

VIOLENCE PREVENTION

A Vision of Hope



FINAL REPORT

August 1995

Attorney General Daniel E. Lungren's
Policy Council on Violence Prevention

This publication was prepared by the Crime and Violence Prevention Center, California Attorney General's Office.

INITIATIVES

MEDIA

Promote policies and strategies that increase the constructive use of media to deglamorize violence and promote nonviolent social norms.

FIREARMS

Promote policies and strategies that reduce deaths and injuries from firearms.

ALCOHOL

Promote policies and strategies that reduce violence associated with alcohol.

COMMUNITY

Promote policies and strategies that strengthen communities and schools by expanding local ownership and control.

FAMILY

Promote policies and strategies that support families, recognizing them as the basic institution for developing and nurturing children.

RELATIONSHIPS

Promote policies and strategies that foster and support violence-free relationships.

YOUTH

Promote policies and strategies that ensure the development of healthy and responsible youth.

RESPECT for DIVERSITY

Promote policies and strategies that recognize that all people matter, fostering a respect for diversity.

PERSONAL & SOCIAL RESPONSIBILITY

Promote policies and strategies that advance personal and social responsibility.

RESEARCH & EVALUATION

Promote policies and strategies to support violence prevention research and evaluation based on the public health model.

INITIATIVE: FIREARMS

Promote policies and strategies that reduce deaths and injuries from firearms.

BACKGROUND

"Homicide victims are getting younger and younger and younger ... with the most rapid rate of increase in the 15- to 19-year olds. ... Simultaneously, the perpetrators are also getting younger and younger. So, increasingly, we have a problem of kids killing kids ... and firearms playing a central role in this epidemic of youth homicide."

— Mark Rosenberg
National Centers for Disease
Control and Prevention¹

California has the unenviable distinction of being one of the first states to report that gunshot wounds have become the leading cause of injury deaths, even surpassing vehicular accidents. Deaths and injuries due to firearms are both a public health and law enforcement concern; both fields have made it a priority to prevent future firearm tragedies.

In February 1995, the California Police Chiefs' Association adopted a position paper on the regulation of firearms stating, "The lack of regulation over and misuse of firearms is one of the most daunting issues we must face, if we are ever to address the tragedy that threatens the viability of our society." An unequivocal goal of the association is "the saving of human lives through a substantive reduction in the misuse of firearms."²

The California Department of Justice reported that firearm-related homicides in California increased by 67.4 percent from 1988 to 1993. Firearms were used in 74 percent of the 4,095 homicides in California in 1993. Handguns were used in 85 percent of these firearm-involved homicides.³ In 1993, firearms were involved in almost two-thirds of the armed robberies and almost one quarter of all aggravated assaults reported.⁴

California teenagers and young adults face an especially high risk of being killed with a firearm. During 1993, about 70 percent of all homi-

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cide victims under age 18 and 83 percent of victims aged 18 to 29 were killed with a firearm. Proportionately, victims 40 years of age or older were less likely to be killed with a firearm than any other age group (58 percent).⁵

Based on a comprehensive national study of the financial cost of firearm violence, the California Research Bureau, California State Library, developed a model and applied it to the state. Some of the major findings of this study are:

- Wounded gunshot victims and gunshot fatalities in California cost \$703 million in direct medical care in 1993.
- Over 80 percent (or nearly \$569 million) of the medical care provided to gunshot victims in California was uncompensated cost passed on to the public.
- The average cost of treating a gunshot victim in California in 1993 was \$25,883.
- The average cost due to loss in productivity and quality of life per gunshot fatality in California in 1993 was over \$2.4 million.
- Firearm-related injuries and fatalities in 1993 indirectly cost Californians over \$16.9 billion in lost productivity and quality of life, based on state-adjusted costs for 1992.⁶

Sales of firearms rose dramatically in California from 483,574 in 1991 to 635,688 in 1993, an increase of about 30 percent. In 1994, sales of firearms dropped about 6.7 percent from the 1993 figures to 593,246. About two handguns are sold for every long gun sold in California. In 1994, the Department of Justice checked 599,672 dealer records of sale for the purchase of firearms, as required by law, and denied 6,426 purchases or transfers from being made. Of these denials, 21 were denied because the individuals involved had prior homicide convictions, 333 were under restraining order, and 3,041 had prior assault convictions.⁷

The Policy Council's approach to the Firearms Initiative was to address actions that should be taken to reduce the lethality and availability of firearms. The Council's recommendations on firearms reflect its concern for injuries and unnecessary loss of life and range from manufacturing standards and sale of hollow-point bullets to firearms dealer requirements, licensure of handgun purchasers, and safe storage. The Council believes that through prevention efforts, public education and legislation, California could: 1) reduce the numbers of injuries and deaths from firearms; and 2) reduce the numbers of firearms that end up in the hands of violent offenders, impulsive or threatened youth, inexperienced or unskilled owners, and criminals.

