

How Strict are U.S., Colorado, and Local Gun Control Laws?

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Executive Summary

In both the United States and Canada, opinion polling consistently reveals two facts:

- [A large number of people favor "more" gun control laws.
- [An equally large number of people have no idea how strict gun control laws *already* are.

In Colorado, for example, leaders of a new anti-gun organization called "SAFE" have claimed that:

- [There should be a law against buying automatic weapons over the counter.
- [There should be a law against "straw purchases," in which a legal purchaser buys a gun for an illegal person.

In fact, the first item has been law since 1934, and the second item has been law since 1968.

This Issue Paper explains existing federal, state, and local gun control laws. The paper proceeds as follows:

- [Part I details federal gun laws, including their stringent bans on gun possession by various classes of people, and their preposterous laws regarding handgun possession by juveniles.
- [Part II describes Colorado gun laws.
- [In Part III, local ordinances in Denver and elsewhere are examined. The Paper shows how oppressive and unfair many of these laws are, and why Colorado should (like over 40 other states) enact legislation specifying that gun laws should be enacted only at the state level (with a few exceptions for truly local matters, such as firearms discharge).
- [The next Part specifies each of the 19 weapons control laws which were broken by Littleton murderers Eric Harris and Dylan Klebold and their gun-supplying accomplices. Before Harris and Klebold set foot on Columbine High School on April 20, they had perpetrated enough weapons laws violations so that they could have been sent to prison for the rest of their lives.

- [Gun prohibition lobbyists have used the Columbine murders as a pretext for a campaign to destroy gun shows. Part V examines the phony claim that there is a gun show "loophole" in current law.

I. Federal Law

Most of the federal gun control laws are based on the use of Congressional power to regulate interstate commerce. It is claimed that mere possession of a firearm by an individual, entirely within the boundaries of a single state, somehow implicates interstate commerce.

A. Bans on Possession by "Prohibited Persons"

Since 1968, federal law has made it a felony for various "prohibited persons" to possess a firearm, to purchase a firearm, to own a firearm, or to do anything else with a firearm. The law is backed by stringent felony prison terms. Likewise, it is illegal for a person (including a firearms dealer) to transfer a firearm to a prohibited person. (18 U.S.C. § 922(d).) The list of prohibited persons includes:

- [Anyone with a felony conviction, no matter how distant and non-violent (e.g., tax evasion in 1951).
- [Anyone with a misdemeanor conviction if the conviction involved "domestic violence" (e.g., a person who pleaded guilty to a crime after spanking his child in a parking lot).
- [Any illegal drug user.
- [Any alcoholic.
- [Any illegal alien.
- [Any person against whom there is a restraining order, based on claims of potential domestic violence.
- [Any person dishonorably discharged from the military (including persons discharged because of their sexual orientation).

All of these prohibitions were imposed retroactively. For example, the ban on domestic violence misdemeanants was imposed in 1994, but applies to all persons with a relevant conviction, even if the conviction was in 1962. The prohibited persons language is:

- (g) It shall be unlawful for any person
- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
 - (2) who is a fugitive from justice;
 - (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S. Code § 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien-- (A) is illegally or unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

18 U.S.C. § 922(g).

B. Young Persons and Schools

1. Ban on Sales by Licensed Dealers

A gun dealer is forbidden to sell or deliver a rifle or shotgun to a person under 18, a handgun to a person under 21, or a handgun to a resident of another state. § 922(b).

2. School Zones

It is illegal to bring a gun with 1,000 feet of a school, with certain exceptions. Gun Free School Zones Act. 18 U.S.C. § 922(q):

(2)(a) It shall be unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

Under 18 U.S. Code § 921(a)(25) The term "school zone" means:

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term "school" means a school which provides elementary or secondary education, as determined under State law."

3. Handgun Possession by Minors

It is illegal for a minor to possess a handgun, with certain exceptions. It is illegal for an adult to transfer a handgun to a minor:

18 U.S.C. 922(x):

"(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile...

(A) a handgun;...

(2) It shall be unlawful for any person who is a juvenile to knowingly possess...

(A) a handgun;..."

There are some exceptions allowing juveniles to possess handguns while ranching or farming, or engaged in lawful target shooting or hunting. But even then, current federal law demands that the juvenile have prior written permission from her parents, and must carry that permission at all times with her while in possession of the handgun.

It would be a mistake to think that teenagers helping on their parents' ranches and farms are actually complying with this silly statute. On the ranch, they do not carry around prior written permission. Off the ranch, they may carry a handgun in their pickup truck for protection while driving on isolated rural roads at night, as people in their family have for many generations. It is doubtful that most farmers and ranchers even know of the federal statute--or have much interest in studying it.

For a lot of people, federal gun laws have become like the Internal Revenue Code: it exists, but the populace dislikes it, evades it, and does not want to waste energy trying to understand it. The Tax Code and the gun laws and regulations are frustrating, arcane laws which are genuinely understood by only a small group of specialists. We have seen how the citizenry feels about the Tax Code and the IRS. It would be naïve in the extreme to believe that

firearms owners do not have the same opinions of the gun laws and the Bureau of Alcohol, Tobacco, and Firearms.

Current proposals in Congress would make the juvenile gun ban even worse. Senate Bill 254 (which is currently in a conference committee), would a *mandatory* one year minimum sentence on any adult who transfers a handgun to a juvenile, regardless of the circumstances. A father who gives a family heirloom in a locked glass case to a son on the son's seventeenth birthday would spend a *mandatory* year in prison. Mandatory sentences may make good sound bites, but they are cruel and thoughtless when applied in the real world.

