
The Legal and Empirical Case for Firearm Purchaser Licensing

Hannah Abelow, Cassandra Crifasi, and Daniel Webster

State government actors concerned about gun violence prevention operate with limited political capital and must prioritize interventions based on existing empirical evidence and the likelihood of withstanding judicial scrutiny. Before pushing for assault weapons bans, enhanced background checks, or increased location restrictions, policymakers in states with an appetite for meaningful yet achievable gun safety legislation should consider placing firearm purchaser licensing at the top of their agenda.

The crisis of high rates of gun violence has been met with remarkable federal inaction. In order to circumvent this stasis, this article advocates for a pragmatic state-level policy response: purchaser licensing. To do so, we first outline the evidence base for firearm purchaser licensing. We then describe how state governments can design this policy. Next, we examine the likelihood that purchaser licensing legisla-

tion would be held up by federal courts. Finally, we address the implications of this policy, aimed at curbing gun deaths, for other equally important racial justice priorities. Using empirical research — including a recently-published study of mass shootings — we argue that a purchaser licensing policy is one of the most effective firearm-focused laws that state governments can enact to reduce gun deaths within the existing federal legislative and legal frameworks.

Thirty-five states require a license to carry a concealed firearm. Only nine require a license to purchase a firearm from any seller. To obtain purchaser licenses, prospective gun owners typically make an application to a state or local government agency, which always includes a background check to assess whether the applicant has prohibiting conditions. Frequently, the background check is augmented by required fingerprinting and a fee. Although some studies treat purchaser and possession licensing regimes as interchangeable, there is both a broader body of research supporting and more consistent public opinion polling data available in favor of purchaser licensing. For this reason, among others, we advocate for purchaser licensing rather than possession licensing.

For both purchaser and possession licenses, there is compelling evidence that the application processes reduce diversions of guns for criminal use and reduce gun homicides and suicides. While more research is needed on the underlying mechanism, these regimes may work by deterring straw purchases, creating an additional time lag for obtaining a firearm which can reduce impulsive purchases, and pooling a myriad of other component requirements such as background checks, firearm training mandates, and in-person interviews.

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In the United States, the firearm bans or near-bans that many other countries have used to greatly reduce gun violence are currently unattainable due to the Supreme Court's recognition of a Second Amendment right to a gun for self-defense in the home. Purchaser licensing regimes offer rigorous approaches for regulating firearms in the near term and make use of a type of regulation well-recognized across many facets of society. From marriage licenses to liquor licenses, Americans recognize the license as a way for governments to fairly regulate goods and behaviors. An even

crisis, high rates of gun homicides, disproportionately affects young black men.^{A5} Given the challenges associated with getting political support for multiple pieces of gun legislation at one time, the best policies will tackle both aspects of this crisis. Researchers have studied the effects of both enacting and repealing firearm purchaser licensing laws in Missouri, Connecticut, Maryland, and elsewhere.^{A6} The data is particularly persuasive in light of the lack of compelling data showing efficacy of other commonly advocated-for gun safety reform measures such as comprehensive

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broader role for licensing is accepted in regulating dangerousness: state governments impose stringent licensing requirements for driving a car or operating an amusement park ride. Although the intersection of licensing and fundamental rights is subject to greater scrutiny, enacting a licensing regime remains compatible with preserving fundamental rights so long as it is appropriately tailored. The potential for this commonplace regulatory tool to take on a broader role in gun safety regulation was reinforced by a 2019 Quinnipiac University poll showing 82% overall support for the policy, including a majority of Republicans polled.^{A1} Several additional polls conducted have shown greater than 75% support for purchaser licensing among adults in the United States, including support from over 60% of gun owners across the United States and 75% of gun owners in states that already require purchaser licenses.^{A2}

Empirical Evidence Supports Firearm Purchaser Licensing

A growing body of research evidence supports the claim that laws requiring firearm purchasers to be licensed reduce both homicides and suicides. There are two distinct gun crises wreaking havoc on the United States. One is the high rate of gun suicides that disproportionately affects middle-aged white men.^{A3} Gun suicides account for nearly two-thirds of gun deaths in the United States annually.^{A4} The other

background checks absent licensing systems or the federal assault weapon ban.^{A7} Many states have focused on implementing comprehensive background checks for gun purchasers. While evidence suggests private sale background check policies can reduce gun diversion — transfers from legal gun purchasers to someone else who is arrested with the gun within a year of the initial retail sale — the data shows no corresponding reduction in gun deaths.^{A8} Enacting purchaser licensing as a complement to requiring background checks for firearms bought from any seller greatly enhances their effectiveness in reducing firearm-related deaths.

Homicides

In 2007, Missouri repealed its purchaser licensing law.¹ The law, which had been in place since 1921, required those seeking to purchase a handgun to be licensed by local police.² Several studies have shown that this repeal of handgun purchaser licensing requirements significantly increased firearm homicide rates relative to estimated counterfactuals.³ In a 2014 study, Webster and colleagues found that Missouri's firearm homicide rate, which had been largely unchanged between 1999 and 2007, increased dramatically after the purchaser licensing law repeal.⁴ In the immediate period following the repeal, 2008–2010, the mean firearm homicide rate was 5.82 per 100,000 people annually.⁵ This number was 24.9% higher than the mean of 4.66 per 100,000 people annually prior to the repeal.⁶ This initial study, though promising, was not sufficient in of itself to draw conclusions on the efficacy of enacting similar policies elsewhere and prompted further analysis of both the Missouri repeal and enactment of similar laws elsewhere.⁷

In a more recent study, which included data through 2016, Hasegawa and colleagues estimated that Missouri's repeal was associated with a firearm homicide rate increase of 27% in the statistical model contrasting Missouri's rates against its most similar controls.⁸

This second study indicated the finding is worth extrapolating from.

