



# Gun Safety in New York:

## Deploying Common Sense Technology



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## I. Introduction

Very few topics in the United States stir up as much passion as the debate over guns and gun safety measures by federal, state, and local governments. The issue involves both the limits and interpretation of Constitutional rights and questions of life and death that have unfathomable consequences for communities and families. This report will discuss the statistics on gun-related violence as well as the practicality of gun safety measures, in an attempt to move towards an approach that will protect rights while also protecting the safety of the public.

In recent years, technology has changed the landscape of gun safety, bringing improvements that can enhance both law enforcement and consumer safety. This report will identify technological advancements that can further improve gun safety for our communities and suggest ways of implementing them into our gun safety regime.

## II. The Statistics

Guns have killed more Americans over the past 50 years than all U.S. wars combined.<sup>1</sup> The fact that children and young adults account for 38% of the gun-related deaths and injuries in this country<sup>2</sup> is both sobering and a call to action. However, is not just young people affected by gun violence. Guns increase the risk of death in domestic violence cases and suicide attempts.<sup>3</sup> The impact is disproportionately felt in African American communities, which suffered 23% of all firearm deaths in the United States, including 56% of homicides involving guns, despite making up just 13% of the population.<sup>4</sup> Gun-related homicide is the number one cause of death among African American males between the ages of 15 and 34.<sup>5</sup>

The United States represents approximately 30% of the population of the 32 members of the Organization for Economic Cooperation and Development (OECD) with per capita income above \$15,000. At the same time, the U.S. accounts for over 90% of the gun-related homicides among these countries.<sup>6</sup> It is no coincidence that the U.S. lacks strong federal gun regulations. For example, there is no federal universal background check, no waiting period, or even a requirement for individual gun owners to report a lost or stolen gun.<sup>7</sup> All of these measures enjoy broad public support:

- Universal background checks have the support of 90% of Americans;<sup>8</sup>
- Waiting periods are supported by 50% of National Rifle Association (NRA) members and even larger percentages of the general public;<sup>9</sup> and
- Mandatory reporting of lost or stolen firearms is supported by 94% of Americans.<sup>10</sup>

Without strong federal support, states are left to decide the regulation of guns on their own while contending with an increasingly anti-regulatory interpretation of the Second Amendment by the United States Supreme Court.<sup>11</sup> While some states have taken important steps towards curbing gun violence, others have gone in the opposite direction and have imposed harsh penalties on agencies or local officials who try to regulate guns.<sup>12</sup> New York is among the states that have made progress towards stricter, more effective gun safety laws which can have a real impact on the level of gun-related violence. Last year, New York passed the Safe Act, adding important safeguards to protect the public from dangerous and irresponsible gun use.

New York State's common sense gun safety laws are working. New York's per capita firearm death rate of 4.39 per 100,000 in population is the third lowest in the country, despite being home to the country's largest city.<sup>13</sup> The national rate is 10.64 per 100,000 in population.<sup>14</sup> New York consistently ranks among the states with the strongest gun safety laws, receiving an "A-minus" from the Law Center to Prevent Gun Violence.<sup>15</sup> New York's Safe Act is a model for other states looking to make their gun safety regime work.

Despite the state's tough regulation regime, many guns still make their way into New York and ultimately into the hands of criminals.<sup>16</sup> The most recent highly-publicized display of this problem was the shooting deaths of two on-duty NYPD officers who were shot by a man who obtained a gun that originally entered the stream of commerce in Georgia, but authorities do not know how it ended up in the hands of the

shooter.<sup>17</sup> Georgia has some of the most lax gun laws in the nation, neither requiring a background check nor mandatory reporting of a stolen gun.<sup>18</sup> Ismaaiyl Brinsley, the shooter, was a convicted felon and would certainly have not passed a background check in a state that required one.

