



Legal Community Against Violence

expertise, information & advocacy to end gun violence

**2004 CALIFORNIA REPORT:**  
**RECENT DEVELOPMENTS IN FEDERAL, STATE**  
**AND LOCAL GUN LAWS**

## Gun Violence: A Public Health Epidemic

Gun violence touches every segment of society. It increases the probability of deaths due to domestic violence, raises the likelihood of fatalities by those who intend to injure others or attempt suicide, and places children and young people at special risk.

Nearly 100,000 Americans are victims of gun violence each year. According to the Centers for Disease Control and Prevention (CDC), 30,242 people died from firearm-related injuries in 2002 (the most recent year for which statistics are available).<sup>1</sup> In that year, guns claimed the lives of 6,694 high school-age teens and young adults (age 15-24) – an average of 18 deaths each day.<sup>2</sup> The CDC estimates that 65,834 individuals were treated in hospital emergency departments for non-fatal gunshot wounds in 2003.<sup>3</sup>

In California, 3,381 people died from firearm-related injuries in 2002 and 4,322 others were treated for non-fatal gunshot wounds.<sup>4</sup> Guns are the second leading cause of injury-related deaths in California and nationwide, second only to motor vehicle accidents.<sup>5</sup> In California, firearms killed more children and young people ages 15-24 during the years 1998-2002 combined than motor vehicle accidents.<sup>6</sup>

While opinions differ regarding the root causes of gun violence, most Americans favor stronger gun laws. Yet, due to the immense power of the gun lobby, Congress has not enacted any significant gun legislation since the early 1990s, when it enacted the Brady Act – establishing a limited system of background checks for gun purchasers – and the federal assault weapon ban (which Congress and President Bush allowed to expire on September 13, 2004). Now more than ever, the future of gun violence prevention depends on building momentum for nationwide change through state and local policy reform.

Fortunately, California provides an outstanding example of what progress can be achieved at the state and local levels. The state has, in recent years (including 2004), adopted several important firearm-related laws, many of which were modeled after innovative local ordinances enacted by cities and counties in this state. In addition, California local governments continue their invaluable leadership role in the gun violence prevention movement.

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<sup>1</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics Reports, *Deaths: Final Data for 2002*, Vol. 53, No. 5 (October 12, 2004).  
<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (WISQARS), *WISQARS Nonfatal Injury Reports (2004)* <http://webapp.cdc.gov/sasweb/ncipc/nfirates2001.html>.

<sup>4</sup> California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), EPICenter California Injury Data Online, *Firearm Injuries (2004)*, <http://www.applications.dhs.ca.gov/epicdata/default.htm>.

<sup>5</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics Reports, *Deaths: Final Data for 2002*, Vol. 53, No. 5 (October 12, 2004).

<sup>6</sup> See note 4.

## Federal Update: A Discouraging Year for Gun Violence Prevention

### Expiration of the Assault Weapon Ban

The most alarming development in federal gun policy over the last year was the September 13, 2004 expiration of the 10-year-old assault weapon ban. That law, adopted in 1994 with the support of every major law enforcement agency in the nation, banned a class of semi-automatic firearms designed with military features, such as pistol grips and large-capacity ammunition magazines (some capable of holding 100 bullets), to allow rapid spray firing. The 1994 law also banned the transfer and possession of “large capacity ammunition feeding devices,” defined to include magazines manufactured after the enactment of the Act that could hold more than 10 rounds of ammunition.

Thanks to the enormous political clout of the NRA, Congress and President Bush allowed the assault weapon ban to expire, despite the fact that it was supported by a majority of Americans, including gun owners, and had resulted in a dramatic drop in the percentage of assault weapons traced to crime. As a result, military-style firearms like semi-automatic AK-47s and Uzis are now legal again nationwide, unless banned by state or local law.

California adopted the nation’s first state law banning assault weapons in 1989, in response to the Stockton schoolyard assault weapon massacre. That law was strengthened in 1999, giving California what is widely viewed as the toughest assault weapon ban in the country. Six other states currently ban assault weapons, including Connecticut, Hawaii, Maryland, Massachusetts, New Jersey and New York.