The Council was aware of the complex legal questions involved in implementing some of the recommendations concerning firearms. There were heated debates and disagreements on the specific wording of some of the recommendations. However, consensus was reached to include most of the recommendations in this report, as long as the minority views were reflected in the discussion.

One major recommendation on which the Council could not reach consensus relates to the repeal of state pre-emption over regulation of firearms. Although the Council agreed to adopt the general principle of local control and ownership of violence prevention efforts, members could not reach agreement on this issue. Council members did, however, agree that the debate on the issue of pre-emption should be included in the report because of the significance of the issue.

California law restricts the regulation of firearms to the state. "Existing California law provides that it is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms, and that such provisions shall be exclusive of all local regulations relating to registration or licensing by any city or county." (Gov. Code, § 53071.)

The proposed Council recommendation, which was given serious consideration, stated:

California should enact legislation to repeal Government Code section 53071 and allow local jurisdictions (cities and counties) to regulate the sales and possession of firearms.

After vigorous debate, the Council could not reach consensus on the inclusion of this recommendation in the report. The Council's discussion is summarized below.

Arguments in favor of eliminating state pre-emption and allowing local regulation of firearm sales and possession:

- The firearm issue is no different than other local issues, and problems are best solved by local communities that can assess and determine appropriate solutions to their problems.
- The clear, strong relationship between the availability of firearms and the incidence of violent crimes is a critical issue in violence prevention, which local jurisdictions need authority to impact.
- Authorizing local jurisdictions to regulate firearms is not meant to be an initial move to ban all firearms, but simply to provide local control over the issue.
- Gun control is not a constitutional issue; no gun control law has ever been overturned by a federal court on Second Amendment grounds.
- Inconsistency in local laws exist in other fields of law and are managed by local jurisdictions.

Arguments against eliminating state pre-emption, which prohibits local regulation of firearms sales and possession:

- Local regulations could lead to inconsistencies in the law, which could result in law-abiding citizens unknowingly committing crimes by bringing a legally owned weapon into a jurisdiction with specific restrictions against such weapons.
- Local regulations could infringe on civil liberties such as the right to bear arms, limiting the ability of individuals to own or possess a gun for protection of themselves and their homes.
- Local regulation could be a first step in an out-and-out ban of all firearms in some localities, following a pattern similar to the development of local anti-cigarette smoking ordinances.

Other discussion on local control concerned revising appropriate sections of the Government Code to authorize local jurisdictions to enact time, place and manner regulations for firearms sales. For example, such regulations would restrict a firearms dealer from locating across the street from an elementary school, daycare center or youth recreational center.

The Council concluded this portion of the deliberations by strongly reiterating its belief in the connection between firearms availability and the lethality of violence. Council members encourage additional public debate on the issue of pre-emption.

The following recommendations were based on the evidence presented to the Council and the collective wisdom of the group in seeking a common ground on firearms. Although many issues involving firearms were vigorously debated, the Council lacked the time and resources to conduct an exhaustive analysis of every issue. Ultimately, decisions on these matters will require further public investigation and debate, as well as potential action by the Legislature, the Governor and, perhaps, the courts.

R E C O M M E N D A T I O N S

I California should enact legislation to prohibit the manufacture and sale of handguns commonly referred to as "Saturday Night Specials."

Discussion:

One difficulty in addressing the issue of the Saturday Night Special (SNS) was the lack of a common definition. The Bureau of Alcohol, Tobacco and Firearms describes the Saturday Night Special as a weapon that retails for less than \$50, is .32-caliber or lower, and has a barrel length of three inches or less.⁸ Other definitions include the following descriptors: short barrel, low caliber, small size that maximizes concealability, cheaply constructed from low tensile strength materials that minimize the price and carry the potential to injure the user.

Proponents of this recommendation argued that a handgun with these manufacturing specifications serves no useful sporting or self-defense purposes, and that:

- Handguns made of cheap, low tensile strength materials prevent prolonged use in target shooting.
- The short barrel of this handgun precludes use in hunting or target shooting.
- A bullet of higher velocity and caliber is necessary to provide adequate "stopping power" for self-defense purposes.
- This type of handgun is consistently awarded poor quality ratings by the gun industry itself.

Dr. Garen Wintemute testified on the handgun industry in California. In his testimony, he reviewed *Ring of Fire*, a report from the Violence Prevention Research Program at the University of California, Davis. Specifically, this report describes a small group of handgun manufacturers in Southern California who produce the great majority of Saturday Night Specials made in the United States. According to Dr. Wintemute, "such small, inexpensive handguns [SNS] are disproportionately involved in violence and figure in thousands of firearm crimes each year. In 1992, the most recent year for which data are available, six California manufacturers produced 685,934 handguns — 34 percent of all handguns made in the United States."⁹

Ring of Fire includes excerpts from the magazine *Gun Tests*, which is characterized as the equivalent of *Consumer Reports* for gun buyers. *Gun Tests* conducts its own "rigorous" product evaluations. The following *Gun Tests* product evaluations were included in *Ring of Fire*:

In its review of two versions of a .22-caliber pistol "both guns had

enough problems with feeding and chambering that they were effectively rendered single-shot pistols." They concluded: "[i]f you never plan to do anything but look at them, they ... are fine." The review was subtitled, "Don't Waste Your Money."¹⁰

In its *Gun Tests* evaluation, another .25-caliber pistol "performed unreliably, either failing to chamber a round or overriding the top cartridge in the magazine with a resulting feeding failure about 20 percent of the time." After test firing, the evaluators concluded: "Accuracy from this type of pistol is seldom impressive, but this ... performance was worse than usual." The gun received a "Do Not Buy" recommendation.¹¹

Gun Tests found another recently introduced .22-caliber pistol to be categorically "Unacceptable." Its "handling qualities were mediocre at best." In test firing, the evaluators "experienced 20 misfires due to light firing-pin strikes and 36 failures to completely lock into battery, and [the gun] failed to feed truncated-nose ammunition about 25 percent of the time." The bottom line: a "Do Not Buy" recommendation.¹²

Some Council members expressed their concerns that banning these low-cost and cheaply manufactured firearms could deprive people of self-protection, if they could not afford to buy more expensive, higher-quality handguns. Others argued that prohibiting the manufacture of these particular low-grade, cheap handguns in California would simply move the industry — with its employment and tax base — out of the state. In addition, such a ban could result in the substitution of more expensive, reliable and lethal handguns by criminals. The Council agreed, however, that the state should prohibit the manufacture and sale of this type of firearm in California because this action would reduce the availability of small, easily concealable, cheaply made handguns.

2 California should enact legislation to require guns manufactured in California to meet the same consumer safety and production standards imposed on imported firearms.

Discussion:

The Council believes that Californians should have the same degree of protection from handguns manufactured in this state as they can currently expect from handguns imported from foreign manufacturers. In 1968, Congress responded to an epidemic of violence and public concern by enacting the Gun Control Act of 1968. (18 U.S.C.S. § 921 et seq.) Among its many provisions was a ban on the importation of firearms (Saturday Night Specials), which were determined to not be "suit-

able for sporting purposes." To implement the ban, the Bureau of Alcohol, Tobacco and Firearms (BATF) developed the factoring criteria defining the specifications and describing the characteristics of these handguns. Although such handguns were also manufactured in the United States, Congress consciously and deliberately exempted their domestic production from such standards.¹³

The BATF standards for imported revolvers and pistols address barrel length, frame construction, weapon weight (unloaded), caliber, revolver safety features such as lock mechanism and loaded chamber indicators, and miscellaneous equipment, including double action and target grips. To determine if a particular handgun meets import standards, the BATF awards points, as appropriate, for each of these characteristics. A specified number of points is required for the gun to meet import standards.¹⁴

At the request of the Violence Prevention Research Program, the BATF evaluated handguns manufactured by six California manufacturers to determine if they met the standards imposed on imported firearms.¹⁵ The BATF found that most California-manufactured handguns are too small and too easily concealable to meet the importation criteria. Others meet the size criteria, but fall below other design or performance standards.¹⁶

3 California should enact legislation that requires gun manufacturers to build in or provide child safety devices for all firearms sold in this state and requires all dealers to offer such devices at the point of sale.

Discussion:

There are no California laws requiring gun manufacturers to build in or provide child safety devices for firearms sold in California, nor are there laws requiring dealers to offer such devices at the point of sale. No federal law authorizes jurisdiction over the design and domestic production of firearms. In fact, Congress expressly prohibits the Consumer Product Safety Commission from exercising jurisdiction over firearms or ammunition. (15 U.S.C.S. § 2052(a)(1)(E) and § 2080, note; 18 U.S.C.S. § 921 et seq.)

A variety of California laws have been enacted to reduce incidents of accidental deaths and injuries from firearms through education and threat of penalties for careless handling. For example, firearm safety devices are a mandated topic for inclusion in the Department of Justice *California Firearms Law* booklet, and methods for childproofing firearms

and safe storage are within the scope of knowledge required for receipt of a Basic Firearms Safety Certificate. (Pen. Code, §§ 12080 subd. (a)(5), 12803 subd. (a)(1).) Under the Children's Firearm Accident Prevention Act of 1991, any person who keeps a loaded firearm where a child obtains it and improperly uses it may be fined or sent to prison. (Pen. Code, § 12035.) In addition, licensed gun dealers are required to conspicuously post a sign within their licensed premises that warns their patrons: "If you leave a loaded firearm where a child obtains and improperly uses it, you may be fined or sent to prison." (Pen. Code, § 12071, subd. (b)(7).) These measures, however, only promote, rather than ensure safety.

