Legal Community Against Violence

expertise, information & advocacy to end gun violence

LCAV Model Law

REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS (LOCAL GOVERNMENTS IN CALIFORNIA)

May 2009

About LCAV and Our Model Laws

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

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

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

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

Executive Summary

Policy Background

Legal Community Against Violence (LCAV) has developed a model ordinance for use by California jurisdictions to require the reporting of lost or stolen firearms.

Federal and California laws currently require licensed firearms dealers, but not gun owners, to report the loss or theft of firearms.[1] Seven states (Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island), the District of Columbia, and several local jurisdictions, many in California, impose this requirement on gun owners as well. Local governments with reporting laws include San Francisco, Sacramento, Oakland, Berkeley, Los Angeles, West Hollywood, Thousand Oaks, Simi Valley and Port Hueneme in California, as well as Chicago, Illinois, Cleveland and Columbus, Ohio, Hartford, Connecticut, and New York, New York.

[1] References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model law below.

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Laws requiring the reporting of lost or stolen firearms are useful to law enforcement for several reasons. First, when a crime gun is traced by law enforcement to the last purchaser of record, the owner may claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking.[2] Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it. These laws allow law enforcement to charge an individual with a crime if he or she failed to file a timely report of a lost or stolen firearm, or, alternatively, if he or she filed a false report.

Second, reporting laws help disarm prohibited persons. When a person who legally owned a gun falls into a prohibited category, it is crucial that law enforcement remove the firearm from his or her possession. For example, a gun owner who is convicted of a felony or who becomes the subject of a domestic violence restraining order is not permitted under federal or state law to continue to possess his or her firearm.[3] However, when ordered to surrender the firearm by law enforcement or a judge, the owner may falsely claim it has been lost or stolen. Mandatory reporting laws provide a deterrent to this behavior.

Third, the reporting requirement makes it easier for law enforcement to locate a lost or stolen firearm and return it to its owner. Timely reporting of gun thefts or losses enables police to trace guns more effectively, and makes the successful prosecution of users of stolen guns more likely.

Finally, reporting laws make gun owners more accountable for their weapons. Such laws also protect gun owners from unwarranted criminal accusations when a gun that was lost or stolen is later recovered at a crime scene.

According to a December 2008 report by Mayors Against Illegal Guns (a coalition of over 300 mayors that targets illegal guns nationwide), lost or stolen firearm reporting laws "can help law enforcement more easily identify and prosecute gun traffickers." The report presents data showing that states that require the reporting of lost or stolen firearms export crime guns at less than one-third the rate of states that do not have lost or stolen reporting laws. In a 2007 report, The International Association of Chiefs of Police states, "law enforcement's early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence." The report recommends that state and local governments mandate reporting of lost or stolen firearms.

A 2008 survey of Americans' attitudes toward gun violence prevention measures found almost unanimous support for laws requiring the reporting of lost or stolen firearms: 91 percent of all people surveyed, and 88 percent of polled gun owners favored reporting laws.

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[2] Gun trafficking occurs when a person buys a gun legally and subsequently transfers it to another illegally.
[3] Note that the California Department of Justice maintains a Prohibited Armed Persons File to identify prohibited persons who remain in possession of firearms. This database currently identifies roughly 13,000 armed and prohibited persons.

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Opposition Arguments

Opponents of such laws sometimes argue that these measures could unfairly punish otherwise law-abiding gun owners who fail to report a weapon lost or stolen. However, prosecutorial discretion allows law enforcement officials to focus only on persons suspected of falsely claiming the loss or theft of a firearm, rather than persons who innocently fail to comply with the reporting requirement.

Opponents also sometimes argue that these laws will impose an undue burden on gun owners. However, federal and state laws already require firearms dealers to report lost and stolen firearms. In addition, California requires motorists to report serious automobile accidents to the Department of Motor Vehicles. A reporting requirement for firearms is no more burdensome on gun owners than the accident reporting law is on motorists. Moreover, the highly lethal nature of firearms justifies an increased level of responsibility over that required for ownership of other, less dangerous products.

Another opposition argument is that criminals could easily thwart the law by filing false reports of lost or stolen guns. As noted above, however, a gun owner who repeatedly files reports claiming his or her firearms have been lost or stolen puts law enforcement on notice of possible gun trafficking. In addition, the model law makes it a crime to file a false report that a firearm has been lost or stolen. This provides a deterrent to the filing of false reports, and provides prosecutors another basis upon which to charge a trafficker or someone whose gun turns up at a crime scene where his or her involvement may be suspected.[4]

This Model Law

This model law requires a person to report the loss or theft of a firearm he or she owns or possesses within 48 hours of the time he or she knew or reasonably should have known of such loss or theft.[5] In addition, an objective standard is used regarding the onset of the reporting period. This means that reporting is required within 48 hours of the time a reasonable person knew or *reasonably should have known* that the firearm was lost or stolen. A subjective standard, based on when the owner actually became aware of the loss or theft, would allow dishonest gun owners to thwart the law simply by claiming that they never knew the firearm was lost or stolen.

The model also provides an optional provision that requires persons who have had a firearm lost or stolen within five years prior to the effective date of the law to report the loss or theft within sixty days of the ordinance's effective date. This provision is

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[4] Opponents of lost or stolen reporting requirements also sometimes argue that gun owners will be unaware of the new duties imposed upon them and will unwittingly fail to comply. However, a jurisdiction adopting such a measure can take steps, such as mailing letters to gun owners or requiring firearms dealers to post notices, to ensure that gun owners learn of the new requirement. And, as noted above, prosecutors have discretion. If the circumstances suggest that an otherwise law-abiding gun owner was truly unaware of the law, it is unlikely that he or she would be prosecuted.

