

Gun Crime, Gun Laws and Citizen Defense in the United States

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Abstract: In the United States firearms are used for recreation, self-defense, and unfortunately used in crime. Despite numerous gun laws and registration requirements, gun crimes continue to victimize many citizens. In response, the purchase and registration of guns are regulated by federal and state legislation. A comparison of federal and state gun laws is addressed, including a discussion and how guns are illegally obtained. Due to the fear of predatory crime, many citizens are arming themselves for protection. Armed citizen defensive is examined including laws on justifiable homicide, and the meaning of state castle doctrines or stand your ground laws. Evidence on citizen use of guns for personal protection is presented.

Keywords: Gun Laws, Gun Crime, Citizen Defense, Justifiable Homicide

1. Introduction

“Gun violence is a crisis with over 117,000 Americans shot every year. Underserved urban communities are pervaded by shootings, with young black men experiencing a gun death rate 20 times the national average. Over 20,000 Americans kill themselves with guns every year”. Law Center to Prevent Gun Violence 2016

It is understood guns are the instrument of choice in crimes of violence. In a 2007 report by the Switzerland-based Small Arms Survey, the United States, has about 35–50 percent of the worlds civilian owned guns, and the highest homicide-by-firearm rate among the world's most developed nations [1]. Firearm violence is a persistent public health concern in the U.S. Annual firearm homicides is the highest among developed, industrialized nations. Firearms are used in most homicides in the U.S, and the commission of other violent crimes such as robbery and assault. In 2014, the Center for Disease Control reported over 33,000 deaths occurred from firearms in the U.S. with a rate of 10.6 persons per 100,000 [CDC 2016]. As depicted in data from California Department of Justice [figure 1], handguns are the weapon of choice in most crimes.

Firearms used in crimes, 96 firearms

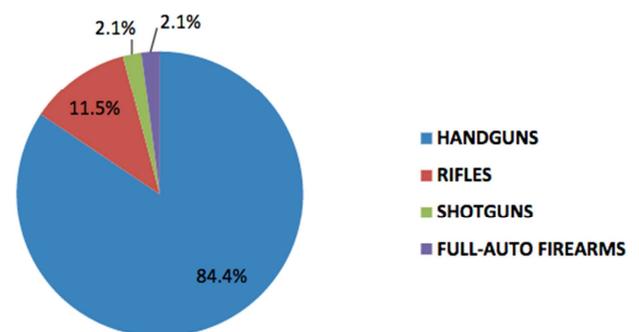


Figure 1. Firearms and Crimes FY 2015.

Source: 2015 Firearms Used in the Commissions of Crimes. (2015). California Department of Justice. Retrieved from <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-15.pdf>

Although many own guns for self-protection or recreation, studies indicate the risks associated with gun ownership. A gun kept in the home is more likely to be involved in an accidental shooting, criminal assault or a suicide attempt than used to injure or kill an intruder in self-defense. There is evidence that higher levels of firearm ownership have an increased risk for violent crimes perpetrated with a firearm

[2]. A study published in 2017 by the Violence Policy Center (VPC), using five years of nationwide statistics from 2010-2014 compiled by the federal Bureau of Justice found that defensive gun use occurs at a dramatically lower rate. The center presented data to show that for every justifiable homicide in the United States involving a gun, guns were used in 34 homicides. Research has indicated urban gun violence especially among blacks occurs more regularly as evidenced by the gun crimes in cities such as Chicago [3]. Another alarming issue is how guns get into the hands of criminals. Most guns are bought from legitimate dealers, and most gun owners are responsible citizens who have gone through a background check. In a tragic mass shootings at an Orlando, Florida nightclub in 2015, the weapons were purchased legally after a federal background check; thus there are no guarantees.

The availability of guns from unauthorized sources is problematic. Illegal guns come from dishonest gun dealers, gun shows, straw purchasers, and family members or acquaintances. To compound the problem, some states have lax gun laws where guns may be purchased more quickly and taken to another state for sale. In 2014, ATF traced the source of over 170,000 guns used in crimes in the U.S. About 28 percent were found to be used to commit crimes in a state other than the state purchased. And, in 2014, over 3,200 firearms originally purchased in Georgia were used to commit crimes in other states, making Georgia the biggest exporter of crime guns in the U.S. that year [4]. Straw purchases are another major source of illegal gun ownership. A straw purchase is when one legally buys a weapon for another person, because the second party cannot legally buy a gun. Regarding gun crimes in Chicago in 2015, about 60% of those crimes the weapons were purchased out of state, and some through straw purchases. Straw purchases were significantly more common at gun shows in states with little regulation (Arizona, Florida, Nevada and Texas) than at gun shows in California, which regulates gun shows and requires background checks for all firearm transfers [5]. In a 1995 study Decker, Pennell, and Caldwell of 7,000 arrestees in 11 major urban areas, they found that the firearms were obtained through black market contacts and smuggling operations like illegal drug trafficking [6]. For purposes of this paper the discussion of firearms is confined to handguns as opposed to rifles or shotguns since handguns are most often used in crime and citizen defense.

