1142</sup> Smart gun storage provides a more secure, more convenient and more user-friendly alternative to standard firearm locks and safes. For example, Gunbox manufactures gun storage using Bluetooth, biometric and RFID scanner technology.<sup>1143</sup> These specific technologies could both prevent guns from getting into the hands of minors and help avert firearm thefts.<sup>1144</sup>

### 5.7.1 BARRIERS TO THE DEVELOPMENT OF SMART GUN TECHNOLOGY

***“By simply using technology that already exists and bringing it to the marketplace, the public health benefits could be enormous, allowing us to take a standard injury prevention approach to preventing gun violence... Countless lives that would otherwise have been lost to suicide, accidental shootings and guns getting into the wrong hands could be saved. Policymakers and manufacturers should re-examine the potential for smart guns to not only produce a profit, but also to lessen the toll of gun deaths in the United States.”***

Stephen P. Teret, Associate Dean for Education and Faculty Development at the Johns Hopkins Bloomberg School of Public Health and Professor of Health Policy and Management and Director of the Johns Hopkins Center for Law and the Public's Health, quoted in 2016<sup>1145</sup>

In January 2013, President Obama announced an initiative to the private sector that resulted in the Gun Safety Technology Challenge offering a cash prize for innovations in gun safety technology.<sup>1146</sup> In January 2016, President Obama issued an Executive Order directing the development of a research strategy to expedite the deployment of smart gun technology.<sup>1147</sup> In April 2016 a joint report by the Departments of Justice, Homeland Security and Defense outlined the significant benefits of the technology, the status of development and a plan to develop standards for that technology so that it could be used by law enforcement agencies around the country.<sup>1148</sup> However, at the time of writing, there had not been any additional significant federal funding for research and development of smart gun technology.

***“[N]early 60 percent of Americans, if they buy a new handgun, are willing to purchase a smart or childproof gun.”***

Johns Hopkins Bloomberg School of Public Health, *Report to the President Outlining a Strategy to Expedite Deployment of Gun Safety Technology*, Depts. Justice, Homeland Security and Defense, 3-4, (2016)<sup>1149</sup>

Unfortunately, while there is interest in the potential of gun safety technology, its development has been repeatedly impeded.<sup>1150</sup> The actions of gun rights activists, including the boycott of gun manufacturers working on smart guns, have worked to prevent the development of the technology. For example, when gun manufacturer Smith & Wesson pledged, in an agreement with the White House, to explore smart gun technology, gun rights activists led a boycott of the manufacturer, forcing them to abandon the project.<sup>1151</sup> Actions have also been taken against gun dealers. For example, a Maryland dealer became the focus of an intense backlash after announcing plans to sell a smart gun. After receiving thousands of negative comments online,

including death threats, he was forced to publicly renounce his plans.<sup>1152</sup>

The need for further research into evidence-based firearm safety extends beyond just smart gun technology to all firearm safety measures. A 1991 report from the US General Accounting Office found that 31% of accidental firearm deaths in 1988 and 1989 might have been prevented by two safety devices, a device making the firearm childproof and a loading indicator.<sup>1153</sup> Since then, some studies have found that safe firearm storage practice can reduce the likelihood of death and injury.<sup>1154</sup> However, researchers have found that by restricting federal research regarding firearms generally, Congress has also effectively stalled research and development on gun safety, including mechanisms for security and storage of firearms aimed at reducing and preventing firearm violence, accidental shootings and suicide (see Section 5.8).<sup>1155</sup>

The USA has an obligation to protect the public from exposure to harmful and often deadly gun violence. One of the ways that it can better meet these human rights obligations is to encourage and fund research and development of all potential mechanisms of firearms safety, including innovations such as smart guns and smart storage, aimed at preventing the acquisition of firearms by those at risk of misusing them and preventing unauthorized use of firearms once acquired. Moreover, there remains an urgent need for evidence-based research and analysis of firearm storage and security in the USA.

