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SYMPOSIUM - GUN CONTROL AND THE SECOND AMENDMENT:  
DEVELOPMENT AND CONTROVERSIES IN THE WAKE OF  
DISTRICT OF COLUMBIA V. HELLER AND MCDONALD V.  
CHICAGO

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## Gun Control After Heller and McDonald: What Cannot Be Done and What Ought to Be Done

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## GUN CONTROL AFTER *HELLER* AND *MCDONALD*: WHAT CANNOT BE DONE AND WHAT OUGHT TO BE DONE

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## INTRODUCTION

The *Heller* and *McDonald* decisions rendered certain gun control measures unconstitutional. This Article discusses the kinds of gun control that still may be constitutionally permissible in light of those decisions. It also analyzes which kinds of gun control are effective, first reviewing evidence on the fundamental underlying issue of whether gun ownership levels affect violence rates. This Article then outlines the major forms that gun control efforts have taken and critically reviews the research evidence concerning the impact of gun control measures on crime. Finally, the Conclusion outlines the types of constitutionally permissible gun control policies that should be implemented to reduce crime.

### I. WHAT CANNOT BE DONE: CONSTITUTIONALLY IMPERMISSIBLE GUN CONTROL

In *District of Columbia v. Heller* and *McDonald v. City of Chicago*, the Supreme Court established that the Second Amendment protects an individual's right to own a gun for personal use and that neither the federal government nor state or local governments can abridge this right.<sup>1</sup> More specifically, the Court ruled that there is a constitutional right to keep a loaded handgun at home for self-defense.<sup>2</sup> Thus, it seems clear that governments may not completely forbid the ownership of handguns, or of all guns, or require that all guns kept in the home remain unloaded.

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1. See *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

2. See *Heller*, 554 U.S. at 628–29.

## II. WHAT MAY STILL BE PERMISSIBLE

Beyond these limitations, it remains unclear what other gun control measures, if any, are now constitutionally impermissible. Because the decisions explicitly addressed the possession of guns in the home, it remains possible that governments could completely forbid the possession of firearms outside the home. Possession in the home can be restricted in a variety of ways short of total prohibition. For example, after the *McDonald* decision struck down Chicago's handgun ban, the city of Chicago quickly responded by implementing a revised ordinance that forbade keeping more than one handgun assembled and operable in the home.<sup>3</sup>

Likewise, the Court did not explicitly forbid the enactment of laws establishing restrictive firearms licensing laws and ordinances. New York City requires residents to have a pistol permit to own a handgun legally, but the law is administered so stringently that virtually no residents of New York City other than retired police officers are able to get a permit.<sup>4</sup> It costs \$431.50 just to apply for a handgun license (including fingerprinting charges), the fees are nonrefundable, and the odds are stacked heavily against the application being approved.<sup>5</sup> For example, in 1987, only twenty-one percent of applications were approved.<sup>6</sup> Applicants may be denied if they had a moving violation in their driving history, failed to get fingerprinted, or failed to provide all the voluminous paperwork and documentation required.<sup>7</sup> The application must include two color photographs of specified size, a birth certificate, proof of current address, a letter of necessity, and for some applicants, copies of the applicant's business sales tax report, a

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3. See CHI., ILL. CODE § 8-20-040 (2010).

4. See Jarrett Murphy, *Are New York City's Gun Laws the Next Target?*, CITY LIMITS (Aug. 24, 2012), <http://www.citylimits.org/news/articles/4618/are-new-york-city-s-gun-laws-the-next-target>.

5. See POLICE DEP'T CITY OF N.Y., INSTRUCTIONS TO HANDGUN LICENSE APPLICANTS (2012), available at <http://www.nyc.gov/html/nypd/downloads/pdf/permits/HandGunLicenseApplicationFormsComplete.pdf>.

6. Bethany Kandel, *Goetz Sentenced in Gun Case Today*, USA TODAY, Oct. 19, 1987, at 3A.

7. See POLICE DEP'T CITY OF N.Y., *supra* note 5. This document includes a detailed five-page application form and eleven more pages of supplementary forms and instructions, including forms in which the applicant swears that he is familiar with all local, state, and federal laws and regulations related to handgun possession, which must be signed and notarized. See POLICE DEP'T CITY OF N.Y., HANDGUN LICENSE APPLICATION (2010), available at <http://www.nyc.gov/html/nypd/downloads/pdf/permits/HandGunLicenseApplicationFormsComplete.pdf>.

personal income tax return, daily bank deposit slips, and a variety of bank statements.<sup>8</sup>

In short, it is so difficult to own a handgun in New York City legally that less than one percent of New York City residents have obtained the license authorizing them to possess a handgun.<sup>9</sup> The burden of proof under New York City law is on the would-be handgun owner to show high moral character and a special need for a handgun.<sup>10</sup> Few are able to meet that burden. The New York City law therefore appears to function effectively as a *de facto* ban on handgun possession even though it is not written explicitly as a ban. It remains to be seen whether this sort of semi-ban is constitutionally impermissible, but if New York City's gun laws are constitutional, it is unlikely that any existing gun laws, or any but the tiniest share of politically achievable future gun control measures, would be ruled unconstitutional.

The actual impact of *Heller* and *McDonald* on gun control restriction in America may well turn out to be negligible. No other large cities besides Washington, D.C. and Chicago—and no states—have enacted outright bans on private possession of handguns or of guns in general.<sup>11</sup> There are no signs that any would have done so in the foreseeable future if *Heller* and *McDonald* had been decided differently. If this pair of decisions only forbids outright bans, and later decisions do not significantly increase the scope of measures considered to be unconstitutional, it is unlikely that many significant existing gun control measures would be taken off the books. In sum, it is not clear that any further gun laws will be struck down (beyond the handful of local gun bans in those small towns in Illinois) or that any politically achievable gun control proposals will have to be withdrawn due to constitutional concerns as a result of *Heller* and *McDonald*. Furthermore, it may not be politically feasible to enact outright gun bans in the foreseeable future. Only twenty-six percent of U.S. adults supported banning the private possession of handguns in an October 2011 national survey.<sup>12</sup> Thus, if *Heller* and *McDonald* forbid only outright gun bans, they will neither preclude enactment of

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8. See sources cited *supra* note 7.

9. See Murphy, *supra* note 4.

10. See *supra* note 4.

11. See D.C. CODE § 7-2502.01 (2012); 430 ILL. COMP. STAT. 65/1 (2012).

12. See *Guns*, GALLUP, <http://www.gallup.com/poll/1645/guns.aspx> (last visited Nov. 20, 2012); see also Jeffrey M. Jones, *Record-Low 26% in U.S. Favor Handgun Ban*, GALLUP (Oct. 26, 2011), <http://www.gallup.com/poll/150341/Record-Low-Favor-Handgun-Ban.aspx>.

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any new gun laws that would otherwise have been politically achievable nor require the repeal or revision of any significant existing gun laws beyond the two they have already negated.<sup>13</sup>

On the other hand, it is possible that the scope of what is considered unconstitutional may be expanded in the future as the Court extends or elaborates on *Heller* and *McDonald*, especially if the composition of the Court changes in a conservative, pro-gun direction. Thus, it is worth thinking about whether anything significant in the way of crime control and violence prevention would be lost if any existing gun control laws were struck down. What does existing research have to say about the effectiveness of gun laws? If they are ineffective, no crime control would be lost by expanded interpretations of the protections of the Second Amendment, no matter how extensive the protections might prove to be.

### III. DO GUN LEVELS AFFECT VIOLENCE?

A more fundamental preliminary question, however, is whether gun availability actually increases crime and violence. If it does not, there is little utilitarian justification for gun control. While many gun control advocates undoubtedly favor stricter gun laws for non-utilitarian reasons, such as a cultural antipathy towards gun owners,<sup>14</sup> few openly rest their case for controls on these grounds.<sup>15</sup> If gun availability does affect the rates or seriousness of crime and violence, then laws that are effective in reducing gun availability may reduce rates of violence.

Most studies of the impact of gun ownership levels on rates of crime and violence are fatally flawed.<sup>16</sup> Nearly all of them make at least one, but usually all of the three critical errors: (1) they use invalid measures of gun ownership levels; (2) they fail to make any serious effort to control for the effects on crime of other factors correlated with gun ownership (“confounding factors”); or (3) they fail to distinguish the effect of gun levels on crime rates from the

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13. For examples of the gun laws that were not subject to repeal, see sources cited *supra* note 11.

14. See Gary Kleck et al., *Why Do People Support Gun Control?: Alternative Explanations of Support for Handgun Bans*, 37 J. CRIM. JUST. 496, 497–98 (2009) [hereinafter Kleck et al., *Why do People Support Gun Control?*].

15. See generally BRADY CTR. TO PREVENT GUN VIOLENCE, LEGAL ACTION PROJECT LITIGATION DOCKET (Jan. 2012), available at <http://www.bradycenter.org/xshare/pdf/lap/cases/currentdocket.pdf>.

16. See Gary Kleck, *How Not to Study the Effect of Gun Levels on Violence Rates*, 21 J. FIREARMS & PUB. POL’Y 65, 65–93 (2009).

effect of crime rates on gun ownership.<sup>17</sup> Only three studies have avoided these three problems, and all found there was no net crime-increasing effect on gun ownership levels.<sup>18</sup>

Thus, the overall rate of gun ownership in the population as a whole has no net effect on crime rates, including homicide rates.<sup>19</sup> Consequently, even if gun control measures could reduce general gun ownership levels, there is no sound reason to believe this would cause a reduction in crime rates. On the other hand, gun control measures might reduce gun levels within some high-risk subsets of the population, such as convicted criminals. Indeed, few gun control measures are intended to reduce overall gun levels.<sup>20</sup> In fact, they might reduce crime in other ways that do not require reducing gun ownership levels, such as reducing the availability of guns in public places or deterring criminal use of guns through harsh penalties.<sup>21</sup> Thus, some gun control interventions might still be effective even though higher overall gun levels do not increase crime.