2. Gun Laws

2.1. Federal Laws

Major federal legislation began in 1938 with the Federal Firearms Act, which was aimed at those selling and shipping firearms through interstate or foreign commerce channels. In 1963, President John F. Kennedy was killed by Lee Harvey Oswald who purchased the weapon via mail-order. The subsequent assassinations of Martin Luther King and Robert Kennedy caused a quick passage for regulating gun

purchases and licensing requirements such as convicted felons and mentally incompetent persons. The key element of this bill outlawed mail order sales of rifles and shotguns.

The gun control act of 1990 Crime Control Act created “drug-free school zones,” including criminal penalties for possessing or discharging a firearm in a school zone. Outlawed the assembly of illegal semiautomatic rifles or shotguns from legally imported parts. One of the most notable gun control acts in recent years is The Brady Handgun Violence Prevention Act, otherwise known as the Brady bill which into effect in 1994. The Act establishes a national system for quickly checking the background of a prospective handgun purchases. The Act is named after James Brady, who was shot by John Hinckley, Jr. during an attempted assassination of President Ronald Reagan in 1981. The Brady bill contains many provisions [table 1]. The Brady act requires federally licensed firearms dealers (FFLs) to perform background checks on prospective firearms purchasers to ensure that the firearm transfer would not violate federal, state or local law.

As of 2016, there were no federal laws banning semiautomatic assault weapons, military-style .50 caliber rifles, handguns, or large-capacity ammunition magazines, which can increase the potential lethality of a given firearm[7]. There was a federal prohibition on assault weapons and high-capacity magazines between 1994 and 2004, but Congress allowed these restrictions to expire. In January 2016 President Obama issued a series of executive orders to address gun violence. The orders require dealers selling firearms at gun shows or online to obtain federal licenses and, in turn, conduct background checks of prospective buyers. Gun control advocates hope these steps will help close existing legal loopholes that have allowed violent criminals and others to purchase weapons without FBI screening. Additionally, the President proposed funding to hire hundreds more federal law enforcement agents. An illegal firearm purchase can bring a felony conviction sentence of 10 years in jail and a fine of up to \$250,000. An example is when one purchases a gun and gives it to someone who is prohibited from owning a firearm. This act is illegal under federal and state laws. The growing and often contentious debate regarding citizen ownership of guns will undoubtedly continue for some time.

Federal law designates what is legal at the national level, and federal law supersedes local (state) laws in cases of conflict. To avoid confusion between federal and state jurisdiction of firearms, federal laws control the interstate trade of firearms and regulation of gun dealers. In general most federal laws place limits on gun dealers, and fully automatic weapons deemed especially dangerous.

Table 1. The Federal Brady Law.

<p>The Federal Brady Bill The federal Gun Control Act of 1968, codified at 18 U.S.C. § 922, prohibits the sale of firearms to any person who: Is underage; Has been convicted of, or is under indictment for, a crime punishable by imprisonment for more than one year;</p>

Is a fugitive from justice;
 Is an unlawful user of or addicted to a controlled substance;
 Has been “adjudicated as a mental defective” (defined by Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) regulations to include persons who have been determined to be a danger to themselves or to others, or who lack the mental capacity to contract or manage their own affairs, including persons found insane by a court in a criminal case, persons found incompetent to stand trial, and persons found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice);
 Has been “committed to a mental institution” (defined by ATF regulations to mean involuntary commitment)
 Is an illegal alien;
 Has been dishonorably discharged from the military;
 Has renounced his or her U.S. citizenship;
 Is subject to a court order restraining him or her from harassing, stalking or threatening an intimate partner, his or her child or a child of a partner or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, provided that the order: 1) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; and 2) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
 Has been convicted of a misdemeanor offense of domestic violence.

