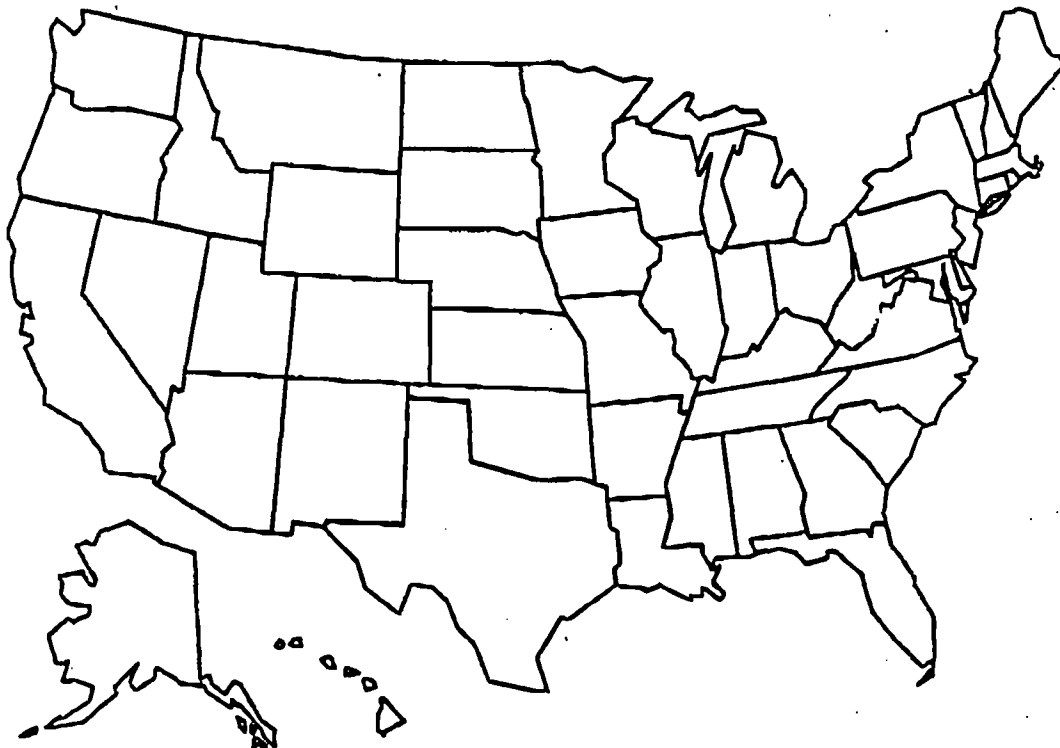


Crime—Juvenile Handgun Code

PHOTOCOPY
PRESERVATION



Model Juvenile Handgun Code for the States



INTRODUCTION

Background

When President Clinton signed the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322 (the "Crime Act") on September 14, 1994, he approved comprehensive legislation he designed along with Congress to reduce the problem of violent crime that buffeted the nation for years.

Among its significant provisions, the Crime Act sought to reduce violent crime committed by juveniles -- defined as persons under 18 years of age -- a group that had generally experienced a significant increase in the commission of violent crime between 1985 and 1994. For the first time, the Crime Act made it a federal offense for a juvenile to possess a handgun, 18 U.S.C. § 922(x), and provided for enforcement of this new law by permitting prosecutions of offending juveniles as adults, 18 U.S.C. §§ 5031, 5032.

The Crime Act also sought to reduce the prevalence of juvenile violence and handgun use by directing the Attorney General of the United States, through the Administrator of the Office of Juvenile Justice and Delinquency Prevention ("OJJDP"), to:

- (1) evaluate existing and proposed juvenile handgun legislation in each state;
- (2) develop model juvenile handgun legislation that is constitutional and enforceable;
- (3) prepare and disseminate to state authorities the findings made as the result of the evaluation; and
- (4) report to Congress the findings and recommendations concerning the need or appropriateness of further action by the federal government.

Note at 42 U.S.C.A. § 5653.

OJJDP commenced an evaluation of state legislation required by the statute through administration of a grant to the National Criminal Justice Association ("NCJA"), which completed a detailed compilation of state firearms codes that impact juveniles as of December 31, 1994. In connection with the compilation, NCJA and representatives from the Department of Justice convened a diverse group composed of public officials, organizations and others (the "Resource Group") to assist in developing model juvenile handgun legislation (the "Model Code") as well as additional findings and recommendations.¹

¹ The Resource Group included representatives from the American Bar Association, Bureau of Alcohol, Tobacco and Firearms, Department of Justice, District of Columbia Public Schools, Handgun Control, Inc., International Association of Chiefs of Police, National Association of Attorneys General, National Association of Secondary School Principals, National Center for State Courts, National Council of Juvenile and Family Court

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Guiding Principles

In developing a proposal for model legislation affecting juvenile ownership, possession and use of handguns, the Resource Group was guided by several overriding principles and considerations.

First and foremost, the Resource Group sought to satisfy the statutory mandate that any proposal for a model code be both constitutional and enforceable. After undertaking a significant review and analysis of applicable law, the group drafted the proposed code in a manner that it believes comports with applicable law and that would be expected to withstand any legal challenge.

Second, the Resource Group sought to keep the scope of its proposed code limited to regulation of handguns to fulfill its statutory directive and maintain the broadest possible consensus among the group with respect to the project's aims.

Third, the Resource Group sought to craft a proposed code that would serve, not just as a model code, but also as one that would be adopted uniformly. While respectful of the right of the citizens of each state to enact laws reflecting community values, the Resource Group also sought consensus to encourage uniformity to the greatest extent possible in the hope that it would facilitate nationwide enforcement of civil and criminal firearms law in a fair and even-handed manner.

Finally, the Resource Group set forth its findings and recommendations that, as a general matter, it believed to be within the scope of the statutory mandate.

Building on these principles and the proposals of the Resource Group, and pursuant to its statutory mandate, the Department of Justice has developed the following findings, recommendations and Model Code.

Judges, National District Attorneys Association, National Legal Assistance Defenders Association, National Organization for Victim Assistance, National Rifle Association, National School Boards Association, Pennsylvania Commission on Crime and Delinquency, Police Executive Research Forum, Probation Office of Los Angeles County, and the U.S. Department of Education.