## **5.8 FAILURE TO INVEST IN RESEARCH TO IDENTIFY STRATEGIES TO REDUCE GUN VIOLENCE**

*“Effective data-gathering and evaluation of evidence-based interventions led to requirements for seatbelts,*

*airbags, and other measures that reduced vehicle traffic fatalities. This research drove down the motor vehicle fatality rate by nearly 60%. We should be using the same approach to address the firearm violence crisis in the U.S.”*

Dr. Garen Wintemute, Professor of Emergency Medicine and Director of the Violence Prevention Research Program at the University of California Davis, on measures to prevent firearm and motor vehicle fatalities between 1960 and 2015<sup>1156</sup>

For more than 20 years, the USA has restricted federal funding for firearms research through publicly funded entities like the CDC and, more recently, the National Institute of Health (NIH).<sup>1157</sup> Public health experts recently highlighted that of the top 30 leading causes of death in the USA, gun violence was the least researched, based on the number of publications, and the second least funded.<sup>1158</sup>

Over the past three decades, progress has been made in reducing other causes of death, resulting in significant improvements – for example when compared to the statistics from 1982, there were 37% less drownings and 44% less fire-related deaths in 2016.<sup>1159</sup> In contrast during the same time period, the number of gun-related deaths in the USA did not decrease and actually went up; in 1982 there were 32,957 firearm deaths and in 2016, the most recent year for which data is available, there were 38,658 deaths, an increase of over 17%.<sup>1160</sup>

Indeed, the US government has actively taken steps to prevent research on gun violence. In 1996, Congress passed the Dickey Amendment which specified that “none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.”<sup>1161</sup> And while this was not necessarily a complete ban on research related to firearms, the legislation was accompanied by a US\$2.6 million budget cut,

which was exactly the amount of money spent by the CDC on gun research the year before. The passage of the Amendment was spurred by a CDC report finding that firearms in the home could be linked to an increased risk of homicide, which gun rights advocates, including certain members of Congress, perceived as biased research.<sup>1162</sup>

Since 1996, despite significant increases in its overall budget, CDC funding for gun injury prevention has steadily decreased. According to analysis by Everytown for Gun Safety, in 2009, the CDC's budget for firearm research was just 4% of 1993-1996 budget. By 2012, despite a US\$5.3 billion CDC budget, only US\$100,000 was allocated for firearm research.<sup>1163</sup>

It is true that since 1996 the CDC has continued with some limited gun related research. For example, in 2016, the Division of Violence Prevention National Center for Injury Prevention and the CDC released a report on *Elevated Rates of Urban Firearm Violence and Opportunities for Prevention in Wilmington, Delaware*.<sup>1164</sup> However, this type of research has been limited. Between the limited funding and the language of the Dickey Amendment, the chilling effect on CDC research on firearm violence and firearm violence prevention has been significant.<sup>1165</sup>

In 2012, Jay Dickey himself, the Arkansas congressman who was the author of the Dickey Amendment, reversed his position. He co-wrote an opinion piece in *the Washington Post* and called on Congress to reverse the Dickey Amendment, advocating increased funding for gun violence research.<sup>1166</sup> In 2015, he wrote: "Research could have been continued on gun violence without infringing on the rights of gun owners, in the same fashion that the highway industry continued its research without eliminating the automobile... It is my position that somehow or someway we should slowly but methodically fund such research until a solution is reached. Doing nothing is no longer an acceptable solution."<sup>1167</sup>

The impact of the Dickey Amendment was broadened in 2012, when, after other agencies such as the NIH began funding research on gun violence and firearm deaths, the Dickey Amendment was added to their future budgets.<sup>1168</sup> However, the NIH – which has a budget almost three times that of the CDC – has since funded numerous studies specifically involving gun-related injuries, totaling approximately US\$11.4 million and the National Institute of Justice has allocated more than US\$2 million dollars in research funding for firearm-related studies in 2014, seemingly ignoring congressional prohibitions and pressure.<sup>1169</sup> The NIH funded initiative, titled "Research on the Health Determinants and Consequences of Violence and its Prevention, Particularly Firearm Violence", provided approximately US\$18 million to numerous research projects between January 2014 and January 2017, but the agency failed to renew the initiative in 2017.<sup>1170</sup> In April 2018, following the Marjory Stoneman Douglas High School shooting in Parkland, Florida, the NIH announced it would grant US\$5 million in funding for child firearm injury research.<sup>1171</sup>