In the review that follows, the conclusions I draw are based on the findings of the methodologically strongest research done on each gun-related intervention. They are not based on crude “vote counting” to determine the most frequent findings. This is a crucial distinction because the vast majority of research in this area is, like the research on the effect of gun levels on crime rates, fatally flawed and the findings of most studies therefore can be given little weight.<sup>22</sup> Making matters worse, most research published in medical and public health journals is not only technically primitive, but also shows distinct signs

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17. *See id.*

18. *See* Gary Kleck & E. Britt Patterson, *The Impact of Gun Control and Gun Ownership Levels on Violence Rates*, 9 J. QUANTITATIVE CRIMINOLOGY 239 (1993) [hereinafter Kleck & Patterson, *Violence Rates*]; Tomislav Kovandzic, Mark Schaffer, & Gary Kleck, *Gun Prevalence, Homicide Rates and Causality: A GMM Approach to Endogeneity Bias*, THE SAGE HANDBOOK OF CRIMINOLOGICAL RESEARCH METHODS 76-92 (David Gadd, Susanne Karstedt, & Steven F. Messner eds., 2012); Tomislav Kovandzic, Mark Schaffer, & Gary Kleck, *Estimating the Causal Effect of Gun Prevalence on Homicide Rates: A Local Average Treatment Effect Approach*, 28 J. QUANTITATIVE CRIMINOLOGY (forthcoming Sept. 2013).

19. *See* Kleck et al., *Why Do People Support Gun Control?*, *supra* note 14, at 502. *See generally* GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL (1997) [hereinafter KLECK, TARGETING GUNS].

20. *See* KLECK, TARGETING GUNS, *supra* note 19.

21. *See id.* at 366.

22. For a discussion of examples of fatally flawed research, see *infra* Part V.

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of ideological bias.<sup>23</sup> In practice, this means one technically sound study can outweigh a dozen fatally flawed studies. The conclusions of this Article are based on the studies that, though typically few in number, most closely hewed to the methods prescribed in research methods textbooks.

#### IV. FORMS OF GUN CONTROL

Gun control can take many forms and is not limited to laws and ordinances. Indeed, most efforts to limit gun ownership in recent decades have not been aimed at creating new legislation.<sup>24</sup> As state and local governments increasingly have become dominated by Republicans and conservative Democrats, prospects for gaining stricter gun laws have become dimmer and gun control advocates have sought other avenues for limiting guns that did not require the support of legislative majorities.<sup>25</sup> Before discussing gun control laws, it is worth reviewing some of the other methods of gun control.

First, however, I should stress what this Article does not cover. It does not cover (1) evaluations of policy interventions that were putatively aimed at “reducing gun violence” but that did not actually include any gun-specific elements, or (2) evaluations of interventions composed of multiple elements, some gun-related and others not, but that did not separately assess the gun-related elements. One example of an intervention that does not involve any gun-oriented elements aside from the nature of offenders targeted are “Gun Court” programs, which establish special courts to handle gun crimes. Aside from the fact that the programs are aimed at gun offenders, they typically have no specifically gun-oriented elements.<sup>26</sup>

While some interventions involve genuinely gun-oriented elements, they are combined with non-gun-oriented elements in such a way that the effects of the different elements cannot be separately assessed. For example, Boston’s Operation Ceasefire involved two radically different strategies to reduce youth gun violence, one clearly gun-

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23. See KLECK, TARGETING GUNS, *supra* note 19, at 56–62; Don B. Kates et al., *Guns and Public Health: Epidemic of Violence or Pandemic of Propaganda?*, 62 TENN. L. REV. 513, 513–22 (1995).

24. See Gary Kleck & Shun-Yung Kevin Wang, *The Myth of Big-Time Gun Trafficking and the Overinterpretation of Gun Tracing Data*, 56 UCLA L. REV. 1233, 1234–35 (2009).

25. See *id.*

26. See, e.g., *Gun Courts*, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, <http://www.ojjdp.gov/mpg/progtypesguncourt.aspx> (last visited Oct. 12, 2012).



oriented and the other not.<sup>27</sup> It not only attempted to disrupt illegal gun markets and reduce gun trafficking to gang members and other criminals, but also to reduce youth violence, in the same area, at the same time, by targeting street gang members with threats of severe punishment if they continued their violent ways.<sup>28</sup> The developers of the program conceded that they could not convincingly separate the effects of the gun trafficking disruption efforts from the deterrence efforts, but nevertheless concluded that the dramatic short-term reductions in Boston's youth gun homicide rate were almost certainly due to the deterrence components rather than the gun trafficking disruption efforts.<sup>29</sup> They based this conclusion mainly on the grounds that no gun traffickers were convicted until *after* the youth gun homicide decreases already had occurred.<sup>30</sup> In this light, to describe Operation Ceasefire as an example of successful gun control, or even a successful gun intervention, would be misleading at best, irresponsible at worst.

To include evaluations of programs like these in this Article would effectively require review of every kind of crime-reduction effort ever undertaken, as long as its sponsors claimed that at least one of its goals was to "reduce gun violence." The reviewer would, for example, be placed in the absurd situation of reviewing studies of the impact of capital punishment on homicide merely because some sponsors of death penalty bills asserted that executions would deter gun homicides.<sup>31</sup> Therefore, this Article covers only specifically gun-oriented interventions, whose effects are supposed to be produced through some restriction on firearms.

### A. Lawsuits Against Gun Manufacturers, Distributors, and Dealers

A variety of non-legislative efforts to reduce gun violence have been made.<sup>32</sup> Beginning in 1989, the Brady Center to Prevent Gun Violence, the nation's leading gun control advocacy group, embarked

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27. See Anthony A. Braga & Glenn L. Pierce, *Disrupting Illegal Firearms Markets in Boston: The Effects of Operation Ceasefire on the Supply of New Handguns to Criminals*, 4 CRIMINOLOGY & PUB. POL'Y 717, 722 (2005).

28. See *id.* at 723–24.

29. See *id.* at 743–44.

30. See *id.* at 723.

31. See Doug Mataconis, *There's No Evidence the Death Penalty Deters Crime*, OUTSIDE BELTWAY (June 12, 2012), <http://outsidethebeltway.com/theres-no-evidence-the-death-penalty-deters-crime>.

32. See, e.g., BRADY CTR. TO PREVENT GUN VIOLENCE, *supra* note 15.

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on a campaign to organize and assist lawsuits against gun manufacturers, distributors, and dealers on a variety of legal grounds, including negligent distribution or marketing, making and selling defective firearms, deceptive advertising, and contributing to a public nuisance.<sup>33</sup> The Brady Center's Legal Action Project assisted both governments and private parties in bringing suits by providing free legal assistance and expertise to plaintiffs.<sup>34</sup> If these cases could be won on the merits, favorable decisions for plaintiffs might result in alterations in the way guns are manufactured, distributed, advertised, and sold.<sup>35</sup> In extreme cases, these results could cause the bankruptcy of the firearms businesses due to damages awarded to plaintiffs or legal costs.<sup>36</sup> Thus, gun availability, in general or among high-risk persons, might thereby be reduced by trial outcomes favorable to the plaintiffs. On the other hand, cases that were settled out of court might benefit individual plaintiffs, but would be unlikely to alter the way the gun business operated. Certainly cases that were dismissed or decided against plaintiffs at trial were not likely to produce such changes.

Few of the lawsuits, however, were won on the merits or resulted in any changes in the gun industry's operations. Most cases were dismissed before reaching trial; in others, the plaintiffs dropped their claims; and still others resulted in favorable trial decisions for the gun industry.<sup>37</sup> While private plaintiffs occasionally received out-of-court monetary settlements, these did not require any changes in the way gun makers, distributors, or retail dealers did business.<sup>38</sup>

Lawsuits brought by state and municipal governments were uniformly unsuccessful in obtaining favorable court decisions.<sup>39</sup> In

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33. See *About LAP*, BRADY CTR. TO PREVENT GUN VIOLENCE, <http://www.bradycenter.org/legalaction/aboutlap> (follow "The History of the Legal Action Project" hyperlink) (last visited Oct. 12, 2012).

34. See generally *id.*

35. See Fox Butterfield, *Lawsuits Lead Gun Maker to File for Bankruptcy*, N.Y. TIMES, June 24, 1999, <http://www.nytimes.com/1999/06/24/us/lawsuits-lead-gun-maker-to-file-for-bankruptcy.html>. See generally BRADY CTR. TO PREVENT GUN VIOLENCE, *supra* note 15.

36. See Butterfield, *supra* note 35.

37. See generally BRADY CTR. TO PREVENT GUN VIOLENCE, *supra* note 15.

38. See generally BRADY CTR. TO PREVENT GUN VIOLENCE, *supra* note 15; *Compendium of State Laws Governing Firearms 2010*, NRA-ILA (July 9, 2010), <http://www.nra.org/gun-laws/articles/2010/compendium-of-state-firearms-laws.aspx>.

39. Alan Feuer, *U.S. Appeals Court Rejects City's Suit to Curb Guns*, N.Y. TIMES, May 1, 2008, at B2.

2008, the *New York Times* summarized the results of government lawsuits against gun manufacturers: “Gun makers have been sued dozens of times by city and state officials across the country, but no suit has ever been successful.”<sup>40</sup> Most of these lawsuits have been dismissed, while a handful was settled out of court.<sup>41</sup> As of 2005, none of the suits brought by municipal governments had been won by plaintiffs at trial.<sup>42</sup> Since the gun industry rarely has lost lawsuits brought by either governments or private parties, there is no affirmative basis to believe that the suits had any impact on gun availability, and thus no basis to believe that they affected crime or violence.

In 2005, most lawsuits promoted by the Legal Action Project were prohibited when the Protection of Lawful Commerce in Arms Act was enacted.<sup>43</sup> The law banned civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others, unless the actions were permitted under a set of narrowly defined exceptions.<sup>44</sup>

### B. Behavioral Interventions to Reduce Firearms Injury

Another broad means of reducing firearms-related injury by altering gun-related beliefs and practices has been attempted through “education” or mass media campaigns.<sup>45</sup> These interventions commonly involve educational programs intended to increase perceptions of gun ownership, handling, and certain gun storage practices as dangerous, thereby discouraging these behaviors.<sup>46</sup> For example, school-based educational programs aimed at children may teach them to not touch guns when not supervised by adults.<sup>47</sup> In 2004, a panel of the National Research Council reviewed “behavioral interventions targeted toward reducing firearms injury” and concluded, “of the more than 80 other programs described at least briefly in the literature, few have been adequately evaluated as to

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40. *Id.*

41. *See generally* BRADY CTR. TO PREVENT GUN VIOLENCE, *supra* note 15.

42. Dan Herbeck, *America's Gun War Is Being Fought in Our Nation's Courts*, BUFFALO NEWS, June 13, 2005, at A7.

43. *See* 15 U.S.C. § 7901 (2006).