Connecticut enacted a purchaser licensing law in 1995.⁹ A 2015 study used synthetic control models to estimate the effect of this purchaser licensing law on homicide rates.¹⁰ It found that the law was associated with a 40% reduction in firearm homicide rates during the first 10 years it was in place and found no change in homicide rates that did not involve firearms.¹¹

The most recent study of the effects of these changes in purchaser licensing laws uses additional years of data and somewhat different statistical models, but supports the general findings from the earlier studies.¹² McCourt and colleagues estimated that Missouri's repeal of handgun purchaser licensing requirements was associated with a 47% increase in firearm homicide rates during 2008-2017 and Connecticut's law was associated with a 28% decrease in firearm homicide rates between 1996 and 2017.¹³ Finally, a study that examined data from a broader set of states in order to estimate the association between state firearms laws and homicide rates in urban counties found that licensing laws were associated with an 11% reduction in firearm homicide rates at the county level.¹⁴

Note that the estimates of effectiveness vary within different studies due to differing time periods, units of analysis, and statistical procedures. Regardless of the range of estimates, each study of the effects of this policy on reducing gun homicides has shown significant public safety benefits. Importantly, none of these studies revealed any association between changes in purchaser licensing laws and homicides that did not involve firearms, strengthening the argument for a causal link.¹⁵

Suicides

The same pattern of associations between firearm homicide rates and changes in purchaser licensing laws was found in a study of suicide rates.¹⁶ Crifasi and colleagues estimated a 15.4% reduction in firearm-related suicide rates in Connecticut during the first ten years after the state passed a purchaser licensing law (1996-2005) and a 16.1% increase in gun-related suicide rates in Missouri during the years following lawmakers' repeal of its purchaser licensing law, 2008-2012.¹⁷ Note that although Connecticut simultaneously passed a law increasing the minimum age to purchase a firearm from 18 to 21, this concurrent change is unlikely to have significantly biased the results, as the minimum age law could only have affected 18-20 year-olds, and there is limited evidence that minimum age laws on their own lessen homicide risk.¹⁸ A new study by McCourt et al. extended the analyses through 2017, estimating that Missouri's repeal of its handgun

purchaser licensing law was associated with a 24% increase in firearm suicide rates and Connecticut's law was associated with a 33% decrease in firearm suicide rates.¹⁹ Connecticut enacted and in 2007 began significant enforcement of a law that gave law enforcement authority to remove firearms from individuals when there was an imminent threat.²⁰ When the estimates were limited to the time period before the emergency firearm removal law was implemented, the handgun purchaser license law was associated with a 23% decrease in firearm suicide rates.²¹

Mass Shootings

A study in the February 2020 issue of *Criminology & Public Policy* built on this earlier research by studying fatal mass shootings.²² Although deaths from mass shootings comprise a relatively small percentage of gun deaths, this study's findings are instructive.

Webster and colleagues compared "handgun purchaser licensing laws that require either in-person application or fingerprinting" to a wide range of common gun violence prevention policy solutions including laws regulating civilian concealed gun carrying, comprehensive background checks that include private transfers but don't require a license to purchase, domestic violence restraining orders, the addition of state-level prohibitor categories, large capacity magazine bans, and assault weapon bans.²³ Although the researchers acknowledge limitations of the dataset used, the findings on licensing handgun purchasers were robust to a range of statistical modeling approaches.²⁴

After controlling for other gun laws and factors hypothesized to influence risk for mass shootings, purchaser licensing laws were associated with a roughly 56 percent lower risk for fatal mass shootings.²⁵ The researchers "found no evidence that concealed carry laws, assault weapons bans, prohibitions for domestic abusers and violent misdemeanants, or point-of-sale [criminal background check] laws were associated with the incidence of fatal mass shootings."²⁶

Why It Works

Researchers posit that these laws work by "reduc[ing] overall firearm availability within a state as well as reduc[ing] firearm availability to high-risk individuals."²⁷

The precise mechanisms at work require greater study. Initial evidence suggests that purchaser licensing requirements reduce the diversion of guns to prohibited individuals through straw purchases and generally raise the price and risk of transferring handguns to someone without verification of their legal status.²⁸ Legal requirements to have a purchaser license

also make it easier for a potential private seller to determine whether a prospective purchaser or gun-owner can legally acquire firearms.^{A10} In a state with a licensing requirement, a person must apply for a license from the state after federal and state background checks have been completed, wait to obtain a license, and then buy the firearm from a dealer or private seller after showing said license. In a non-licensing state, the person can walk into a gun shop, complete a background check, and buy a gun from a seller with a vested interest in allowing the purchase to go through without any oversight from an outside actor. Fingerprinting requirements make a background check more likely to identify prohibited persons because merely recording information from a government-issued ID onto purchase applications can lead to errors.^{A11} Finally, direct interface with the licensing officer may also be a deterrent to those who would like to acquire a gun to harm themselves or others, even if the person is not prohibited from possessing firearms.^{A12}

Current Models for Licensing Gun Purchase

Today, nine states require firearm purchasers to obtain a license law. Maryland, Iowa, and North Carolina have laws pertaining only to the purchase of handguns, and regulate other firearms such as hunting rifles separately.^{A13} Connecticut, Hawaii, and New Jersey have broader purchaser licensing laws.^{A14}

Three states — Illinois, New York, and Massachusetts — license possession in addition to the purchase of firearms. New York's licensing law applies only to handguns.