Congress has also taken steps to restrict access to data on firearms. Legislation, known as the Tiahrt Amendments, originally introduced in 2003, specifically prohibit the ATF from releasing any information from its firearms databases to anyone other than law enforcement or prosecutors.<sup>1172</sup> The ATF is, therefore, prohibited from releasing any data to scientists, academics and private individuals regarding gun sales and ownership. The Amendments also require the FBI to destroy all approved gun purchaser records within 24 hours.<sup>1173</sup> This legislation is a major obstacle to meaningful comprehensive research on issues such as straw purchasers, trafficked and stolen guns and the impact of preventative gun-related policies.

In the wake of the mass shooting at Sandy Hook Elementary School in Newtown, Connecticut,



in 2012, President Barack Obama issued an Executive Order allowing the CDC and other federal entities to resume research and investigate gun violence prevention.<sup>1174</sup> The CDC requested that the Institute of Medicine develop a focused research agenda on firearm-related violence.<sup>1175</sup> The Institute of Medicine concluded that more research is needed on issues such as access to guns and their use in violent incidents; the effectiveness of gun safety technologies; policies aimed at gun violence reduction; and better collection of data and database linkages.<sup>1176</sup> However, without approved funding by Congress, the CDC was not able to fund any research in compliance with the Order.<sup>1177</sup>

***“We dedicate \$240 million a year on traffic safety research, more than \$233 million a year on food safety, and \$331 million on the effects of tobacco, but almost nothing on firearms which take the lives of over 33,000 Americans annually.”***

Letter to the House Committee on Appropriations from Members of the House Democratic Gun Violence Prevention Task Force<sup>1178</sup>

When policy experts and doctors have asked Congress to lift the ban on research and provide funding, Congress has failed to act. In 2015, just hours before the shooting in San Bernardino, California, in which 12 people were killed and 22 others seriously wounded, more than 2,000 physicians from across the USA signed a petition urging Congress to lift the 20-year restriction on CDC funding for gun violence research.<sup>1179</sup> In 2016, one week after the Orlando, Florida, shooting at the Pulse nightclub in which 49 people were killed, the Association of American Medical Colleges and 57 national public health, medical and research entities endorsed a letter in support of two Senate amendments that would reduce access to firearms and allocate US\$10 million for CDC research.<sup>1180</sup> The amendments were voted down by the Senate.<sup>1181</sup>

***“Over the last fifteen years, the rate of fatal firearm violence [in the USA]– homicide and suicide – hasn’t changed much. But the rate of fatal gun violence in California has fallen by about twenty percent. Figuring out what California policies or conditions have contributed to this divergence would be invaluable for federal and state lawmakers contemplating new legislation.”***

Dr. Garen Wintemute, Professor of Emergency Medicine and Director of the Violence Prevention Research Program at the University of California Davis, quoted in a *Los Angeles Times* article published in 2016, commenting on the rate of firearm violence in 2016.<sup>1182</sup>

Research on gun violence, including accidental shootings resulting in injury and death and gun safety, generally falls into three categories: causes, consequences and prevention. Under each category, certain critical questions must be addressed. For example: What are the risk factors that contribute to gun violence? What are the short and long-term physical and psychological effects of gun violence? What are the consequences of gun violence on entire communities who may be disproportionately impacted? Who is at greatest risk of using firearms to commit homicide or suicide and how can these fatalities be prevented?<sup>1183</sup>

Only with valid and up-to date research and data, can policymakers make informed decisions as to what kind of policies have the potential to be effective in curbing the negative impact of firearms in the USA. Moreover, health care providers, educators, parents, law enforcement officials, scientists and advocates all need guidance on how to deal not only with the existing problem of firearm-related injuries and fatalities, but also how to prevent future firearm incidents. Unfortunately, the USA has stymied the efforts of the research community to provide such research and data. The Dickey Amendment and the Tiahrt Amendments should be repealed and adequate funding for research on gun violence, injury and death should be restored.