In 2014, the murder rate in New York City was at its lowest level in 60 years, improving on an already impressive 2013.<sup>19</sup> While recent numbers are encouraging, gun violence is still far too common in New York, particularly in the most impoverished sections of New York City.<sup>20</sup> Brooklyn neighborhoods have been among the hardest hit with gun violence this year.<sup>21</sup> This problem cannot be laid entirely at the feet of Georgia and the other southeastern states that make up the “iron pipeline”. Availability is certainly a factor, but in Brooklyn many of the shootings are gang-related.<sup>22</sup>

In a 2013 report on gun violence in New York City, Brooklyn neighborhoods consistently appear at the top in homicide rates for youths aged 15-24,<sup>23</sup> with Crown Heights topping the list at 41.9 homicides per 100,000 15- to 24-year-old youths. Flatbush (29.8) and East New York (26.9) are second and third citywide respectively.<sup>24</sup> The city average is 11.1 deaths per 100,000.<sup>25</sup> Similarly, Crown Heights and East New York are first and second in firearm related hospitalization rates at 123.8 and 107.8 per 100,000 youths aged 15-24 respectively.<sup>26</sup> Again, these numbers far exceed the city average of 36.4.<sup>27</sup>

More must be done to prevent guns from getting onto our streets and to change a culture where guns are used to resolve disputes among young people. Providing young people with alternative methods of dispute resolution can enhance other gun safety measures and have a real impact on those communities most affected by gun violence related to gang activity.

### **III. Available Responses**

There are various methods available to states that are interested in combatting gun violence. New York State has enacted many of these methods, and has had some success in checking gun violence. However, there is more to be done and still several avenues that New York can explore in its fight against gun violence. The general categories are:

- Child and consumer safety
- Investigations by law enforcement
- Buyer background
- Dealer regulations
- Owner’s responsibilities
- Types of weapons
- Concealed weapons and open carry

While some gun advocates see gun safety measures as violating their Second Amendment rights and invading their privacy, it is worth noting that there has always been a reasonableness factor in constitutional interpretation that accounts for the needs of the public and its safety.

#### *A. Child and Public Safety*

##### *i. Technology*

Technology can help to make guns safer for the user and the public, and provide strong evidence that the behavior of law enforcement protecting the public or citizens acting in self-defense was legitimate and within the law.

There are a variety of ways to personalize a weapon so that only the owner can fire it. These technologies are still being improved, and include biometrics (fingerprint recognition) and token (requires a ring, watch, etc.) methods of personalization. New Jersey has done the most with this technology, requiring the Attorney General to regularly report on the progress and commercialization of these technologies. Once the AG deems them ready, a process begins that will end with a requirement that all guns sold will have to be per-

sonalized.<sup>28</sup> Both Massachusetts and Maryland are also monitoring the progress of these technologies.

The technology exists and it works well enough to begin testing it in the field.<sup>29</sup> The NYPD should create a pilot program with biometric guns that uses fingerprint recognition technology. A pilot program of this nature would help protect law enforcement officers and assist in perfecting the technology before making it mandatory throughout New York State. It would also help to show gun owners and dealers alike that their safety is improved when their own gun cannot be used against them and will become useless if stolen. This addresses two major issues for gun dealers and owners: safety and theft.

In addition, law enforcement and private citizens alike can benefit from the use of micro-cameras mounted on their firearm. The camera would activate when the gun is drawn and record exactly what happens. This is a win-win situation for everyone, as officers acting within protocol can remove public doubt surrounding police shootings and the public can be sure that officers will have a greater incentive to follow that protocol. The technology exists now and a pilot program should be pursued.

### *ii. Storage*

Unsafe, negligent gun storage is a major threat to public safety. There are far too many accidental injuries and deaths every year. Many involve children who have found their parent's loaded, unlocked gun. While there are many accidental cases, there are also too many intentional cases involving youth suicide attempts. There is evidence that suggests that suicide attempts are more likely if there is a loaded or unlocked gun in the home.<sup>30</sup> Finally, unlocked guns are easier to steal, providing another way for guns to get into the hands of criminals and disappear from the data stream.

Most of these types of shootings can be prevented by safe, reasonable storage of weapons and ammunition, or with safety locks on weapons. New York State has laws requiring any owner who lives with a convicted felon, a person with certain mental health issues, or a domestic abuser to keep their firearms locked. In addition, the State requires all dealer sales to include a lock which meets certain standards. New York City requires all firearms to be locked when out of the "immediate control" of the owner, and requires a locking device on all guns sold,<sup>31</sup> but New York State does not require locking devices for private sales.

Children face particular dangers from unlocked guns.<sup>32</sup> According to a recent report, 70% of accidental child deaths involving a gun could have been prevented if the firearm had been locked and unloaded.<sup>33</sup> The fact that toy makers create realistic looking toy guns makes it more confusing and dangerous for a child who finds his parent's unlocked firearm. They may not understand the difference and this could have disastrous results.