FINDINGS AND RECOMMENDATIONS

Linkage Between Juvenile Violence and Firearms

The link between juvenile violence and firearm use -- particularly handgun use -- is demonstrably strong. A variety of statistical studies reveal that, over the last 10 to 15 years, juveniles are committing more violent crimes, and are more frequently using handguns to commit these horrible acts. With the juvenile crime rate having increased significantly over the last decade or so -- and only recently beginning to taper off -- the need for measures to reduce juvenile gun violence is more urgent than ever.

Statistics concerning homicides committed by juveniles present one important measure of the strong correlation between guns and juvenile violence. Between 1980 and 1994, of the more than 27,000 persons known to be murdered by juveniles, 7 of every 10 were killed with a firearm.² Moreover, during this period, juvenile responsibility for homicide in the U.S. grew from 5 percent to 10 percent of all homicides.³ All growth in homicides by juveniles over this period was in firearm-related homicides. In 1984, for example, 57 percent of juvenile homicide offenders killed with a firearm; by comparison, in 1994, 81 percent killed with a firearm -- with approximately three-fourths of these firearms being handguns.⁴ Thus, without the increase in firearm-related homicides, homicides by juveniles actually would have declined between 1980 and 1994.

Victim and other crime studies confirm the significant link between juvenile violence and handguns by demonstrating juveniles are more likely than adults to use a firearm in a crime of violence, and that the juvenile's firearm of preference is a handgun. Generally, about one-third of victims of violent crime report that the perpetrator used a firearm to commit the offense.⁵ However, it has been shown that juveniles are more likely than adults to use a firearm to kill, and

² Snyder, H. N., Sickmund, M. and Poe-Yamagata, E., *Juvenile Offenders and Victims: 1996 Update on Violence* 22 (Office of Juvenile Justice and Delinquency Prevention, 1996).

³ *Id.* at 18.

⁴ Snyder, H., & Finnegan, T. *Easy Access to the FBI's Supplementary Homicide Reports: 1980 - 1994* (Office of Juvenile Justice and Delinquency Prevention, 1996); Snyder, H. & Sickmund, M., Unpublished analyses of the FBI's Supplementary Homicide Report data (National Center for Juvenile Justice, 1996).

⁵ The National Crime Victimization Survey for 1993 found that 1.3 million victims of a violent crime (or 29 percent of all violent crime victims) reported they faced an offender with a firearm, with nearly 7 of every 8 of these firearms being handguns. Zawitz, M., *Guns Used in Crime* 1-2 (Bureau of Justice Statistics, 1995). The FBI reported firearms were used in 31 percent of violent crimes (i.e., 70 percent of homicides, 42 percent of robberies and 24 percent of aggravated assault) in 1994. *Crime in the United States 1994* 11, 18, 29, 32 (Federal Bureau of Investigation, 1995).

to have carried a firearm at a crime scene.⁶ It has also been shown that juveniles' crime gun of choice is a handgun.⁷ According to these studies, it is fair to conclude that juveniles are more likely to commit a violent crime using a gun, and that gun is more likely than in other cases to be a handgun.

Arrest data also points directly at firearms as a significant factor associated with juvenile crime. Trends in juvenile arrest rates for weapons law violations track closely with both violent crime arrests and juvenile firearm-related homicide patterns.⁸ Each began to rise substantially in about 1987 after years of relative stability, peaking in the early 1990s, and declining in 1995. More specifically, the juvenile arrest rate for weapons law violations doubled between 1987 and 1993 and, similar to the murder arrest rate trend, declined in both 1994 and 1995. From this data, it is logical to assume that firearms played an increasing role in juvenile violent crime during the late 1980s and early 1990s.

Finally, there are other important bellwethers of the significant and tragic role firearms -- handguns specifically -- tend to play in the lives of juveniles. From 1987 to 1992, young persons age 16 to 19 experienced the highest rate of handgun victimization of all age groups, with the rate of handgun-related victimization for males age 16-19 three times the national average. Moreover, between the 1970s and 1990s, the rate of suicide among youth age 15 to 19 nearly doubled, with this increase due almost entirely to firearm-related suicides.⁹

Indeed, the sheer prevalence of juvenile firearm possession and abuse is in clear focus in a recent study of 4,000 arrestees in 11 major U.S. cities, which found:¹⁰

⁶ The FBI's Supplementary Report Program found that, in 1994, juvenile murderers were more inclined to kill using a firearm than adult murderers (81 versus 69 percent). Snyder, H., & Finnegan, T., *Easy Access to the FBI's Supplementary Homicide Reports: 1980 - 1994* (Office of Juvenile Justice and Delinquency Prevention, 1996). (Statistics presented represent weapon use patterns for known offenders; in nearly 40 percent of homicides in 1994, the offender characteristics were unknown.) A recent Virginia study similarly found that juvenile offenders were more likely than adults to have carried a firearm at a crime scene (31 versus 17 percent), and that this weapon was more likely to be a semiautomatic pistol (18 versus 7 percent).

⁷ A Virginia study found juveniles more likely than adults to carry a semiautomatic pistol at a crime scene. *Supra* n. 6. Further, an effort by the Bureau of Alcohol, Tobacco and Firearms to trace every gun used in crime in 17 cities revealed that juveniles were more likely than adults to commit a crime using a handgun (80 versus 70 percent). *Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Market in 17 Communities* 7, Bureau of Alcohol, Tobacco, and Firearms (July, 1997)

⁸ Snyder, H., *Juvenile Arrests 1995* 4, 5, 8 (Office of Juvenile Justice and Delinquency Prevention, 1996)

⁹ Fingerhut, L., Unpublished data from the National Center on Health Statistics, as reported in *Firearm Facts* (National Center for Education in Maternal and Child Health).

¹⁰ Decker, S. & Pennell, S., *Arrestees and Guns: Monitoring the Illegal Firearm Market* (National Institute of Justice, 1995)

- * 40 percent of juvenile male arrestees reported possessing a firearm at some time;
- * Over one-third admitted owning a firearm in the last month;
- * 22 percent reported carrying a gun almost all of the time;
- * 55 percent of all juvenile arrestees reported they had been threatened with a gun;
- * 50 percent of all juvenile arrestees had a gun fired at them;
- * 11 percent of all juvenile arrestees had been injured by a gunshot;
- * 38 percent believed that it was okay to shoot someone who had hurt them; and
- * juveniles who had been victimized (*i.e.*, threatened or shot at) were more likely to own a gun.