The District of Columbia imposes strict liability in tort against manufacturers, importers and dealers of assault weapons for all damages due to the discharge of assault weapons in the District. The District also bans the sale and possession of handguns, which encompass assault pistols, a subset of assault weapons.

For more information about assault weapons, see LCAV’s recent report, *Banning Assault Weapons – A Legal Primer for State and Local Action*. That report, and accompanying model law, can be found on our web site at [www.lcav.org/library/reports\\_analyses/assaultweaponreport.asp](http://www.lcav.org/library/reports_analyses/assaultweaponreport.asp).

### Gun Industry Immunity

In 2004, Congress came close to passing a NRA-sponsored bill to provide unprecedented legal protection to the gun industry. That bill, which sailed through the House of Representatives in 2003, would have prohibited most civil lawsuits against gun manufacturers, distributors, trade associations and dealers. The legislation would have precluded actions in state, as well as federal, court and required the immediate dismissal of most lawsuits pending against the industry nationwide. No other industry enjoys such special treatment.

Although the immunity bill was the NRA’s top legislative priority, in March 2004 the organization directed its supporters in the Senate to vote the bill down after a bipartisan coalition

of senators added key gun control amendments to the legislation. Those amendments would have extended the federal assault weapon ban, closed the so-called “gun show” loophole (which allows unlicensed individuals to sell firearms at gun shows and other locations without conducting background checks), and required handguns to be sold with locking devices to reduce unintentional shootings. The NRA decided to kill the immunity bill rather than allow such rational policies to become the law of the land.

Emboldened by the reelection of President Bush and the loss of Democratic seats in the House and Senate, however, the NRA is already planning for the reintroduction of the immunity bill in 2005. Unfortunately, this time the NRA may finally succeed in eliminating litigation as a strategy to impose responsibility on an industry whose products and marketing practices are otherwise unregulated by federal law.

The State of California has experience with the devastating impact of laws immunizing the gun industry. In 2001, the California Supreme Court held that an immunity statute adopted in 1983 shielded an assault weapon manufacturer from a lawsuit brought by the victims of the 101 California Street massacre, even though the gun maker’s advertising boasted that the gun’s surface had “excellent resistance to fingerprints” and called attention to other features that would be of primary interest to criminals.<sup>7</sup>

In 2002, the California Legislature repealed the state’s immunity statute so that the gun industry would be held to the same legal standards as any other industry. The Legislature’s action would be nullified, however, by passage of a federal immunity bill.

Passage of that legislation also could prevent many meritorious lawsuits from going forward. For example, the immunity bill would have been an obstacle to the now-settled action brought by the victims of the 2002 Washington, DC-area sniper attacks against Bull’s Eye Shooter Supply, the gun dealer that recklessly supplied the assault rifle used in the attacks, and Bushmaster, the manufacturer of the weapon. (The Bureau of Alcohol, Tobacco and Firearms traced the assault weapon to Bull’s Eye, but the dealer had no record of the sale. According to government audits, this was only one of hundreds of guns “missing” from the store’s inventory.) Bull’s Eye and Bushmaster recently agreed to pay \$2.5 million to settle the action.<sup>8</sup>

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<sup>7</sup> See *Merrill v. Navegar* (2001) 26 Cal. 4<sup>th</sup> 465.

<sup>8</sup> The federal immunity legislation also could have prevented an action by 12 California cities and counties against the gun industry. In August of 2003, those local governments entered into a groundbreaking settlement agreement with two major California gun dealers and three out-of-state wholesale distributors. Pursuant to the agreement, the distributors promised to reform their business practices to stem the flow of guns to criminals, e.g., to end sales to residential gun dealers and to those who sell firearms at gun shows. The gun dealers also agreed to a number of important reforms, including employee training to guard against sales to “straw purchasers” (individuals who buy guns on behalf of felons and other prohibited persons), and the implementation of a plan for securing firearms from theft. An appeal is pending with respect to claims against the manufacturer and trade association defendants in the action.