2.2. State Laws

In addition to federal legislation, each of the 50 states legislates gun laws. However, states are more diverse in terms of registration requirements. The tragic Las Vegas shooting 2017 resulting in 59 deaths, and the Sandy Hook Elementary School shooting in 2012 where 20 children and six adults were murdered awakened once again the need to reexamine of gun crime and laws. These shootings and many others have caused a number of states to enact more stringent gun laws. The state of New York passed a law in 2013 known as the New York Secure Ammunition and Firearms Enforcement Act of 2013. The law makes it more difficult to purchase firearms and ammunition. The act specifically bans the possession of any "high-capacity magazines" regardless of when they were made or sold and requires ammunition dealers to perform background checks, similar to the requirements imposed for gun purchasers. The act also requires the reporting of stolen guns within 24 hours. Beginning in 2016, a number of states are enacting additional laws on guns. In Texas for example, recent legislation allows Texans with a concealed carry permit to carry a holstered weapon in plain view. The law bans handguns from churches, hospitals, prisons or jails and some places where alcohol is served. Businesses have the option as private property owners of allowing open carry in their restaurants [8]. Under federal and state law, a number of legal disqualifiers and restrictions exist for gun ownership. Having a felony record or certain mental or physical conditions are examples of legal disqualifiers. Accordingly, not all types of firearms are legally obtainable by citizens such as high powered automatic military type assault weapons. State gun laws vary, meaning some impose stricter limitations than others as long as the laws do not interfere with federal law and the second amendment. States may legislate additional gun ownership restrictions. California is considered to

have one of the most restrictive gun laws in the country [table 2].

Table 2. California Penal code 2017.

Code Section	Penal §§12020, 12021, 12071, 12072
Illegal Arms	Cane gun; wallet gun; any firearm not immediately recognized as such; short-barreled shotgun or rifle, i.e., barrel of less than 18 inches for shotgun, less than 16 inches for rifle, or less than 26 inches designed to fire a fixed shotgun shell or cartridge; zip gun; any bullet with explosive agent; multi-burst trigger activator; any unconventional pistol; any undetectable firearm.
Waiting Period	10 days Lifetime Ban: Those with any felony conviction or conviction of other offenses listed by the California Dept. of Justice; any person adjudicated to be a mentally disordered sex offender; any person found incompetent to stand trial or found not guilty by reason of insanity for any crime.
Who May Not Own	10-Year Ban: Anyone convicted of a misdemeanor violation of certain violent crimes, such as assault and battery or domestic violence. 5-Year Ban: Any person taken into custody as a danger to self or others, is assessed and admitted to a mental health facility (subject to a lifetime ban).
Law Prohibiting Firearms On or Near School Grounds	Felony.

Source: California Penal Code Penal §§12020, 12021, 12071, 12072 (2016)

In 2016 California added new restrictions. Law enforcement will be able to seize an individual’s gun for 21 days in California if a judge determines that person is a potential threat to others. The law allows family members to get a restraining order, if they can convince a judge that a person “poses an immediate and present danger of causing personal injury to himself, herself or another by having in his or her custody or control.” In a separate law, California is also requiring pellet guns, BB guns and airsoft guns come in bright colors so police do not mistake them for real guns. There are also additional controls on ammunition purchases. Other notable California gun laws in effect as of 2017 are:

1. Limit whom gun owners can lend their weapons to; allowing only for lending to family members.
2. Create new criminal punishments for falsely reporting a gun lost or stolen.
3. Require gun owners to report a gun lost or stolen to law enforcement within five days of realizing the weapon is missing.
4. Make it illegal to possess a large-capacity magazine. The new law will make it illegal to possess magazines that hold more than 10 rounds of ammunition.
5. Require law enforcement officers to lock their firearms in a box in the trunk when exiting their vehicles.

Although California has stringent gun laws, gun crimes continue to plague many communities. According to the Center for Disease Control [2016], there were 2,935 gun deaths in California in 2014 [9]. This figure translate to a rate of 7.4 deaths per 100,000 persons. The National rate in 2014 was 10.5

per 100,000. In Chicago for the year 2016, there were over 700 homicides, and an additional 2,900 people shot. Chicago had the most homicides of all U.S. cities in 2015. In one day in November 2016, five people were killed and at least 16 others were wounded in s south Chicago shootings. And over the Fourth of July weekend in 2017, Chicago experienced over 100 fatal shootings. Despite differences in laws between states, there are a number of clear similarities. All states require some type of background check, whether it is an instant check or a waiting period. All have restrictions on prohibiting guns on or near school property.

Other notable comparisons are the restrictions for having a felony record prohibiting gun purchases. Some states like California increase gun possession for convictions of misdemeanor domestic violence convictions for up to 10 years. By contrast, some states like Alaska and Wyoming have less restrictive gun laws [10]. It should be noted that the importance of waiting periods (as opposed to so called instant checks) has been researched regarding suicides. In research published in the American Journal of Public Health, states with laws requiring a waiting period for the completion of handgun sales had 27% fewer suicides per capita and 51% fewer firearm suicides [11].