These statistics are alarming, more so given that juveniles are responsible for a greater share of violent crime today than they were about 10 years ago. FBI clearance statistics demonstrate that juveniles were responsible for 10 percent of all violent crime in 1985 and 14 percent in 1995,¹¹ a trend reflected in the large increases in the juvenile violent crime arrest rate over this period. While juvenile violent crime arrest rates declined for the first time in ten years in 1995, the 1995 rate was still nearly 70 percent greater than it was in 1985.¹² In 1995, law enforcement agencies made an estimated 147,700 arrests of juveniles for a Violent Crime Index offense (murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault).¹³ That is, about one of every five persons arrested for a violent crime in the U.S. in 1995 was under age 18.¹⁴

Thus, a variety of available statistical evidence -- whether self-reported data, official arrest statistics, or morbidity and mortality statistics -- conclusively establishes that juvenile weapons use is a serious problem of national proportions. The impact of harm and fear caused by juvenile gun violence reaches beyond these statistics into individual American homes, neighborhoods, buses, and schools. Unless handgun use by juveniles is reduced, the carnage will continue unabated.

¹¹ Snyder, H., *Juvenile Arrests 1995* 9 (Office of Juvenile Justice and Delinquency Prevention, 1996).

¹² *Id.* at 4.

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

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State Legislation Regulating Juveniles' Contact With Firearms

The NCJA survey of state juvenile handgun legislation focused on laws that specifically restrict juveniles' use of firearms. The survey did not examine provisions that prohibit the possession of certain weapons by all persons regardless of age (e.g., a ban on assault weapons). NCJA's compilation of state statutes is attached as Exhibit C. Some of the findings concerning existing state legislation are summarized below:

(a). Possession. Most states have statutes that restrict possession of firearms by juveniles, although statutes vary widely with respect to specified exceptions and restrictions on age and type of firearm. Eighteen states, for example, restrict possession of handguns by persons under 18, and 14 states prohibit possession of all firearms by persons under 18. The most common exceptions involve authorized recreational or educational activities, or firearms safety courses.

Twenty-two states prohibit firearms possession by adjudicated delinquents; seven states prohibit possession by such persons for 10 years following adjudication of delinquency or release from a juvenile facility; and 6 states retain a prohibition on possession until a court or the governor orders a restoration of rights. Typically, possession is prohibited for conviction or adjudication of offenses that would be felonies or other violent offenses if committed by an adult.

In 21 states, unlawful possession of a firearm by a juvenile is a misdemeanor offense; three states make it a felony; and this offense results in an adjudication of delinquency in another eight states. Nine states enhance penalties for subsequent violations of these statutes.

(b). Licensing. A significant majority of states require a person to be of a certain age to obtain a license to carry or purchase a firearm. Thirty-five states, for example, regulate the age at which a person may obtain a license to carry certain firearms. Eleven states require that a person reach 21 to obtain a permit to carry a concealed weapon, while in eight other states that age requirement is 18 years. Thirteen states impose an age requirement for persons wishing to obtain a handgun license -- eight states set this age at 21, while five states require that a person first reach the age of 18. Finally, 18 states require that an individual seeking a hunting license reach a certain age, ranging from 10 years of age in Maine to 21 in West Virginia.

(c). Transfer. Forty-three states prohibit transfer of firearms to individuals under a certain age -- defined as the sale, gift or loan of a firearm -- although the age and type of firearms governed vary. Eighteen states require that the transferor know that the person receiving the firearm is underage to establish a transfer violation. Many states enhance penalties for subsequent offenses.

(d). Access. While varying somewhat in their intent requirements and exceptions, 15 states have specific statutes imposing liability on an adult when a minor unlawfully gains access

to a firearm. Nine states create criminal liability for storing a loaded firearm in a manner that allows a juvenile to gain access unlawfully. Some states enhance the penalty if the juvenile, after unlawfully gaining access to a handgun or firearm, causes injury or death to himself or another, while other states require that injury or death result in order for the offense to be criminal. Common exceptions to liability under these statutes include circumstances where (a) the minor gains access by unlawful entry into a home or place of storage; (b) the firearm is secured or equipped with a locking device; or (c) injury occurs as a result of a hunting or sport-shooting accident.

The efficacy of laws creating criminal liability for allowing a juvenile to gain unlawful access to a firearm was statistically supported recently in a study published in the *Journal of the American Medical Association*.¹⁵ The study demonstrated that laws in 12 states making gun owners responsible for storing firearms safely away from children resulted in a decrease of unintentional shooting deaths to children under age 15 by 23 percent.

* * * *

Based on the above findings about juvenile violence and state legislation and on the Resource Group's proposals, the Department of Justice drafted, consistent with the Crime Act's dictates, a Model Code (attached as Exhibit A) intended primarily to (a) prevent handgun possession by juveniles, except in limited and well-established circumstances, (b) prohibit unlawful transfer of handguns to juveniles, and (c) enhance safety of handgun storage by (i) providing for criminal liability for persons who carelessly store them such that a juvenile could gain access, (ii) requiring firearms dealers to provide a locking safety device at the time of sale of a handgun, and (iii) requiring dealers to provide notice to handgun purchasers of the laws concerning juvenile handgun possession. A section-by-section analysis of the Model Code is attached as Exhibit B.

Other Findings

(a). Juvenile Acquisition of Firearms. Significant additional data must be obtained concerning the sources from which juveniles unlawfully obtain handguns. There is considerable reason to believe, for example, that illegal firearms trafficking is a primary means by which juveniles obtain handguns. An analysis conducted by the Bureau of Alcohol, Tobacco and Firearms ("ATF") of firearms recovered from juveniles by law enforcement officials revealed that as many as 43 percent of crime guns recovered from juveniles were newer guns (less than three years old), indicating these guns moved speedily from the first point of retail sale to recovery by law enforcement agencies in connection with crime. Investigative experience suggests that recovery of such relatively new firearms signals a rapid illegal diversion of these

¹⁵ "State Gun Safe Storage Laws and Child Mortality Due to Firearms," 278 *J. Am. Med. Ass'n* No. 13, p. 1084-86 (Oct. 1, 1997).

firearms and a corresponding robust black market supply for juveniles.¹⁶ States are thus encouraged to take all possible steps, including cooperation with Federal law enforcement agencies, to collect intelligence about the illegal flow of firearms in order to disrupt the illegal market supplying guns to juveniles.