Senate Bill 254 would also extend the juvenile handgun ban to possession of so-called "assault weapons" and to ammunition clips holding more than 10 rounds. Magazines holding more than 10 rounds for rifles or handguns are commonly used for target shooting, for predator control, for self-defense, and for other lawful and enjoyable purposes, such as plinking at tin cans. If a 17-year-old can be trusted with a rifle and a 10-round magazine, it does not make sense to turn him and his parents into criminals just for using a 15 round magazine instead of a 10 round magazine.

As for "semiautomatic assault weapons," the very name is an oxymoron. One semiautomatic rifle (e.g., a Marlin Camp Carbine) functions just like any other (e.g., a Colt AR-15A2). The federal "assault weapon" ban applies to some but not all semiautomatics, and classifies guns on the basis of petty cosmetic characteristics--such as whether the gun has a bayonet lug, or whether the magazine protrudes "conspicuously" from the rest of the gun. So-called "assault weapons" do not fire faster, or fire larger bullets, than other firearms. There is no reasonable basis for sending parents and children to prison because a child's lawfully-used rifle has a bayonet lug or some other cosmetically incorrect feature.

C. Permission to Purchase and Registration Required for all Retail Sales. Police Notification for Some Sales

Firearms are the only consumer product for which FBI permission is needed for every single retail purchase. FBI permission is granted via the National instant criminal background check on all retail firearms sales. § 922(t).

Besides getting FBI permission, all retail purchasers of firearms are required to fill out the Federal Form 4473. This form records the buyer's name and address, and which particular firearms he purchased. The form also requires the buyer attest that he is not in any of the various federal prohibited categories. The 4473 forms are kept by the licensed dealer, are available for law enforcement inspection, and are turned over to the Bureau of Alcohol, Tobacco and Firearms when the dealer retires.

Federal law allows the 4473 forms to be examined as part of an annual inspection of the firearms dealer by the BATF. In addition, the forms are

available to law enforcement whenever needed for investigation of specific crimes. Federal law prohibits use of the 4473 forms to compile a registration list of gun owners

But despite the federal law, the BATF frequently uses the 4473 forms to launch fishing expeditions to investigate people simply because they have bought a particular type of firearm. In addition, the BATF is using the 4473 forms to compile computerized registration lists of gun owners. The FBI is using the National Instant Check System to do the same.

D. Additional Gun Control Laws

Federal law also bans:

- [Manufacture, transfer, or possession of a "semiautomatic assault weapon."§ 922(v).
- [Transfer or possession of "large capacity ammunition feeding device."§ 922(w).
- [Possession of firearms in federal facilities. § 930.
- [Transporting or manufacturing for transporting any firearm or explosive or incendiary device knowing or having reason to know or intending that same will be used in furtherance of a civil disorder. 18 U.S.C. § 231.
- [Mailing a concealable firearm. 18 U.S.C. § 1715.
- [Carrying a weapon or explosives on aircraft. 49 U.S.C. § 46505.

E. Penalties

Penalties are as follows, according to 18 U.S.C. § 924:

- [Violation of § 922(d) or (g) [possession by or transfer to a prohibited person] is up to 10 years imprisonment.
- [Violation of § 922(q) [possession of a gun within 1,000 feet of a school] is up to 5 years imprisonment, which must be consecutive to any other sentence.
- [Violation of § 922(x) [handgun possession by a minor] is up to one year imprisonment. Up to 10 years if the transferor knows or had reasonable cause to know that the juvenile intended to use the handgun in a crime of violence.
- [Using or carrying a firearm during a crime of violence or drug trafficking offense is punishable by a mandatory minimum term of 5 years and, in some cases, up to "life imprisonment without release."
- [Possessing "armor piercing ammunition" during crime of violence or drug trafficking offense is punishable by a mandatory minimum additional term of 5 years. § 929.

F. National Firearms Act and Machine Guns

The Gun Control Act of 1968 (and its many subsequent amendments) covers ordinary firearms (rifles, pistols, and shotguns) and is based on Congressional authority over interstate commerce. In contrast, the National Firearms Act of 1934 ((26 U.S.C. §§ 5801-5872) covers various exotic weapons (including machine guns, sawed-off shotguns, grenades, etc.). The NFA is based on the federal taxing power. In general, the NFA imposes a strict registration and licensing system on certain weapons, in guise of tax collection.

Besides the controls detailed below, there is one other important federal law: it is illegal to sell a machine gun made after 1986 to anyone other than a government employee. 18 U.S.C. § 922(o).

For NFA purposes *only*, a "firearm" is defined to include machine guns, sawed-off rifles and shotguns, and "destructive devices." 26 U.S.C. § 5845. The definition of NFA "firearms" includes many items which are not really firearms (e.g., grenades, rocket launchers) and excludes many items which actually are firearms (e.g., most bolt action, lever action, or self-loading rifles, pistols, and shotguns).