# RECOMMENDATIONS

## BACKGROUND CHECKS

### Federal:

- The US Congress should enact legislation requiring background checks on all firearm purchases and transfers prior to carrying out any sale or other transfer. These background checks should be conducted indicating the absence of known risk factors for misuse. Risk factors for consideration should include, at a minimum:
  - › a prior criminal record, particularly for violent offences;
  - › being under indictment for a felony offence;
  - › a history of gender-based, sexual or domestic violence;
  - › medical conditions including a history of drug/alcohol abuse or mental health issues which might lead to the harm of self or others. Each application should be reviewed on a case-by-case basis by competent authorities drawing on all available relevant evidence.
- The US Congress should require that all private sellers of firearms perform background checks through Federally Licensed Firearms Dealers (FFLs), so that a record of sale is made, and that the background check is conducted by an independent and licensed dealer.
- The US Congress should abolish the current three-day waiting period for performing background checks on all firearms sold by FFLs so that relevant agencies have the ability to track down records and adequately respond to requests. Background checks must be completed before any sale or transfer takes place.
- The US Congress should ensure that federal, state and local agencies are reporting records accurately, completely, and as soon as possible to the FBI for inclusion in the National Instant Criminal Background Check System (NICS). The US Congress should enact legislation allocating

adequate funding and technical support to facilitate improvements in state systems for records reporting (for example, by creating systematic and comprehensive methods for automated entry of eligible records) and to penalize federal agencies that do not report records.

- The US Congress should enact legislation requiring identification documents of the purchaser or transferee of a firearm to be verified prior to the sale or other transfer, through cross-checks, by linking licensed FFLs with state motor vehicle databases.
- The US Congress should enact legislation allocating funding to provide sufficient resources to the FBI to conduct background checks and to the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to retrieve any firearms that have been received by prohibited persons due to default sales (pending the abolition of the three-day waiting period), or for any other reasons.

### State:

- In the absence of federal law mandating background checks on all firearm purchases and transfers, all state legislatures must enact legislation requiring background checks prior to carrying out any sale or other transfer of a firearm. These background checks should be conducted indicating the absence of known risk factors for misuse. Risk factors for consideration should include, at a minimum:
  - › a prior criminal record, particularly for violent offences;
  - › being under indictment for a felony offence;
  - › a history of gender-based, sexual or domestic violence;
  - › medical conditions including a history of drug/alcohol abuse or mental health issues which might lead to the harm of self or others. Each application should be reviewed on a case-by-case basis by competent authorities drawing on all available relevant evidence.

- All state legislatures should enact legislation requiring state and local entities to report if an individual has been adjudicated as presenting a heightened risk of harm to themselves or others, criminal records, domestic violence orders and other information pertinent to the fitness of an individual to carry or possess a firearm, as promptly as possible (for example, by creating systematic and comprehensive methods for automated entry of eligible records) to the FBI for inclusion in the NICS and, where appropriate, to state and local databases, so that effective background checks can be performed.
  - In the absence of federal law mandating verification of valid identity documents prior to the sale or transfer of all firearms, all state legislatures should enact legislation requiring identification documents of the purchaser or transferee of a firearm to be verified prior to the sale or other transfer, through cross-checks, by linking FFLs with state motor vehicle databases.
- › the name of the licensed holder of the firearm,
  - › any sale, transfer or other change of ownership, including loss or theft.
- The US Congress should enact legislation limiting the number and types of firearms that can be possessed by individuals, in keeping with the principles of necessity and credible justification.