Additionally, given that private sales of handguns to juveniles are not well regulated, states may want to examine such potential avenues of supply as firearms shows, which juveniles may visit without adult supervision and thereby attempt to unlawfully obtain handguns.

(b). Parental Involvement. Parental involvement in controlling and rehabilitating criminal juvenile behavior is essential. Parents should be encouraged to monitor the activity of juveniles under their supervision and be active participants in any remedial actions imposed for a handgun violation. For this reason, the Model Code requires parents or legal guardians of juveniles who violate the code to accompany the juvenile to court in order that they may become more involved in disposition plans.

(c). Probation Conditions. States may consider requiring that juveniles released on probation following conviction or adjudication of delinquency be prohibited from possessing any firearms as a condition of release -- particularly with respect to convictions for any sort of violent crime.

(d). Community Outreach and Education Efforts. Finally, a critical ingredient in curbing juvenile handgun-related crime is a concerted effort by communities to become active partners in such efforts. Involvement by all members of the community -- educators, service providers, businesses and individuals of every kind -- is essential to creation of an environment in which children can thrive and be prevented from falling into criminality, while at the same time helping to redeem those children who have already strayed from a law-abiding path. One place communities may look for guidance in developing strategies for citizen participation is the Coordinating Council on Juvenile Justice and Delinquency Prevention, which has developed a National Juvenile Justice Action Plan focusing upon local efforts to reduce juvenile delinquency and violence.

Recommendations for Additional Action By the Federal Government

(a). Crime Gun Tracing. Law enforcement efforts aimed at reducing the illegal flow of handguns to juveniles is one of the most effective ways to address the problem of juvenile handgun violence. The Youth Crime Gun Interdiction Initiative ("YCGII"), a cooperative effort among the Bureau of Alcohol, Tobacco, and Firearms, the Department of Justice and local law

¹⁶ *Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Market in 17 Communities*, General Findings at 8, Bureau of Alcohol, Tobacco, and Firearms (July, 1997).

enforcement agencies, seeks to identify, investigate and prosecute illegal traffickers who supply juveniles with firearms. The principal investigative tools for the YCGII are the tracing of every crime gun recovered in the participating jurisdiction, the debriefing of arrestees for illegal gun source information and a systematic analysis of accumulated tracing and intelligence information. Analysis of trace results in particular helps identify movement of illegal firearms in the community and enables law enforcement officials to focus resources where they are most likely to have the greatest impact on illegal trafficking to juveniles, violent youth gang members, and adults.

President Clinton recently expanded the YCGII to include 27 cities.¹⁷ The Department of Justice believes that further expansion of this program should be considered as an essential element of a national strategy to combat illegal gun trafficking associated with violent juvenile crime.

(b). Legislation. The Department of Justice believes that enactment of additional federal legislation will help reduce the incidence of juvenile gun crime. The Department proposed in its Anti-Gang and Youth Violence Act of 1997 a number of changes to existing law designed to curb the proliferation of criminal juvenile firearms possession and use, including:

- a lifetime ban on firearms possession for juveniles who commit serious or violent offenses;
- increased penalties for juvenile-related gun and drug offenses;
- requiring firearms dealers to provide a child safety lock with the sale of every firearm;
- increased discretion for federal prosecutors in charging juveniles as adults, with appropriate judicial safeguards;
- increased access to juvenile proceedings and records in appropriate cases; and
- assured, substantial funding for after-school and other crime prevention initiatives targeted at juveniles.

The Department's entire legislative proposal, along with a section-by-section analysis, is attached as Exhibit D.

* * * *

¹⁷ The initiative will now be conducted in Atlanta, Baltimore, Birmingham, Boston, Bridgeport, Chicago, Cincinnati, Cleveland, Detroit, Gary, Houston, Inglewood, CA, Los Angeles, Miami, Memphis, Milwaukee, Minneapolis, New York, Philadelphia, Richmond, St. Louis, Salinas, CA, San Antonio, Tucson, and Seattle.

Reducing violent juvenile crime and victimization represents one of the greatest challenges to America's responsibility to its youth. In an effort to address this challenge, and pursuant to the Crime Act's directive, the Department of Justice, through OJJDP, will disseminate the Model Code and accompanying materials to Congress, the nation's Governors, Attorneys General, state agencies that administer the Juvenile Justice and Delinquency Prevention Act's Formula Grants Program, and to a range of policymakers and practitioners.

MODEL JUVENILE HANDGUN CODE

§1. Juvenile Handgun Offenses

(a) POSSESSION. -- It is unlawful for a juvenile to possess a handgun, or ammunition that is in such close proximity to a handgun that the ammunition may be readily loaded in the handgun, except where --

(1) the juvenile is in the presence of and has the permission of a parent or legal guardian to possess a handgun or the juvenile has on his or her person the written consent for such possession of a parent or guardian, where such parent or guardian is not prohibited by federal, state, or local law from possessing a firearm;

(2) the juvenile, in a manner consistent with federal, state, and local law, is --

(A) attending a lawfully sanctioned course of instruction in the safe and lawful use of a handgun;

(B) engaging in target shooting at a lawfully established firing range;

(C) participating in an organized target shooting competition or performance approved by a national, state, or local government unit or sponsored by an organization that is approved by a national, state, or local government unit to sponsor such events, or participating in a regularly scheduled practice for such a competition or performance;

(D) hunting and in possession of a valid hunter's license;

(E) at the direction of an adult who is not prohibited by federal, state, or local law from possessing a firearm, performing activities in the operation of a farm or ranch in the course of employment either at the residence of the juvenile or on other property with the permission of the owner or lessee; or

(F) traveling to or from any of the activities described in subparagraphs (A) - (E) with an unloaded handgun that is secured in a locked case and with any ammunition secured separately;

(3) the juvenile has not been convicted of a felony, or of a misdemeanor involving a firearm, and has not been adjudicated delinquent for conduct which would be either a felony, or a misdemeanor involving a firearm, if committed by an adult; and

(4) the juvenile is not otherwise prohibited and, if the juvenile were an adult would not otherwise be prohibited, by federal, state, or local law from possessing a firearm.