Finally, the District of Columbia has a registration law in place that functions much the same way that possession licensing does elsewhere.^{A15}

Typical Features of a Licensing Regime

Maryland's Firearm Safety Act of 2013 contains many elements typical of purchaser licensing regulation.^{A16} In Maryland, a person seeking to purchase a handgun must first apply for a license. To apply, the person must be 21 years old and reside in Maryland. The applicant submits an online form to the state police stating that they have no prohibitors and have completed a firearms training course, gets fingerprinted, and pays a \$67 fee for the application and fingerprinting. After the application is submitted, the state public safety agency must run a criminal history records check within 30 days. To deny the ten-year license, the agency has to "provide a written denial, along with a statement of reasons and notice of appeal rights." Administrative and judicial review of the licensing

decision are available if requested within 30 days of denial.^{A17}

Elements of the policy vary by state, and often include minimum age, training requirement, discretion assigned to licensing officer, duration of permit, relationship to carry permit, fee charged, and maximum wait allowed. See Online Appendix 1 for additional detail.

Crafting Gun Licensing Legislation to Withstand Constitutional Challenge

Gun regulation is limited by the Supreme Court's decision in *Heller v. District of Columbia*, which significantly recast Second Amendment jurisprudence. However, even as the *Heller* court recognized a Second Amendment right to own a firearm for self-defense within the home, the court did not hold that Second Amendment rights are without limitation. The *Heller* court concluded that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."^{A18} Although the policy challenged in *Heller* included a licensing component, the Court did not reach that issue. Because the "respondent conceded at oral argument that he does not 'have a problem with ... licensing'" the court chose instead to "assume petitioners' issuance of a license will satisfy respondent's prayer for relief and [did] not address the licensing requirement..."^{A19}

Since *Heller*, the lower courts have established a two-step test for assessing the constitutionality of a challenged firearm regulation. First, the court assesses whether the regulation restricts an activity protected by the Second Amendment. Second, if the Second Amendment is implicated, the court determines whether the core right has been affected and based on that determination assigns a level of scrutiny and performs a means-ends analysis.^{A20}

Most post-*Heller* litigation relating to purchaser and possession licensing regimes has taken the form of as-applied challenges to individual denials. When litigation on the facial validity of a regulation has arisen, state and federal have held a variety of regimes to be Second Amendment compliant. In New York, courts have mostly agreed that the State's possession licensing law restricts an activity protected by the Second Amendment, but does not go to the core of the right, and is therefore assessed using an intermediate level scrutiny.^{A21} Intermediate scrutiny requires that the regulation further an important government interest by means that are substantially related to that govern-

ment interest — in this case, that of protecting public health and safety — in order to be upheld.

Federal courts in New York have consistently held that the State's gun licensing regime satisfies that standard.^{A22} State and federal courts in Massachusetts have similarly rejected a series of facial challenges to the constitutionality of its licensing statute.^{A23} New Jersey state courts have consistently held the State's purchaser licensing statute to be Second Amendment compliant.^{A24} Courts have generally upheld the District of Columbia's registration system, after striking down certain ancillary components to be discussed *infra Heller III*.^{A25}

In addition to relying on the scattered case law to date, defenses to intermediate scrutiny can be strengthened by the data on effectiveness of this policy in reducing gun deaths cited herein, which further reinforces courts' conclusions that licensing regimes are substantially related to the government interest in protecting public safety.

Implementation

Policymakers may differ in which elements of a licensing regime they include, given other essential values at play. In making choices around setting fees or allowing decision-maker discretion, policymakers should take care to avoid imposing undue costs for those without ability to pay or exacerbating the effects of decision-maker bias. Whatever policy choices government actors make, they should craft a regime likely to withstand legal challenges. To ensure a new law is upheld, policymakers should consider (1) what constitutes a fair fee and situations in which a waiver of that fee may be applicable, (2) whether law enforcement discretion is appropriate in denying licenses, and (3) potential constitutional challenges to duration restrictions, as these issues have been most frequently litigated to date. Although the Supreme Court has yet to rule on these issues, circuit court case law and Supreme Court precedent from other areas of law can be instructive.

Fees

Licensing fees have been the subject of substantial post-*Heller* litigation. In *Kwong v. Bloomberg*, the Second Circuit upheld a \$340 handgun license fee, though plaintiffs asserted the fee was unlawfully high.^{A26} The Second Circuit upheld the district court's finding "that the \$340 fee did not impermissibly burden plaintiffs' Second Amendment rights under the Supreme Court's 'fee jurisprudence' because it was designed to defray, and did not exceed, the administrative costs of regulating an individual's right to bear arms."^{A27}

The court says this finding holds true regardless of whether or not the regulation is analyzed under intermediate scrutiny. The court "express[es] skepticism" that the regulation would receive heightened scrutiny because it places only a "marginal" or "incremental" burden on the right. Even if intermediate scrutiny were to be applied, the "substantial" and "compelling, governmental interests in public safety and crime prevention" that are a "reasonable but not perfect fit" with a "licensing fee ... designed to allow the City of New York to recover the costs incurred through operating its licensing scheme, which is designed to promote public safety and prevent gun violence" constitute a regulation that "easily survives."^{A28}

In the 2015 *Heller III* decision, the DC Circuit agreed with the Second Circuit's fee analysis. Rather than arguing a \$48 fee was too high, the plaintiff argued that "[t]he District may not condition exercise of a fundamental constitutional right on the creation of a burdensome registration regime and then justify imposing 'administrative costs' to pay for it."^{A29} But the court, citing to *Kwong*, the Supreme Court's First Amendment jurisprudence, and its own holding in *Heller II*, found that "'administrative ... provisions incidental to the underlying regime'—which include reasonable fees associated with registration—are lawful insofar as the underlying regime is lawful."^{A30}