For NFA "firearms" (machine guns, etc.), federal law imposes the following requirements:

- [Transfer tax and transfer. 26 U.S.C. § 5811 requires the payment of a \$200 transfer tax. 26 U.S.C. § 5812 requires the filing of an application, which includes fingerprints and a photograph, and approval by the Secretary of the Treasury before a person may take possession of the firearm.
- [Federal regulation requires that a person receive permission from his local chief of police or other similar official before being allowed to take possession of an NFA "firearm."
- [Making Tax. 26 U.S.C. § 5821.
- [Requires a \$200 tax for the construction of each NFA "firearm."
- [Making a firearm. 26 U.S.C. § 5822.
- [Prohibits making any NFA "firearm" unless the maker has registered with the Secretary of the Treasury, and identified in advance the firearm that will be made.
- [Registration of firearms. 26 U.S.C. § 5841 requires all NFA "firearms" to be registered with the Secretary of the Treasury.
- [Identification. 26 U.S.C. § 5842 requires that every maker of NFA firearms place serial numbers on them. (This has been required for the manufacture of all guns since 1968.)

- [Record and returns. 26 U.S.C. § 5843 requires importers, manufacturers, and dealers to keep certain records.
- [Prohibited Acts. The proscribed acts under 26 U.S. § 5861 include the possession, receipt, transfer, or making of any firearm in violation of the National Firearms Act.
- [Penalty. 26 U.S.C. § 5871 provides for 10 years and a \$10,000 fine.

G. The Biggest Loophole

Senator Larry Craig has identified the loophole in federal gun law which most aggravates the gun prohibition lobbies and their Congressional allies. The loophole mandates:

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 gun prohibition lobbies sometimes claim that this "right of the people" belongs exclusively to the government, the Justices of the United States Supreme Court have treated the Second Amendment as an individual right in over two dozen separate cases.[\[1\]](#)

II. State of Colorado Laws

In general, Colorado gun control laws are better drafted and more sensible than federal laws.

A. State Constitution

The most important Colorado law regarding arms is in the Bill of Rights of the Colorado Constitution:

Section 13. *Right to bear arms.* The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

The records of the State Constitutional Convention reveal that there was no controversy regarding the right to arms. The only change made by the Convention was to expand the right from every "citizen" to every "person," in order to make it clear that legal immigrants could enjoy this important constitutional right.

The final clause regarding concealed weapons is (like the rest of the text) taken from the Missouri Constitution of 1875. The effect of the clause is to remove the carrying of *concealed* weapons from the scope of the Constitutional right, while leaving intact the Constitutional right to carrying *unconcealed*. The clause gives the legislature the latitude:

- [to ban concealed weapons carrying entirely, or

- [to ignore the subject and make no laws against concealed carrying, or
- [to create a regulatory system for concealed carrying licenses.

Colorado's current laws regarding concealed handgun licenses were enacted in the mid-1970s. They authorize police chiefs and sheriffs to issue licenses, provide that the licenses shall be valid statewide, and protect chiefs/sheriffs from civil liability if the chief/sheriffs submits the applicant's fingerprints to the Colorado Bureau of Investigation.

The effect of proposed concealed handgun bills would be to change the state regulatory system from "may issue" to "shall issue" for qualified adult applicants with clean records and safety training. One prominent Senator who opposes "shall issue" legislation sometimes claims that the "shall issue" bills violate the state Constitution. This claim is self-evidently preposterous: nothing in the Constitution forbids the legislature from creating a licensing system; the Constitution simply declares that concealed carrying is not a constitutional right. Moreover, if a "shall issue" regulatory system violates the Constitution, then so does the current "may issue" regulatory system--if the Constitution really does require that concealed carrying be outlawed, rather than regulated.

The following are the other Colorado weapons laws:

Instant check system; unlawful acts and penalties

The proscribed conduct under Colorado Revised Statutes 12-26.5-105 includes:

"(1) It is unlawful for:..

8 Any person to knowingly acquire a handgun for a person who is prohibited by local, state, or federal law from purchasing, receiving, or possessing a handgun;"[\[2\]](#)

Thus, straw purchases are *already* illegal in Colorado. Straw purchases are also illegal under the federal Gun Control Act of 1968.

Terrorist training. C.R.S. 18-9-120

"(1) As used in this section, unless the context otherwise requires:

(a) 'Civil disorder means any planned public disturbance involving acts of violence by an assemblage of two or more persons that causes an immediate danger of, or results in, damage or injury to property or to another person.

(b) 'Explosive or incendiary device' means:...

(II) Any explosive bomb, grenade, missile, or similar device;

(III) Any incendiary bomb or grenade, fire bomb, or similar device, including any device which:

(A) Consists of or includes a breakable receptacle containing a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound; and

(B) Can be carried or thrown by one person acting alone.

'Firearm' means any weapon which is designed to expel or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon....

(2) Any person who teaches or demonstrates to any person the use, application, or making of any firearm, explosive or incendiary device, or technique capable of causing injury or death to any person and who knows that the same will be unlawfully used in furtherance of a civil disorder and any person who assembles with one or more other persons for the purpose of training or practicing with, or being instructed in the use of, any firearm, explosive or incendiary device, or technique capable of causing injury or death to any person with the intent to unlawfully use the same in furtherance of a civil disorder commits a class 5 felony."

Possessing a dangerous or illegal weapon

Under C.R.S. 18-12-102 the proscribed conduct includes:

"(1) As used in this section, the term §dangerous weapons§ means a firearm silencer, machine gun, short shotgun, short rifle....

(3) A person who knowingly possesses a dangerous weapon commits a class 5 felony."

Possession of a defaced firearm. C.R.S. 18-12-103.

Defacing a firearm. C.R.S. 18-12-104.

Unlawfully carrying a concealed weapon. C.R.S. 18-12-105.