(b) THEFT. -- It is unlawful for a juvenile to obtain a handgun by theft or unlawful entry,

or to possess a handgun knowing or having reasonable cause to believe that the handgun was obtained by theft or unlawful entry.

(c) POSSESSION DURING AND IN RELATION TO A CRIME OF VIOLENCE. -- It is unlawful for a juvenile:

- (1) to possess a handgun during and in relation to the commission of a crime of violence or drug trafficking crime;
- (2) to possess a handgun with the intent to possess the handgun during and in relation to the commission of a crime of violence or drug trafficking crime;
or
- (3) to knowingly participate in a crime of violence or drug trafficking crime where another possesses a handgun during and in relation to such crime of violence or drug trafficking crime.

(d) PENALTIES. --

(1) A juvenile who violates this section shall be subject to a fine as provided by law and shall be confined --

(A) in case of a violation of subsection (a) committed after --

- (i) conviction of a felony;
- (ii) conviction of a misdemeanor involving a firearm;
- (iii) adjudication of delinquency for conduct which would be either a felony, or a misdemeanor involving a firearm, if committed by an adult; or
- (iv) a prior conviction or adjudication of delinquency for violating this section;

for not more than five years;

- (B) in case of a violation of subsection (c), for not more than five years;
- (C) in case of a violation of subsection (b), for not more than three years;
and
- (D) in case of any violation of subsection (a) not described in subparagraph (A) of this paragraph, for not more than one year.

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(2) A juvenile who violates this section on school property shall be subject to twice the penalties otherwise authorized by this section.

(3) A handgun possessed in violation of this section may be deemed contraband and seized, forfeited, and disposed of in accordance with the law.

(e) **MILITARY SERVICE EXEMPTION; CLARIFICATION OF PROHIBITED POSSESSION.** -- Subsection (a) does not apply to a juvenile who is on active duty with a member of the Armed Forces of the United States or the National Guard and who possesses or is armed with a handgun in the line of duty. For purposes of subsection (a), persons prohibited by federal law from possessing a firearm shall be deemed to include any person described in sections 922 (g) and 922 (n) of title 18, United States Code.

(f) **JUVENILE'S PARENT.** -- In a prosecution of a juvenile for a violation of this section, the juvenile's parent(s) or legal guardian shall be present at all proceedings unless excused by the court. The court may use the contempt power to enforce this subsection.

§2. Liability for Transfer to Juveniles

(a) **SALE.** -- It is unlawful for any person to sell a handgun to a juvenile whom the seller knows, or has reasonable cause to believe, is a juvenile.

(b) **TRANSFER.** -- Except when a juvenile would be in lawful possession of a handgun as permitted by section 1, it shall be unlawful for any person to deliver or otherwise transfer a handgun to a juvenile whom the transferor knows, or has reasonable cause to believe, is a juvenile.

(c) **POSSESSION DURING AND IN RELATION TO A CRIME.** -- It is unlawful for any person to sell, deliver, or otherwise transfer a handgun to a juvenile when the transferor knows, or has reasonable cause to believe, that a juvenile intends to possess the handgun, or that the handgun will be possessed by a juvenile, during and in relation to the commission of a crime.

(d) **PENALTIES.** -- (1) Any person who is not a juvenile and who violates this section shall be subject to a fine as provided by law and shall be confined --

(A) in the case of a violation of subsection (a) or (b), for not more than five years; and

(B) in the case of a violation of subsection (c), for not less than three years or more than ten years. The court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed

therein.

(2) A juvenile who violates this section shall be subject to a fine as provided by law and shall be confined --

(A) in the case of a violation of subsection (a) or (b), for not more than three years; and

(B) in the case of a violation of subsection (c), for not more than five years.

(e) JUVENILE'S PARENT. -- In a prosecution of a juvenile for a violation of this section, the juvenile's parent(s) or legal guardian shall be present at all proceedings unless excused by the court. The court may use the contempt power to enforce this subsection.

§3. Liability for Access by Juveniles

(a) ACCESS. -- Except when a juvenile would be in lawful possession of a handgun under section 1, it is unlawful for any person to store, place or leave a handgun in any location where the person knows, or has reasonable cause to believe, that the handgun will be accessible to a juvenile. The prohibition of this subsection does not apply to a handgun that has been secured with a locking device that is secured in a manner which prevents the handgun from discharging.

(b) PENALTY. -- Any person who violates this section shall be subject to a fine as provided by law and may be confined for not more than one year.

§4. Responsibility of Firearms Dealers - Locking Device

(a) SELLING. -- When selling or delivering any handgun, a licensed firearms dealer shall provide the purchaser with a locking device that prevents the handgun from discharging.

(b) PENALTIES. -- Any person who violates this section shall be subject to a fine as provided by law and may be subject to a suspension or revocation of any applicable state or local license to deal in firearms.

§5. Responsibility of Firearms Dealers - Notice

(a) POSTING. -- At every purchase counter in every store, shop or sales outlet, a licensed firearms dealer shall conspicuously post the following warning in block letters not less than one inch in height:

"FEDERAL AND STATE LAW PROHIBITS THE POSSESSION OF A HANDGUN BY A MINOR IN MOST CIRCUMSTANCES. IT IS UNLAWFUL TO STORE, LEAVE OR PLACE AN UNLOCKED OR UNSECURED HANDGUN WHERE A MINOR CAN OBTAIN ACCESS TO IT WITHOUT LEGAL AUTHORIZATION. THE USE OF A LOCKING DEVICE OR CONTAINER IS ONLY ONE ASPECT OF RESPONSIBLE FIREARMS STORAGE. FAILURE TO LOCK PROPERLY AND STORE YOUR FIREARM MAY RESULT IN CRIMINAL OR CIVIL LIABILITY UNDER LAW."

(b) WRITTEN NOTICE. -- In connection with the sale of any handgun, a licensed firearms dealer, along with the delivery of the handgun, shall provide the purchaser with a writing that contains the text of the warning set forth in subsection (a).

(c) PENALTIES. -- Any person who violates this section shall be subject to a fine as provided by law and may be subject to a suspension or revocation of any applicable state or local license to deal in firearms.

§6. Definitions.

(a) "Firearm" means --

- (1) any weapon that will, is designed to, or may be readily converted to, expel a projectile by the action of an explosive; or
- (2) the frame or receiver of any firearm; or
- (3) any firearm muffler or firearm silencer.