In its recent Policy Paper, the California Police Chiefs' Association (CPCA) stated that "a gun is a product not unlike a car, chain saw or lawn mower, in that it is capable of being designed and manufactured in such manner as to render it less likely to be misused or cause unintended injury to the operator." The association recommended that domestic and imported firearms manufacturers be subject to consumer product safety standards.¹⁷

The CPCA also addressed storage of firearms in its policy paper: "Guns left lying about the home unsecured kill or injure thousands of people a year. Responsible gun ownership demands that no firearm ever be left unattended in such condition that it can be readily used or stolen." The CPCA also recommends that "all firearms at the time of sale be sold with a separate locking device that would render a firearm incapable of immediate use."¹⁸

The addition of safety devices such as trigger locks and handle grips would provide a primary prevention strategy, making it nearly impossible for young children to pull the trigger of a loaded firearm without supervision or help from an adult. The firearms industry has already developed this technology. These safety devices would prevent accidental deaths and injuries to children if they were installed or built into all guns sold in California.

Based on these findings, the Council strongly recommends that gun manufacturers be required to build in or provide safety devices in firearms sold in California, and that dealers be required to offer such safety devices at the point of sale.

4 The California Attorney General, Governor and Legislature should urge Congress to support the continuation and rigorous enforcement of the federal assault weapons ban.

Discussion:

"Assault weapons, like the ones used to brutally murder my wife and seven others [at 101 California Street, San Francisco], have absolutely no place in our society, and they threaten the well-being of our most important natural resource — our people. ... What further evidence do we need to classify an assault weapon as a weapon of mass destruction? Eight dead, six wounded ... is that not enough?"¹⁹

The federal assault weapons ban, included in the Violent Crime Control and Law Enforcement Act of 1994, was signed into law on September 13, 1994. (Pub.L. 103-322 (Sept. 13, 1994), 108 Stat. 1996.) Within a few months after its enactment, efforts were already underway for its repeal. The new federal law:

- Makes it unlawful for a person to manufacture, transfer or possess a semiautomatic assault weapon after September 13, 1994.
- Defines the term "semiautomatic assault weapon" to mean: 1) any of the 19 types of firearms, or copies, or duplicates of the firearms in any caliber, as specified; 2) a semiautomatic rifle that has the ability to accept a detachable magazine and has at least two of five specific assault features; 3) a semiautomatic pistol that has the ability to accept a detachable magazine and has at least two of five specified assault features; and 4) a semiautomatic shotgun that has at least two of four specified assault features.
- Makes it unlawful for a person to transfer or possess a "large capacity ammunition feeding device" as defined, which was manufactured after September 13, 1994, and has a capacity of, or can be readily restored or converted to accept, more than 10 rounds of ammunition.
- Exempts the use of semiautomatic assault weapons by the military or law enforcement officers.
- Doubles the penalty to 10 years for anyone who uses a banned weapon in a violent or drug trafficking crime.
- Repeals the law 10 years after enactment. (Pub.L. 103-322 (Sept. 13, 1994), 108 Stat. 1996, Sec. 110101 et seq.)

Assault weapons and large-capacity magazine clips clearly increase the capacity for death and injury of innocent victims when available to and used by criminals. Council members could determine no justification for anyone but law enforcement or the military to have this level of firepower.

The Council supports the federal assault weapons ban and recommends that the California Attorney General, Governor and Legislature urge Congress to support continuation and rigorous enforcement of the law.

5 California should enact legislation to limit the sale of expanding, hollow-point ammunition because of its lethality and ability to cause extensive injury and organ damage.

Discussion:

Restricting the sale of expanding, hollow-point bullets was recommended to the Council on a number of occasions, primarily by emergency and trauma physicians. The physicians based this recommendation on their first-hand experiences attempting to save the lives of people wounded by these bullets. A discussion of bullet characteristics taken from an article in the *Journal of Trauma* follows:

There are two major classes of high-velocity bullets — jacketed (e.g., full patch, military) and expanding (e.g., mushrooming, soft nose, sporting). In accord with international law (Geneva Convention), all military bullets must be the full-jacketed, non-expanding type. Generally, such bullets maintain their approximate caliber in passing through tissue masses in animals comparable in size to man. This international agreement applies to bullets of all nations.

In contrast to full-jacketed ammunition are the expanding bullets. When performing ideally, this type of bullet expands to several times its original caliber, thereby establishing a very wide wound tract, the frontal area of which far exceeds that produced by full-jacketed bullets. The expanding bullet forms a wound that is a cone of enormously greater volume.

Velocity and bullet design are the major determinants of wounding capability in gunshot wounds. High-velocity bullet wounds differ from other penetrating injuries in that wound size bears little relationship to the dimensions of the wounding agent. ... Expanding bullets used for sporting purposes create a permanent tract much larger than that produced by full-jacketed, military type bullets. In experiments with .30-caliber bullets traveling at a speed of 2900 feet per second, wound volumes ... were approximately 40 times as great with expanding bullets, as compared with full-patch military bullets.

Wounds due to high-speed bullets in hunting accidents and home accidents in the average community are almost always due to jacketed, expanding-type bullets (e.g., soft nose, hollow-points). As such, they embrace the most damaging properties of moving bullets — high velocity and widely expanded wound tract."²⁰

Expanding hollow-point bullets cause substantial organ and tissue damage in providing the "stopping power" to immediately disable or kill the intended victim. Hollow-point injuries are far more destructive, life threatening and, ultimately, costly to treat.