Litigation against the gun industry provides a strong incentive for the industry to act responsibly. The federal immunity legislation would remove that incentive and unfairly insulate the industry from the legal consequences of its actions.<sup>9</sup>

### The Second Amendment

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

Although the NRA and other gun rights activists repeatedly mount legal challenges to firearms laws on the basis of the Second Amendment, **not one** of those challenges has succeeded since the U.S. Supreme Court ruled, in 1939, that the “obvious purpose” of the Amendment was to “assure the continuation and render possible the effectiveness” of the state militia. *U.S. v. Miller*, 307 U.S. 174 (1939).

In October 2004, the United States Supreme Court issued an order denying a petition for writ of certiorari in *Nordyke v. King*, 319 F.3d 1185 (9<sup>th</sup> Cir. 2003), a Ninth Circuit Court of Appeals decision rejecting a Second Amendment challenge to an Alameda County ordinance banning the possession of firearms and ammunition on county-owned property. In December 2003, the Supreme Court issued a similar order denying review of *Silveira v. Lockyer*, 312 F.3d 1052 (9<sup>th</sup> Cir. 2002), a Ninth Circuit decision rejecting a Second Amendment challenge to California’s assault weapon ban. Both cases held that the Second Amendment protects a collective right to maintain an effective state militia, and does not establish an individual right to own or possess firearms.

Despite these judicial victories, the gun lobby continues to argue that the Second Amendment precludes common sense laws to regulate the sale and possession of firearms. Former U.S. Supreme Court Chief Justice Warren Burger once characterized the NRA’s interpretation of the Second Amendment as “one of the greatest pieces of fraud, I repeat the word *fraud*, on the American public by special interest groups that I have ever seen in my lifetime.”

Additional information regarding the Second Amendment can be found on the LCAV web site at [www.lcav.org/content/secondamend\\_index.asp](http://www.lcav.org/content/secondamend_index.asp).

### **California: Overall A Year of Continuing Progress**

Although gun safety measures are being threatened at the federal level, they continue to receive priority in the State of California.<sup>10</sup> On September 13, 2004 (the same day the federal assault weapon ban expired), Governor Arnold Schwarzenegger signed groundbreaking legislation to ban 50 caliber rifles statewide. Fifty caliber rifles are military-style firearms that combine long range, accuracy and massive power. They are accurate to distances of 1,000 to 2,000 yards (10

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<sup>9</sup> In 2005, the gun lobby is expected to push for a repeal of Washington, D.C.’s handgun ban (as well as the District’s authority to regulate firearms), despite the fact that such action is opposed by elected officials in the jurisdiction. The House passed such a measure in 2004, but the Senate did not consider it.

<sup>10</sup> For a summary of California gun laws, go to [www.lcav.org/states/california.asp](http://www.lcav.org/states/california.asp).

to 20 football fields), depending on the skill of the shooter, and can penetrate armored vehicles, disable aircraft and damage industrial targets, such as refineries and chemical plants.

Although the United States General Accounting Office has concluded that 50 caliber rifles have been associated with significant criminal activity, these dangerous weapons are treated as ordinary long guns under federal law and can be purchased by 18-year-olds. Moreover, because of the “gun show” loophole, 50 caliber rifles can be purchased in most states by criminals and would-be terrorists, no questions asked. Beginning January 1, 2005, California will be the first state in the nation to ban these dangerous weapons.

In addition to signing legislation to ban 50 caliber rifles, Governor Schwarzenegger signed bills in 2004 to require law enforcement agencies to conduct a background check on firearms owners prior to returning a firearm that has been held or seized by the agency, and to regulate imitation firearms (defined to include toy guns and BB guns). He also supported renewal of the federal assault weapon ban.

However, the Governor disappointed gun violence prevention advocates when he vetoed three other common sense gun bills – the first to strengthen the state’s child access prevention law (which encourages gun owners to store their weapons safely), the second to prohibit the sale of ammunition to minors and require ammunition sellers to record their sales, and the third to require gun safety education in schools. The Governor’s views regarding gun violence therefore remain somewhat unclear.

During 2004, the California Department of Justice began developing regulations to implement SB 489, a law adopted in 2003 to require new models of semi-automatic handguns, beginning January 1, 2006, to have either a magazine safety disconnect (preventing the weapon from being fired once the ammunition magazine has been removed) or a chamber load indicator (clearly showing when the firearm is loaded). Beginning January 1, 2007, all newly designed semi-automatic handguns must include both safety features. SB 489 is precedent-setting because federal law does not regulate guns from a consumer safety standpoint. In fact, the Consumer Product Safety Act explicitly exempts firearms and ammunition from federal health and safety regulations. Accordingly, it is up to state and local governments to protect the public from unsafe firearms.