44. *See id.*

45. COMM. TO IMPROVE RESEARCH INFO. & DATA ON FIREARMS, FIREARMS AND VIOLENCE: A CRITICAL REVIEW 201 (Charles F. Wellford et al. eds., 2005).

46. *See id.*

47. *See, e.g., id.* at 202–05.

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their effectiveness. Those that have been evaluated provide little empirical evidence that they have a positive impact on children's knowledge, attitudes, and beliefs."<sup>48</sup>

Another variant of educational efforts aimed primarily at adults entails physicians counseling patients about the dangers of firearms.<sup>49</sup> Although supporters have claimed beneficial impacts of these efforts in the form of safer gun storage practices or reduced gun ownership based on crude before-and-after comparisons,<sup>50</sup> the only randomized, controlled trial evaluation of this kind of program found that counseling had no impact on either gun ownership or gun storage practices.<sup>51</sup> Another type of gun safety educational effort involves the use of mass communication methods, such as television and radio announcements, and widespread distribution of printed materials stressing the dangers of gun ownership or of storing guns in an unsafe manner.<sup>52</sup> The most technically sound evaluation of such a program found that public education efforts in the form of safe storage campaigns had no impact on whether guns were stored unlocked or loaded.<sup>53</sup> Finally, gun owners who participated in gun training programs were found to be no more likely than other gun owners to store their guns locked and unloaded.<sup>54</sup> Whether this reflects the ineffectiveness of gun training programs is unclear because people who own guns for defensive purposes are the ones most likely to keep their guns loaded and unlocked, and most gun training programs would not instruct owners to store defensive guns locked and unloaded.<sup>55</sup>

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48. *Id.* at 213.

49. *See, e.g., id.* at 202–03.

50. *See, e.g.,* Kara S. McGee et al., *Review of Evaluations of Educational Approaches to Promote Safe Storage of Firearms*, 9 *INJURY PREVENTION* 108, 111 (2003).

51. *See* David C. Grossman et al., *Firearm Safety Counseling in Primary Care Pediatrics: A Randomized, Controlled Trial*, 106 *PEDIATRICS* 22, 24 (2000).

52. *See* Elanor A. Sidman et al., *Evaluation of a Community-Based Handgun Safe-Storage Campaign*, 115 *PEDIATRICS* 654, 655 (2005).

53. *See id.* at 658–59.

54. *See* Douglas S. Weil & David Hemenway, *Loaded Guns in the Home: Analysis of a National Random Survey of Gun Owners*, 267 *JAMA* 3033, 3036 (1992). *See generally* PHILIP J. COOK & JENS LUDWIG, *GUNS IN AMERICA: RESULTS OF A COMPREHENSIVE NATIONAL SURVEY ON FIREARMS OWNERSHIP AND USE* 23, 24–25 (1996).

55. *See* Jens Ludwig, *Better Gun Enforcement, Less Crime*, 4 *CRIMINOLOGY & PUB. POL'Y* 677, 685 (2005).

### C. Firearms Safety Technology

The National Research Council Panel on Firearms and Violence reviewed studies of the impact of firearms safety technology (mostly locking devices) and stated, “we found no credible scientific evidence . . . that demonstrates whether safety devices can effectively lower injury.”<sup>56</sup> The Panel noted that many locking devices were found unreliable in unlocking when an authorized user of the gun wanted to use the gun,<sup>57</sup> and that “firearms safety technology invariably reduces the effectiveness of the weapon.”<sup>58</sup> The Panel also concluded that locking devices could “cause unintended injuries” because “locking devices may compromise the ability of authorized users to defend themselves” and “a lock may fail [to disengage] entirely or may take too much time for the weapon to be of use.”<sup>59</sup> Thus far, attempts to develop reliable “personalized” gun locks that automatically lock, but then unlock only for authorized users, have proven unsuccessful.<sup>60</sup>

### V. EFFECTS OF GUN CONTROL LAWS ON CRIME

The primary focus of this review is the effect of gun control laws on crime. Enacting new gun control laws or amending existing laws to make them stricter could reduce violent crime by blocking the acquisition of guns, discouraging their possession in certain circumstances and locations, or deterring their use in crime.<sup>61</sup> The laws might be broadly aimed at reducing gun availability in the general population as a whole, or just at subsets of the population regarded as being at a higher risk of committing violence.<sup>62</sup> They can restrict firearms as a whole, or just narrow subsets like “assault weapons,” inexpensive concealable handguns, or handguns as a group.<sup>63</sup> Conversely, gun control laws might be loosened, which could either increase or decrease crime. This Article covers the more

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56. See COMM. TO IMPROVE RESEARCH INFO. & DATA ON FIREARMS, *supra* note 45, at 219.

57. *Id.* at 216.

58. *Id.* at 217.

59. *Id.* at 216.

60. COMM. TO IMPROVE RESEARCH INFO. & DATA ON FIREARMS, *supra* note 45, at 216–17; Gary Kleck, Editorial, *Guns Aren't Ready to Be Smart*, N.Y. TIMES, Mar. 11, 2000, at A15.

61. See Gary KLECK, POINT BLANK: GUNS AND VIOLENCE IN AMERICA 323-58 (1991) [hereinafter KLECK, POINT BLANK] (discussing gun regulations).

62. See *id.* at 328.

63. For a taxonomy of gun control laws, see *id.* at 327.

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important types of gun control laws; it does not cover minor types adopted by only one or two state or local jurisdictions.

### A. Bans on Possession of Specific Gun Types

#### 1. *Local Handgun Bans*

The United States has never banned the private possession of all guns or of handguns. Likewise, no state has done so.<sup>64</sup> A few municipalities, however, have banned handguns.<sup>65</sup> In recent decades, the only large cities to do so were Chicago and Washington, D.C., which effectively banned the private possession of handguns by first requiring handguns to be registered, then ceasing to register any more handguns.<sup>66</sup> More precisely, these cities enacted slow-motion handgun bans in which residents who already had properly registered handguns could continue possessing them if they re-registered them, but no further registration of handguns would occur.<sup>67</sup> Thus, as lawful handgun owners died or moved away from the city, the number of legal handgun owners would dwindle.<sup>68</sup> Although these laws were struck down by the *Heller* and *McDonald* decisions, it is still worth assessing their impacts on crime as a way of judging the likely effects of adopting similar bans that might prove constitutionally acceptable to a future Supreme Court.

The technically strongest evaluations of local handgun bans have assessed the D.C. law.<sup>69</sup> Colin Loftin and his colleagues conducted a time series analysis of homicide trends in D.C. and in the surrounding suburbs, which were treated as control areas.<sup>70</sup> They found that gun homicides declined abruptly in D.C. immediately after the law went into effect, and declined to a greater degree than in the D.C. suburbs, which were not subject to the handgun ban.<sup>71</sup> This finding, however,

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64. LEE KENNETT & JAMES LAVERNE ANDERSON, *THE GUN IN AMERICA: ORIGINS OF A NATIONAL DILEMMA* 244–45 (1975).

65. See Michael B. de Leeuw et al., *Ready, Aim, Fire?* *District of Columbia v. Heller and Communities of Color*, 25 HARV. BLACKLETTER L.J. 133, 145–46 (2009).

66. Chester L. Britt et al., *A Reassessment of the D.C. Gun Law: Some Cautionary Notes on the Use of Interrupted Time Series Designs for Policy Impact Assessment*, 30 LAW & SOC'Y REV. 361, 369 (1996).

67. See *id.* at 369, 371.

68. See *id.* at 369.

69. D.C. CODE § 6-2301 et seq. (1990).

70. See generally Colin Loftin et al., *Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia*, 325 NEW ENG. J. MED. 1615 (1991).

71. See *id.* at 1678.

was later found to be extremely fragile—it could not be replicated if the analysis was improved in any of a number of ways.<sup>72</sup> Chester Britt, Gary Kleck, and David Bordua reanalyzed the D.C. homicide data and extended the dataset.<sup>73</sup> The study found that support for a homicide-reducing impact disappeared once various improvements were made in the research.<sup>74</sup> For example, the original study's statistical model of the temporal pattern of the ban's effect assumed an immediate, abrupt effect, even though the law implemented a slow-motion handgun ban that should have reduced handgun levels gradually over an extended period of time.<sup>75</sup> When an impact model that more appropriately assumed a gradual impact was used, the results indicated the law had no effect.<sup>76</sup> The authors also used the D.C. suburbs as a control area, even though control areas are customarily chosen to resemble the intervention area as closely as possible.<sup>77</sup> The D.C. suburbs are radically different from D.C. When Baltimore, an area far more similar to D.C. than the suburbs, was used as a control area, evidence of any impact of the ban on homicide disappeared.<sup>78</sup> Baltimore experienced just as big a drop in gun homicide as D.C., even though the former did not ban handguns or otherwise strengthen its gun laws.<sup>79</sup> Finally, since the impact of a slow-motion ban should be most pronounced after a few years have passed, the time period was extended to cover a longer period of time after the law was passed in 1976.<sup>80</sup> Using this improved study, it was clear that by 1991 the appearance that the D.C. ban had an impact had disappeared.<sup>81</sup> Thus, the most thorough analysis of the D.C. handgun ban indicated that it had no effect on homicide rates.<sup>82</sup> No comparable studies of the Chicago handgun ban have been conducted. In sum, it appears that local handgun bans do not reduce homicide.

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72. *See generally* Britt et al., *supra* note 66.

73. *See generally* Britt et al., *supra* note 66.

74. *See id.* at 373–77.

75. *See id.* at 369–70.

76. *See id.* at 375–76.

77. *See id.* at 364–66.

78. *See id.* at 373.

79. *See id.*

80. *See id.* at 375.

81. *See id.* at 377.