**State:**

- All state legislatures should enact legislation requiring that an individual obtain a license prior to the purchase of a firearm.
- A state firearm licenses should not be authorized unless the following minimum conditions are met:
  - › credible justification prior to purchase;
  - › in general, a minimum age of 21; and
  - › a background check has been conducted indicating the absence of known risk factors for misuse. Risk factors for consideration should include, at a minimum:
    - › a prior criminal record, particularly for violent offences;
    - › being under indictment for a felony offence;
    - › a history of gender-based, sexual or domestic violence;
    - › medical conditions including a history of drug/alcohol abuse or mental health issues which might lead to the harm of self or others. Each application should be reviewed on a case-by-case basis by competent authorities drawing on all available relevant evidence.
- All state firearm licenses should be time-limited and compliance with license conditions should be vetted prior to expiry/renewal in order to assist law enforcement officials in identifying unauthorized individuals or those who have become prohibited

## TRAINING, LICENSING AND REGISTRATION

**Federal:**

- The US Congress should enact legislation mandating that firearms may only be obtained for purchase or transfer with a valid firearms license.
- The US Congress should enact legislation requiring the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to register all firearms in a central national gun registry, which is digitized and searchable, and should ensure appropriate funding through the legislation to support the ATF's ability to implement these systems. At a minimum, national registration should include:
  - › the manufacturer
  - › model/caliber
  - › serial number
  - › country of manufacture (importer) and type of firearm
  - › the source of the weapon

purchasers. In the event of non-compliance with license conditions, systems should be in place whereby firearms licenses are revoked by local law enforcement officials and the firearm immediately removed.

- All state legislatures should enact legislation requiring firearms training and testing prior to receiving a license to purchase a firearm; applicants must demonstrate competence in use of the firearm, as well as in firearms law, safety, storage, and first aid. States should require additional training and testing prior to issuing a license to carry a firearm. This training should include live-fire training, effective judgment training, verbal resolution and don't shoot/shoot scenarios.
- All states legislatures should enact legislation requiring firearm dealers to track and register any sale or transfer of ownership of firearms and should require firearm dealers to contribute records of all firearm sales and transfers for inclusion in the federal register in accordance with established international guidelines.

## REGULATING THE CARRYING OF FIREARMS IN PUBLIC

### Federal:

- The US Congress should enact legislation prohibiting the carrying of firearms in public, whether open or concealed, unless there is a credible justification for doing so.
- The US Congress should reject legislation authorizing Federally Mandated Concealed Carry Reciprocity.

### State:

- All state legislatures should enact legislation prohibiting the carrying of firearms in public, whether open or concealed, unless there is a credible justification for doing so.
- All state legislatures should enact legislation requiring an individual to obtain a permit if they wish to carry any firearm in public. All permits

issued should be recorded in the federal registry.

- All state legislatures should ban the carrying of firearms on college and university campuses.

## REPORTING OF LOST OR STOLEN FIREARMS

### Federal

- The US Congress should enact legislation requiring all lost and stolen firearms to be immediately reported to local law enforcement officials.
- The US Congress should enact legislation that prohibits the trafficking of firearms.
- The US Congress should enact legislation requiring Federally Licensed Firearm Dealers (FFLs) to lock and store weapons on their premises and to adopt adequate safety measures and precautions to decrease the likelihood of inventory being lost or stolen. The ATF should be authorized to enforce these requirements and be provided with adequate funding to do so.
- The US Congress should amend the Firearm Owners Protection Act of 1986, making annual audits of all FFLs a requirement.

### State:

- In the absence of federal law, all state legislatures should enact legislation requiring all unlicensed firearm dealers and gun owners to immediately report lost or stolen firearms to local law enforcement officials.
- In the absence of federal legislation, all state legislatures should enact legislation prohibiting the trafficking of firearms.
- All state legislatures should enact legislation prohibiting the purchase or acquisition of a firearm with the intent to transfer possession to another individual without undergoing a background check and/or the solicitation of an individual to acquire possession of a firearm by proxy to circumvent a required background check.
- In the absence of federal legislation, all state

legislatures should enact legislation requiring firearms dealers to lock and store weapons on their premises and to adopt adequate safety measures and precautions to decrease the likelihood of inventory being lost or stolen.