How courts will respond to fees above what is needed to defray administrative costs is as yet unclear, although an Illinois state appellate court upheld such a fee in 2019.^{A31} States looking to do so may wish to invoke the history of using gun tax revenue for other purposes, as Shearer and Anderman do when they argue that courts should look to this history to uphold gun violence-prevention taxes.^{A32}

Courts may also look to case law from other contexts. For instance, the Supreme Court has well-developed case law around First Amendment licensing fees. The Court first addressed this issue in a 1941 case, *Cox v. New Hampshire*, upholding a New Hampshire fee requirement for parade permits because it was designed "to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed."^{A33} Shortly thereafter, the Court cabined its holding in *Cox* in *Murdock v. Pennsylvania*, striking down an ordinance requiring Jehovah's Witness preachers to pay for a license to collect contributions when handing out pamphlets. The Court saw *Murdock* as different from *Cox* because the fee in question was neither merely recouping administrative costs nor protecting public health and safety while regulating dangerous activities.^{A34}

Although courts have upheld, and will likely continue to uphold, fees as high as \$340 for a firearm

purchaser license, policymakers should consider a fee waiver for low-income applicants. A fee waiver would have the dual benefits of providing added protection against constitutional challenges and making access to licensing more equitable for low-income communities, and in particular for low-income communities of color most likely to be targeted for enforcement against unlicensed gun purchases. A reasonable fee waiver might waive the fee for applicants receiving certain public benefits, applicants with income under 125% of the federal poverty level, or applicants otherwise unable to pay.

Discretion

If gun licensing litigation tracks patterns in litigation over other gun laws, decision-maker discretion may continue to grow as a litigation focal point. State actors wishing to reduce litigation risk and craft a policy that is relatively less susceptible to potential licensing officer bias should consider eliminating all decision-maker discretion. Recognizing, however, the policy trade-offs inherent in doing so, some may wish to maintain elements of discretion. If a policymaker chooses to maintain some level of licensing officer discretion, they should do so narrowly — perhaps borrowing from procedures used for discretionary Extreme Risk Protection Orders — to enact policies with strict parameters around permissible reasons for discretionary denial as well as documentation requirements for the licensing officers.^{A35}

In the concealed carry arena, debates over discretion often center on whether a licensing officer “may” or “shall” issue a license. States with purchaser licenses currently sidestep that controversy by including “shall” issue language, making it mandatory for the licensing officer to issue a license if the applicant meets certain criteria.^{A36} However, discretion can be found elsewhere in a statutory scheme. New York’s Penal Law § 400.00 delegates broad discretion to the licensing officer, allowing denial “for good cause” and asking the licensing officer to determine whether the applicant has “good moral character” without clear legislative standards for either determination.^{A37} As a result, individual license denials have been widely litigated in New York.

Courts have generally created and upheld their own standards for reasoned decision-making by licensing officers making gun licensing decisions. In *Kachalsky v. County of Westchester*, a 2012 concealed carry case, the Second Circuit upheld an assignment of discretion in New York’s concealed carry regulatory scheme comparable to the assignment of discretion found in its possession licensing regime, a requirement of “proper

cause.” The court concluded “[p]laintiffs’ contention that the proper cause requirement grants licensing officials unbridled discretion is something of a red herring” because the standard is defined by “binding judicial precedent” established over the course of many years.^{A38} New York courts have used similar logic to reject facial challenges to the possession licensing statute’s grant of discretion.^{A39}

Courts have opted not to apply First Amendment doctrines around unbridled administrator discretion, substantial overbreadth, or facial vagueness to the Second Amendment context. These three distinct but overlapping doctrines are grounded in reasoning seen as specific to the First Amendment.^{A40}

In *Hightower v. City of Boston*, the plaintiff challenged the revocation of her firearm license, arguing that a provision of the state law asking the licensing officer to determine whether an applicant is “suitable” for a license was facially unconstitutional as a grant of “unbridled discretion.”^{A41} In evaluating this claim, the First Circuit chose to rely upon Second Amendment case law from lower courts instead, holding that “the prior restraint doctrine is specific to the First Amendment and stems from the substantive First Amendment restrictions.”^{A42} The court went on to cite the 1988 Supreme Court case *City of Lakewood v. Plain Dealer Publishing Company* warning against the dangers of a licensing law that “constitutes a prior restraint and may result in censorship.”^{A43}

In short, non-discretionary purchaser licensing regimes are on strong legal footing and can help alleviate concerns about licensing officer bias. Discretionary licensing, while likely also constitutional if properly implemented, remains vulnerable to as-applied challenges if the State cannot provide an objective reason for denial.

Duration Restrictions

To date, duration restrictions, though common, have either been upheld or gone unlitigated. In *Heller III*, however, the DC Circuit struck down a related “requirement that a gun owner re-register his firearm every three years” as unconstitutional on the basis that the government had not provided “substantial evidence” that they “could reasonably have concluded that requiring re-registration would advance an important governmental interest.”^{A44} Two of the government’s justifications deemed insufficient by the court could have implications for licensing regimes in other states. The court did not view the possibility that a gun owner could have entered a prohibited category during the three years as reason to make them re-register, arguing that background checks could be done

separately.^{A45} Similarly, the court argued that concerns about lost weapons could be handled through stand-alone reporting.^{A46} Although courts have not imported this to the licensing-only context to date, policymakers should be aware of litigation risk when considering duration restrictions.