82. *See generally id.*

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## 2. *Assault Weapon Bans*

The 1994 Federal Violent Crime Control Act banned assault weapons (AWs) and large-capacity ammunition magazines.<sup>83</sup> Nine states have enacted similar bans.<sup>84</sup> These assault weapon bans typically prohibit further manufacture, importation, acquisition, or transfer of specified models of semiautomatic firearms, while leaving ownership of existing AWs undisturbed.<sup>85</sup> The impact of the laws are sharply restricted by the narrow scope of prohibited firearms and the rarity with which these guns are used in crime. For example, the gun models banned by the federal AW ban claimed less than 1.4% of the crime guns recovered in two large statewide samples, while AWs in general account for less than 1.2% of the guns used in homicide and, on average, only about 1.8% of all the crime guns recovered by police in forty-three state and local samples.<sup>86</sup> Because existing AW bans did not criminalize possession of AWs already in existence when the laws were enacted, and unbanned, mechanically identical guns could easily be substituted for the banned models, the maximum possible impact of the bans would necessarily be much smaller than 1.2 to 1.8%. For example, it was estimated that even under the most optimistic plausible set of assumptions, no more than 0.03% of prospective criminals could have been blocked from getting an AW or functional equivalent by the federal AW ban.<sup>87</sup> We do not have research methods and data sensitive enough to detect effects this small. For one thing, statistics on crime, even homicide, are not accurate to within 2% of the true totals, never mind 0.03%.<sup>88</sup> Consequently, claims that the federal AW ban reduced homicides by 7% cannot be taken seriously.<sup>89</sup> It is probably impossible to detect

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83. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796.

84. See generally BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, STATE LAWS AND PUBLISHED ORDINANCES—FIREARMS (2010), available at <http://www.atf.gov/publications/download/platf-p-5300-5-2011/2009-30th-edition.pdf> [hereinafter ATF STATE LAWS]; NRA-ILA, *supra* note 38.

85. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796.

86. See KLECK, TARGETING GUNS, *supra* note 19, at 112–14, 141–43.

87. See Gary Kleck, *Impossible Policy Evaluations and Impossible Conclusions: A Comment on Koper & Roth*, 17 J. QUANTITATIVE CRIMINOLOGY 75, 77 (2001) [hereinafter Kleck, *Comment on Koper & Roth*].

88. See *id.* at 78.

89. See Christopher S. Koper & Jeffrey A. Roth, *The Impact of the 1994 Federal Assault Weapon Ban on Gun Violence Outcomes: An Assessment of Multiple*



the extremely small effects that AW bans might have, if they have any effect at all.

AWs do not fire significantly more rapidly than other semiautomatic guns or revolvers, and any one shot from an AW is not, on average, more lethal than a shot from other, non-AW firearms.<sup>90</sup> Thus, the main reason that AWs might contribute to the number of deaths and injuries resulting from assaults is that they, like most semiautomatic firearms, all permit the use of large capacity magazines (LCMs), which allow a shooter to fire a large number of rounds without reloading.<sup>91</sup> Bans on the further manufacture or sale of LCMs typically prohibit magazines with a capacity greater than ten rounds.<sup>92</sup> Thus, if denied an LCM, a criminal armed with a semiautomatic pistol could fire no more than eleven rounds (the ten stored in the magazine, plus one in the chamber of the gun itself) without reloading. The bans were based on the premise that some criminals armed with LCMs would kill or wound more victims because they could fire more shots without reloading. The impact of these bans was sharply limited by the fact that very few criminal assaulters fire more than eleven rounds in a given violent incident even when they have the ability to do so.<sup>93</sup> The firing of so many rounds is confined to a very small number of usually highly publicized mass shootings.<sup>94</sup> Even in these incidents, however, LCMs are nearly always irrelevant to the number of rounds fired or the number of victims killed or wounded because most mass shooters are either armed with multiple guns and do not need LCMs to fire large numbers of rounds without reloading or are able to reload their guns because no victims or other parties tried to interfere with them doing so.<sup>95</sup> In the decade preceding the enactment of the federal AW ban, there were fifteen mass shooting incidents in which more than six victims were killed or more than twelve were killed or non-fatally wounded in the entire United States.<sup>96</sup> In all but one of these incidents, the killer either had multiple guns or reloaded during the

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*Outcome Measures and Some Lessons for Policy Evaluation*, 17 J. QUANTITATIVE CRIMINOLOGY 33, 59 (2001).

90. See KLECK, TARGETING GUNS, *supra* note 19, at 121–24.

91. See *id.* at 123–24.

92. See *id.* at 123.

93. See Koper & Roth, *supra* note 89, at 40.

94. See Kleck, *Comment on Koper & Roth*, *supra* note 87, at 79.

95. See KLECK, TARGETING GUNS, *supra* note 19, at 124–26, 144; Kleck, *Comment on Koper & Roth*, *supra* note 87, at 79.

96. See KLECK, TARGETING GUNS, *supra* note 19, at 124–26, 144.

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incident.<sup>97</sup> Thus, even in mass shooting incidents—the type of crime where the use of LCMs is supposed to be most consequential—LCMs do not affect the number of persons hurt. Consequently, even an LCM ban that was so effective that it denied LCMs to all would-be mass shooters could not have any detectable impact on the number of victims killed or wounded in mass shootings.

### 3. “Saturday Night Special” Bans

These laws ban the possession, or more commonly the manufacture and sale, of small, inexpensive handguns, popularly known as “Saturday Night Specials” (SNSs).<sup>98</sup> Unlike AWs, these weapons are a frequently used type of crime gun, and laws that denied access to SNSs could affect a large number of gun criminals.<sup>99</sup> It is not clear, however, that the effects of doing so would be beneficial. Surveys of prison inmates indicate that, among those who had committed crimes with guns before they were sent to prison, the vast majority would substitute some other type of gun if denied access to SNSs.<sup>100</sup> Because jurisdictions with SNS bans do not ban all handguns or all guns, other types of guns theoretically still would be available for substitution.<sup>101</sup> The problem is that nearly all other common types of firearms are more lethal than SNSs. Both long guns (rifles and shotguns) and non-SNS handguns are more lethal in the sense that a shot from these other gun types is more likely to kill the victim than a shot from a SNS.<sup>102</sup> SNSs are generally of smaller caliber and fire smaller projectiles at a lower muzzle velocity.<sup>103</sup> The result is that SNSs inflict smaller wounds on victims than other gun types.<sup>104</sup> As such, substitution of other gun types would generally increase the fatality rate arising from gunshot injuries—clearly an undesirable policy outcome. Simulations of the substitution process, assuming different rates of substitution and substituted weapons of differing lethality,

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97. Kleck, *Comment on Koper & Roth, supra* note 87, at 79.

98. See Gary Kleck, *Evidence that “Saturday Night Specials” Not Very Important for Crime*, 70 SOC. & SOC. RES. 303, 303 (1986) [hereinafter Kleck, *Evidence*].

99. See *id.*

100. JAMES D. WRIGHT & PETER H. ROSSI, *ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS* 216 (1986).

101. See generally ATF STATE LAWS, *supra* note 84.

102. See Gary Kleck, *Handgun-Only Gun Control*, in *FIREARMS AND VIOLENCE: ISSUES OF PUBLIC POLICY* 177-85 (Don B. Kates, Jr. ed., 1984) [hereinafter Kleck, *Handgun-Only*].

103. See Kleck, *Evidence, supra* note 98, at 306.

104. See KLECK, *TARGETING GUNS, supra* note 19, at 134.

indicate that with even modest levels of substitution, SNS bans and handgun bans in general are likely to produce a net increase in homicides.<sup>105</sup>

Empirical research, however, indicates that SNS bans neither reduce nor increase homicide.<sup>106</sup> This may indicate that the bans did not deny SNSs to any significant number of prospective killers and the need for offenders to seek substitute weapons does not arise. Kleck and Patterson found no effect of SNS bans on rates of homicide, rape, aggravated assault, or robbery in America's 170 largest cities, controlling for other gun laws and a variety of other control variables.<sup>107</sup>

### **B. Bans on Acquisition or Possession of Guns by High-Risk Subsets of the Population**

It is common for the states to prohibit the acquisition or possession of guns by relatively narrow "high-risk" subsets of the population. The categories of persons most commonly targeted are convicted criminals (often just those convicted of felonies), mentally ill persons, alcoholics (and persons under the influence of alcohol at the time of an attempt to acquire a gun), drug addicts (and persons under the influence at the time of an attempt to acquire a gun), and minors (usually defined as persons under the age of either twenty-one or eighteen).<sup>108</sup> Other bans apply to persons of temporary statuses, such as a fugitive from justice or one subject to a restraining order protecting an intimate partner.<sup>109</sup>

The most comprehensive assessment of these bans simultaneously assessed the effects of bans on gun possession by criminals, mentally ill persons, drug addicts, alcoholics, and minors, with respect to rates of homicide, aggravated assault, robbery, and rape.<sup>110</sup> Kleck and Patterson found no significant crime-reducing effects resulting from any of these five types of bans on any of the four types of violent crime, with the possible exceptions of bans on gun possession by

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105. See KLECK, POINT BLANK, *supra* note 61, at 91–94, 97. See generally Kleck, *Handgun-Only*, *supra* note 102.

106. See Kleck, *Evidence*, *supra* note 98, at 305–06.

107. See Kleck & Patterson, *Violence Rates*, *supra* note 18, at 274.

108. See ATF STATE LAWS, *supra* note 84; see also NRA-ILA, *supra* note 38.

109. See sources cited *supra* note 108.

110. See Kleck & Patterson, *Violence Rates*, *supra* note 18, at 274.

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criminals on aggravated assault and robbery and a likely effect of bans on gun possession by mentally ill persons on homicide.<sup>111</sup>

A recent study carefully assessed the impact on intimate partner homicides of five different types of domestic violence gun laws: restraining order laws forbidding purchase or possession of guns, restraining order laws forbidding possession only, laws forbidding purchase or possession of guns by persons convicted of domestic violence misdemeanors, laws forbidding only possession of guns by persons convicted of domestic violence misdemeanors, and laws permitting law enforcement officers to confiscate firearms at the scene of an alleged domestic violence incident.<sup>112</sup> Of these five types of gun laws, only restraining order laws forbidding purchase or possession of guns showed evidence of impacting the number of intimate partner homicides.<sup>113</sup>

### C. Background Checks of Prospective Gun Buyers

#### 1. *The Brady Act*

The Brady Handgun Violence Prevention Act (the Brady Act), which became effective on February 28, 1994, is the most significant piece of federal firearms control legislation passed since the Gun Control Act of 1968.<sup>114</sup> The law's central gun control mechanism is an instant background check on persons seeking to purchase guns of any kind, not just handguns, from Federal Firearms License holders (FFLs).<sup>115</sup> It required FFLs to check with law enforcement authorities to see if the prospective buyer was disqualified under federal law from buying a gun, particularly if the buyer had previously been convicted of a felony.<sup>116</sup> The law exempted the eighteen states that already had their own gun purchase background checks in place before 1994, and thus introduced new background checks into the

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111. *See id.*

112. *See* Elizabeth Richardson Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 EVALUATION REV. 313, 330 (2006).