- All state legislatures should enact legislation requiring that firearm owners keep firearms locked and unloaded and safely stored in lock boxes or firearm safes, out of plain sight, with ammunition stored separately from the firearm, when in their home or vehicle.
- Semi-automatic assault rifles and shotguns, large-capacity magazines, bump stocks, trigger cranks and other dangerous devices

#### **Federal:**

- The US Congress should pass legislation banning the sale, transfer, and possession of semi-automatic assault rifles, semi-automatic shotguns, semi-automatic submachine guns, large-capacity magazines, bump stocks, trigger cranks and other dangerous devices.
- The US Congress should enact legislation banning the purchase, assembly or transfer of “ghost guns,” which are self-assembled firearms without serial numbers and 3D-printed guns, both of which are essentially untraceable.
- The US Congress should repeal the Protection of Lawful Commerce in Arms Act (PLCAA).

#### **State:**

- In the absence of federal law, all state legislatures should enact legislation banning the sale, transfer and possession of semi-automatic assault rifles, semi-automatic shotguns, semi-automatic submachine guns, large-capacity magazines, bump stocks, trigger cranks and other dangerous devices.
- All state legislatures should repeal laws shielding firearm manufacturers and dealers from liability.

## **STAND YOUR GROUND LAWS**

- All state legislatures should repeal Stand Your Ground laws.

## **SMART GUNS AND GUN SAFETY TECHNOLOGY**

- The US Congress should enact legislation to fund research and development of all potential mechanisms of firearms safety. All approaches need to be analyzed for evidence-based policy making aimed at reducing firearms violence.

## **INVESTMENT IN RESEARCH TO IDENTIFY STRATEGIES TO REDUCE GUN VIOLENCE**

- The US Congress should acknowledge that firearm violence is a public health crisis, repeal the Dickey Amendment and enact legislation allocating adequate funding to conduct evidence-based research on the causes and effects of gun violence, and to research and develop viable strategies for gun violence prevention to inform policy making aimed at reducing firearms deaths and injuries.
- The US Congress should enact legislation to repeal the Tiahrt Amendments which prohibit the ATF from releasing identifying information regarding firearm ownership, possession and transfer for the purposes of conducting further firearm research on gun violence prevention.

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- 816 Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36i, 29-37a, 29-38g – 29-38j. Connecticut does not impose any limit on the number of firearms that a permit holder who has completed safety training may possess.
- 817 D. C. Code Ann. §§ 7-2502.01 – 7-2502.10; D.C. Mun. Regs. tit. 24, D.C. Mun. Regs. tit. 24, §§ 2311 – 2320. DC has no limit on the number of firearms purchased by an individual but, an individual may not register more than one handgun in a 30-day period in DC.
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- 822 Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E, 131P. All firearm owners must obtain a valid Firearm Identification (FID) card or a Class A or Class B license to carry a firearms. FID card holders may purchase/possess rifles or shotguns, but not assault weapons and large capacity weapons. Class A licensees are allowed to purchase any type of firearm permitted under law and Class B licensees may only possess/purchase handguns that are not "large capacity," rifles and shotguns (Mass. Gen. Laws ch. 140, § 131(a)). Only one handgun may be purchased per permit. There is no limit on the number of firearms that Class A & B licensees may purchase. FID card holder may purchase unlimited non-large-capacity rifles or shotguns. Massachusetts defines "large capacity weapon" to include assault weapons, certain semi-automatic weapons, and certain large capacity rotating-cylinder firearms.
- 823 Mich. Comp. Laws §§ 28.422, 28.422a.
- 824 Michigan's permit requirement appears to apply to purchase but not possession, although Michigan's law says that the license is required to "purchase, carry, possess, or transport a pistol." The word "possess" was added in 2008. 2008 Mich. ALS 195 (effective January 7, 2009). However, the law also says, "A license is void unless used within 30 days after the date it is issued." Mich. Comp. Laws § 28.422. In addition, individuals who obtain a handgun from a licensed dealer after a background check are exempt from the license requirement. Mich. Comp. Laws § 28.422a.
- 825 Neb. Rev. Stat. Ann. §§ 69-2404, 69-2407, 69-2409. Individuals who purchase handguns from licensed dealers outside of the city of Omaha, or who have been issued a concealed carry permit, do not need a handgun certificate to purchase or possess a handgun. Individuals who purchase handguns from private sellers must obtain a valid handgun certificate.
- 826 N.J. Stat. Ann. § 2C:58-3.
- 827 New Jersey's law appears to prohibit "possession" without a permit, but exempts possession in the home or place of business from this requirement, making this prohibition apply primarily to guns in public. See N.J. Stat. §§ 2C:39-5, 2C:39-6(e).