Child Access Prevention (CAP) laws make negligent parents criminally liable. CAP laws have been linked to lower suicide rates and fewer unintentional deaths.<sup>34</sup> These laws can range from prohibiting providing a child with a firearm or imposing criminal liability if the child obtains the firearm due to parental negligence. New York State does not have a CAP, although there is legislation before the State Legislature:

- Nicholas' Law – requiring safe storage of all weapons (A00053 - Paulin; S02291-Klein).
- Requires safe storage of rifles, shotguns, and firearms (A00214 - Abinanti).
- Allows for temporary forfeiture of weapon for people who may be a danger to themselves or others (A01748 - Cahill).

In addition to passing the above legislation, the NYPD should:

- Create a pilot program testing the viability of biometric recognition technologies.
- Create a pilot program testing the viability of gun-mounted micro-cameras.

## *B. Investigations by Law Enforcement*

In addition to making guns safer, technology can aid law enforcement in making our streets safer. Combined with a robust permitting and registration requirement, these technologies can be a powerful tool for law enforcement to track down criminals and better trace how illegal guns are making their way into those criminals' hands. It is easy to see why 77% of Americans favor ballistic identification laws.<sup>35</sup>

To build on ballistic identification laws, micro-stamping gives each handgun a unique signature (even more unique than a typical forensic inquiry can identify) that can be used to identify the gun used in a shooting. New York State passed a ballistic identification law in 2000, but it was repealed in 2012 at the urging of Governor Cuomo because it was costing millions of dollars and not producing the intended result. However, with a gun registry, ballistic identification could produce better results. There is currently legislation pending on micro-stamping before the New York State Legislature:

- Requiring all semiautomatic pistols to allow for micro-stamping of ammunition (Schimel; S01113 - Peralta).

## *C. Buyer Background*

If the NRA's oft-repeated slogan "guns don't kill people, people kill people" is true, looking at the buyer of a firearm seems like a reasonable step towards preventing gun-related violence. But any approach must balance legitimate privacy concerns with the necessity of public safety. The problem arises because of the two types of gun sales in this country. There are sales by licensed sellers, which account for about 60% of gun sales, and sales by private sellers, which are more difficult to regulate and account for the other 40% of sales.<sup>36</sup> Both methods have loopholes that contribute to the ability of criminals to obtain guns.

Federal law requires that all persons "engaged in the business" of selling firearms must be licensed.<sup>37</sup> However, the definition of "engaged in the business" was vague and largely undefined until the act was amended in 1986 to exclude people who make occasional sales for hobby or collection purposes.<sup>38</sup> The bottom line is that even people who regularly engage in selling firearms can avoid the federal licensing requirements.

The larger issue is private sales of firearms. These are unregulated by the federal government and only sporadically regulated by the states. New York requires all transfers, public or private, to go through a licensed dealer and requires universal background checks for all buyers regardless of the type of firearm.<sup>39</sup>

A 2011 undercover investigation by the City of New York found that 62% of online sellers agreed to sell to someone who admitted that they probably could not pass a background check.<sup>40</sup> A previous investigation of gun shows by the City of New York determined that 94% of licensed dealers at gun shows allowed straw purchases (a purchase by one buyer on behalf of someone else, often because the ultimate end user could not have passed any background check).<sup>41</sup>

Domestic violence and guns is another issue that must be addressed more comprehensively in New York. Domestic violence situations are already dangerous, but removing a gun from the premises can be the difference between having them turn deadly or not. New York mandates that judges revoke or suspend firearms licenses and require the surrender of any firearms, if a protection order is issued based on the use of physical violence, threats involving a dangerous weapon, or violent felony behavior.<sup>42</sup> Judges can use their discretion in other situations where a protective order is put in place. Some states (MA, HI, NJ and IL) go further and require, or allow for, seizure of firearms from the possession of the abuser, not simply relying on the abuser to turn in any weapons of their own accord.<sup>43</sup> New York should follow those states' lead.

Overall, New York State does well with buyer backgrounds by requiring universal background checks for all transfers. However, there are a few areas where more must be done. A statewide safety course requirement for gun owners would help to ensure that people who are buying guns are competent in the safe, responsible use of those guns. In addition New York State could require licenses to be renewed every five

years statewide (it is already required in New York City), allowing law enforcement to remove guns from owners who have since done something to remove them from gun ownership eligibility. Further, more must be done to require dealers to report to law enforcement when someone restricted from gun ownership tries to purchase a gun. Most issues that cause a red flag during a background check have to do with violent histories. Therefore, anytime someone fails a background check, the authorities should be notified.