113. *See id.*

114. Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993) (codified as amended at 18 U.S.C. §§ 921-22 (2006)); *see also* JEFFREY D. MONROE, HOMICIDE AND GUN CONTROL: THE BRADY HANDGUN VIOLENCE PREVENTION ACT AND HOMICIDE RATES 1 (2008).

115. *See* 18 U.S.C. § 922.

116. *See id.* § 922(t).

remaining thirty-two states.<sup>117</sup> It did not, however, impose background checks on prospective gun buyers seeking guns from private sources.<sup>118</sup>

Jens Ludwig and Philip Cook evaluated the Brady Law and concluded that its implementation was not associated with a reduction in adult homicides.<sup>119</sup> Gary Kleck and Thomas Marvell criticized the research for studying an unduly short period of time, 1990–1997, which limited the ability to model pre-law trends or to detect anything but the very immediate effects of the law.<sup>120</sup> They noted that, because the law restricted new acquisitions of guns but did not immediately disarm anyone, the law’s effect should be slight in the short run even if it was strong in the long run, when more would-be criminal gun buyers were denied guns.<sup>121</sup> The analysis was simply done too soon to assess the law’s impact properly, and it remains to be seen whether the Brady Law was effective. The evaluation also failed to adequately control for confounding variables and wrongly assumed that the Brady Act could only affect killings of adults.<sup>122</sup> This assumption was based on the fact that the law did not change the legal status of gun purchases by minors (they were forbidden both before and after the Brady Act). The assumption is wrong because roughly half of killings of juveniles are by adults, meaning that the implementation of the Brady Act’s new restrictions on adult acquisition of guns could have affected the number of killings of juveniles.<sup>123</sup>

A second assessment also concluded that the Brady Law did not affect homicide rates.<sup>124</sup> This study used different methods, but shared the most serious flaws of its predecessor—far too short a post-law evaluation period (just three years) and inadequate controls for

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117. *See id.* § 922(t)(3)(A).

118. U.S. GEN. ACCOUNTING OFFICE, GUN CONTROL: IMPLEMENTATION OF THE BRADY HANDGUN VIOLENCE PREVENTION ACT 20 (1996).

119. Jens Ludwig & Philip J. Cook, *Homicide and Suicide Rates Associated with Implementation of the Brady Handgun Violence Prevention Act*, 284 JAMA 585, 588 (2000).

120. *See* Gary Kleck & Thomas Marvell, Letter to the Editor, *Impact of the Brady Act on Homicide and Suicide Rates*, 284 JAMA 2718, 2718 (2000).

121. *See id.* at 2719.

122. *See id.* at 2718.

123. *See id.*

124. *See* MONROE, *supra* note 114, at 3.

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confounding variables.<sup>125</sup> Consequently, there is no sound foundation for judging whether the Brady Act was effective. Firm conclusions will have to await research studying a longer post-1994 period and explicitly controlling for a significant number of other factors that affect homicide rates.

## 2. *State-Mandated Background Checks*

Before the Brady Act was implemented, many states had laws requiring background checks before gun sales, and some of those state laws still in effect are stricter than the federal law in some respects. Thus, it is worthwhile to consider the effects of these state-level measures. Background checks or screening for disqualifying characteristics of prospective gun buyers are usually conducted in connection with gun owner licensing, purchase permit, or purchase application systems; therefore, one may gain insight into the impact of background checks by examining the impact of these kinds of laws. Kleck and Patterson found that gun owner licensing laws and purchase permit laws may reduce homicide, but do not affect rates of rape, robbery, or aggravated assault.<sup>126</sup> These results suggest that background checks have value for preventing murders with guns. The apparent conflict between these findings concerning state-level background checks and Ludwig and Cook's findings regarding the Brady Act,<sup>127</sup> whose main gun control element was background screening of prospective gun buyers, may be attributable to a difference in the kinds of effects measured. Kleck and Patterson assessed the long-term effects of state laws requiring background checks,<sup>128</sup> while Ludwig and Cook could detect only the very short-term effects of the Brady Act, which were unlikely to be significant.

### D. Gun Registration

Gun registration is sometimes confused with other legal measures that commonly accompany it, such as licensing of gun owners, permits to purchase guns, or screening of prospective gun buyers for criminal records or other disqualifying traits. Registration of guns, however, involves nothing more than officially recording the acquisition or

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125. See Gary Kleck, Book Review, 35 CRIM. JUST. REV. 118, 118-19 (2010) (reviewing JEFFREY D. MONROE, HOMICIDE AND GUN CONTROL: THE BRADY HANDGUN VIOLENCE PREVENTION ACT AND HOMICIDE RATES (2008)).

126. See Kleck & Patterson, *Violence Rates*, *supra* note 18, at 274.

127. See Ludwig & Cook, *supra* note 119.

128. See Kleck & Patterson, *Violence Rates*, *supra* note 18, at 256.

ownership of firearms.<sup>129</sup> It is precisely analogous to the registration of motor vehicles, which entails recording the owners of the vehicles but is not intended to block anyone from owning or driving a vehicle. Likewise, registration of firearms, as distinct from licensing gun owners or screening prospective gun buyers, merely involves generating a written record of the person who acquired or owns a gun, without blocking anyone from acquiring or owning a gun.<sup>130</sup> Most state gun registration laws require a record of handgun purchases be provided to some governmental agency, rather than requiring registration of all handgun owners.<sup>131</sup>

The most common rationales that advocates offer for expecting some crime-reducing impact of gun registration are either that (1) registration will aid authorities in tracing the prior history of guns used in crimes and thereby help in eventually identifying gun traffickers and other unlawful sellers of guns, or (2) registration will deter criminal use of guns because prospective offenders will believe they could be identified through registration records.<sup>132</sup> The latter rationale founders on the fact that criminals almost never use guns that are registered in their own names and rarely leave their guns behind at the scene of a violent crime for police to recover.<sup>133</sup> Therefore, advocates of gun registration more commonly stress the value of registration for aiding in the identification of criminal gun suppliers.

The trafficking-focused rationale, however, hinges on an underlying theory of how criminals acquire guns, which emphasizes the significance of organized, high-volume gun traffickers.<sup>134</sup> If such illicit dealers account for significant numbers of criminals acquiring guns, then any techniques that would facilitate identifying these traffickers could have substantial potential for reducing the number of criminals who become armed with guns, thereby reducing gun violence. Some scholars have claimed support for this “concentrated trafficking model,” but the support largely relies on the misinterpretation of ATF gun tracing data and what it supposedly indicates about the involvement of “point sources” of illegal guns, i.e.

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129. See KLECK, POINT BLANK, *supra* note 61, at 335–37.

130. *See id.*

131. See generally ATF STATE LAWS, *supra* note 84.

132. PETE SHIELDS, GUNS DON'T DIE—PEOPLE DO 150 (1981).

133. See KLECK, POINT BLANK, *supra* note 61, at 335–36.

134. See Kleck & Wang, *supra* note 24, at 1239–40.

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higher-volume traffickers.<sup>135</sup> The best available evidence indicates that high-volume traffickers are virtually non-existent and contribute only a negligible share of guns obtained by criminals.<sup>136</sup> More commonly, the persons who illegally sell guns are residential burglars who sell the handful of guns they steal each year.<sup>137</sup> Arresting and convicting such low-volume and easily replaceable sellers likely has little effect on the flow of guns to criminals.<sup>138</sup> Therefore, using registration systems to identify largely non-existent high-volume gun traffickers or real but low-volume traffickers is largely irrelevant to the reduction of crime.

### E. One-Gun-a-Month Laws

One other type of gun control law similarly relies on the concentrated gun trafficking model for its crime-reducing rationale. Based on ambiguous gun tracing data and law enforcement anecdotes about apprehended traffickers, gun control advocates and some scholars have claimed that a significant share of crime guns are diverted to criminals by traffickers who buy large numbers of guns (usually handguns) from licensed retail gun dealers.<sup>139</sup> They are purchased either directly or, alternatively, indirectly through the use of straw purchasers (confederates of the trafficker who pose as genuine purchasers but actually buy guns on behalf of the trafficker).<sup>140</sup> Supporters of this theory assert that many licensed dealers who sell the guns do so either knowing the transactions are suspicious or do so negligently, not caring whether the buyer might be a trafficker or straw purchaser.<sup>141</sup> Thus, purchases of large numbers of handguns at a time from a corrupt or negligent licensed dealer are regarded as key mechanisms by which guns are diverted from legal channels to criminals. Therefore, gun control advocates have pushed the enactment of laws that forbid selling more than one handgun to a given individual within a month on the assumption that this would significantly impair the efforts of traffickers to quickly acquire the large numbers of handguns they supposedly sell.

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135. *See id.*

136. *See id.* at 1241.

137. *See* WRIGHT & ROSSI, *supra* note 100, at 197-99.

138. *See* Kleck & Wang, *supra* note 24, at 1238.

139. *See, e.g.,* Philip J. Cook et al., *Regulating Gun Markets*, 86 J. CRIM. L. & CRIMINOLOGY 59, 76-79 (1995).

140. *See id.* at 79

141. *See id.* at 78.



As noted before, traffickers who sell large numbers of guns are extremely rare and do not contribute significantly to the flow of guns into criminals' hands.<sup>142</sup> For this reason alone, it is unlikely that one-gun laws could reduce gun violence by any measurable degree. It also turns out that most handguns purchased in "bunches"—i.e., as a part of a multiple handgun purchase (MHP)—are rarely later recovered by police in connection with crimes, and are actually *less* likely to be linked with later crimes than handguns purchased one at a time.<sup>143</sup> Koper used ATF gun trace data to identify handguns purchased as part of an MHP and to compute the share of the guns later recovered by police in connection with crimes.<sup>144</sup> He found that even after ten years, only 4.07% of MHP handguns had been linked with crimes, and that this share was actually slightly *lower* than the 4.69% of non-MHP handguns that were linked with crimes.<sup>145</sup> As far as the available evidence can inform us, handguns purchased in multiples are rarely purchased by traffickers or straw purchasers, given that few crime guns are supplied by traffickers, and few MHP handguns ever end up being used in crimes.<sup>146</sup> As a result, there is no sound empirical basis for the rationale that underlies one-gun laws. The laws probably do no harm beyond inconveniencing the occasional lawful handgun buyer, but are also unlikely to have any measurable impact on crime rates. This expectation was confirmed by a sophisticated, state-level, fixed-effects panel study of crime rates by John Lott and John Whitley,<sup>147</sup> who controlled for other gun control laws and forty specific control variables,<sup>148</sup> and found no significant crime-reducing effect from one-gun laws on any of the seven FBI Index crime rates.<sup>149</sup>

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142. See Kleck & Wang, *supra* note 24, at 1241.