- 828 New Jersey's handgun permit may be extended for an additional 90 days upon a showing of good cause. All individuals seeking to purchase a handgun must obtain a permit to purchase. Those seeking to purchase a rifle or shotgun must obtain a valid Firearms Purchaser Identification Card (FPIC). Both permit and ID card require a background check and waiver of confidentiality where the individual has been confined by an institution for a mental or psychiatric condition. Only one handgun may be purchased per permit and within each 30 day period.
- 829 N.Y. Penal Law §§ 400.00 – 400.01. Individuals with handgun licenses in NY must have them recertified every five years in the state and every three years if the permits apply to NYC. The specific caliber, make, model, manufacturer's name and serial number must be recorded on each license.
- 830 In New York City, an individual must possess a valid permit to purchase or possess a rifle or shotgun, rifle or shotgun ammunition, and/or rifle or shotgun ammunition feeding device. Applicants must pass a background check to be eligible and permits are valid for three years, New York, N.Y., Admin. Code § 10-131, 10-303 et seq., Rules tit. 38, § 3-01 et seq.
- 831 N.C. Gen. Stat. §§ 14-402 – 14-404. A handgun permit to purchase in NC is valid for one handgun.
- 832 R. I. Gen. Laws §§ 11-47-35 – 11-47-35.1. Safety certificates for pistols/revolvers in RI must be issued by the Department of Environmental Management. Any individual wishing to purchase a hand gun must complete a two-hour handgun safety course unless they have been issued a valid concealed carry permit or are a law enforcement officer.
- 833 *The National Firearms Act*, 26 U.S.C. § 5801 *et seq.* The National Firearms Act (NFA), enacted in 1934, imposes an excise tax and registration requirements on a small category of firearms: including machine guns, short-barreled shotguns or rifles, and silencers. These weapons must also be registered under the NFA. 26 U.S.C. § 5845(a). The NFA also includes certain "smooth-bore handguns." 26 U.S.C. § 5845(a), (e). Most handguns are not covered by the NFA's registration requirement.
- 834 US law actually prohibits the use of the NICS data system to create a national firearm registry. See 18 U.S.C. § 926(a); 28 C.F.R. § 25.9(b) (3); The NFA required the registration of firearms. The NFA covered certain shotguns and rifles, firearms described as "any other weapons," machineguns, and silencers. This early firearm control legislation was endorsed by the NRA. In *Miller* the Supreme Court held that the NFA did not violate the Second Amendment. In 1968, the obligation to register a firearm under the NFA was challenged in Supreme Court in *Haynes v. United States*, 390 US 85 (1968). The Court held that the registration requirement could violate the privilege from self-incrimination under the Fifth Amendment of the US This decision essentially made the NFA moot and accordingly there is currently no comprehensive national system of firearm registration. The NFA does still require a narrow category of firearms, including machine guns, short-barreled shotguns or rifles, and silencers, to be registered. But federal law prohibits the use of the NICS to create any general or comprehensive system of registration of firearms or firearm owners.
- 835 Haw. Rev. Stat. Ann. §§ 134-3(a), (b), 134-4; D.C. Code Ann. §§ 7-2502.01-7-2502.10; D.C. Mun. Regs. tit. 24, §§ 2311- 2320. (DC does not allow dangerous firearms to be registered. These include: sawed-off shotguns, machine guns, short-barreled rifles, assault weapons, .50 BMG rifles, among others.
- 836 N.Y. Penal Law §§ 265.00(22)(e)-(f), 265.00(23), 400.00(10), (16-a), 400.02.
- 837 California, Connecticut, Hawaii, Maryland, New Jersey and New York.
- 838 Delaware, Florida, Georgia, Idaho, Pennsylvania, Rhode Island, South Dakota and Vermont.
- 839 For more on International guidelines on firearm regulation see Section 1.4: A System Of Regulation Based On International Guidelines.
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- 842 *Fact Sheet - Multiple Firearms Sales*, ATF, May 2018, [www.atf.gov/resource-center/fact-sheet/fact-sheet-multiple-firearms-sales](http://www.atf.gov/resource-center/fact-sheet/fact-sheet-multiple-firearms-sales)  
(This rule does not apply to long guns like assault rifles).
- 843 Much of the data utilized to create this table was taken from Giffords Law Center to Prevent Gun Violence, *Registration*, [www.lawcenter.giffords.org/gun-laws/policy-areas/gun-owner-responsibilities/registration/](http://www.lawcenter.giffords.org/gun-laws/policy-areas/gun-owner-responsibilities/registration/)
- 844 As of 1986, the transfer and possession of machine guns (not already in lawful circulation) was outlawed in the US. 18 U.S.C. § 922(o). See also 18 USC. § 922(b)(4); Pre-ban machine guns that were lawfully owned may continue to be owned and transferred subject to the purview of the NFA and its requirements. 26 U.S.C. § 5802, 26 U.S.C. § 5841(a). See also 27 C.F.R. §§ 479.101, 479.105. Short-barreled shotguns are also banned from sale by licensed dealers, unless specifically authorized by the US Attorney General, and necessary for public safety. 18 U.S.C. § 922(b)(4).
- 845 Cal. Penal Code §§ 17000, 27560.
- 846 Cal. Penal Code §§ 30510-30530, 30600-30675, 30900-30965.
- 847 Conn. Gen. Stat. §§ 53-202d(a), 53-202p(a)(1), 53-202q.
- 848 Del. Code Ann. tit 11, § 1448A(d)(1), (3).
- 849 D.C. Code Ann. §§ 7-2502.01-7-2502.10; D.C. Mun. Regs. tit. 24, §§ 2311- 2320.