Unlawfully carrying a weapon--unlawful possession of weapon--school, college, or university grounds. C.R.S. 18-12-105.5.

Prohibited use of weapons. C.R.S. 18-12-106

The proscribed conduct includes unlawfully aiming a firearm, recklessly or with criminal negligence discharging a firearm, and possessing a firearm while intoxicated.

Possession of firearm by convicted felon. C.R.S. 18-12-108.

Possession of handguns by juveniles. C.R.S. 18-12-108.5.

"(1)(a) Except as provided by this section, it is unlawful for any person who has not attained the age of 18 years knowingly to have any handgun in such person's possession."

**Unlawfully providing or permitting a juvenile to possess handgun.
C.R.S. 18-12-108.7**

"(1)(a) Any person who intentionally, knowingly, or recklessly provides a handgun with or without remuneration to any person under the age of 18...or any parent or legal guardian of a person under eighteen years of age who knows of such juvenile's conduct which violates section 18-12-108.5 and fails to make reasonable efforts to prevent such violation commits the crime of unlawfully providing or permitting a juvenile to possess a handgun."

(b) Class 4 felony.

(2)(a) and (b). If the parent "is aware of a substantial risk that such juvenile will use a handgun to commit a felony offense," the parent's crime is a class 4 felony.

**Possession, use, or removal of explosives or incendiary devices.
C.R.S. 18-12-109**

"(2) Any person who knowingly possesses or controls an explosive device commits a class 4 felony."

Possession of a loaded firearm in a motor vehicle. C.R.S. 33-6-125

"It is unlawful for any person, except a person authorized by law or by the division, to possess or have under his control any firearm, other than a pistol or revolver, in or on any motor vehicle unless the chamber of such firearm is unloaded."

III. Local Ordinances

Local firearms ordinances often poorly drafted, and in direct conflict with Colorado's constitutional right to arms. Because Denver's ordinances are so extensive, they are discussed at the end of this Part, after the ordinances from other cities.

Aurora ammunition ban

An Aurora ordinance states that any ammunition coated or treated with Teflon or similar synthetic compound is unlawful.

Many target shooters use some types of Federal brand ammunition, which has basic lead bullets. Some more expensive versions of the Federal bullets coated with Teflon. This coating is provided on this readily-available commercial ammunition to keep the pistol from having too much lead build-up in the barrel from higher-velocity bullets. The Teflon reduces the abrasion as the bullet passes through the barrel, and thereby reduces how much lead is abraded off the bullet and deposited in the barrel.

This normal ammunition--which is banned by Aurora--is not the infamous "cop-killer" extremely-penetrant ammunition. Such ammunition is banned by federal law, and the federal definition has nothing to do with Teflon. Rather,

"armor piercing ammunition" is a handgun bullet "constructed entirely" from "tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium."27 Code of Federal Regulations § 178.11.

The Aurora "Teflon" ban is a perfect example of how local governments lack the expertise to craft appropriate firearms laws. The federal ban (which, by the way, was supported by the National Rifle Association) focuses on the types of bullet materials which give a bullet armor-piercing capability. The Aurora ban does nothing about high-penetration bullets. Instead, the Aurora law merely bans a type of bullet coating.

When the Colorado legislature enacts gun laws, the legislature usually brings in experts of all types to craft technically appropriate legislation. But the Aurora government apparently enacted a law based on little more than what some councilperson had heard from a television program.

Thus, it is now illegal in Aurora to possess ordinary Federal brand ammunition, which has no more penetrating power than any other commercially-available ammunition, and which certainly will not penetrate a police jacket.

The Federal ammunition is perfectly legal in all other areas of the State, and can be purchased over the counter by anyone legally capable of buying pistol ammunition. Yet, if a citizen were to bring such ammunition to a target shooting range in Aurora, he could be arrested.

Englewood forfeiture

The forfeiture ordinance states that "In every case where a person is charged with a violation involving a weapons offense, he/she shall forfeit to the City such dangerous or illegal weapon."This does not say convicted, but simply charged.

Lakewood carrying

It is unlawful to carry a firearm where vinous, spirituous or malt liquors are sold, but that this ordinance does not apply to peace officers or proprietors. This would make it illegal for a concealed-carry permit holder even to walk into a liquor store and buy a bottle of wine for dinner that night. It is also illegal for a person with a concealed handgun permit to go into a grocery store, since most grocery stores sell beer. Likewise, it is illegal for a person with a concealed handgun permit to have dinner her spouse in any restaurant which serves liquor--even if the permit holder never drinks a drop. Thus, the average permit holder is in danger of arrest for the perfectly innocent acts of going to a grocery store or going out to dinner.

Thornton carrying

Colorado law currently allows persons to carry a handgun in their place of business for lawful protecting, or in their automobile for protection for lawful protection "while traveling."(C.R.S. § 18-12-105.) Like Denver, Thornton

drastically narrows the statewide law, and allows business owners or travelers to carry only when there is a direct or immediate threat! Thus, proprietors of small businesses, or travelers, are deprived of their right to self-protection. Thornton and Denver apparently expect that small business owners will be able to ask robbers to wait a minute with the robbery, so that the owner can lawfully retrieve her handgun.

Denver carrying

Denver Revised Municipal Code § 38-117 forbids the concealed or open carrying of any firearm, any knife with a blade greater than 32 inches in length, or any other dangerous or deadly weapon.