The California Legislature is expected to consider additional legislation to reduce gun violence in 2005. One of the most exciting legislative proposals would require handgun ammunition to carry serial numbers allowing law enforcement to trace bullets to the buyer.

### **California Local Governments: At the Forefront of Gun Policy Reform**

California cities and counties lead the state and nation in gun violence prevention. Since the mid-1990s, local governments in California have adopted over 300 innovative firearm ordinances. Significantly, this local regulatory activity has provided a catalyst for several new state laws. In 1999, for example, the California Legislature adopted laws to: 1) prohibit the manufacture and sale of “junk guns;” 2) require firearms dealers to equip all firearms with child-

safety locks; 3) prohibit the sale of large-capacity ammunition magazines; and 4) limit handgun purchases to one per person per month. Each of these laws was modeled after local ordinances adopted since 1995.

This trend continued in 2004, when the state adopted a ban on 50 caliber firearms (discussed above) modeled after ordinances enacted by California local governments. In 2003, Los Angeles became the first jurisdiction in the nation to ban the sale of 50 caliber firearms. In March of 2004, Contra Costa County followed suit. The California Legislature's subsequent adoption of legislation to ban 50 caliber rifles statewide once again demonstrates how local regulations can serve as a catalyst for statewide reform.

In the fall of 2004, the City and County of San Francisco completed an overhaul of its gun laws, repealing measures that had become duplicative of state law (such as that banning junk guns) and adopting new measures to reduce gun violence. The new measures included a ban on 50 caliber firearms and a requirement that gun owners report the loss or theft of their firearms (to help law enforcement determine the accuracy of a gun owner's claim that a crime gun was lost or stolen). LCAV provided in-depth assistance to San Francisco.

California cities and counties continue to adopt a variety of other cutting-edge ordinances to fill gaps in state and federal law, including those to:

- Prohibit firearms dealers from operating in residential neighborhoods and near other "sensitive" areas, e.g., schools, playgrounds and places of worship;
- Require firearms dealers to obtain liability insurance to ensure that persons injured by the dealer's negligence are adequately compensated;
- Require firearms dealers to conduct employee background checks to screen out employees who are prohibited from possessing firearms;
- Prohibit the sale or possession of firearms on publicly owned property (this type of ordinance has had the effect of ending gun shows at some public facilities, such as county fairgrounds); and
- Regulate ammunition sales.<sup>11</sup>

Elected officials, government attorneys and activists should be commended for their groundbreaking work at the local level.

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<sup>11</sup> For more information about the types of ordinances currently in effect in California cities and counties, see the California Local Ordinance Summary page of our web site at [www.lcav.org/states/calocalord.asp](http://www.lcav.org/states/calocalord.asp).

## How We Can Help

LCAV is available to provide free legal assistance to California community leaders working to promote gun violence prevention. We are proud to provide the legal expertise, information and advocacy that make it possible for state and local officials and activists to advance effective, legally defensible reforms. Specifically, we:

- Conduct legal research and analysis;
- Assist in the drafting of firearms laws;
- Testify, upon invitation, at public hearings regarding firearms laws;
- Arrange for *pro bono* litigation assistance when a local government is sued following the adoption of a violence prevention ordinance; and
- Maintain a library of gun ordinances enacted statewide and pleadings filed in ordinance-related litigation.

We welcome the opportunity to work with you to make Californians safer from gun violence.

### *About Legal Community Against Violence*

*Legal Community Against Violence (LCAV) is a public interest law center dedicated to preventing gun violence. Formed in the wake of the 1993 assault weapon massacre at 101 California Street in San Francisco, LCAV provides free legal assistance to activists and public officials, including law enforcement and government attorneys, working to prevent gun violence. To learn more about our services or to request assistance, visit our website [www.lcav.org](http://www.lcav.org), the nation's most comprehensive source for information on U.S. firearms regulation.*