Some of these ideas have legislation before the New York State legislature:

- Safe Home Act – authorizing law enforcement to remove firearms immediately, if there is a report of domestic violence (A00249 - Rozic).
- Mandatory revocation/suspension of firearm licenses when an order of protection is issued in cases (A00373 - Rosenthal).
- Adopt a statewide safety course for all gun license applicants (Kavanagh; S02442 - Gianaris).
- Impose a waiting period for all purchases (Kavanagh; S02389 – Gianaris).
- Limit the number of guns purchased by an individual per month (Kavanagh; S02389 - Gianaris).
- Make it a felony to be a straw purchaser (A02696 - Weprin).

In the past, there has been legislation introduced relating to:

- Requiring relicensing every 5 years statewide (Paulin).

The New York State legislature can and should pass these measures, but they should also look at:

- Requiring licensed dealers to report to law enforcement anytime someone fails a background check.

#### *D. Dealer Regulations*

While unlicensed sales are a major issue, some licensed dealers are also circumventing gun laws or failing to use safe practices. As mentioned above, dealers should have to inform authorities about buyers who tried to purchase a firearm and failed a background check. This common sense approach allows law enforcement to know who is trying to obtain guns that should not be. Many of the aforementioned suggested changes in regards to buyers actually relate to dealers as well. For example, New York State can limit the number of purchases by individuals and waiting periods both directly involve the seller.

Nationally, too many guns are being diverted from the stream of legitimate commerce. All guns enter that stream of commerce through a dealer, or Type I licensee, of which there are over 50,000 in the United States.<sup>44</sup> Type II licenses are for pawnbrokers, and there are over 7,700 individuals who have that license in the United States.<sup>45</sup> Currently, under federal law, the ATF can only perform one unannounced inspection of dealers each year, and even this one inspection has proven difficult to implement in the face of severe understaffing.<sup>46</sup>

Between 2004 and 2011, licensees reported over 170,000 firearms missing from their inventories.<sup>47</sup> These guns are often the ones that end up in the hands of criminals and cannot be traced to their initial purchaser. Federal investigation into tracing guns has been all but shut off since the mid-1990s,<sup>48</sup> and statistics that are vital to combat gun violence have not been shared with the public, academic researchers, or with attorneys in civil proceedings.<sup>49</sup> This trace data could help law enforcement and governments better understand the flow of illegal guns in the United States and design better approaches to reduce gun violence.

In New York, there are over 1700 Type I licenses, only 11 Type II licenses, and over 2,100 Type III licenses, which are for “collectors of curios and relics”.<sup>50</sup> These dealers are reasonably regulated and must perform background checks on all transfers. In addition, New York State requires dealers to have a state license and limits ammunition sales to those who have a license. Dealers must also supply a shell casing from each new gun to be placed on record with the State Police so the gun can be identified later if needed.

Recent ATF data shows that 90% of the traceable guns used in New York City crimes were originally sold out of state.<sup>51</sup> Statewide, the number is approximately 68%.<sup>52</sup> New York City's gun laws are stricter than the state as a whole. This is evidence that New York's gun safety laws as applied to dealers are working, but that they could also be better, such as by requiring background checks on employees and better security at dealer locations. There are several laws currently making their way through the New York State legislature:

- Require state and federal background checks for all dealer employees (Kavanagh; S01348 - Peralta).
- Require certain insurance and security measures for dealers (Kavanagh; S02430 - Gianaris).
- Create a task force to make better use of data to help combat gun violence (S00812 - Breslin).

In the past, there has been legislation introduced relating to:

- Requiring pawn shops to maintain same storage standards as Type I dealers (Squadron).

#### *E. Owner's Responsibilities*

Beyond the need for improved sale conditions from both sides of the transaction, gun owners have an immense responsibility to ensure that their guns are stored and maintained safely. This responsibility does not go away under any interpretation of the Second Amendment. Public safety is paramount and having an individual right to bear arms does not include the ability to be negligent with the safety of others.