Duration restrictions can, however, be useful as a forcing mechanism for frequent criminal background checks. States with point-of-sale background checks may consider longer license durations than states fully reliant on licensing background checks. For instance, Connecticut, a state with a point-of-sale background check law in place, allows purchaser licenses to remain valid for up to 5 years. States without point-of-sale background checks should consider a shorter license duration.

Racial Justice Implications of Gun Purchaser Licensing Regimes

In enacting such a policy, state actors should consider the specific burdens of gun violence on communities of color as well as the potential for racist enforcement of well-intended legal interventions including the one proposed herein, and should acknowledge the obvious tension between those two realities.

In proposing purchaser licensing rather than possession licensing, the authors hope to reduce the risk of harming communities of color through what may be the most pernicious outcome of discriminatorily-enforced licensing policies: that of disproportionate gun arrests and disproportionate incarceration due to gun arrests. Although most gun arrests reflect conceal carry infractions rather than possession licensing violations, the ongoing nature of a possession licensing law leaves significant room for disproportionate enforcement leading to disproportionate incarceration. Since the mechanism best-supported by empirical research to date occurs at time of purchase, a policy that regulates only purchase and not possession maintains the integrity and effectiveness of licensing regimes studied to date without creating additional opportunities for racist law enforcement in communities of color.

Policymakers should also seek to ensure that the purchasing licenses are not themselves issued in a racially (or economically) discriminatory manner. Preliminary ideas of how to do so have been detailed herein and include automatic fee waivers below certain income levels as well as elimination of discretion in the licensing officer's process to prevent lawful gun-owners of color from being dissuaded from seeking a license due to previous negative experiences with law enforcement. The proposed purchaser licensing

scheme does, however, rely on the existing, and significantly biased, criminal justice system, for instance through its reliance on criminal background checks, and will therefore remain susceptible to carried-over bias.

Conclusion

Given the strength of the empirical case for purchaser licensing, state-level lawmakers concerned about gun violence should move swiftly to put such policies in place. Lawmakers should take care to do so in a racially-sensitive manner. Online Appendix 2 includes model bill language for policymakers' consideration. The highly litigious environment around gun regulation requires that all potential litigation risks be weighed carefully within the context of important policy objectives. However, such licensing schemes have to date withstood legal challenges and state actors should not allow the theoretical litigation risk to deter them from taking this important action.

Editor's Note

Appendices 1-3 can be found online. Reference notes for A1-A46 can be found in Online Appendix 3.

Note

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2. *Id.*
3. *Id.*
4. See Webster, *supra* note 1, at 296.
5. *Id.*
6. *Id.*
7. *Id.*, at 300.
8. See Hasegawa, *supra* note 1, at 376.
9. K. Rudolph et al., "Association between Connecticut's Permit-to-Purchase Handgun Law and Homicides," *American Journal of Public Health* 105, no. 8 (August 2015): e49-e54.
10. *Id.*, at e51.
11. *Id.*
12. A. McCourt et al., "Effects of Purchaser Licensing and Point-of-Sale Background Check Laws on Firearm Homicide and Suicide in Four States," *American Journal of Public Health* (forthcoming).
13. *Id.*
14. *Id.*
15. *Id.*; see also C. Crifasi et al., "Association between Firearm Laws and Homicide in Large, Urban U.S. Counties," *Journal of Urban Health* 95, no. 3 (2018): 383-390. Correction: *Journal of Urban Health* 95, No. 5 (2018): 773-776.
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17. *Id.*, at 46.
 18. See, e.g., *Effects of Minimum Age Requirements on Suicide*, RAND Corporation, available at <<https://www.rand.org/research/gun-policy/analysis/minimum-age/suicide.html>> (last updated August 13, 2020).
 19. See McCourt, *supra* note 12.
 20. *Id.*
 21. *Id.*
 22. D. Webster et al., “Evidence Concerning the Regulation of Firearms Design, Sale, and Carrying on Fatal Mass Shootings in the United States,” *Criminology & Public Policy* 19 (2020): 171-212.
 23. *Id.*, at 174.
 24. *Id.*
 25. *Id.*, at 181.
 26. *Id.*
 27. *Id.*, at 189.
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APPENDIX 1

| | Discretion to Deny a permit | Fingerprints Taken | Age | Maximum Wait | Duration | Safety Training/ Exam | Type | Can use Carry Permit |
|-----------|-----------------------------|--|---|--|--|---|--------------|-------------------------|
| CT | No | Yes or any other method of positive identification required. | 21+ | 90 days | 5 years | Yes | Handgun | Yes |
| HI | Yes | Yes | 21+ | 20 days. | Handgun: 10 days; 1 transaction Long gun: 1 year. | Yes, Training course. | All | No |
| IL | No | No | 21+ unless written consent of parent or guardian. | 30 days for new applicants; 60 days for renewal. | 10 years. | No | All | No |
| IA | No | No | 21+ | Upon completing application. | 5 years | No | Handgun | Yes |
| MD | No | Yes | 21+ | 30 days | 10 years | Yes | Handgun | No |
| MA | Yes | Yes | 21+ | 40 days | 6 years | Yes, Safety certificate. | Any firearm | Not a separate license. |
| NJ | Yes | Yes | 21+ | 30 days for residents, 45 days for nonresidents | 90 days, 90 day renewal, 1 handgun. | No | Handgun | No |
| NY | Yes | Yes | 21+ | 6 months | Generally, until revoked. 3 years in New York City, 5 years in certain counties. | Generally, no. Required only in Westchester county. | Handgun | Yes |
| NC | Yes | No | 18+ to possess | 14 days | 5 years, 1 handgun | No | Handgun | Yes |
| DC | No | Yes | 21+ (18 with signature) | 60 days | 3 years | Yes | All firearms | No |

