

## Guns and the Law

### Legal Ammunition

### Statutory Provisions

#### Who Can Legally Buy or Own a Gun?

Most American adults can legally buy and own a gun provided that they do not have a disqualifying background such as a felony or domestic violence conviction, or a history of mental illness. California law is stricter in that, additionally, most misdemeanor convictions involving violence or certain firearm offenses result in a 10-year firearm prohibition. In a few jurisdictions (e.g., the District of Columbia or New York City), it is very difficult to legally acquire and own a handgun.

#### Carrying and Using Guns

Generally, other than the prohibition on guns in Federal buildings and courthouses, state law governs the carrying and use of firearms. All states, except Vermont, regulate the concealed carry of a loaded handgun. Slightly more than 30 states provide for the mandatory issuance of a license or permit to carry provided that the applicant is an adult, lacks a disqualifying criminal or mental health history and completes any required training. Penalties for unlawful concealed carry vary from state to state. In California, violations can be prosecuted as felonies in most circumstances; however,

currently most violations are prosecuted as misdemeanors.

California law allows for an exemption from the general prohibition against carrying a concealed handgun or loaded firearm when a person reasonably believes he or she is in grave danger and has obtained a restraining order against the feared person(s).

Discharge of firearms is usually regulated by city or county ordinance. California does have a state law prohibiting "grossly negligent" discharge of a firearm in a manner likely to cause death or injury. This law was enacted in 1988 in response to the then-common practice of shooting into the air to celebrate the Fourth of July and New Years. Violations can be prosecuted as felonies or misdemeanors.

#### Use of Guns in Self-Defense

Generally speaking, a civilian may lawfully use a gun in self-defense in a situation wherein a reasonable person would have a reasonable fear of imminent death or great bodily harm to themselves or others. California and many other states have laws that provide special protections against criminal prosecution when deadly force is used against a forced entry into a residence.

*This information was furnished by Bruce Colodny, an attorney in private practice specializing in firearm law. See the Technical Resources Section for contact information.*

If law enforcement learns that a civilian has used a gun in self-defense, an investigation follows. It may be cursory if the emergency circumstances are clear; however, charges may still be filed for technical violations such as possession or carrying without a required license or permit. This is more likely to happen in California and other urban states such as New York, Massachusetts, New Jersey, etc. These offenses often can be charged as felonies instead of misdemeanors.

Despite a claim of self-defense, a civilian who fires a fatal shot may face criminal homicide charges (murder or manslaughter). Some common reasons include: being unable to make a case that there was a reasonable fear; mistaking another household member for an intruder; and using a gun while under the influence of alcohol or drugs.

Keep in mind that the use of firearms in self-defense normally involves a sudden and unexpected threat calling for a split-second decision with potentially devastating legal consequences.

### **Must Guns Be Registered?**

As a general statement, Federal law and most states do not require that guns be registered. However, since 1968, Federal law has required that all gun dealers keep detailed sales records that must be maintained for a minimum of 20 years. Many states do require that handguns or "assault weapons" (usually referring to semi-automatic copies of firearms originally designed for military use) be registered, while exempting conventional rifles or shotguns. California requires that "assault weapons" be registered but most conventional handguns, rifles and shotguns are exempt.

### **When Guns Can Be Taken Away**

Federal law provides that if a restraining order is obtained by an intimate partner (current or former spouse or co-habitant, or the other parent of a child), the restrained person is prohibited from possessing firearms. Such orders are sometimes issued when divorce proceedings are initiated.

In California, firearms can also be seized by law enforcement as a result of domestic disputes. Although guns taken under such circumstances generally must be returned within 72 hours, the police may refuse to do so and may even initiate a forfeiture petition in superior court.

Persons detained for psychiatric evaluation to determine whether they are dangerous to themselves or others (commonly known as a "5150" or 72-hour hold) may be prohibited from purchasing or possessing guns for a five-year period in California. California law also provides that persons voicing to their therapist threats of harm to a specific individual or individuals may also be prohibited from buying a gun for six months if these threats are communicated to the authorities.

A gun owner who has been prohibited from possessing firearms (whether as a result of a criminal conviction, restraining order, mental health problems, etc.), must immediately dispose of his or her firearms or risk felony prosecution that will likely result in a prison sentence.

### **Buying a Gun from a Dealer**

Enacted in 1968 after the assassinations of Martin Luther King and Robert Kennedy, a Federal law established nationwide standards for the sale of guns and ammunition by licensed dealers and greatly restricted interstate sales. Since November, 1998 no licensed dealer may sell a firearm unless the buyer clears a criminal background check or has an approved state permit or license. California and many other urban states also require a waiting period before the firearm is actually released to the buyer.

Buying a firearm in a gun shop is not a "cash and carry" sale; the transaction will take at least the better part of a half-hour. Even in states with few gun laws, a multi-page Federal form must be completed, proper identification must be produced, and then the buyer must either pass an on-line criminal background check or produce an approved state firearms license.

As a general rule, California law dealing with firearms tends to be much more restrictive than the federal law or the firearms laws of most other states.

### **Buying a Gun from a Private Party**

With very few exceptions, California and a few other states require that transfer of firearms between private parties be processed through a licensed dealer in the same manner as though the sale was made from the dealer's inventory. While Federal law prohibits non-dealer gun sales between residents of different states, it does not prohibit private gun sales between residents of the same state. Thus, many Western and Southern states do not regulate private gun sales between individuals other than to ban such sales to minors or convicted felons.