In New York City, 13% of the firearm-related hospitalizations of youths 15-24 were the result of unintentional discharge of a weapon.<sup>53</sup> Improved safety measures, such as proper firearm and ammunition storage or mandatory gun safety courses, would certainly have made a significant difference in these cases. Without access to the guns and the ammunition, there cannot be an accidental shooting.

New York State requires licensing for purchasers of handguns and renewal every 5 years.<sup>54</sup> In New York City, local law shortens that time to 3 years and all guns are included, not just handguns.<sup>55</sup> The State could expand the New York City requirements statewide, which would result in faster removal of guns from the hands of those owners who have forfeited their privileges by their own bad actions.

Another avenue to improve public safety is a gun safety course requirement for all purchasers. Connecticut, Massachusetts, and Washington, D.C. all require safety training for all types of weapons, while Hawaii, Maryland, and Rhode Island require safety training for handguns only.<sup>56</sup> Hands-on testing could be another component of the licensing and safety requirements.

Arguments against these measures tend to come in three varieties:

- they create a 'slippery slope' towards eliminating gun rights;
- they do not work to protect consumers; or
- they are too costly for the resulting benefit.

However, common sense safety requirements are not a restriction on gun ownership. They simply recognize the dangerous nature of guns, particularly those guns used and maintained improperly. As for their effectiveness, it is true that, standing alone, some of these measures are not immediately effective. The key, then, is a comprehensive regime that closes current loopholes, giving the regulations a chance to have their intended public safety effect. This will also result in a better cost-benefit analysis.

There are several bills, in addition to those already mentioned, which relate to owner responsibilities, before the New York State Legislature:

- Requiring a proficiency exam before being permitted to own a gun (A00198 - Gantt).
- Anyone possessing a firearm must obtain a safety certificate (Kavanagh; S02442 - Gianaris).

- Owners must obtain liability insurance (S02683 - Parker).

#### *F. Types of Weapons and Ammunition*

There are different types of firearms that have many different purposes. One of the more controversial firearms is the assault weapon. Assault weapons are not legitimate hunting firearms and are only designed to kill people. States can ban certain models, or adopt a 'one-feature' test that applies more broadly. New York State has adopted the 'one-feature' test and bans assault weapons. Assault weapons that were in-state pre-ban are grandfathered in, but the State imposes a registration requirement and transfers are prohibited in all but a few situations.<sup>57</sup>

Large capacity magazines have similar restrictions on practical use. These magazines are often the type used in mass shootings.<sup>58</sup> New York State limits the amount of ammunition a magazine can hold to 10 rounds.

Similarly, high caliber weapons have no legitimate use besides killing people. They can penetrate armor and walls, causing damage far beyond their intended target. Their combination of power and accuracy at long distances makes them a particularly dangerous threat in the hands of someone intent on causing widespread terror and harm. Given that they have no legitimate non-military use, failure to regulate these weapons constitutes negligence towards public safety.

To date, only a handful of states ban or regulate 50 caliber weapons. New York State is not among them. However, there is currently legislation before the New York State legislature:

- Prohibits the possession of certain 50 caliber weapons (Kavanagh; S02050 - Squadron).

In 2013, New York passed significant laws regarding ammunition, requiring a background check for all commercial sales and transfers.<sup>59</sup> This was an important step, as federal law is notoriously weak on regulating ammunition. New York does not prohibit the possession, transfer, or sale of particularly dangerous types of ammunition, such as armor piercing and hollow-point (dum-dum) bullets.

New York State should:

- Prohibit the possession or transfer of armor piercing and hollow point ammunition.

#### *G. Concealed Weapons and Open Carry*

States fall into several categories when it comes to carrying concealed weapons. Only a few states have no permit requirement, but many have no discretion when it comes to issuing permits if the person meets certain criteria. New York, along with a few other states, has a "may issue" regime, which gives the issuing agency complete discretion over who can receive a permit. Within the "may issue" regime, states differ as to what an applicant must show. New York State requires a showing of good cause and that the person is of good character. Other states have an additional requirement of having to show knowledge of firearm safety. New York is not one of those states, and should adopt the safety course legislation mentioned in previous sections.

The opposite of concealed weapons is open carry. Recently, gun-rights advocates across the country have taken to carrying weapons in public places as a way of exercising their rights. However, these actions have come across as intimidating to many and add danger to a situation where it is wholly unnecessary. The risk of an unintentional shooting increases every time a gun is brought to a public place.

New York State prohibits the open carrying of hand guns, but not long guns, and should consider legislation to ban open carry of long guns as well.