A number of arguments against restricting the sale of hollow-point bullets were made by a few Council members, including: 1) the design of the bullet is more effective in stopping perpetrators of crime; 2) many law enforcement professionals believe these bullets are safer, because they stop perpetrators without exiting the victim and wounding or killing innocent bystanders; 3) the bullet is more humane for hunting, because it will kill the animal immediately rather than wounding it and allowing it to wander off and slowly bleed to death; and 4) banning hollow-point bullets would create an underground market for the ammunition.

After consideration of these views, the Council concluded that regulating and limiting accessibility to lethal and destructive expanding, hollow-point bullets was consistent with the initiative to reduce deaths and injuries due to firearms. Thus, the Council recommends that hollow-point bullet sales be limited, for example, to people who are licensed hunters.

6 California should enact legislation to require all gun dealers to register with their local police or sheriff's department to ensure that proper dealer licensing requirements have been met.

Discussion:

The Council was concerned about the licensing of firearms dealers and the monitoring of their compliance with the law. Council members were also interested in determining how local communities could impact enforcement of these laws. During the course of the Council's public hearings and deliberations, both federal and state legislation was enacted that addressed some of these concerns. Specifically, firearm dealer license applicants are now required to notify the police chief or sheriff of the jurisdictions in which they wish to conduct business. (Pub.L. 103-322 (September 13, 1994), 108 Stat. 2013, Sec. 110302.) However, it should be noted that neither state nor federal law requires any kind of response from the local law enforcement agency.

Currently, persons selling, leasing or transferring firearms in the State of California must be licensed in compliance with *both* federal and state laws. (Pen. Code, § 12070, subd. (a).) These laws are reviewed below:

Federal Requirements for Firearms Dealer Licensure

According to the Bureau of Alcohol, Tobacco and Firearms (BATF), there were 23,883 federally licensed California firearms dealers in January 1994. Minimal federal requirements at that time made dealer licenses very easy to obtain. Possession of a federal license allowed the holder to

buy large numbers of firearms at wholesale prices and to buy handguns without a waiting period. Of these federally licensed dealers, 20 percent operated out of storefronts, and 80 percent sold guns from their homes, at gun shows or through catalog orders. There was little BATF control to ensure that non-storefront locations complied with the law.²¹

In 1994, the Violent Crime Control and Law Enforcement Act tightened federal standards for BATF licensing of firearms dealers. This law directed the Secretary of the Treasury to notify the chief law enforcement officer in the appropriate state and local jurisdictions of the names and addresses of all persons in the state to whom a firearms license was issued. (Pub.L. 103-322, 108 Stat. 2014, Sec. 110307.) The new law strengthened the licensing requirements by mandating that applicants to submit a photograph and fingerprints, inform local law enforcement of their federal dealer application, and comply with state and local laws. (Pub.L. 103-322 (September 13, 1994), 108 Stat. 2013, Sec. 110301 et seq.)

In March 1995, the BATF reported a 19 percent drop in the number of federal dealer licenses in California, from 23,883 in January 1994 to 19,130 through the first quarter of 1995. BATF staff speculated that this may have been a result of the stricter licensing requirements and higher fees.²² The number of federal dealers has continued to fall. As of April 1, 1995, there were 18,567 federal licensees, a 22 percent drop from January 1994. Since the new federal law requires federally licensed dealers to comply with state requirements, it is anticipated that the number of federal firearms licensees will continue to decrease as renewals are evaluated for state compliance.

California Requirements for Licensure

California law authorizes the California Department of Justice (DOJ) to administer state firearms dealer licensing and enforcement functions. (Pen. Code, § 12071.) All persons who sell, lease or transfer firearms must obtain a California firearms dealer license. (Pen. Code, § 12070.)

To be a licensed firearms dealer in California and be listed on the state-wide registry of firearms dealers, California Penal Code Section 12071 requires applicants to:

- Provide evidence of a valid federal firearms dealer's license.
- Submit a valid Department of Justice Certificate of Eligibility, a state verification that the applicant is not a person prohibited by law from possessing a firearm or holding a dealer's license. (Note: This certificate must be renewed annually.) The verification also involves the submission of fingerprint cards and payment of all processing fees.
- Provide evidence of a valid Seller's Permit issued by the State Board of Equalization.

- Provide evidence of all locally issued regulatory and/or business licenses or letters from a governmental representative explaining that such licenses are not required in that particular jurisdiction.

On April 1, 1995, the DOJ reported that of the 18,567 federally licensed firearms dealers in California, there were only 2,700 fully licensed dealers (i.e., dealers who had registered with both state and federal authorities), about 14.5 percent of the total. This year, the DOJ will begin inspecting California-licensed firearm dealers to monitor compliance. (Pen. Code, § 12071, subd. (f).)

Even with the strengthening of the dealer licensing laws, the Council agreed that firearms dealers should be required by state law to register with their local law enforcement agency. Council members believe that this recommendation could improve dealer compliance with state law and could also help local community law enforcement agencies to better monitor the operations of firearms dealers in their communities.