The affirmative defenses to Denver Code § 38-117 are found in Denver Code § 38-118. The affirmative defenses include carrying in a private automobile or other private means of conveyance for lawful protection of self or another person or property, when there is a direct and immediate threat thereto, while traveling away from the area of one's residence or business; being in one's own dwelling, or place of business, or on property owned or under one's control at the time of the act of carrying such weapon; or being a collector or licensed dealer displaying or transporting such weapon for display or sale. All firearms so displayed or transported shall be unloaded at all times.

Denver ban on guns which melt at the wrong temperature

It is unlawful for any person engaged in the business of selling handguns to sell, rent, exchange, or deliver any handgun having a melting point of less 1,000 degrees Fahrenheit, or tensile strength of less than 50,000 lbs. per square inch, or metal having a density of less than 7.5 grams per cubic centimeter. This ordinance is ostensibly aimed at protecting foolish consumers from poor quality guns. But the ordinance contains an exemption for police officers. There are only two logical implications which can be drawn from the police exemption:

- A. The Denver City Council wants police to use inferior firearms;
- B. The Denver City Council wants to disarm poor people by making it illegal to sell inexpensive firearms.

The latter conclusion seems more likely.

Denver ban on guns which are frightening in pictures

Denver's "assault weapon" ban is directly copied--even including typographical errors--from a 1989 California statute. The California statute was created by a few people looking through a picture book of guns, and picking out which guns did not look "sporting." The arbitrary list of guns has nothing to do with the gun's function; one of the guns banned by Denver is a single-shot shotgun.

The Denver ordinance forbids the carrying, storing, keeping, manufacturing, selling, or otherwise possessing any firearm defined as an "assault weapon." It also includes any detachable magazine with a capacity of 21 or more rounds. There is no exemption or affirmative defense for gun shows or exhibits under the ordinance.

Denver juvenile "weapons" ban

Denver's juvenile weapons ordinance is now touted as the reason for Denver's recent drop in homicides--although the decline in crime in Denver is no greater than the trend in most other large American cities in the same period. And the statewide juvenile handgun law (enacted three months after the Denver ordinance) would remain in place, and restrict most handgun possession by juveniles, even if the Denver ordinance were repealed.

As detailed in a 1993 Independence Institute Issue Paper, the Denver ban goes far beyond any reasonable form of gun control. In Denver, it is currently illegal to allow someone under 16 years old to even touch a gun, even during a safety training class.

It is even illegal for a father and son to drive to a hunting trip in the Yampa Valley, which an unloaded rifle in the rack of a pick-up truck.

Denver property confiscation law

Denver's property confiscation law does not create additional gun controls, but does impose draconian penalties on based on the other gun ordinances.

Among other things, put, the ordinances allow the confiscation of the gun and the car of people *with concealed handgun permits* who travel through Denver.

The ordinances make a mockery of due process; for example the ordinances declare that judges must enforce them "without regard to...the culpability or innocence of those who hold these rights." (Denver R.M.C. § 37-70(a).) In some barbaric countries, courts impose a standard of "guilty until proven innocent." But the Denver ordinance is even worse than this barbaric standard; the Denver rule that "even if you prove yourself innocent, the government will still take your property."

IV. Twenty Potential Weapons Control Law Violations by Eric Harris, Dylan Klebold, and Others

Murderers Eric Harris and Dylan Klebold appear to have violated numerous federal and state weapons control laws, as detailed below.

It appears that Harris and Klebold violated at least 17 different state and federal weapons control laws. Mark E. Manes, the man who allegedly sold the handgun to Harris and Klebold, may have violated at least one federal and one state law. If Harris or Klebold's parents knew of their juvenile's handgun possession, the parents would be in violation of one Colorado law.

Because Harris and Klebold killed themselves, it is not at this point clear which of them violated the particular laws below. But it is clearly that before Harris and Klebold committed a single violent act, they had already violated enough state and federal weapons control laws to be sent to prison for the rest of their lives.

A. State of Colorado Laws

Instant Check System. Acquiring a handgun for a person who is prohibited by state law from doing so. C.R.S. 12-26.5-105.

Terrorist Training. Practice in use of firearms or explosives for the purpose of causing civil disorder. 18-9-120.

Possessing a Dangerous or Illegal Weapon. Possession of a sawed-off shotgun. 18-12-102.

Unlawfully Carrying a Concealed Weapon. Carrying weapons concealed under trenchcoats. C.R.S. 18-12-105.

Unlawfully Carrying a Weapon--Unlawful Possession of a Weapon--School, College, or University Grounds. Bringing weapons onto school property. C.R.S. 18-12-105.5.

Possession of handguns by juveniles. Both Harris (18 at the time of the murders) and Klebold (17) possessed a handgun before their 18th birthday. C.R.S. 18-12-108.5.

Note: The May 5, 1999 issue *Denver Post* reported that 22 year old Mark E. Manes sold the handgun to Harris and Klebold in February 1999, when both Harris and Klebold were 17. The *Post* also reported that Manes has a long record of driving offense and underage drinking violations. According to the *Post*, Manes' mother is a long-time Handgun Control, Inc., activist, who always taught Manes about the "evilness" of handguns.

Unlawfully Providing or Permitting a Juvenile to Possess a Handgun. Possibly violated by Harris's and Klebold's parents. C.R.S. 18-12-108.7.

Possession, Use, or Removal of Explosives or Incendiary Devices. Multiple violations. C.R.S. 18-12-109.