#### IV. Conclusion and Recommendations

New York State has a strong gun safety regime that was made even better with the passage of the Safe Act in 2013. As a result of this, New York has one of the lowest per capita firearm-related death rates in the country. Despite this, New York, and New York City in particular, still has far too many gun-related deaths every year. There is more that can be done to make all New Yorkers safer, including law-abiding gun enthusiasts.

Luckily, due to an active and knowledgeable group of elected officials and non-profit advocacy groups, many of the suggestions that remain to be put in place in New York currently have legislation pending in the State legislature. While New York cannot control what other states do with the gun safety laws, elected officials can continue to make our gun safety laws among the strongest in the nation and lessen the impact that those out-of-state decisions have here at home.

The following suggestions will help achieve that end:

- Use technology to improve gun safety via pilot programs for micro-cameras and fingerprint technology on law enforcement weapons, micro-stamping of all pistols, and greater data sharing between all stakeholders to allow for better tracing capabilities.
- Require dealers to notify local law enforcement when someone who has been specifically barred from possessing a gun (i.e. domestic abuser who is the target of a protective order) attempts to purchase a gun and is denied via background check.
- Prohibit the possession or transfer of armor piercing and hollow point ammunition.
- Continue strengthening New York's gun safety laws by supporting current legislation such as Nicolas' Law (requiring safe storage of all firearms), safety course requirements for permits, and mandatory removal of firearms when a protective order is issued in a domestic violence case.
- Require improved safety procedures at all gun dealers, regardless of license type, including background checks for all employees and more secure storage of firearms.
- Bring together law enforcement and youth groups to discuss alternatives to violence when addressing peer conflicts.

All of these measures will help to lessen the amount of gun violence in New York, whether accidental or intentional. New York needs to continue to build on the success it has had in gun safety by remaining vigilant and taking advantage of new technologies that can help us combat the effects of gun violence in our communities.