Notes

1. Conn. Gen. Stat. A. §§ 29-36, 29-33.
2. Haw. Rev. Stat. § 134-2.
3. 430 Ill. Comp. Stat. § 65.
4. Iowa Code. §§ 724.15, 724.19, 724.20.
5. MD Code Ann., Pub. Safety § 5-117.1.
6. Mass. Gen. Laws 140 § 131.
7. N.J. Stat. Ann. § 2C:58-3; N.J. Admin. Code § 13:54-1.4(i); N.J. Stat. Ann. § 2C:58-3(c)(5) (allows denial for anyone where the “issuance would not be in the interest of the public health, safety or welfare”); N.J. Stat. Ann. § 2C:58-3; N.J. Admin. Code § 13:54-1.4(i); N.J. Stat. Ann. § 2C:58-3(c)(5) (allows denial for anyone where the “issuance would not be in the interest of the public health, safety or welfare”).
8. NY Penal Law § 400.00.
9. N.C. Gen. Stat. Ann. § 14-404(a)(2) (“...the sheriff shall issue a permit when the sheriff has ... fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant. For purposes of determining an applicant’s good moral character to receive a permit, the sheriff shall only consider an applicant’s conduct and criminal history for the five-year period immediately preceding the date of the application.”); N.C.G.S.A §§ 14-404(e), 14-269.7, 14-404(f), 14-403, 14-402.
10. DC ST § 7-2502.

APPENDIX 2

Model Firearm Purchaser Licensing Act

Short Title.

This (chapter, statute, law) shall be known and cited as the “firearm purchaser licensing act.”

Findings.

The legislature finds that a firearm purchaser licensing act requiring all persons within the State of ____ seeking to purchase firearms from licensed firearm dealers or through private sales to first obtain a license to do so shall improve public health and public safety through a reduction in gun diversions, gun deaths, and overall gun violence.

Definitions.

- **Licensing Officer.** State employee designated by the Commissioner [of Public Safety /Public Health] to review applications for Firearm Purchaser Licenses and issue Firearm Purchaser Licenses and denials.
- **Approved Firearm Use and Safety Course.** A course in the safe and lawful use of firearms must be approved by the Department of Public Safety and must include instruction regarding: (1) knowledge and safe handling of firearms and ammunition; (2) safe storage of firearms and ammunition and child safety; (3) safe firearms shooting fundamentals; (4) federal and state laws pertaining to the lawful purchase; (5) ownership, transportation, use, and possession of firearms; (6) state laws pertaining to the use of deadly force for self-defense; (7) techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution; and (8) suicide risks for adults and teenagers with easy access to firearms.

Authority.

_____.

Eligibility for Firearm Purchaser License.

Any person who is twenty-one years of age or older may apply to the Commissioner of [Public Safety or Public Health] for a firearm purchaser license in order to purchase a handgun, semi-automatic rifle or other long gun.

The Licensing Officer shall issue a firearm purchaser license unless said Licensing Officer finds that the applicant: (1) has failed to successfully complete an Approved Firearm Use and Safety Course; (2) meets any federal prohibitor, as defined by the Gun Control Act (CGA), codified at 18 U.S.C. § 922(g); (3) meets any state prohibitor, as defined by ____; (4) has committed a serious violent offense adjudicated in the juvenile justice system within the ten years preceding application; (5) is currently subject to an Extreme Risk Protection Order pursuant to ____; (6) has been convicted of a violent misdemeanor within the ten years preceding application, has been convicted of an alcohol-related offense within the ten years preceding application; (7) has been involuntarily committed to a treatment facility for individuals with psychiatric disabilities within the ten years preceding application; or (8) resides out of state.

Application for Firearm Purchaser License.

Requests for Firearm Purchaser Licenses shall be submitted to the Commissioner of [Public Safety or Public Health] on application forms prescribed by the Commissioner. No Firearm Purchaser License for a handgun, semi-automatic rifle, or other long gun shall be issued unless the applicant for such Firearm Purchaser License gives the Licensing Officer full information concerning the applicant’s criminal record and relevant information concerning the applicant’s mental health history. Each applicant shall submit to state and national criminal history records checks. The Licensing Officer shall take a full description of such an applicant. The Licensing Officer shall take the fingerprints of such applicant or conduct any other method of positive identification required by the Federal Bureau of Investigation. The Licensing Officer shall record the date the fingerprints were taken in the applicant’s file and shall conduct criminal records checks in accordance with state statute. The Licensing Officer shall, within sixty days of receipt of the national criminal history records check from the Federal Bureau of Investigation, either approve the application and issue the Firearm Purchaser License or deny the application and notify the applicant of the reason for such denial in writing.

Applicants may appeal denials through an administrative appeals process prescribed by the Commissioner.

APPENDIX 2

Model Firearm Purchaser Licensing Act

The Firearm Purchaser License shall be of such form and content as the Commissioner may prescribe; shall be signed by the license holder; and shall contain an identification number, the name, address, place and date of birth, height, weight and eye color of the certificate holder and a full-face photograph of the certificate holder.

Scope of Firearm Purchaser License.

A Firearm Purchaser License authorizes the purchase of firearms within the state from any licensed firearm dealer or through private sales from date of issuance until date of expiration.

A Firearm Purchaser License shall not authorize the holder thereof to carry a firearm upon his or her person in circumstances for which a permit to carry a firearm issued pursuant to ____ is required under ____.