Possession of a loaded firearm in a motor vehicle. Violated during the drive to Columbine. 33-6-125.

Most of the above statutes have exceptions, none of which applied to Harris and Klebold.

B. Federal Law, Gun Control Act

Possession of Firearms by Drug Users. Possession of a firearm by any person who has used drugs in the last year. 18 U.S.C. 922(g)(3).

Gun Free School Zones Act. Possession of firearms with one thousand feet of school property. 18 U.S.C. 922(q).

C. Federal Law, National Firearms Act

The federal Gun Control Act covers rifles, shotguns, and handguns, and was enacted in 1968 (and has since been greatly amended). The National Firearms Act (NFA) was enacted in 1934, and covers a smaller category of weapons. For NFA purposes only, a "firearm" is defined to include sawed-off shotguns, and "destructive devices." 26 U.S.C. 5845(a)(1) and (8). "Destructive devices" include "any explosive...bomb...or similar device." 26 U.S.C. 5845(f)(1). With that definition in mind, here are the NFA violations committed by Harris and Klebold:

Making Tax. 26 U.S.C. 5821. Requires a \$200 tax for the construction each NFA "firearm." The two sawed-off shotguns were made into NFA "firearms" when Harris or Klebold sawed off the barrel to less than 18 inches. Harris and Klebold also failed to pay the \$200 tax for each bomb they made.

Making. 26 U.S.C. 5822. Prohibits making any NFA firearm unless the maker has registered with the Secretary of the Treasury, and identified in advance the firearm that will be made.

Registration. 26 U.S.C. 5841(c). Requires manufacturers of NFA "firearms" (the sawed-off shotguns, and the bombs) to register each firearm with the Secretary of the Treasury.

Identification. 26 U.S.C. 5842. Requires that every maker (Harris and Klebold) of NFA firearms place serial numbers on them.

Record and Returns. 26 U.S.C. 5843. Requires manufacturers to keep certain records.

Prohibited Acts. 26 U.S. 5861.

"It shall be unlawful for any person--

(f) to make a firearm in violation of the provisions of this chapter."

Each violation of the above laws is punishable by up to 10 years in prison. Each sawed-off shotgun and each bomb constitutes a separate violation.

C. Other Federal Laws

Explosives Law. 18 U.S.C. 842.

"(i) It shall be unlawful for any person--

(2) who is an unlawful user of or addicted to any controlled substance....

(4)....to...possess any explosive which has been shipped or transported in interstate or foreign commerce."

"(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary [of the Treasury]."

Explosives Law penalties. 18 U.S.C. 844.

(a) Up to ten year prison term for violation of 842(i).

(b) Up to one year for 842(j).

V. Gun Shows

Some of the most vicious acts of political cynicism and deception following the Columbine murders involve the attacks gun show patrons and businesses. Contrary to claims that there is "gun show loophole" in current law, ***the law about firearms sales at gun show is exactly the same as for firearms sales anywhere else.*** The federal Gun Control Act specifically states that a licensed dealer must comply with all laws, including record keeping, when making a transfer at a gun show. 18 U.S.C. § 923(j).

The second false claim is that the "gun show loophole" allowed murderers Eric Harris and Dylan Klebold to obtain their weapons. To the contrary, the 18 year old female and 22 year old male who purchased weapons for Harris and Klebold were legal buyers. The sales made the gun show were perfectly legal, and would remain so even if every single proposal being pushed by President Clinton had been law.

The National Institute of Justice is the research arm of the United States Department of Justice. The NIJ's "Drug Use Forecasting" program collects data about all kinds of criminal arrests (not just drug arrests). According to an NIJ study released in December 1997, only 2% of criminal guns came from gun shows. About a quarter of criminal guns came from retail firearms stores, and the rest came from sources such as theft and black market purchases. This result is consistent with a mid-1980s study for the NIJ, investigating the gun purchase and use habits of convicted felons in 12 state prisons. The study found that gun shows were such a minor part of criminal gun acquisition that they were not even worth reporting as a separate figure.

Contrast this research data with Rep. Diana DeGette's claim at a press conference that "seventy percent" of criminal guns come from gun shows, and with SAFE head Arnie Grossman's claim in the *Denver Post* that "most guns used for criminal purposes are purchased at guns shows."

The 2% figure for gun shows (and the 25% figure for gun stores) does not mean that the criminal necessarily purchased the gun himself at that location. Many persons with criminal records use a "straw man" purchaser-- someone with a clean record who buys the gun, and then transfers it to the criminal.

"Straw man" purchases have been classified a federal felony since the Gun Control Act of 1968; the federal law against straw purchases was

strengthened in 1986 by the NRA-sponsored Firearms Owners Protection Act.

Ever since 1938, persons engaged in the business of selling firearms have been required to obtain a federal firearms license. Those who are not engaged in the business, but who sell firearms from time to time (like a man who sells a spare hunting rifle to his brother-in-law), are not required to obtain this license.

The physical location of the sale does not affect its legal status under federal law. Many storefront gun dealers set up tables at weekend gun shows since the show may have more foot traffic in a weekend than a small store does in a whole month. (The main reason for the growth in gun shows in the last decade and a half is that the Firearm Owners Protection Act provided for licensed firearms dealers to conduct business at gun shows in addition to selling from their storefronts.) If you walk the aisles at a gun show, you will find that the overwhelming majority of tables are owned by licensed firearms dealers. If you buy a gun from one of those tables, you will go through the same paperwork (the federal form 4473) and the same background check (once the Brady handgun check, but now the "instant check" on both handguns and long guns) as if you bought the gun at the dealer's storefront.