7 California should enact legislation to require individuals to obtain a license to purchase a handgun.

Discussion:

The Council members agreed that handgun purchasers should demonstrate personal competence in the safe use and handling of a handgun. However, they could not unanimously agree on how this would be accomplished. Much of the discussion focused on the controversy surrounding the use of the term "license" in this recommendation. As an alternative, the term "certificate" was suggested. Many Council members strongly objected to the substitution of the term and, although a vocal minority continued to object to the use of the word "license," the Council unanimously agreed to include it with the opposition viewpoint clearly presented.

To lawfully purchase and take delivery of a handgun from a licensed California firearms dealer, an individual must be 21 years of age, observe a 15-day waiting period, undergo a clear background check, and possess a Basic Firearms Safety Certificate (BFSC). (Pen. Code, § 12072, subds. (b) & (c).) There is no requirement, however, for individual purchasers to obtain a license by demonstrating personal skill and competency in the use, maintenance and storage of a handgun.

When a handgun is purchased, a dealer's record of sale (DROS) must be completed to furnish information for a background check to the California Department of Justice (DOJ) and the local law enforcement agency. The handgun purchaser must present to the dealer clear evidence of

identity and age, as well as other personal information (e.g., date of birth, local address, place of birth, complete telephone numbers, occupation, sex, physical description, all legal names and aliases ever used, and yes or no answers to questions that prohibit purchase). The purchaser must then sign and certify the record of sale. (Pen. Code, §§ 12076, subd. (a), 12077, subd. (a)(2).) The dealer mails two copies of the DROS to the DOJ and one copy to the local law enforcement agency in which the sale is made. (Pen. Code, § 12076, subd. (b).)

The DOJ uses the DROS to check its records (e.g., criminal history records and Domestic Violence Restraining Order Registry), as well as those records that the DOJ is authorized to request from the Department of Mental Health and local mental health facilities, to determine if the purchaser is a member of a category prohibited by law from having firearms. Individuals who are felons, those under restraining order or convicted of violent misdemeanors, or people suffering from certain mental health conditions are prohibited from obtaining firearms. If the DOJ determines that the purchaser is prohibited from obtaining a firearm, it is required to immediately notify the dealer and the local law enforcement agency of that fact. (Pen. Code, § 12076, subd. (c).) The intent of this requirement is to ensure that firearms are not released to any prohibited individuals.

After the mandatory waiting period and absent any notification that the purchase is prohibited, the handgun purchaser receives delivery of the handgun upon presentation of the BFSC to the dealer. (Pen. Code, § 12071, subd. (b)(8).) The BFSC is intended to certify the buyer's personal knowledge about the safe use, handling and storage of handguns, methods for childproofing handguns, the laws applicable to carrying a handgun, and the responsibilities of handgun ownership. (Effective April 1, 1994, Pen. Code, § 12803, subd. (a)(1).) A BFSC can be obtained by taking and receiving a passing score on the DOJ objective test, completing the two-hour DOJ basic firearms safety video course provided by the dealer, or completing a DOJ-certified firearms safety course. (Pen. Code, § 12802 et seq.)

In light of California's current system requiring a mandatory waiting period, background check and the BFSC, the recommendation to require a license prior to the purchase of a handgun was vigorously debated among Council members.

Arguments in favor of requiring licenses for the purchase of a handgun:

- Licensing would require individuals to demonstrate personal skill and competence in the safe use and handling of a handgun. Possession of a BFSC only signifies that its holder has either seen a video, passed an objective test, or attended an approved firearms safety course.

- California and national data show that public health, safety and welfare are threatened by the irresponsible use, possession, handling and/or storage of handguns.
- Requirements for this type of licensing program are equivalent to the initial driver's license exam (a combination performance- and knowledge-based test). The lethality of handguns is as well-documented as that of motor vehicles.
- A licensing program can be supported by its own fees and would not create a new fiscal burden on state government.

Arguments against requiring licenses for the purchase of a handgun:

- A more palatable, less controversial approach is already in place. Current requirements include background checks and possession of the BFSC prior to delivery.
- Licensing individuals to purchase handguns suggests that government is granting a privilege. Owning a handgun is a right, and licensing would be an intrusion on civil liberties.
- Government could use licensing to discriminate against individuals based on race, ethnicity, sex, residence or economic status.
- Establishing licensing requirements would be costly. After intense debate, the Council concluded in favor of the initiative that handgun purchasers should be required to demonstrate personal skill and competency to reduce death and injuries from firearms.

8 The Department of Justice should promote public awareness of California law requiring that all firearm sales and transfers be documented through a licensed dealer or local law enforcement agency.