[5] Forty-eight hours is the reporting time period required of dealers by both federal and state law.

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designed to decrease the ability of a gun owner to falsely claim that his or her gun was lost or stolen before the reporting requirement went into effect.

This model law requires the reporting of lost or stolen firearms and is designed specifically for use by local governments in California. LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to enact this or other laws to reduce gun violence. Please see www.lcav.org for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

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Text of Model Law

CHAPTER 1 REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS

Sec. 1 Findings
Sec. 2 Reporting of Loss or Theft of Firearm
Sec. 3 Exceptions
Sec. 4 Penalty
Sec. 5 Severability

Sec. 1 Findings

[Findings regarding the need for and benefits of this law should be included. Findings in support of a law are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

Whereas, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 other people were hospitalized for non-fatal gunshot wounds;[6]

Whereas, federal and California law require licensed firearms dealers to report the loss or theft of firearms to law enforcement within 48 hours;[7]

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

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

Whereas, existing reporting laws, like California's requirements that firearms dealers report the lost or theft of firearms and that motorists report serious automobile accidents to the Department of Motor Vehicles, demonstrate that reporting laws are not unduly burdensome. Moreover, the highly lethal nature of firearms justifies an increased level of responsibility over that required for ownership of other, less dangerous products;

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

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[6] California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), Firearm Injuries in California (2008).
[7] 18 U.S.C. § 923 (g)(6); Cal. Penal Code §§ 12071(b)(13), 12086(c)(3).

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

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

Whereas, Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, and Rhode Island, and the District of Columbia, require the reporting of lost or stolen firearms;

Whereas, several local governments in California already require the reporting of lost or stolen firearms, including San Francisco, Sacramento, Oakland, Berkeley, Los Angeles, West Hollywood, Thousand Oaks, Simi Valley and Port Hueneme. Local ordinances often serve as catalysts for statewide policies;[8]

Whereas, several major cities outside of California, including Chicago, Illinois, Cleveland and Columbus, Ohio, Hartford, Connecticut, and New York, New York, also require reporting of lost or stolen firearms;

Whereas, a December 2008 report by Mayors Against Illegal Guns (a coalition of over 300 mayors that targets illegal guns nationwide) states that lost or stolen firearm reporting laws "can help law enforcement more easily identify and prosecute gun traffickers." The report presents data showing that states that require the reporting of lost or stolen firearms export crime guns to other states at less than one-third the rate of states that do not have lost or stolen reporting laws;[9]

Whereas, in a 2007 report, The International Association of Chiefs of Police states, "law enforcement's early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence." The report recommends that state and local governments mandate reporting of lost or stolen firearms;[10]

Whereas, a 2008 survey of Americans' attitudes toward gun violence prevention measures found almost unanimous support for requiring the reporting of lost or stolen

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[8] For example, state laws regulating junk guns and requiring trigger locks were enacted only after numerous local communities in California adopted these measures. For citations to these and other local laws, *see,* Legal Community Against Violence, *Communities on the Move: How California Communities are Addressing the Epidemic of Handgun Violence* (2000), at http://www.lcav.org/library/surveys_local_ords/com2000_pdf.pdf.

[9] Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking,* (December 2008), at http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf. States "export" a crime gun when the last purchase of record occurred in the state and the gun is later recovered at a crime scene in a different state.

[10] International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 16, 22 (Sept. 2007).

firearms: 91 percent of all people surveyed, and 88 percent of polled gun owners favored reporting laws;[11]

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

Sec. 2 Reporting of Loss or Theft of Firearm

It is unlawful for any person to fail to report to the Police/Sheriff's Department the theft or loss of a firearm he or she owns or possesses within forty eight (48) hours of the time he or she knew or reasonably should have known that the firearm has been stolen or lost, if the person resides in City/County or the loss or theft occurs in City/County.*

[*Optional provision:*

It is unlawful for any person to fail to report to the Police/Sheriff's Department within sixty days (60) of the effective date of this ordinance the theft or loss of a firearm he or she owned or possessed within the five years prior to the effective date of this ordinance if the person resided in City/County at the time of the loss or theft, or the loss or theft occurred in City/County, unless the firearm has been recovered.][12]

Pursuant to Penal Code § 11108, the Chief of Police/Sheriff shall submit a description of each firearm which has been reported lost or stolen directly into the California Department of Justice automated property system for firearms.

Sec. 3 Exceptions

Section 2 shall not apply to the following persons:

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

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

c) Firearms dealers and manufacturers licensed under federal and state law while engaged in the course and scope of their activities as licensees.

Sec. 4 Penalty

a) Any person violating section 2 is guilty of a misdemeanor;

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* Where the words "Police/Sheriff," "City/County" or similar variations appear, simply select the appropriate designation for your jurisdiction.

[11] Greenberg Quinlan Rosner Research and The Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* (April 10, 2008), available at http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf

[12] This provision is designed to decrease the ability of a gun owner to falsely claim that his or her gun was lost or stolen before the reporting requirement went into effect.

b) Any person who reports to any law enforcement officer, pursuant to section 2 of this ordinance, that a firearm has been lost or stolen, knowing the report to be false, is guilty of a misdemeanor.

Sec. 5 Severability

If any section, subsection, sentence or clause of this Chapter is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity or the enforceability of the remaining portions of this chapter or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.