(b) "Handgun" means --

- (1) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and
- (2) any combination of parts from which a firearm described in paragraph (1) can be assembled.

(c) "Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(d) "Juvenile" means a person under the age of 18.

(e) "Crime of violence" means an offense that is a felony and --

(1) has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

(2) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(f) "Drug trafficking crime" means conduct that is a felony and --

(1) is punishable under [insert reference(s) to appropriate state statutory provisions applicable to drug offenses] or

(2) satisfies all elements of an offense punishable under the Controlled Substances Act (21 U.S.C. § 801 *et seq.*), the Controlled Substances Import and Export Act (21 U.S.C. § 951 *et seq.*), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. § 1901 *et seq.*).

(g) "Locking device" means --

(1) a device that when installed on a handgun and secured by means of a key or mechanically, electronically, or electro-mechanically operated combination lock prevents the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically, or electro-mechanically operated combination lock; or

(2) a mechanical, electrical, or electro-mechanical locking mechanism incorporated into the design of the handgun that prevents discharge of the weapon by anyone not having access to the key or other device designed to unlock and allow discharge of the handgun.

SECTION-BY-SECTION ANALYSIS

§1. Possession

This section prohibits the possession by a juvenile, defined in § 6 as a person under the age of 18, of a handgun or ammunition that is in such close proximity to a handgun that the ammunition may be readily loaded in a handgun. The section provides for exceptions where the juvenile is: (a) in the physical presence of and has the permission to possess a handgun, or has on his or her person such permission in writing, of a parent or legal guardian who may lawfully possess a handgun; and (b)(i) attending a lawfully sanctioned handgun safety course; (ii) target shooting at a lawfully established firing range; (iii) participating in a sanctioned competition or performance, or participating in a scheduled practice for such a competition or performance; (iv) hunting with a valid hunter's license; (v) performing, under adult direction, activities related to the operation of a farm or ranch in the course of employment; or (vi) while traveling to or from these activities with a handgun that is unloaded and secured.

Although this section generally prohibits a juvenile from possessing a handgun, it recognizes there are circumstances where a juvenile should legally be able to do so. These circumstances involve historically recognized, legitimate activities currently permitted either under state or federal law. However, these circumstances would apply only where there is no other violation of federal, state, or local law.

This section also prohibits possession of a handgun under any circumstances by a juvenile who has previously been convicted of a felony, or a misdemeanor involving a firearm, or adjudicated delinquent for conduct that would be a felony, or a misdemeanor involving a firearm, if committed by an adult. The purpose of this restriction is twofold. First, for those juveniles convicted of or adjudicated delinquent for a felony, the same prohibition that applies to adult felons applies to the juvenile. Second, this restriction works as a preventive measure for juveniles who show a propensity for any offense involving a firearm. The risk of these juveniles continuing to participate in such activities may be reduced if they are not allowed to possess handguns under any circumstances. The section also provides for application of federal, state, and local laws that limit juveniles' or adults' possession of a firearm.

With respect to penalties, this section is drafted to permit states to determine fine levels and whether juvenile sanctions or criminal penalties are appropriate. Maximum periods of confinement range from 1 year for simple possession, to 3 years for theft-related offenses, and to 5 years for possessing a handgun during and in relation to the commission of a crime of violence or drug trafficking crime, possessing a handgun with the intent to possess it during and in relation to the commission of a crime of violence or drug trafficking crime, or knowingly participating in a crime of violence or drug trafficking crime where another possesses a handgun during and in relation to such crime. Repeat offenders under this section are also subject to a 5 year penalty, as are first time offenders who have been previously (a) convicted of a felony, or a misdemeanor involving a firearm,

or (b) adjudicated delinquent for conduct which would be either a felony, or a misdemeanor involving a firearm, if committed by an adult. Juveniles who commit violations of this section on school property are subject to twice the penalties otherwise authorized.

The section authorizes the forfeiture of any handgun possessed in violation of the statute. The section also provides an exception for juveniles performing military service.

Finally, the section requires the presence of the juvenile's parent(s) or legal guardian at all proceedings related to the prosecution of the juvenile, unless excused by the court.

§2. Liability for Transfer to Juveniles

This section specifically prohibits the sale of a handgun to a juvenile under any circumstances. Criminal liability for such an offense is predicated upon actual knowledge or reasonable cause to believe that the handgun purchaser is a juvenile.

Except when a juvenile is involved in authorized activities as provided in section 1, any delivery or transfer of a handgun to a juvenile is also prohibited.

The section defines a separate offense of sale or transfer to a juvenile with knowledge, or reasonable cause to believe, that the juvenile intends to possess the handgun, or that the handgun will be possessed, during and in relation to the commission of a crime.

The maximum period of confinement for a violation of this section by an adult is 5 years, but with a higher 10 year maximum, 3 year minimum, and limitation on parole or probation, for an offense related to possession of the transferred handgun during and in relation to a crime. The corresponding maxima for juveniles who violate the section are 3 years and 5 years, respectively.

The section also requires the presence of the juvenile's parent(s) or legal guardian at all proceedings related to the prosecution of the juvenile, unless excused by the court.

§3. Liability for Access by Juveniles

This section would generally hold a person criminally liable for storing, placing or leaving a handgun in a location when the person knows, or has reasonable cause to believe, that an unauthorized juvenile will have access to the handgun. An exception is provided where the handgun is secured with a locking device in a manner that prevents the handgun from discharging. The definition of "locking device" contained in § 6 is intended to include locking storage boxes and gun safes.

The penalty for violating this section is a fine or term of confinement of up to 1

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year or both.

§4. Responsibility of Firearms Dealers - Locking Devices

This section would require licensed firearms dealers, when selling or delivering a handgun, to provide each purchaser with a locking device that prevents such handgun from discharging. This section serves to protect juveniles and gun owners because accidental and other shootings can be avoided if a safety lock device is used or a gun is secured properly in circumstances where a juvenile may otherwise gain access to the handgun.

Violations of this section would be subject to a fine as provided by law and suspension or revocation of any applicable state or local license to deal in firearms.

§5. Responsibility of Firearms Dealers - Notice

This section establishes a notice requirement for licensed firearm dealers. It is designed to provide notice to purchasers of handguns of potential civil and criminal liability if a handgun is improperly stored such that a juvenile can obtain access without legal authorization. Requiring licensed firearms dealers to post such notice, and provide such notice to a purchaser in writing, underscores the importance of firearms safety and the need to protect children.