If a person is not engaged in the business of selling guns, he may sell firearms without a federal license. For example, if a gun collector dies and his widow does not want to maintain the collection, she is entitled to sell it. Even if the collection were large (say, for the sake of argument, 50 guns), her sale of the guns would not require a federal firearms license since she is just selling off inherited property and is not "engaged in the business." Once the sale is over, she will not continue buying and selling firearms.

The same law would apply to an active gun collector. If a collector has a 40-gun collection, and over the course of the year sells three guns from his collection and buys six new guns, he does not need a federal firearms license. Though he buys and sells guns, he is not engaged in the business of selling them.

Suppose that the widow doesn't want to sell her deceased husband's guns by taking out a classified ad in the newspaper; she prefers to sell the entire collection in a single weekend. She could purchase a table at a gun show and sell them there. Since she is not engaged in the business, she does not need a federal license. The location of the sale does not change the legal requirements that apply.

Likewise, the law applicable to the active gun collector does not change if he does his trading at a gun show. He can rent a table, display his entire 40-gun collection, and during a weekend, buy one gun and sell another. Whether he sells the single gun from his home, or at the gun show, the law does not change. Because he is not in the business, he does not need a federal license.

Therefore, someone who buys a gun from him does not need to comply with federal laws, such as filing the 4473 form and the Brady Act paperwork, which apply only to sales by licensed dealers.

Now, suppose that someone claiming to be a collector is actually operating a firearms business. He rents a table at a gun show 50 weekends a year, and sells 20 guns each weekend. Selling firearms at the rate of 1,000 per year, and conducting a business week after week, he appears to be engaged in the business of selling firearms. If this man does not have a federal firearms license, then he is guilty of a federal felony.

Indeed, every separate gun sale constitutes a separate federal felony. (The federal laws are section 922 and 923 of volume 18 of the U.S. Code.)

What about the folks in the middle who rent gun show tables on many weekends but sell at a far lower volume than the hypothetical 20-gun-per-weekend dealer? Federal law does not specify any particular number or rate of firearms sold as a threshold for being engaged in the business. This is a sensible rule as the widow selling 50 guns in one weekend is, despite her high volume, not in the business. So for any given situation, the determination of whether a person is engaged in a business is based on common-sense. In case of a dispute, the issue would be resolved by a jury, after taking all of the facts into account.

Now the majority of people who sell guns at gun shows, and who are not federally licensed dealers, are neither widows nor high-volume dealers operating illegally. Rather, they are people who used to be licensed federal gun dealers, selling a few guns a year to their friends, from a home-based business. These folks were known as "kitchen-table dealers," as opposed to "stocking gun dealers," who sell from a storefront.

The Bureau of Alcohol, Tobacco and Firearms (BATF) acknowledged that these kitchen table dealers were not a problem; they sold only a few guns per year to people whom they personally knew to be good citizens. But BATF claimed that the need to perform inspections of the kitchen table dealers kept BATF inspection agents so busy that they did not have enough time to do repeat inspections of stocking gun dealers. So starting in 1993, BATF began a program to drive the kitchen table dealers out of business. Threats from BATF agents, deliberate bureaucratic delays and other forms of harassment not only convinced most kitchen table dealers to cease operations, but also caused many small-scale stocking gun dealers to surrender or not renew their licenses.

Some of these low-volume ex-licensees sell firearms at gun shows. Since BATF took away their licenses under the claim that the licensees were not selling enough guns to be engaged in the business, it would hardly be fair to claim that these people are violating federal law by not having a license.

In short, gun shows are no "loophole" in the federal laws. If a person is required by federal law to have a federal firearms license, then the requirement applies whether or not the person sells at a gun show. And if a person is not required to have a license, then the person's presence at a gun show does not change the law.

The gun prohibition lobbies express outrage that a person can buy a firearm at a gun show without going through the federal background check, though this is only the case when the purchase is made from the minority of tables that do not have an FFL. However, even if the non-FFL gun collector sold his gun from his home rather than from a gun show, a federal background check still would not be required.

Why should the location of the sale determine whether a background investigation will be required?

The real point of complaining about non-FFL private transactions at gun shows is to begin the campaign to outlaw all private firearms sales. If it should be illegal for a widow to sell a gun without a background check at a gun show, then it should also be illegal for her to sell the same gun through a classified ad, and it should likewise be illegal for her to sell the gun to her neighbor.

In California, Handgun Control, Inc., has achieved its objective of outlawing all private gun sales. In California, you cannot sell a .22 squirrel rifle to your cousin. Instead, you must route the transaction through a licensed gun dealer, pay a fee for a background check, undergo a two-week waiting period, and have your sale registered by the California Department of Justice.

Attacking gun shows is the first step to abolishing all privacy regarding firearms, en route to implementing universal gun registration. And the step after that? New York City, England, and Australia have already used gun registration lists to confiscate long guns. They are following the strategy enunciated by HCI founder and President Nelson "Pete" Shields, who explained in 1976:

"The first problem is to slow down the number of handguns being produced and sold in this country. The second problem is to get handguns registered. The final problem is to make possession of all handguns and all handgun ammunition--except for the military, police, licensed security guards, licensed sporting clubs, and licensed gun collectors--totally illegal."(Richard Harris, "A Reporter at Large: Handguns, *New Yorker*, July 26, 1976, p. 58.