143. See Christopher S. Koper, *Purchase of Multiple Firearms as a Risk Factor for Criminal Gun Use: Implications for Gun Policy and Enforcement*, 4 CRIMINOLOGY & PUB. POL'Y 749, 760 (2005).

144. See *id.*

145. See *id.* at 760–61.

146. See *id.* at 762.

147. See generally John R. Lott, Jr. & John E. Whitley, *Safe-Storage Gun Laws: Accidental Deaths, Suicides, and Crime*, 44 J.L. & ECON 659 (2001).

148. See *id.* at 679–80.

149. See *id.* at 680.

### F. Waiting Periods

Some gun control laws try to delay gun acquisitions rather than blocking them altogether.<sup>150</sup> Some require that gun buyers who paid for the gun and passed any required screening for disqualifying attributes wait a given minimum period of time before actually taking delivery of the gun.<sup>151</sup> The waiting periods are usually two or three days, but can be as long as fourteen days in some states.<sup>152</sup> Two rationales have been offered for waiting periods. First, it was once argued that they served as “cooling off” periods, allowing prospective buyers in the grip of a violent fury to calm down before acquiring a gun.<sup>153</sup> The plausibility of this rationale is undercut by the fact that criminal aggressors rarely acquire guns shortly before committing a violent act with the gun.<sup>154</sup> Even where no waiting periods are in operation, violent offenders usually had their guns long before they used them to commit a violent crime.<sup>155</sup> Further, among the violent gun offenders who get guns at the last minute, few acquire them from the licensed dealers who would observe the legally mandated waiting period.<sup>156</sup> Another rationale for waiting periods is that they allow more time to carry out more thorough background checks.<sup>157</sup> This makes little sense with regard to computerized record checks, since they can be carried out in minutes, but it is conceivable that states that still consult paper records might make use of this additional time. There is, however, no empirical evidence that more thorough, time-consuming record checks are carried out in states with waiting periods. Not surprisingly, empirical evaluations consistently indicate that waiting periods have no measurable effect on violent crime rates.<sup>158</sup>

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150. See KLECK, POINT BLANK, *supra* note 61, at 323–32.

151. See ATF STATE LAWS, *supra* note 84, at 12–13.

152. See *id.*

153. See KLECK, POINT BLANK, *supra* note 61, at 333–34 (noting that only three of 342 incarcerated handgun killers in Florida had purchased the murder weapon from a retail dealer within three days of the killing).

154. See *id.*

155. See *id.*

156. See *id.* at 334–35.

157. See *id.*

158. See Kleck & Patterson, *Violence Rates*, *supra* note 18, at 283; Colin Loftin & David McDowall, *The Deterrent Effects of the Florida Felony Firearm Law*, 75 J. CRIM. L. & CRIMINOLOGY 250, 255 (1984); Lott & Whitley, *supra* note 147, at 679.

### G. Enhanced Penalties for Crimes Committed with Guns

Some gun-oriented interventions do not involve restricting access to guns, but rather, attempt to discourage their use in crimes by establishing more severe punishment if offenses are committed with a gun.<sup>159</sup> Firearms sentence enhancement (FSE) laws establish either mandatory minimum prison sentences for crimes committed with a gun or add on additional penalties for the gun use, above and beyond the penalties for the underlying offense, such as robbery or aggravated assault.<sup>160</sup> The authors of a few technically primitive studies of a small number of non-randomly selected local areas have claimed to find an impact of FSE laws on crime,<sup>161</sup> but the best available evidence indicates that they have no impact.<sup>162</sup> The most comprehensive and sophisticated study was done by Thomas Marvell and Carlisle Moody, who analyzed every single state FSE measure in existence at the time of their research, using a multivariate fixed-effects panel design to determine whether crime rates declined after FSE laws were implemented.<sup>163</sup> They concluded that there is little evidence that the laws generally reduce crime.<sup>164</sup> Indeed, they found that when crime rates changed significantly after implementation of FSE laws, they were slightly more likely to increase than to decrease.<sup>165</sup> These findings confirmed the city-level cross-sectional findings of Kleck and Patterson,<sup>166</sup> and more limited time series analyses of mandatory penalty laws in Michigan and Florida.<sup>167</sup>

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159. See KLECK, POINT BLANK, *supra* note 61, at 337–42. See generally Thomas B. Marvell & Carlisle E. Moody, *The Impact of Enhanced Prison Terms for Felonies Committed With Guns*, 33 CRIMINOLOGY 247 (1995).

160. See Marvell & Moody, *supra* note 159, at 250.

161. See, e.g., David McDowall et al., *A Comparative Study of the Preventive Effects of Mandatory Sentencing Laws for Gun Crimes*, 83 J. CRIM. L. & CRIMINOLOGY 378 (1992).

162. See generally Marvell & Moody, *supra* note 159.

163. See generally *id.*

164. See generally *id.*

165. See generally *id.*

166. See Kleck & Patterson, *Violence Rates*, *supra* note 18, at 274.

167. See generally Colin Loftin et al., *Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control*, 17.2 LAW & SOC'Y REV. 287 (1983); Loftin & McDowall, *supra* note 158.

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#### H. Child-Access Protection Laws: Requiring Guns to Be Stored Secured

Child-Access Protection (CAP) laws require that gun owners keep their guns secured so that young persons (most commonly defined as those under fifteen or sixteen years of age) may not gain access to them and provide criminal penalties if harm is done by a young person with an unsecured gun.<sup>168</sup> The laws are primarily aimed at reducing gun accidents, though they might also reduce other kinds of gun violence. The most thorough and comprehensive study of the impact of CAP laws on gun accidents among young people was that of Daniel Webster and Marc Starnes, who assessed all fifteen CAP laws existing at the time<sup>169</sup> using a state-level panel design that compared trends in fatal gun accidents in states that passed CAP laws with trends in states that did not.<sup>170</sup> They found no significant effect of the laws in fourteen of the fifteen states; the only state that experienced a significant decline was Florida, the first state to pass a CAP law.<sup>171</sup>

The authors interpreted this one decline as a genuine effect of the Florida CAP law, even though none of the fourteen other states with CAP laws experienced such an effect.<sup>172</sup> They attributed this unique Florida effect to the fact that the law in that state provided for felony penalties for violations.<sup>173</sup> This explanation founders for two reasons: first, the authors provided no evidence that felony penalties have ever actually been imposed for CAP law violations in Florida, and second, two other states' CAP laws also provided felony penalties but did not experience declines in gun accidents among young people.<sup>174</sup> A more plausible explanation of the Florida experience is that the effects were actually due to the extraordinary volume of news media coverage of the unique cluster of gun accidents that preceded and provoked passage of Florida's CAP law, as well as the debate over

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168. *See generally* Lott & Whitley, *supra* note 147; Daniel W. Webster & Marc Starnes, *Reexamining the Association Between Child Access Prevention Gun Laws and Unintentional Shooting Deaths of Children*, 106 PEDIATRICS 1466 (2000).

169. Only two more were subsequently enacted. *See* ATF STATE LAWS, *supra* note 84; *see also* NRA State Laws, *supra* note 38; *Right-to-Carry*, *infra* note 180.

170. *See generally* Webster & Starnes, *supra* note 168.

171. *See id.* at 1467–68.

172. *See id.*

173. *See id.*

174. *See id.*

the law and the underlying issue of unsafe storage of guns.<sup>175</sup> This intense burst of publicity served to highlight the dangers of unsafe gun storage and may have stimulated more gun owners to lock up their firearms, independent of the passage of the CAP law itself. Unfortunately, states that later followed Florida's example could not expect to enjoy the same massive volume of news coverage that the first-in-the-nation CAP law received, so this publicity effect is not likely to be repeated. CAP laws themselves appear to have no significant effect on gun accidents among young people.

On the other hand, there is some evidence that CAP laws, by making guns harder to acquire immediately for defensive use by crime victims, increase crime rates. Lott and Whitley found that the implementation of CAP laws was followed by significant increases in rates of rape, robbery, and burglary, with no compensating reductions in gun accident or suicide rates.<sup>176</sup> This study, however, was subject to some of the same problems characterizing most of the panel studies that evaluated RTC laws, including the use of an unjustified, arbitrary selection of control variables, and no direct evidence of either changes among prospective offenders in perceived risk of confronting armed crime victims or of actual reductions in the accessibility of firearms.<sup>177</sup>

### I. Restrictions on Carrying Guns Away From Home

Some gun laws restrict possession of firearms away from the possessor's home, either prohibiting it altogether or requiring a special permit.<sup>178</sup> Restrictions tend to be stricter when carrying guns on the person than when carrying in one's vehicle and stricter for concealed carrying than for open carrying.<sup>179</sup> The strictness levels used to be far more variable across states than they are now, since the post-1986 wave of "shall-issue" or "right-to-carry" laws were passed.<sup>180</sup> Now at least forty states have these more lenient carry laws, which require a carry permit but allow most noncriminal adult

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175. For a discussion of the limited effects of CAP laws, see Emmet Meara, *Bill Before Legislature May Be Affected by Rampage*, BANGOR DAILY NEWS, Apr. 22, 1999, at A4.

176. See Lott & Whitley, *supra* note 147, at 679, 685.

177. See *infra* Part V.J.

178. See KLECK, POINT BLANK, *supra* note 61, at 326–27.

179. See *id.*

180. See *Right-to-Carry 2012*, NRA-ILA, <http://www.nraila.org/news-issues/fact-sheets/2012/right-to-carry-2012.aspx> (last visited Oct. 8, 2012) [hereinafter NRA-ILA, *Right-to-Carry*].