Discussion:

California law requires the Department of Justice (DOJ) to prepare a booklet summary of California firearms laws. The booklet, *California Firearms Laws*, includes information on lawful possession, documentation of sale, loan and transfer procedures, and responsibilities of firearms ownership. Copies of the booklet must be offered at actual cost to firearms dealers. (Pen. Code, § 12080.) Dealers must offer copies of the most current version available for sale to retail purchasers or transferees of firearms. (Pen. Code, § 12071, subd. (b)(9).) Currently, the DOJ also offers annual training sessions throughout the state to educate dealers on changes in the law.

Despite the availability of this pamphlet and annual dealer training, it was the opinion of the Council that more could be done to educate the general public on current law requiring documentation of all sales, transfers and loans of firearms through licensed dealers or local law

enforcement agencies. (Pen. Code, § 12072, subds. (c) & (d).)

The DOJ Bureau of Criminal Information and Analysis estimates that there are 100,000 reports of gun thefts from California homes annually, and only about 25 percent of these guns are recovered.²³ Over 80 percent of the firearms used in crimes are reportedly obtained by theft or through illegal or unregulated transactions.²⁴

The Council believes that a public education effort on the benefits of documenting all sales, transfers and loans of firearms would help local law enforcement officers investigate crimes, return stolen firearms and track firearms used in violent crimes.

9 The California Department of Justice, the California Department of Health Services and local law enforcement agencies should develop a public service campaign to promote firearms safety and to encourage gun owners to record the make, model and serial number of their firearms for reporting purposes, if stolen.

Discussion:

Information on safe use and handling of firearms, methods of firearms storage and child-proofing, availability of firearms safety programs and devices, and the responsibilities of firearms ownership is covered in the DOJ booklet, *California Firearms Laws*. (Pen. Code, § 12080.) Although this information is offered to the public through licensed firearms dealers, the Council felt that a more visible statewide public awareness campaign could save lives and improve law enforcement's ability to investigate crimes, apprehend criminals and return stolen property.

The goals of law enforcement and public health are similar in that they both want to reduce deaths and injuries caused by firearms. This view is also shared by a substantial proportion of community members. Public education is one of many public health strategies. Comprehensive public education campaigns concerning seat belt safety and the dangers of smoking have successfully changed public behavior (e.g., increasing the use of seat belts and reducing smoking) by influencing public knowledge and attitudes.

The Council recommends that the DOJ, Department of Health Services and local law enforcement agencies jointly embark on a public education campaign concerning firearm safety practices, safe home storage and available safety devices. Encouraging owners to record the make, model and serial number of their firearms would aid in tracking these weapons should they be stolen, as well as in apprehending and prosecuting criminals.

The Judicial Council should encourage judges to apply the law allowing them to order individuals who are subject to domestic violence restraining orders to surrender any and all firearms in their possession.

Discussion:

Law enforcement officers at the scene of a family-violence incident involving a threat to human life or physical assault may take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search required for the protection of the peace officers and others present. If the firearm is not retained for use as evidence, it must be returned to the owner or person who was in lawful possession 48 hours after the seizure or as soon as possible, but no more than 72 hours later. In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm would be likely to result in endangering the victim, the agency can advise the owner and, within 10 days, initiate a petition in superior court to determine if the firearm should be returned. (Pen. Code, § 12028.5.)

Effective January 1, 1995, the courts may order individuals with domestic violence restraining orders against them to relinquish firearms in their immediate possession or control within 24 hours of the order, if present in court, and within 48 hours after being served, if not in court. The order must be based on the court's determination by a preponderance of evidence that the respondent is likely to use or display or threaten to use a firearm in a further act of violence. The firearm must either be surrendered to the control of local law enforcement officials or sold to a licensed gun dealer. (Fam. Code, § 6389.)

During calendar year 1994, approximately 40,000 domestic violence protective orders were reported to the DOJ by local law enforcement agencies. During this same period, there were 333 firearms denials based on domestic violence restraining orders.²⁵

A new law requires that the court or local law enforcement agency immediately notify the DOJ by electronic transmission of protective orders. (Fam. Code, § 6380.) The DOJ estimates that an additional 150,000 reports will be made this year. Thus far, the DOJ has entered 44,000 reports in its system.²⁶

California law makes it a crime for any person who knows that he or she is subject to a domestic protective order, temporary restraining order or injunction from purchasing, receiving or attempting to purchase or receive a firearm, or to willfully and knowingly violate the order. (Pen. Code, § 12021, subd. (g).)

The Council strongly supports laws that may prevent domestic violence by making it more difficult for violent individuals to have access to firearms. Therefore, the Council recommends that the Judicial Council encourage judges to actively apply Family Code section 6389 when appropriate.

11 California should enact legislation to increase the penalty for carrying loaded, concealed firearms from a misdemeanor to a misdemeanor/felony at the discretion of the district attorney, to make it consistent with other concealed weapon sanctions.

Discussion:

The California Penal Code is inconsistent in charging dangerous weapons violations as misdemeanors, misdemeanor/felonies or felonies. Individuals arrested for carrying concealed "metal knuckles, blackjacks or certain knives" may be charged with a misdemeanor or a felony. (Pen. Code, § 12020, subd. (a).) Individuals carrying a concealed, loaded firearm without a permit are subject only to misdemeanor charges. (Pen. Code, § 12031, subd. (a) (1).) The Council concluded that this incongruity in criminal law and public policy was indefensible.