Fee for Firearm Purchaser License. Fee Waiver.

The fee for each Firearm Purchaser License issued under the provisions of ____ shall be ____, which fees shall be paid to the Commissioner. Upon deposit of such fees in the General Fund, the fees shall be credited to the appropriation to the Department of ____ and retained within a restricted account for the purposes of the issuance of Firearm Purchaser Licenses under said section.

A fee waiver shall be made available, in a form prescribed by the Commissioner, to (1) applicants receiving public benefits under the Supplemental Nutrition Assistance Program (SNAP), Social Security Income (SSI), Temporary Assistance for Needy Families (TANF), or other comparable state or federal programs, (2) applicants whose monthly income is 125% or less of the poverty guidelines as updated periodically in the Federal Register by the United States Department of Health and Human Services pursuant to 42 USC § 9902 (2), or (3) applicants who, as individually determined by the Licensing Officer, cannot pay licensing fees without using moneys that normally would pay for the common necessities of life for the applicant and the applicant's family.

Change of Address, Expiration, and Renewal.

A person holding a Firearm Purchaser License shall notify the Commissioner or their designee within two business days of any change of address. The notification shall include the old address and the new address.

Any Firearm Purchaser License shall expire [one year if no point-of-sale background check in place or five years if point-of-sale background check in place] after issuance.

The Commissioner shall send a notice of the expiration of the Firearm Purchaser License issued pursuant to ____ to the holder of such License, by first class mail, at the address of such person as shown by the records of the Commissioner, not less than ninety days before such expiration, and shall enclose therein a form for the renewal of said License. Each renewal thereof shall expire ____ years after the date it becomes effective. A renewal fee to be determined by the Commissioner shall apply.

Revocation of Firearm Purchaser License.

Any Firearm Purchaser License shall be revoked by the Commissioner upon the occurrence of any event which would have disqualified the holder from being issued the Firearm Purchaser License pursuant to section _____. Upon the revocation of any Firearm Purchaser License, the person whose Firearm Purchaser License is revoked shall be notified in writing. Surrender of the Firearm Purchaser license must occur within five days of notification in writing of revocation.

Severability.

If any section, subsection, sentence, clause, phrase, word, provision, or application of the law shall be found invalid, illegal, unconstitutional, or unenforceable, that finding shall not affect or undermine the validity of any other section, subsection, sentence, clause, phrase, word, provision, or application which can be enforced without the use of the portion of this statute found invalid, illegal, unconstitutional, or unenforceable.

Effective Date.

The effective date of the act shall be _____.