- 850 Fla. Stat. Ann. § 790.335(2), (3).
- 851 Ga. Code Ann. § 16-11-129(a).
- 852 Haw. Rev. Stat. Ann. §§ 134-3(a), (b), 134-4. (The registration must include: (1) the name of the manufacturer and importer; (2) the model, type of action, caliber or gauge, and serial number of the firearm; and (3) the source from which the firearm was obtained, including the name and address of the previous registrant. Further, every individual who brings a firearm into Hawaii must register the firearm within three days of the arrival of either the person or the firearm, whichever arrives later).
- 853 Haw. Rev. Stat. Ann. §§ 134-3(a), (b), 134-4. Hawaii bans assault pistols, but not assault long guns.
- 854 Idaho Const., art. 1, § 11.
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- 856 Md. Code Ann., Crim. Law § 4-303. Maryland bans both assault pistols and assault long guns, but only grandfathered assault pistols must be registered.
- 857 N.J. Stat. Ann. §§ 2C:39-5f, 2C:58-12.
- 858 N.Y. Penal Law §§ 265.00(22)(e)-(f), 265.00(23), 400.00(10), (16-a), 400.02.
- 859 N.Y. Penal Law §§ 265.00(22)(e)-(f), 265.00(23), 400.00(10), (16-a), 400.02.
- 860 18 Pa. Cons. Stat. § 6111.4 (long guns only).
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- 868 *Understanding McDonald v. Chicago*, Giffords Law Center to Prevent Gun Violence, [www.lawcenter.giffords.org/gun-laws/the-second-amendment/the-supreme-court-the-second-amendment/mcdonald-v-chicago/](http://www.lawcenter.giffords.org/gun-laws/the-second-amendment/the-supreme-court-the-second-amendment/mcdonald-v-chicago/)
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- 1050 Haw. Rev. Stat. Ann. §§ 134-1, 134-4, 134-8
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- 1052 Maryland required the registration of “assault pistols,” which were banned in the state many years before Maryland banned assault long guns.
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- 1054 Mass. Gen. Laws ch. 140, §§ 121, 122, 123, 131M
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