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residents to get one.<sup>181</sup> A few states do not even require a permit (e.g., Arizona and Vermont), while other states require a permit that is rarely granted (restrictive licensing, e.g. California and New York), and Illinois forbids carrying altogether.<sup>182</sup>

Cross-sectional research comparing cities in states with differing gun carrying laws found that banning carrying or having a restrictive permit law on concealed carrying, compared with those with permissive carry permit requirements or no permit requirement at all, had no effect on any violent crime rate, and that similar laws concerning open carrying likewise showed no measurable effect.<sup>183</sup> Longitudinal research, examining changes in crime after new carry laws were passed, could not be effectively applied in the pre-1986 period because there were so few changes in the strictness of legal controls over carrying.<sup>184</sup> Most states had restrictive carry laws throughout the 1968-1985 period.<sup>185</sup> The opportunity to detect the impact of changes over time in carry law strictness arose after 1986, when stricter carry laws began to give way to permissive licensing or “shall issue” carry laws.<sup>186</sup> Research on these changes is covered in the next section.

#### J. Gun Decontrol: Right-to-Carry Laws

Right-to-Carry (RTC) laws, also known as “shall issue” laws, can be seen as a form of gun *decontrol* in which controls over the carrying of firearms away from the carrier’s property are more lenient. They typically involve changing state carry permit laws from discretionary “may issue” laws (restrictive licensing laws) to non-discretionary “shall issue” laws.<sup>187</sup> Under the old discretionary carry permit systems, the burden of proof was on the applicant to show a special need or other special qualifications to have the permit, and the authority making this decision (often a county sheriff) had virtually

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181. *See id.*

182. *See* NRA-ILA, *supra* note 38; *see also* NRA-ILA, *Right-to-Carry*, *supra* note 180.

183. *See* Kleck & Patterson, *Violence Rates*, *supra* note 18, at 274.

184. *See id.* at 252.

185. *See generally* Tomislav V. Kovandzic et al., *The Impact of “Shall-Issue” Concealed Handgun Laws on Violent Crime Rates: Evidence from Panel Data for Large Urban Cities*, 9 HOMICIDE STUD. 292 (2005); Marvell & Moody, *supra* note 159.

186. *See* sources cited *supra* note 185.

187. *See* Kovandzic et al., *supra* note 185, at 292–93.

unlimited discretion in deciding whether to grant the permit.<sup>188</sup> Applicants without disqualifying attributes, such as a criminal conviction or being a juvenile, could nevertheless be turned down—the authorized decision-maker “may” issue the permit, but is not required to do so.<sup>189</sup> Permits were rarely issued.<sup>190</sup> Under “shall issue” or RTC laws, authorities are required to grant the permit to applicants who meet specified requirements (e.g., adult age, resident of the state, no criminal convictions, completed gun safety course), and do not have the discretion of denying permits to otherwise qualified applicants.<sup>191</sup>

By 2008, there were more than two dozen empirical evaluations of the effect of RTC laws on crime rates. The results are about evenly divided between those that found crime-reducing effects and those that found no net effect.<sup>192</sup> Only two studies have found crime-increasing effects, neither published in a refereed journal, while ten refereed studies found crime-reducing effects and nine found no effect one way or the other.<sup>193</sup> This simple count, however, does not tell the full story because nearly all of the studies finding crime-reducing effects were based on county-level crime counts known to the police that were subject to serious missing-data problems.<sup>194</sup> Most analysts used panel designs to examine trends in crime before and after RTC laws were enacted, as well as compared crime trends of counties in states that implemented RTC laws with counties in states that did not.<sup>195</sup> Data from the Uniform Crime Reporting program are missing for at least some time periods for *most* American law enforcement agencies within the span of years examined in these studies, and most of the studies did nothing to account for this missing data.<sup>196</sup> Thus, the data may seem to indicate that crime went down in a given county when the “decrease” was actually due to the fact that some of the constituent local jurisdictions in that county did not

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188. *See id.*

189. *See id.*

190. *See id.* at 316.

191. *See id.* at 292.

192. *See id.* at 311–15.

193. *See* Marvell & Moody, *supra* note 159, at 275–76.

194. Michael D. Maltz & Joseph Targonski, *A Note on the Use of County-Level UCR Data*, 18 J. QUANTITATIVE CRIMINOLOGY 297, 297–98 (2002).

195. *See id.*

196. *See id.* at 316–17.

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report their crime statistics to the UCR for part or all of that year—especially if the non-reporting agencies were in high-crime areas.<sup>197</sup>

This would not be a problem if non-reporting was unrelated to the passage of RTC laws, but it is possible that non-reporting is especially likely in RTC states immediately after enactment of the laws due to the avalanche of carry permit applications that are submitted in this period. Local law enforcement agencies must perform fingerprinting of applicants, and this considerable drain on manpower may force undermanned agencies to sacrifice some lower-priority tasks, such as compiling crime statistics for the UCR program.<sup>198</sup> The result would be the artificial appearance of crime drops occurring just after enactment of RTC laws and occurring only in RTC states—precisely the pattern of crime trends that has been interpreted as evidence of the crime-reducing effects of RTC laws.<sup>199</sup>

The only high-quality study that is completely free of this missing data problem is the city-level panel study of Tomislav Kovandzic, Thomas Marvell, and Lynne Vieraitis.<sup>200</sup> These authors studied the relevant crime data for each city that could be obtained from a single municipal police force for each year, and they studied only cities with complete data for all the years studied.<sup>201</sup> Consequently, they did not have the missing-data problem of other studies that resulted from counting crimes for counties by summing crime counts for individual constituent law enforcement agencies in each county. This study also featured an unusually well-chosen set of specific control variables to help separate the effect of RTC laws from other factors that influence crime rates,<sup>202</sup> addressed possible problems of simultaneity (two-way causation),<sup>203</sup> took account of clustering of multiple cities in states,<sup>204</sup> and used very sophisticated statistical estimation procedures.<sup>205</sup> Based on their fixed-effects panel analysis of 189 U.S. cities with populations of 100,000 or larger over the period 1980–2000, the authors found “no

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197. *See id.* at 299.

198. For an example of how extensive a gun permit application can be, see *supra* note 5.

199. *See, e.g.*, John R. Lott, Jr. & David B. Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns* (Univ. of Chi. Law Sch., John M. Olin Law & Econ. Working Paper No. 41, 1997).

200. *See* Kovandzic et al., *supra* note 185.

201. *See id.* at 301–02.

202. *See id.* at 305–07.

203. *See id.* at 300–01.

204. *See id.* at 302.

205. *See id.* at 303–04.



evidence that the laws reduce or increase rates of violent crime.”<sup>206</sup> This study also provides interested readers with a compact summary of the wide array of other methodological problems that afflict studies of the impact of RTC laws.<sup>207</sup>

It is not surprising that research finds that liberalized issuance of carry permits does not have any measurable crime-increasing effect, given that carry permit holders virtually never commit violent gun crimes or do so in places that require carrying the gun on the person through public spaces.<sup>208</sup> On the other hand, it is not especially surprising that the best available evidence indicates that RTC laws do not *reduce* crime.<sup>209</sup> Supporters of the idea that such an effect occurs assume that the laws reduce crime because prospective criminal offenders are deterred by a greater perception of risk of confronting an armed victim, which supposedly results from either the enactment of RTC laws or the issuance of large numbers of carry permits to potential crime victims.<sup>210</sup> There is, however, no direct evidence at all of changes in the perceived risk of confronting armed victims among likely offenders following enactment of RTC laws. Further, the expectation of such changes is based on the assumption that the overall frequency of gun carrying by prospective crime victims actually increases when RTC laws go into effect. Certainly the number of *legally authorized* gun carriers, i.e., carry permit holders, goes up, but whether the total number of gun-carriers, lawful or unlawful, increases is another matter entirely. It is the latter number that is relevant to the risk of offenders confronting gun-carrying victims. Those who get carry permits following implementation of an RTC may be merely legitimating gun carrying they were already doing before getting the permit.

As it happens, the only direct evidence we have on this matter indicates that this is indeed what most carry permit holders are doing when they get their permits because, as a group, they generally do not increase their frequency of carrying after they get the permit.<sup>211</sup> The National Opinion Research Center’s 2001 National Gun Policy

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206. *Id.* at 292.

207. *See id.* at 298–302.

208. *See* KLECK, TARGETING GUNS, *supra* note 19, at 369–70.

209. *See* Kovandzic et al., *supra* note 185, at 292.

210. *See generally* Lott & Mustard, *supra* note 199.

211. *See* 2001 National Gun Policy Survey, May, 2001, ROPER CTR. FOR PUB. OPINION RES., [http://www.ropercenter.uconn.edu/data\\_access/ipoll/ipoll.html](http://www.ropercenter.uconn.edu/data_access/ipoll/ipoll.html) (type into the search bar: “since you’ve obtained the permit”; then search by “Exact Phrase”) (last visited Oct. 12, 2012).

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Survey, conducted in May of 2001, asked a sample of self-reported carry permit holders this question: “Since you’ve obtained the permit (to carry a handgun), has your frequency of gun carrying increased, decreased, or stayed the same?”<sup>212</sup> Among carry permit holders, 73% did not change their frequency of gun carrying after getting the permit, and there was no significant difference between the percent that reported increasing their carrying frequency and the percent that reported decreasing their carry frequency.<sup>213</sup> Consequently, there is no support for the assumption that total frequency of gun carrying increased or that prospective offenders faced an increased likelihood of confronting a gun-carrying victim following passage of RTC laws. Because there is no reason for offenders to perceive any increased risk of committing crime, it is not surprising that RTC laws do not appear to deter criminal attempts. Note that this does not mean that gun carrying by prospective crime victims has no deterrent effect on prospective offenders; rather, it only means that whatever deterrent effect it may have had probably did not increase after RTC laws were implemented.

#### K. Increased Enforcement of Carry Laws

Increasing efforts to enforce existing laws, rather than enacting new ones, might intensify the impact of gun control on crime. In principle, the enforcement of any gun control law could be increased, but research on the effects of boosting enforcement is largely limited to carry laws because these are the only types of gun laws that police actively enforce to any significant degree.<sup>214</sup> Enforcement in this context means police arresting violators.

There have been a few assessments of the impact of “directed (or targeted) patrol” by the police. These efforts involve increased numbers of police officers being assigned to a patrol area, who are directed to focus their efforts on detecting and seizing illegal guns.<sup>215</sup> Few guns are actually seized, however, and virtually all of these are seized in connection with arrests for unlawful possession, which in

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212. *Id.*

213. *Id.* See also TOM W. SMITH, 2001 NATIONAL GUN POLICY SURVEY OF THE NATIONAL OPINION RESEARCH CENTER: RESEARCH FINDINGS 15 (2001), available at [http://www.norc.org/PDFs/publications/SmithT\\_Nat\\_Gun\\_Policy\\_2001.pdf](http://www.norc.org/PDFs/publications/SmithT_Nat_Gun_Policy_2001.pdf).