### **Mail Order Gun Sales**

Simply put, if you want to pick up a catalog and order a gun, you must either be a properly licensed dealer with a valid Federal Firearms License (usually referred to as an "FFL") or have one place the order for you. Once the gun arrives at the dealer, it cannot be released to you until there has been full compliance with all of the same requirements that apply when you buy a gun from the dealer's inventory. This has been the law since November, 1968.

### **"Straw Man" Sales**

The most common unlawful method used to buy a firearm at a gun shop is known as a "straw-man sale". A person with a clean background, such as a spouse or other acquaintance, makes the purchase but then transfers the weapon to someone who otherwise could not obtain a gun (because of a criminal record, for example). If apprehended and convicted for knowingly selling to a "straw man", the dealer will lose his or her license and be subjected to a felony conviction and a prison sentence. The gun buyer and ultimate receiver are also subject to felony convictions and prison sentences.

### **Gun Shows**

Gun shows, while popular in most areas of the United States, have recently become very controversial and there have been recent efforts to further regulate or even prohibit them outright. The controversy arises in that in those states with less stringent gun laws, some gun sales at gun shows are not subject to official regulation. Since Federal law does not regulate the sale of a gun between two non-dealers who reside in the same state, such a transaction is lawful unless prohibited by state or local law (this is what is known as the "gun show loop-hole".) However, all persons who are engaged in the business of dealing in firearms must have a valid Federal Firearms License and any sales that they make at gun shows are subject to the same requirements (such as the criminal background check) as those sales made at their licensed store.

In addition to guns and ammunition, the merchandise offered for sale at gun shows usually includes western and military memorabilia as well as antique and collectible fishing and hunting equipment. California allows gun shows but bans virtually all private gun sales and has recently enacted a new law greatly expanding oversight and regulation of California gun shows.

### **Machine Guns, Silencers, etc.**

Following a rash of highly publicized Midwestern bank robberies, in 1934 Congress passed the National Firearms Act which effectively ended the legal purchase and use of machine guns, silencers and sawed-off shotguns by private citizens in most states. Even first time violators face a felony conviction and most are sentenced to prison for at least 18 months. However, this Federal law is not an outright prohibition. In approximately half the states (again, mostly Western and Southern states), private citizens may legally own machine guns and silencers subject to the Federal licensing process (which is expensive and takes several months) and any additional state requirements.

California does not issue machine gun licenses except for manufacture for or sale to law enforcement or the military, or for use in motion picture or television production.

Building or converting a firearm into a machine gun can be simple or very difficult depending upon the type of firearm. Regardless, unless done by a licensed manufacturer, it is a felony usually punished more severely than mere possession (under California law, the maximum punishment is eight years instead of three years for mere possession).

### Illegal Weapons and Accessories

Many non-firearm items still commonly sold at California gun shows or currently offered for sale by mail order in the nationally circulated gun magazines are illegal in California. Some of these prohibited items include camouflaging firearms containers, flechette darts or ammunition (small metal darts enclosed in capsules for protection during firing), and explosive bullets. Short-barreled shotguns, short-barreled rifles, cane guns (shaped and disguised as canes), wallet guns (small handguns that fit into rectangular "holsters" designed to disguise the contents), zip guns (crude homemade guns), and undetectable firearms are also illegal.

### Guns at the Airport

Guns can legally be taken into the airport and shipped in checked baggage. The guns must be unloaded and transported in a locked case. The passenger must declare the gun at the counter and the ticket agent will inspect it.

### Guns at School

Subject to various exceptions, Federal law, California and many other states prohibit carrying a gun on or adjacent to (usually within 1,000 feet) a public or private school or on the grounds of colleges and universities. Adult violators are usually charged with felonies while students are usually expelled and referred to juvenile court.

### Guns in Motor Vehicles

In California, handguns and registered assault weapons carried in motor vehicles must not only be unloaded, they cannot be carried concealed unless they are in the trunk or in a secure, fully-enclosed, locked container other than the utility or glove compartment.

### New California Laws for 2001\*

- ◆ It is illegal as of January 1, 2001 to sell, transfer or manufacture new handguns unless they pass safety tests. Among the tests, weapons must not fire when they are dropped from a height of 39 inches. The Department of Justice must publish a list of the guns that pass the tests.
- ◆ Toy guns sold in California must be bright orange or green or a combination of both. The law's intent is to prevent the shooting of children or others by police who believe a toy gun is the real thing.
- ◆ A loophole has been eliminated that had allowed the sale and possession of a trigger mechanism that changed semi-automatic firearms into illegal machine guns.

*\* New California Laws for 2001 summaries provided by the Los Angeles Times, 1/1/01*

#### Spotlight on Depiction of Health and Social Issues

Proprietary To:

Entertainment Industries Council, Inc.

[www.eiconline.org](http://www.eiconline.org)

1760 Reston Parkway, Ste. 415 • Reston, VA 20190-3303  
Telephone: (800) 783-3421 • Fax: (703) 481-1418

500 S. Buena Vista St • Burbank, CA 91521-7283  
Telephone: (866) 289-4347 • Fax: (818) 955-6870