Again, violations of this section would be subject to a fine as provided by law and suspension or revocation of any applicable state or local license to deal in firearms.

§6. Definitions

This section defines key terms used in the code. With respect to the meaning of "handgun," the code employs a definition based largely on existing state and federal law; states may want to consider broadening the scope of this definition by including in its purview short barrel (or "sawed-off") shotguns or rifles. This section further defines the term "drug trafficking crime" (a) by reference to state statutory drug offenses the legislature deems to be an appropriate predicate for prosecution, and (b) all drug offenses punishable under the Controlled Substances Act (21 U.S.C. § 801 *et seq.*), the Controlled Substances Import and Export Act (21 U.S.C. § 951 *et seq.*), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. § 1901 *et seq.*).



Jose Cerda III

03/25/98 12:30:12 PM

Record Type: Record

To: Michelle Crisci/WHO/EOP, Elena Kagan/OPD/EOP

cc: Leanne A. Shimabukuro/OPD/EOP

Subject: Ideas

Rahm/Elena:

While I'm still pouring over the facts to make sure this is what makes the most sense, here's my initial recommendation of what we might want to say in the radio address:

1. **Add section on preventing/responding to multiple shootings in annual report.** Building on his comments this morning the President could call on the AG and Secretary Riley to convene a national meeting with experts on what leads youth to commit such sudden, violent acts (child abuse, exposure to violence, etc.). Recommendations from the experts would be added to the Administration's Annual Report on School Safety and include early warning signs and initial responses that teachers and parents should know to help avoid multiple shootings by distraught students.
2. **Make parents who don't keep guns out of the hands of their kids liable for their actions.** In both the Pearl and Paducah shootings, the kids involved obtained their firearms from their homes. There is absolutely no reason that a distraught 11- or 12-year old should have easy and unsupervised access to firearms. That's why parents who don't make the effort to safely store and lock their firearms should be held liable for their actions. Next week, the Administration will transmit model juvenile handgun legislation to the States that -- in addition to many of the provisions in our juvenile crime bill -- will propose making adults who allow easy to their firearms criminally liable if those guns are misused. Not only should states enact those laws, but I will ask the AG to determine if we should enact such legislation at the federal level, too.

Rahm, the draft report and legislation on model handgun legislation has not yet been sent and can be leaked. I'll run a copy over to you in a few minutes. DOJ and Education refuse to budge on the other pending school violence study. You may want to call Kent. Also, did you know that Riley is testifying on the Hill this afternoon, and this is sure to come up. I understand that ABC will cover the hearing.

Jose'

Jose -

Did we ever transmit
this model legislation?
Elena

THE WHITE HOUSE
WASHINGTON

April 16, 1998

BRUCE/ELENA:

ATTACHED PLEASE FIND A MEMO FROM HANDGUN CONTROL THAT RAHM HAS SHARED WITH THE PRESIDENT (AT LEAST IN SUMMARY FORM). ITS BASIC THREE RECS ARE:

- ✓ (1) DEVELOPMENT OF A "CHILD PROOF" OR "SMART" GUN;
- ✓ (2) CHILD ACCESS LAWS OR HOLDING GUN OWNER ACCOUNTABLE; AND
- (3) A PRESIDENTIAL COMMISSION ON CHILDREN + GUNS (UGH).

RAHM IS ALREADY PUSHING FOR A "CHILD PROOF" GUN ANNOUNCEMENT, + SARAH BRADY HAS PERSONALLY CALLED THE PRESIDENT ON THE COMMISSION.

CC: LEANNE

Boze

HANDGUN CONTROL

ONE MILLION STRONG . . . working to
keep handguns out of the wrong hands.

MEMORANDUM

DATE: April 2, 1998
TO: Rahm Emanuel
FROM: Bob Walker *BW*
RE: Response to Jonesboro Shooting

In the wake of the Jonesboro shooting, the President has an historic opportunity to address the issue of children and guns. While juvenile gun violence is an admittedly complex issue, one of the central problems is the extraordinary ease with which many children can obtain firearms. To address this critical issue, the President could call for or initiate a number of very significant steps.

Development of a "Childproof Gun" Under funding provided by the National Institute of Justice (NIJ), Sandia National Laboratories (SNL) has done work on the development of a "smart gun" that "recognizes" the user and can only be fired by an authorized user.

Originally conceived as a law enforcement aid (police officers are frequently shot with their own weapons), the "smart gun" (also known as a 'personalized' or 'childproof' gun) offers even greater protection to children. Nearly 500 children and adolescents (ages 1-19) die each year from the accidental discharge of a firearm and more than 4500 die in firearm homicides and suicides. A large number of these deaths could be prevented if the gun in the home had been 'personalized' or 'childproofed.'

SNL's "smart gun" project began in April 1994 with a 20-month investigation into a variety of possible sensors, including surface acoustic wave tagging, passive radio frequency coding, touch memory, magnetic encoding, and capacitive sensors/encoding. Utilizing a ring, a fingerprint, or other activator, each of these sensors can ensure that only the authorized user of the gun can fire the weapon. As part of its final report, five demonstration models were developed by SNL to show conceptual operation of smart gun technologies.

Spurred on by the work at SNL, Colt Manufacturing is taking the lead in developing a marketable childproof gun utilizing radio frequency tags, but Colt is not the only potential player in this new market. Fulton Arms, a Texas manufacturer has developed a safety system that employs an encoder mounted in a specifically designed ring and a decoder located in the handle of the gun. Two days after the Jonesboro shooting, Oxford Micro Devices, Inc., announced that it is building small, low-cost, fingerprint capture and verification modules that can be built into the handle of a gun.

These new approaches offer a significant advantage over child safety locks, which--like seatbelts-- require the cooperation and vigilance of the user. A true childproof gun, like an airbag, is a "passive restraint." It is an integral part of the product and operates automatically to defeat unauthorized use.

The technology required to produce a 'childproof gun' has been available for years. From car ignitions to elevators to computers, many consumer products today are personalized to prevent unauthorized use. No major breakthrough is required. Even relatively old technologies can do the job. As Ron Stewart, the CEO and President of Colt, succinctly put it in a recent gun industry publication, *"If we can send a motorized computer to Mars, then certainly we can advance our technology to be more childproof."* Technology is *not* a barrier.