Besides forming a foundation for gun confiscation, abolishing private gun sales eliminates privacy in the exercise of constitutional rights. The government has no more legitimate authority to compile a list of every rifle or handgun purchase than it does to compile a list of everyone who buys "subversive" books or birth control devices.

What about the other charges against gun shows, such as Denver Congresswoman Diana DeGette's highly-publicized charge that gun shows allow illegal "assault weapon" sales? In fact, the 1994 Clinton "assault weapon" law bans the future manufacture of certain firearms based on cosmetic characteristics, such as whether the gun has a bayonet lug (as if criminals were conducting bayonet charges against convenience stores). The law imposes no controls on the pre-1994 supply of so-called "assault weapons." It is perfectly legal to own, buy, and sell these pre-1994 guns. It is legal for a licensed federal dealer to sell such guns from his store, or at a gun show; and it is just as lawful for a private individual to sell such guns.

Thus, the people who claim that gun shows facilitate illegal sales of so-called "assault weapons" are either lying or demonstrating that they are so ignorant of existing law that their opinion is worthless advice about making new laws.

Faced with the factual collapse of the campaign against gun shows, the anti-gunners often retreat to their two favorite characters: Timothy McVeigh and David Koresh, and claim that gun shows were responsible for their crimes.

Here is the truth: McVeigh stole guns from an Arkansas gun store. He sold those stolen guns, as well as racist literature, at gun shows. Imposing more controls on gun show patrons would have had no effect on McVeigh. He was a vendor, not a customer. McVeigh's customers, the customers weren't the criminals; McVeigh was.

David Koresh's Branch Davidian organization often rented a table at gun shows, where they sold novelty items, such as empty grenade hulls and ready-to-eat meals (army-type survival foods). One of Koresh's devotees, Paul Fatta, was a licensed firearms dealer who sold firearms at gun shows in full compliance with federal laws. The major source of the Branch Davidian arsenal came from purchases through another licensed firearms dealer: Hewitt Handguns. Purchased in full compliance with federal laws, these guns were registered by the dealer on the 4473 forms, which were made available to BATF agents when they began the investigation of Koresh.

The federal firearms crimes which Koresh and his group allegedly committed--illegal manufacture of machine guns and explosives without registration--were conducted entirely in private. Gun shows had nothing to do with them.

The assault on gun shows is not very sensible as a matter of crime control. Rather, the campaign against gun shows is, like most of the rest of the anti-gun agenda, an exercise in moral imperialism. Some people who do not like guns cannot stand the idea of so many gun owners in one place, buying and selling their wicked products. It is how some communists feel when they visit the New York Stock Exchange.

As always, the anti-gun agenda is cloaked in a mantle of public safety and reasonableness. Underneath, it is the same old effort to constrict the right to

keep and bear arms bit by bit, until the Second Amendment right of the people has been replaced by a small privilege granted to a select few.

The fact that so many gun prohibition advocates are unwilling to accurately and truthfully describe current gun control laws yields an interesting implication: they are afraid that if the public knew that the current laws really are, there would be much less support for "more" laws.

[1] *E.g.*, *United States v. Muscarello*, 524 U.S. 125 (1998)(Ginsburg, J., dissenting). *U.S. v. Printz*, 521 U.S.--, 117 S.Ct. 2365 (1997)(Thomas, J., concurring); *Albright v. Oliver*, 510 U.S. 266, 307 (Stevens, J., dissenting); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992); *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990); *Moore v. East Cleveland*, 431 U.S. 494 (1976); *Roe v. Wade*, 410 U.S. 113 (1973); *Duncan v. Louisiana*, 391 U.S. 145 (1968); *Poe v. Ullman*, 367 U.S. 497, 542-43 (1961)(Harlan, J., dissenting); *Johnson v. Eisentrager*, 339 U.S. 763 (1950); *United States v. Miller*, 307 U.S. 174 (1939); *United States v. Kepner*, 195 U.S. 100, 123-24 (1904); *Robertson v. Baldwin*, 165 U. S. 275 (1897); *Brown v. Walker*, 161 U.S. 591 (1896)(Field, J., dissenting); *Miller v. Texas*, 153 U.S. 535 (1894); *Presser v. Illinois*, 116 U. S. 252 (1886); *United States v. Cruikshank*, 92 U.S. 542, 551 (1875); *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856). In all cases for which dissents are listed, the dissent was on grounds other than the Second Amendment, and the majority opinion did not contradict the dissenters' analysis of the Second Amendment

[2] There an important complication to the Colorado instant check statute. The statute expired by its own terms in February 1999. Governor Owens in June 1999 ordered the Colorado Bureau of Investigation to resume conducting checks on gun buyers starting August 1, 1999; but the Governor has no legal authority to create a new program. That power is possessed exclusively by the Legislature. When the Legislature convenes in January 2000, it will have the opportunity to create a legal instant check system. Until then, compliance with the Colorado instant check is, legally-speaking, purely optional, and no-one can be prosecuted for any violation between August 1, 1999 and the date that the Legislature creates a real instant check. That the Governor's plainly unlawful usurpation of power has barely even been noticed by the media and by almost the entire political spectrum is a good example of America's deterioration from Republic into Empire. The Independence Institute has always supported the *policy* of background checks, but in a Republic even the best laws must be enacted by legislatures, and not imposed by executive fiat.