## Endnotes

- <sup>1</sup> Office of Congresswoman Robin I. Kelly, *2014 Kelly Report: Gun Violence in America* (2014), vii.
- <sup>2</sup> Law Center to Prevent Gun Violence, *Regulating Guns in America: A Comprehensive Analysis of Gun Laws Nationwide* (May 2014), 3 (citing Nat'l Ctr. For Injury Prevention & Control, Centers for Disease Control statistics).
- <sup>3</sup> *Id.*
- <sup>4</sup> *Id.*
- <sup>5</sup> *Id.*
- <sup>6</sup> Mayors Against Illegal Guns, *Access Denied: How the Gun Lobby is Depriving Police, Policy Makers, and the Public of the Data We Need to Prevent Gun Violence* (January 2013), 10.
- <sup>7</sup> See Law Center to Prevent Gun Violence, *supra* note 2, at 3.
- <sup>8</sup> *Id.*
- <sup>9</sup> *Id.* at 110.
- <sup>10</sup> *Id.* at 135.
- <sup>11</sup> The U.S. Supreme Court only recently began changing its interpretation of the Second Amendment. The last ruling on the issue in the 20<sup>th</sup> century occurred in a 1939 case, *United States v. Miller*, 307 U.S. 174 (1939), where the court held that (1) the Second Amendment only applied to the federal government, and (2) the challenge to the law must be related to having a well-regulated militia. The Second Amendment was interpreted as such until 2008, when the Court changed course in *District of Columbia v. Heller*, 554 U.S. 570 (2008), a 5-4 decision which for the first time gave people an individual right to possess a firearm. A later U.S. Supreme Court case, *McDonald v. City of Chicago*, 561 U.S. 742 (2010), applied the Second Amendment to the states.
- <sup>12</sup> See Law Center to Prevent Gun Violence, *supra* note 2, at 276. Three states have approved these 'extreme preemption' laws: Florida imposes fines and even can cause an official to be terminated if they enact or enforce a gun law that is preempted by state law; Kentucky imposes a misdemeanor (official misconduct) if they violate the firearms preemption statute; and Mississippi allows people to sue the local government and potentially the individual official if they are adversely affected by a local gun regulation.
- <sup>13</sup> Violence Policy Center, *State Firearm Death Rates, Ranked by Rate, 2013* (Jan. 2015). <http://www.vpc.org/fadeathchart15.htm>. Only Hawaii (2.71) and Massachusetts (3.18) have lower rates.
- <sup>14</sup> *Id.*
- <sup>15</sup> Law Center to Prevent Gun Violence, *2014 Gun Law State Scorecard*, available at: <http://gunlawscorecard.org/>.
- <sup>16</sup> Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Strategic Intelligence and Information, *Firearms Tracing System: New York, Jan. 1, 2013 through Dec. 31, 2013* (May 2014) available at: [https://www.atf.gov/sites/default/files/assets/statistics/TraceData/TraceData\\_US/TraceData2013/143870-nyatfwebsite13.pdf](https://www.atf.gov/sites/default/files/assets/statistics/TraceData/TraceData_US/TraceData2013/143870-nyatfwebsite13.pdf). According to the report, over 68% of the traced guns found in New York, where the trace identified an origination state, were from outside of New York.
- <sup>17</sup> Rebecca Leber, *How Did the NYPD Killer Get His Hands on a Gun from Georgia? Because Our Laws are Insane*, New Republic (Dec. 24, 2014); available at: <http://www.newrepublic.com/article/120639/new-york-police-trace-ismaaiyl-brinsley-gun-georgia-arrowhead-shop>.
- <sup>18</sup> *Id.*
- <sup>19</sup> Taylor Wofford, *NYC Mayor: Crime Down in 2014, 'Working Very Hard' to Resolve NYPD Work Slowdown* Newsweek (Jan. 5, 2015). <http://www.newsweek.com/nyc-mayor-says-crime-down-2014-working-very-hard-resolve-nypd-work-slowdown-296821>.
- <sup>20</sup> See Natalie Musumeci and Rocco Parascandola, *Exclusive: Gun Violence Rises in Brownsville Where Cops See More Shooting Victims Than Any Other Precinct*, New York Daily News (May 21, 2014)(The article states that the Brownsville and neighboring precinct are the two top precincts for shootings) available at: <http://www.nydailynews.com/new-york/brooklyn/b-kln-neighborhood-troubled-gun-violence-article-1.1799868>; see also Stephen D. Eide, *Poverty and Progress in New York I: Conditions in New York City's Poorest Neighborhoods*, Manhattan Institute, Civic Report #88 (June 2014)(The report describes the conditions in the poorest neighborhoods in each borough. Brownsville and neighboring East New York are among the poorest in Brooklyn) available at: [http://www.manhattan-institute.org/html/cr\\_88.htm#.VJ155sD4](http://www.manhattan-institute.org/html/cr_88.htm#.VJ155sD4).
- <sup>21</sup> Anthony DeStefano, *Gun Violence in NYC on Rise, Police Stats Show*, Newsday (Apr. 15, 2014) available at: <http://www.newsday.com/news/new-york/gun-violence-in-nyc-on-rise-police-stats-show-1.7717825>; see also Musumeci, *supra* note 20.
- <sup>22</sup> Musumeci, *supra* note 20.
- <sup>23</sup> New York City Department of Health and Mental Hygiene, *Epi Research Report: Firearm Deaths and Injuries in New York City*, 6 (Apr. 2013). [http://www.nyc.gov/html/om/pdf/2013/firearms\\_report.pdf](http://www.nyc.gov/html/om/pdf/2013/firearms_report.pdf).
- <sup>24</sup> *Id.* Fordham-Bronx Park (22.5) and High Bridge-Morrisania (22.1) round out the top 5.
- <sup>25</sup> *Id.*
- <sup>26</sup> *Id.* Central Harlem (104.4), Hunts Point-Mott Haven (88.4), and East Harlem (80.7) round out the top 5.
- <sup>27</sup> *Id.*
- <sup>28</sup> Law Center to Prevent Gun Violence, *supra* note 2, at 196.
- <sup>29</sup> Nicholas Kristof, *Smart Guns Save Lives. So Where are They?*, New York Times (Jan. 17, 2015). <http://www.nytimes.com/2015/01/18/opinion/sunday/nicholas-kristof-smart-guns-save-lives-so-where-are-they.html>.