The Council believes that carrying a concealed, loaded firearm without a permit is a serious crime and should be treated as such. Therefore, the Council recommends that California enact legislation to amend Penal Code section 12031 to increase the penalty to a "misdemeanor or felony," at the discretion of the district attorney.

12 California should enact legislation to increase mandatory sentences for using a gun during a crime.

Discussion:

Many members of the Council wanted the group to directly address those who were committing violent crimes with a firearm. As Steve Helsley, representing the National Rifle Association, stated to the Council, "You've got to deal with the behaviors, the guns are there."²⁷ The Council concluded that firm and clear enforcement of laws should communicate that California will no longer tolerate this type of violent crime. As a whole, the Council agreed that a comprehensive approach to preventing firearms violence included enacting legislation to increase mandatory sentences for use of a firearm during a crime.

Some Council members did not think that increasing mandatory sentences for crimes involving firearms would constitute a prevention

strategy. Most members, however, agreed that tougher penalties and enforcement of these laws may be deterrents to violent and gun-related crimes. Although mandatory sentences would be a late-stage response to violence, they would directly affect those using a gun in the commission of a crime. The Policy Council concluded that stiffer sentences would further its initiative to reduce death and injuries by firearms.

ENDNOTES

1. Mark Rosenberg, M.D., M.P.P., Director, National Center For Injury Prevention and Control, Centers for Disease Control and Prevention, Testimony before the Policy Council, Fresno, California, September 22, 1994.
2. "Confronting the American Tragedy, The Need to Better Regulate Firearms," Sacramento: California Police Chiefs' Association, Position Paper #95-1, Feb. 1995, p. 2.
3. *Crime and Delinquency in California, 1993*, Sacramento: California Department of Justice, 1994, p. 110.
4. *Ibid.*, pp. 11-12.
5. *Homicide in California, 1993*, Sacramento: California Department of Justice, 1994, p. 79.
6. Marcus Nieto, Roger Dunstan and Gus A. Koehler, Ph.D., "Firearm-Related Violence in California: Incidence and Economic Costs," Sacramento: California State Research Bureau, California State Library, Oct. 1994, p. 22.
7. DROS Statistics, Firearms Program, California Department of Justice, 1994.
8. Garen Wintemute, M.D., *Ring of Fire: The Handgun Makers of Southern California*, Sacramento: Violence Prevention Research Program, 1994, citing "Project Identification: A Study of the Handguns Used in Crimes," Washington, D.C.: Bureau of Alcohol, Tobacco and Firearms, 1976.
9. Garen Wintemute, M.D., *Ring of Fire: The Handgun Makers of Southern California*, Sacramento: Violence Prevention Research Program, 1994, p. ix.
10. *Ibid.*, p. 27; citing Plinkers, "Part II: Another Look at .22 pistols," *Gun Tests*, II, No. 3, March 1990, pp. 3-8.
11. *Ibid.*, p. 40, citing "Alloy Semi-auto Pocket Pistols: .25 ACP Single Actions," *Gun Tests*, V, No. 6, June 1993, 24-28.
12. *Ibid.*, p. 40, citing "Odds and Ends: .22 LR pistols," *Gun Tests*, V, No. 12, Dec. 1993, 3-8.
13. Garen Wintemute, M.D., Testimony before the Policy Council, San Diego, California, September 27, 1994.
14. Wintemute, *Ring of Fire: The Handgun Makers of Southern California*, pp. 67-68.
15. *Ibid.*, pp. 24-25.
16. *Ibid.*, p. 21.
17. California Police Chiefs' Association, "Confronting the American Tragedy," p. 4.
18. *Ibid.*, pp. 3-4.
19. Steve Sposato, Testimony before the Policy Council, Oakland, California, August 9, 1994.
20. William E. DeMuth, Jr., M.D., "Bullet Velocity and Design as Determinants of Wounding Capability: An Experimental Study," *The Journal of Trauma*, 6, No. 2, 1966, p. 227-228, 232.
21. Garen Wintemute, M.D., *Ring of Fire: The Handgun Makers of Southern California*, citing "Project Identification: A Study of the Handguns Used in Crimes," Washington, D.C.: Bureau of Alcohol, Tobacco and Firearms, 1976.
22. Sacramento Bee, 9 March 1995, Sec. A, p.1; and Bureau of Alcohol, Tobacco and Firearms.
23. DROS Statistics, Firearms Program, California Department of Justice, 1994.
24. Albert J. Reiss, Jr., and Jeffrey A. Roth, Eds., National Research Council, *Understanding and Preventing Violence*, Washington, D.C.: National Academy Press, 1993, p. 18.
25. Domestic Violence Restraining Order Unit, California Department of Justice.
26. *Ibid.*
27. Steve Helsley, National Rifle Association, Testimony before the Policy Council, San Diego, California, September 27, 1994.