214. See KLECK, POINT BLANK, *supra* note 61, at 347–53.

215. See generally Edmund F. McGarrell et al., *Reducing Firearms Violence Through Directed Police Patrol*, 1 CRIMINOLOGY & PUB. POL’Y 119 (2001); Lawrence W. Sherman & Dennis P. Rogan, *Effects of Gun Seizures on Gun Violence: “Hot Spots” Patrol in Kansas City*, 12 JUST. Q. 673 (1995).

turn are mostly made in the public places where police patrol.<sup>216</sup> Thus, the studies really amount to assessments of increased police enforcement of carry laws.

Although these programs are declared by their sponsors to be aimed at reducing gun violence,<sup>217</sup> their primary element is simply a general increase in police manpower presence in targeted patrol areas.<sup>218</sup> Evaluations of such efforts invariably fail to separate the effects of gun-oriented elements, such as seizing guns from suspects, from the effects of simply increasing the number of police officers patrolling in target areas. For example, Lawrence Sherman and Dennis Rogan claimed that a “hot spots” intervention had reduced gun violence by police officers seizing illegal guns, but offered no evidence that this gun-related element was responsible for local decreases in gun violence rather than it resulting from increased overall police manpower.<sup>219</sup> The researchers observed a 49% decrease in gun crimes in the targeted area.<sup>220</sup> The explanation the authors offered for this huge drop is especially dubious in light of the fact that the investment of 4,512 additional police man-hours in directed patrol yielded a grand total of just twenty-nine seized guns in a large Kansas City neighborhood over a six month period.<sup>221</sup>

Another directed patrol effort in Indianapolis had even more tenuous connections with gun enforcement because it consisted of patrol officers focusing primarily on traffic enforcement, and making more traffic stops. As a by-product of the vehicle stops, however, officers seized twenty-five illegal guns for an investment of 4,900 officer hours.<sup>222</sup> Associated arrests for unlawful gun possession amounted to enforcement of gun carry laws. The results of this program were considerably more mixed than those of the Kansas City program. The number of gun crimes went down by 29% in one of the intervention areas but actually increased by 36% in the other intervention area (compared with an 8% increase in comparison beats).<sup>223</sup>

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216. See sources cited *supra* note 215.

217. See Sherman & Rogan, *supra* note 215, at 676–77.

218. See McGarrell et al., *supra* note 215, at 123–24.

219. See Sherman & Rogan, *supra* note 215, at 690–91.

220. See *id.* at 673.

221. See *id.* at 680.

222. See McGarrell, *supra* note 215, at 131.

223. See *id.* at 137.

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Pittsburgh's Firearm Suppression Patrol (FSP) program was specifically directed at reducing illegal gun carrying, and consisted of more patrol being assigned to targeted areas, and increased traffic and pedestrian stops.<sup>224</sup> Jacqueline Cohen and Jens Ludwig did not have measures of gun carrying per se, but instead evaluated the program's impact on reports of shots fired and gunshot injuries treated in hospitals.<sup>225</sup> Only seven guns were confiscated and only three persons possessing guns were arrested during FSPs,<sup>226</sup> so it is debatable how much this program can be regarded as gun law enforcement. For what it's worth, the authors observed greater reductions in shots fired and gunshot injuries in target areas than in control areas.<sup>227</sup> As with the evaluations of other directed patrol efforts, it is impossible to tell whether these reductions were due to any specifically gun-related efforts of police, or merely to increased police activity in general.

Project Exile in Richmond, Virginia involved increased enforcement in another sense—more prosecutions of gun offenders and more severe sentences imposed on them (achieved by prosecuting under harsher federal statutes than under state statutes).<sup>228</sup> Proponents claimed that the effort produced huge decreases in gun homicides, pointing to a 40% decline from 1997 to 1998,<sup>229</sup> but the most thorough analysis found that Richmond would have experienced an even larger proportional decrease in gun homicides if Project Exile had *not* been implemented.<sup>230</sup>

On the whole, the weak body of evidence on enforcement of gun laws does not provide a firm basis for drawing conclusions about their impact. On the other hand, the research does not indicate that increased enforcement has no effect, so this strategy remains a viable option for reducing gun violence. And unlike so many other gun control measures, it has broad political support, so there are realistic prospects for the strategy to actually be implemented.

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224. Jacqueline Cohen & Jens Ludwig, *Policing Crime Guns*, in *EVALUATING GUN POLICY: EFFECTS ON CRIME AND VIOLENCE* 217, 220 (Jens Ludwig & Philip J. Cook eds., 2003).

225. *See id.* at 223.

226. *See id.* at 224.

227. *See id.* at 230–31.

228. Steven Raphael & Jens Ludwig, *Prison Sentence Enhancements: The Case of Project Exile*, in *EVALUATING GUN POLICY: EFFECTS ON CRIME AND VIOLENCE* 251, 254 (Jens Ludwig & Philip J. Cook eds., 2003).

229. Michael Janofsky, *Fighting Crime by Making Federal Case About Guns*, N.Y. TIMES, Feb. 10, 1999, at A12.

230. *See* Raphael & Ludwig, *supra* note 228, at 267.

**CONCLUSION: WHAT SHOULD BE DONE**

Even though gun ownership levels in the general public have no apparent net effect on violence rates, gun ownership among high-risk subsets of the population may increase the frequency or seriousness of violent incidents. This conclusion is directly supported by evidence that attacks committed with guns are more likely to result in the death of the victim,<sup>231</sup> and indirectly supported by evidence that gun laws aimed at screening out high-risk groups (such as convicted criminals and mentally ill persons) from gun acquisition seem to reduce some kinds of violence.<sup>232</sup> Gun owner license laws and purchase permit laws may reduce homicides and gun accidents, prohibitions of gun possession by convicted criminals appear to reduce aggravated assaults and robberies, and bans on possession by mentally ill persons may reduce homicides.<sup>233</sup> This in turn suggests that improved background screening may reduce gun violence.

One of the most obvious shortcomings of the Brady Act is that it does not cover transfers of guns among persons who are not licensed dealers.<sup>234</sup> Most serious felons get their guns by means other than purchases from licensed dealers, and thus are not directly affected by an instant records check provision by itself.<sup>235</sup> Since background checks on dealer transfers appear to be beneficial, extending them to cover private transfers of guns is a reasonable next step.<sup>236</sup> There is nothing complicated about how this could work. Private individuals who want to transfer their gun to a qualified recipient would still be able to do so, but would have to do so through a licensed dealer acting as a broker. Prospective transferors would go to a licensed dealer with the prospective recipient, where the latter would fill out the usual application form and submit to the same records check that applies to dealer transfers.<sup>237</sup> Criminals strongly motivated to evade the background checks could do so, but less strongly motivated prospective gun buyers, particularly those lacking connections with criminals willing to sell them firearms, could be blocked from

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231. Gary Kleck & Karen McElrath, *The Effects of Weaponry on Human Violence*, 69 SOC. FORCES 669, 684 (1991).

232. See Kleck & Patterson, *Violence Rates*, *supra* note 18, at 276.

233. See *id.* at 276–77.

234. See Ludwig & Cook, *supra* note 119, at 585.

235. See WRIGHT & ROSSI, *supra* note 100, at 182–86.

236. See KLECK, TARGETING GUNS, *supra* note 19, at 388–90.

237. See *id.*

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obtaining guns. To expect 100 percent evasion is probably as unrealistic as it would be to expect no evasion.

Bans on purchase and possession also could be extended to persons convicted of violent misdemeanors. Currently bans of this sort only apply to *domestic violence* misdemeanants.<sup>238</sup> Extending the prohibition to cover all violent misdemeanors makes sense because often the only reason a violent offender was convicted of a misdemeanor rather than a felony was because it was the product of a plea bargain, not because the offense was not a felony.

Evidence indicates that laws prohibiting gun possession by mentally ill persons are effective. While we have little reliable evidence on which to base forecasts, improvements in records on dangerous mentally ill persons could make screening for violence-linked mental illness more effective and thereby prevent some gun violence by such persons. Mental health databases should be made more comprehensive in coverage of persons found by a court to be dangerously mentally ill. They also need to be made more accessible by those performing gun screening, which may require amending current medical privacy regulations.

The carrying of guns by criminals in public places may increase robbery rates. This conclusion is supported by evidence that indicates that robbers are more likely to complete their crimes if they are armed with a gun, suggesting that gun carrying can thereby encourage criminals to commit more robberies, especially impulsive or opportunistic ones.<sup>239</sup> Evidence indicating that well-enforced laws forbidding unlicensed gun carrying may reduce robbery also indirectly supports this conclusion.<sup>240</sup> Therefore, increased police enforcement of existing laws against unlicensed gun carrying may help reduce violent gun crimes that entail offender movement through public spaces, especially those that are not premeditated. Laws punishing unlicensed gun carrying with mandatory penalties may reduce robbery,<sup>241</sup> even though the penalty provisions appear to have little impact on the actual levels of punishment inflicted on offenders.<sup>242</sup> One possible explanation of this apparent paradox is that the mandatory penalty provisions may merely serve as an

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238. See, e.g., 18 U.S.C. § 922(g)(9) (2006). See generally Vigdor & Mercy, *supra* note 112.

239. See KLECK, TARGETING GUNS, *supra* note 19, at 238.

240. See Kleck & Patterson, *Violence Rates*, *supra* note 18, at 276.

241. See *id.*

242. See KLECK, POINT BLANK, *supra* note 61, at 343.

indicator of serious commitment to enforcement among criminal justice personnel, and that it is actually greater police enforcement of carry laws that reduces robbery.

Therefore, police departments might experiment with increasing street searches and arrests for unlawful carrying, and improving the targeting of searches by training officers in improved techniques for identifying pedestrians who are carrying concealed weapons. Even in the absence of increased use of prison sentences for violators, increased carrying arrests might deter the casual, routine carrying of firearms, and thereby indirectly reduce unplanned opportunistic crimes, especially robberies. Currently, most police departments show little evidence of a serious enforcement effort. Most police rarely make arrests for any gun violations and confiscate few criminal guns.<sup>243</sup> Thus, there is considerable room for improvement.

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243. *See id.*