Absent a legislative or Presidential directive, however, it will be a long time before 'childproof guns' are widely available. Largely for reasons of cost, manufacturers are resistant to the idea. Depending on what kind of technology is used, childproofing could easily add \$100 or \$200 to the price of a \$400 handgun. But over time, costs are expected to decline and a recent survey conducted for the Johns Hopkins Center for Gun Policy and Research suggests that many consumers may be willing to pay the price.

The President could contribute significantly to the development of 'childproof guns' by challenging every handgun manufacturer to develop and market a "childproof handgun" within three years.

Child Access Prevention (CAP) Legislation In 1989, Florida became the first state to hold gun owners criminally responsible for the failure to keep a loaded firearm out of the reach of children. Originally known as a "child *accident* prevention" measure, Florida's law was intended to prevent unintentional shootings in the home, but, with more and more children carrying guns to school, these kind of laws are now known as "child *access* prevention" laws.

Now in force in 16 states, CAP laws have been proven effective in reducing unintentional shootings. A study published in JAMA last fall found that CAP laws reduced fatal unintentional shootings by an average of 23 percent. Further research will likely show that safe storage requirements also help to prevent juveniles from committing suicide with firearms or from carrying guns to school. Even more importantly, however, the proper storage of firearms may also help to deter the theft of firearms from homes. Research reports indicate that as many as 500,000 guns are stolen

from private citizens every year. If CAP laws reduced the number of gun thefts by even ten percent, as many as 50,000 guns a year could be kept out of the criminal market.

CAP laws vary widely from state to state. Many states require adults to prevent access by children under the age of 18, others have lowered the age to 16 or 14. In some states a CAP law violation is a misdemeanor, in others a felony. Some states specifically recognize the use of a lock box or a trigger lock as an acceptable deterrent and legal defense, others have a more general standard requiring storage that "a reasonable person would believe to be secure."

While the NRA generally opposes CAP law initiatives, it has--on several occasions--accepted compromise CAP language, such as in California. Other gun groups, like the Citizens Committee for the Right to Keep and Bear Arms (based in Washington State), have on their own initiative supported the adoption of weak CAP laws. Given the heightened concern regarding juvenile gun violence, the NRA and its allies may be forced to support further legislative efforts.

In response to the Jonesboro shooting, Senators Durbin and Chafee have introduced a national CAP law which makes it a misdemeanor for a gun owner to leave a loaded firearm where a juvenile under the age of 18 could reasonably be expected to have access to it. The measure would serve as a federal floor; state penalties would not be preempted. Last year, Rep. Earl Blumenauer (Oregon) introduced a similar bill in the House.

The President could help to make 'safe storage' a national standard by proposing or endorsing a national CAP law and by asking the Attorney General to draft model state legislation. He could also call upon gun manufacturers and the NRA to join in supporting such legislation.

Presidential Commission on Children and Guns Shortly after the Jonesboro shooting, the President asked the Attorney General to set up a study group of experts to review the recent school shootings. Gun violence in our schools, however, is only the more visible aspect of a much larger problem: children and guns. Thanks in large part to the accessibility of firearms, children in this country are 12 times more likely to die from gun violence than children born in other major industrialized countries. Adding together unintentional shootings, suicides and homicides, more than 5,000 children under the age of 20 are killed every year by gun violence.

In order to explore this problem in greater depth, the President could issue the following executive order establishing a Presidential Commission on Children and Guns:

Presidential Commission on Children and Guns

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is hereby established the Presidential Commission on Children and Guns (the "Commission"). The Commission shall be composed of not more than 15 members to be appointed by the President. The members of the Commission shall serve for the life of the Commission and shall have broad experience in government or public policy or expertise relevant to the functions of the Commission. The Commission shall be subject to the Federal Advisory Committee Act, as amended, 5 U.S.C. App 2.

(b) The President shall designate a Chairperson from among the members of the Commission.

(c) The Commission shall consist of:

- (i) at least one representative from the Department of Health and Human Services,
- (ii) at least one representative from the Department of Justice,
- (iii) at least one representative from the Department of the Treasury,
- (iv) at least one representative from the National Center for Injury Prevention and Control,
- (v) at least one representative of a gun rights organization,
- (vi) at least one representative of a gun violence prevention organization,
- (vii) at least one representative of the gun industry,
- (viii) at least one public health professional,
- (ix) at least one educator, and
- (x) at least one law enforcement official.

Section 2. *The Principals Committee.* The Commission shall report to the President through a Principals Committee ("Principals Committee"), which shall review any reports or recommendations before submission to the President. The Principals Committee shall be comprised of:

- (a) the Attorney General,
- (b) the Secretary of the Treasury, and
- (c) the Secretary of Health and Human Services.

Section 3. *Duties* The Commission shall review appropriate research, take public testimony, evaluate relevant laws and proposals, and make appropriate recommendations with respect to:

- (a) the incidence of unintentional shootings and suicides involving children under the age of 18;
- (b) the carrying of guns by children under the age of 18;
- (c) the use of guns by children under the age of 18 in the commission of violent crimes;
- (d) the role that schools and educational programs can play in reducing juvenile gun violence;
- (e) the role that research can play in identifying and addressing specific problems related to juvenile gun violence;
- (f) the role that communities can play in reducing the demand for guns;
- (g) the role that gun interdiction efforts by law enforcement can play in reducing the use of guns in juvenile crime;

- (h) the role that criminal justice efforts can play in reducing incidents of juvenile gun violence;
- (i) the role that thefts and illegal markets play in supplying children with firearms;
- (j) the role that safer gun storage practices can play in reducing the unsupervised use of firearms by children;
- (k) the role that the entertainment industry and the media can play in promoting gun violence prevention efforts;
- (l) the role that gun manufacturers can play in promoting safer storage of firearms and reducing the unsupervised use of firearms by children.

Section 4. Report. The Commission shall submit to the President a report not later than six months after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

Section 5. Termination. The Commission shall cease to exist on the date that is 30 days after the date on which it submits its report.

Section 6. Administration. (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Commission with such information as it may require for purposes of its functions.

(b) Members of the Commission shall be compensated in accordance with Federal law. Committee members may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Department of Health and Human Services shall provide the Commission with such funds as may be necessary for the performance of its functions.