APPENDIX 3

Additional Notes

- A1. Quinnipiac University, "Majority Of Voters Say Climate Change Is An Emergency Quinnipiac University Poll Finds; 72% Say Congress Needs To Act To Reduce Gun Violence," available at <<https://poll.qu.edu/national/release-detail?ReleaseID=3639>> (August 14, 2020).
- A2. See, e.g., C. Barry et. al., "Trends in Americans' Support for Gun Policies," *Health Affairs* 38, no. 10 (2019): 1727-1734; C. Crifasi et. al., "Differences in Public Support for Handgun Purchaser Licensing," *Injury Prevention* 26, no. 1 (2020): 93-95.
- A3. See, e.g., A. Barry-Jester, *Surviving Suicide in Wyoming, FiveThirtyEight*, available at <<https://fivethirtyeight.com/features/suicide-in-wyoming/>> (last visited August 14, 2020).
- A4. Giffords Law Center to Prevent Gun Violence, "Gun Violence Statistics," available at <<https://lawcenter.giffords.org/facts/gun-violence-statistics/>> (last visited August 14, 2020).
- A5. K. Kochanek and A. Arias, "How Did Cause of Death Contribute to Racial Differences in Life Expectancy in the United States in 2010?" *NCHS Data Brief*, No. 125 (2013).
- A6. D. Webster, C. Crifasi, and J. Vernick, "Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides," *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 91, no. 2 (2014): 293-302, at 296; D. Webster, C. Crifasi, and J. Vernick, "Erratum to: Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides," *Journal of Urban Health* 91, no. 3 (2014): 598-601; K. Rudolph et al., "Association between Connecticut's Permit-to-Purchase Handgun Law and Homicides," *American Journal of Public Health* 105, no. 8 (August 2015), e49-e54; C. Crifasi et al., "Association between Firearm Laws and Homicide in Large, Urban U.S. Counties," *Journal of Urban Health* 95, no. 3 (2018), 383-390. Correction: *Journal of Urban Health* 95, no. 5 (2018): 773-776; R. Hasegawa, D. Webster, and D. Small, "Bracketing in the Comparative Interrupted Time-Series Design to Address Concerns about History Interacting with Group: Evaluating Missouri's Handgun Purchaser Law," *Epidemiology* 30, no. 3. (2019): 371-379; C. Crifasi et al., "Effect of Changes in Permit-to-Purchase Handgun Laws in Connecticut and Missouri on Suicide Rates," *Journal on Preventive Medicine* 79 (2015): 43-49; A. McCourt et al., "Effects of Purchaser Licensing and Point-of-Sale Background Check Laws on Firearm Homicide and Suicide in Four States," *American Journal of Public Health* (forthcoming).
- A7. C. Foran, "The Missing Data on Gun Violence," *The Atlantic*, January 21, 2016, available at <<https://www.theatlantic.com/politics/archive/2016/01/gun-control-laws-research/424956/>> (last visited August 14, 2020).
- A8. A. Castillo-Carniglia et al., "California's Comprehensive Background Check and Misdemeanor Violence Prohibition Policies, and Firearm Mortality," *Annals of Epidemiology* 30 (2019): 50-56; D. Webster, J. Vernick, and M. Bulzacchelli, "Effects of State-level Firearm Seller Accountability Policies on Firearm Trafficking," *Journal of Urban Health* 86, no. 4 (2009): 525-537; A. Castillo-Carniglia et al., "Comprehensive Background Check Policy and Firearm Background Checks in Three US States," *Injury Prevention* 24, no. 6 (2017): 431-436; R. Kagawa et al., "Repeal of Comprehensive Background Check Policies and Firearm Homicide and Suicide," *Epidemiology* 29, no. 4 (2018): 494-502.
- A9. Center for Gun Policy and Research, Johns Hopkins Bloomberg School of Public Health, *The Impact of Handgun Purchaser Licensing on Gun Violence*, available at <https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/_docs/Impact_of_Handgun.pdf> (last visited August 14, 2020).
- A10. *Id.*
- A11. *Id.*
- A12. *Id.*
- A13. *Licensing*, Giffords Law Center to Prevent Gun Violence, available at <<https://lawcenter.giffords.org/gun-laws/policy-areas/gun-owner-responsibilities/licensing/>> (accessed April 7, 2020).
- A14. *Id.*
- A15. *Id.*
- A16. MD Code Ann., Pub. Safety § 5-117.1.
- A17. MD Code Ann., Pub. Safety § 5-117.1(h).
- A18. *District of Columbia v. Heller* (hereinafter *Heller I*), 554 U.S. 570, 595 (D.C. Cir. 2008). *Id.* at 631.
- A19. See, e.g., *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010) ("As we read *Heller*, it suggests a two-pronged approach to Second Amendment challenges").
- A20. See, e.g., *Kwong v. Bloomberg*, 723 F.3d 160, 168 (2d Cir. 2013).
- A21. See, e.g., *Weinstein v. Krumpter*, 386 F. Supp. 3d 220, 231 (S.D.N.Y. 2019); *Napolitano v. Ryder*, No. CV18-3607(SJF) (AKT), 2019 WL 365710, at *8 (E.D.N.Y. Jan. 30, 2019); *Libertarian Party of Erie County v. Cuomo*, 300 F.Supp. 3d 424 (S.D.N.Y. 2018); *Toussaint v. City of New York*, No. CV5576(NGG)(VMS), 2018 WL 4288637 (E.D.N.Y. Sept. 6, 2018); *Mishtaku v. City of New York*, No. 14-CV-839(VSB), 2015 WL 13002182, at *5 (S.D.N.Y. May 4, 2015); *Arson v. Becker*, 48 F. Supp. 3d 347, 371 (N.D.N.Y. 2014). But see *John Doe No. 1 v. Putnam County*, 344 F.Supp. 3d 518 (S.D.N.Y. 2018).
- A22. See, e.g., *Commonwealth v. Cassidy*, 479 Mass. 527 (2018); *Commonwealth v. Gouse*, 461 Mass. 787 (2012); *Powell v. Tompkins*, 783 F.3d 332 (1st Cir. 2015).
- A23. See, e.g., *In re: Dubov*, No. A-1829-10T1, 2012 WL 3288124 (N.J. Super. Ct. Aug.4., 2012).
- A24. *Heller v. District of Columbia* (hereinafter *Heller III*), 801 F.3d 264 (D.C. Cir. 2015); *Kwong v. Bloomberg*, 723 F.3d 160, 162 (2d Cir. 2013).
- A25. *Id.*, at 164.
- A26. *Id.*, at 168.
- A27. *Heller III*, 801 F.3d at 278.
- A28. *Id.*
- A29. *Guns Save Life*, 2019 WL 6486055.
- A30. H. Shearer and A. Anderman, "Analyzing Gun-Violence-Prevention Taxes under Emerging Firearm Fee Jurisprudence," *Southern Illinois University Law Journal* 43 (2018): 157.
- A31. *Sozinsky v. United States*, 57 S.Ct. 554 (1937).
- A32. *Cox v. New Hampshire*, 312 U.S. 569, 577 (1941).
- A33. *Murdock v. Pennsylvania*, 319 U.S. 105, 116 (1943).
- A34. See, e.g., Conn. Gen. Stat. § 29-38c.
- A35. *Concealed Carry*, Giffords Law Center to Prevent Gun Violence, <<https://lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/concealed-carry/>> (last visited August 14, 2020).
- A36. See *supra* note 30.
- A37. *Id.*
- A38. *Kachalsky v. Westchester*, 701 F.3d 81, 92 (2d Cir. 2012).
- A39. See *Henry v. County of Nassau*, No. 17-CV-067545(DRH) (AKT), 2020 WL 1185283 (E.D.N.Y. March 12, 2020); *Napolitano v. Ryder*, No. CV18-3607(SJF)(AKT) U.S. Dist. 2019 WL 365710 (E.D.N.Y. Jan. 30, 2019); *Mishtaku v. City of New York*, No. 14-CV-839(VSB), 2015 WL 13002182 (S.D.N.Y. May 4, 2015).
- A40. Rodney A. Smolla, Smolla & Nimmer on Freedom of Speech § 6:2 (2020).
- A41. *Hightower v. City of Boston*, 693 F.3d 61, 79-80 (1st Cir. 2012).
- A42. *Id.*, at 81.
- A43. *Id.*, at 80 (citing *City of Lakewood v. Plain Dealer Publ'g*, 486 U.S. 757 (1988)).
- A44. *Heller III*, 801 F.3d at 277.
- A45. *Id.*
- A46. *Id.*