- <sup>30</sup> Law Center to Prevent Gun Violence, *supra* note 2, at 188.
- <sup>31</sup> *Id.* at 192.
- <sup>32</sup> See generally Everytown for Gun Safety and Moms Demand Action for Gun Sense in America, *Innocents Lost: A Year of Unintentional Child Gun Deaths* (June 2014).
- <sup>33</sup> *Id.* at 3.
- <sup>34</sup> Law Center to Prevent Gun Violence, *supra* note 2, at 198. The reports showed a 23% decrease in unintentional deaths for children under 15 and an 8.3% decrease of suicides between the ages of 14 and 17.
- <sup>35</sup> Law Center to Prevent Gun Violence, *supra* note 2, at 250. A survey by Mayors Against Illegal Guns found that the public favored all handguns sold being required to have a ballistic fingerprint.
- <sup>36</sup> See Law Center to Prevent Gun Violence, *supra* note 2, at 8.
- <sup>37</sup> 18 U.S. Code § 923(a).
- <sup>38</sup> 18 U.S. Code § 921(a)(21).
- <sup>39</sup> See Law Center to Prevent Gun Violence, *supra* note 2, at 10.
- <sup>40</sup> City of New York, *Point, Click, Fire: An Investigation of Illegal, Online Gun Sales*, 10 (Dec. 2011); available at: [http://www.nyc.gov/html/cjc/downloads/pdf/nyc\\_pointclickfire.pdf](http://www.nyc.gov/html/cjc/downloads/pdf/nyc_pointclickfire.pdf).
- <sup>41</sup> City of New York, *Gun Show Undercover: Report on Illegal Sales at Gun Shows* 6, 20-23 (Oct. 2009), at [http://www.nyc.gov/html/om/pdf/2009/pr442-09\\_report.pdf](http://www.nyc.gov/html/om/pdf/2009/pr442-09_report.pdf).
- <sup>42</sup> See N.Y. Fam. Ct. Act § 842-a(2)(a), (3).
- <sup>43</sup> Law Center to Prevent Gun Violence, *Domestic Violence and Firearms Policy Summary*, available at: <http://smartgunlaws.org/domestic-violence-firearms-policy-summary/>.
- <sup>44</sup> See Law Center to Prevent Gun Violence, *supra* note 2, at 67.
- <sup>45</sup> *Id.*
- <sup>46</sup> *Id.*
- <sup>47</sup> *Id.* at 68.
- <sup>48</sup> Mayors Against Illegal Guns, *supra* note 6, at 34. In 1996, Congress passed the Dickey Amendment, which cut CDC funding for research on firearms.
- <sup>49</sup> Since 2003, appropriations bills have had a rider known as the Tiahrt Amendment which limits what information on gun traces the ATF can share with those entities. See Mayors Against Illegal Guns, *supra* note 6, at 34; Law Center to Prevent Gun Violence, *Federal Law on Tiahrt Amendments* (May 12, 2012), available at: <http://smartgunlaws.org/federal-law-on-tiahrt-amendments/>.
- <sup>50</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *Report of Active Firearms Licenses – License Type by State Statistics* (Dec. 10, 2014). [http://www.atf.gov/sites/default/files/assets/FOIA/FFLs/2014/December/ffl\\_type\\_by\\_state\\_12102014.pdf](http://www.atf.gov/sites/default/files/assets/FOIA/FFLs/2014/December/ffl_type_by_state_12102014.pdf).
- <sup>51</sup> Rebecca Leber, *The New York Cop Killer Was Arrested 19 Times. Why Was He Able to Get a Gun?* New Republic (Dec. 22, 2014). <http://www.newrepublic.com/article/120621/nyc-cop-killer-ismaaiyl-brinsley-shows-problem-our-gun-laws>.
- <sup>52</sup> New Yorkers Against Gun Violence, *Gun Violence and New York: No Room for Complacency*, available at: <http://nyagv.org/wp-content/uploads/2013/07/Fact-Sheet-Gun-Violence-and-New-York-7-13.pdf>.
- <sup>53</sup> New York City Department of Health and Mental Hygiene, *supra* note 23, at 2.
- <sup>54</sup> Law Center to Prevent Gun Violence, *supra* note 2, at 122. New York also requires “good moral character”.
- <sup>55</sup> *Id.* at 123.
- <sup>56</sup> *Id.* at 124.
- <sup>57</sup> *Id.* at 143-44.
- <sup>58</sup> Mark Follman, Gavin Aronsen, and Jaeah Lee, *More Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines*, Mother Jones (Feb. 27, 2013). <http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazines-mass-shootings-feinstein>.
- <sup>59</sup> Law Center to Prevent Gun Violence, *supra* note 2, at 169.