Opinion polls indicate support for waiting periods. In a December 2011 poll, 74% of people without a firearm in the home support at least a five-day waiting period for the purchase of firearms, while 66% of non-NRA gun-owners and 50% of NRA members support this measure [12]. Some require lengthy waiting periods (California has a 10 day waiting period) before a firearm can be taken home. The goals of a waiting period are to give law enforcement officials sufficient time to perform a background check, and to provide a “cooling off” period to help guard against impulsive acts of violence. State laws concerning guns usually apply to the carry of concealed weapons, open carry, and background check procedures.

There is another movement on the horizon between federal and state gun law policy. Across the country, a dissatisfaction with the U.S. government firearms law is prompting a number of states to defy federal control over firearms. This movement is particularly strong in Western and Southern states. State legislators are attempting to declare that only they have the right to interpret the Second Amendment. These are known as nullification laws. In Idaho, the Legislature unanimously passed a law to keep any future federal gun measures from being enforced in the state. In Kansas, a law states federal regulation doesn’t apply to guns manufactured in the state. Since 2010, Wyoming, South Dakota and Arizona have had laws protecting “firearms freedom” from the U.S. government. Since 2008, more than three-quarters of U.S. states have proposed nullification laws.

3. Citizen Defense and Justifiable Homicide

“Almost all national survey estimates indicate that

defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million per year.” [Institute of Medicine and the National Research Council reported through the Center for Disease Control 2013]

It is a citizen’s right to defend against physical attack by using reasonable force, including the use of a firearm. An example of reasonable and necessary force is a situation in which a victim is at home and an intruder unlawfully enters threatening injury. Although state laws should be consulted, generally any force used to defend against the attack, including deadly force, is appropriate.

Many states employ the so-called “Castle Doctrine or as known in Florida “Stand your Ground Laws” allowing persons to use deadly force to protect against attack in their home or an open area. It also gives people the power to protect from illegal trespassing, violent entry, or other activities on their property that may cause them physical harm. A Castle Doctrine also gives people the ability to protect other innocent people in their home from harm. If an intruder or attacker is subjected to lethal force by a person defending their home, and the criminal dies, it could potentially be classified as “justifiable homicide.” In such cases however, there will still be a police investigation. The Castle Doctrine is subject to a number of restrictions. The person on your property must be committing an illegal act in order for you to act in defense, and the occupant must reasonably believe that the intruder or trespasser intends to do them serious harm [table 3].

The stand your ground law which is similar to the castle doctrine, allows defensive and potentially deadly force to be used if under attack in other locations. Florida passed a law in 2005 giving a gun owner the right to shoot an attacker in a public area not just the home. In Florida, under the so-called “stand your ground law” deadly force may be used to protect one from imminent threat of harm. In other words, retreat is not required. Many other states have similar provisions for defensive use of firearms. In Texas there is a “stand your ground” clause similar to such laws in other states; however, the law extends to defending oneself from attack in a vehicle or place of employment from crimes like kidnapping, murder, sexual assault or robbery. The law provides civil immunity to persons who use authorized deadly force against attackers. Critics of stand your ground law have not been silent. In an article published by the Journal article by the Medical Association [13], researchers found the implementation of Florida’s stand your ground law was associated with a 24.4% increase in homicide and a 31.6% increase in firearm-related homicide between 2005 and 2014. The study called into question the value of the law. However, the study is not without critics. The authors failed to differentiate between “homicide” and “murder,” and thus cannot result in valid findings with respect to “murder” in particular or with public safety in general.

4. Firearm Applications

According to Bureau of Alcohol, Tobacco, Firearms, and Explosives [14], the number of firearm applications processed has increased in recent years. It is interesting to note the increase of applications from 2005 to 2015 [figure 2]. Fearful of increasing gun restrictions, California gun sales rose 50 percent in 2016. Gun dealers processed 1,331,322 gun sales in 2016, up by 450,000 from 2015. That's the equivalent of one gun sold for every 30 California residents. In 2016, more than 1 million guns were sold in California. Handgun sales rose 18 percent from 2015, to about 573,000[15]. An added concern is police response time.

Firearm needs may vary on the community, crime rate and general fears. Police response time to emergency calls for service may also vary. In many cities police response for emergency calls vary according to officer availability, traffic conditions, 911 operator efficiency and so forth. As of August 2015, average response time in Dallas was 8 minutes. In Milwaukee in 2010 it took almost 14 minutes on average for officers to respond to priority one emergency calls. The national average is reported to be about 11-minutes [16]. Thus, when violent crime is rampant and police response is slow, citizens may assume more personal protection measures.

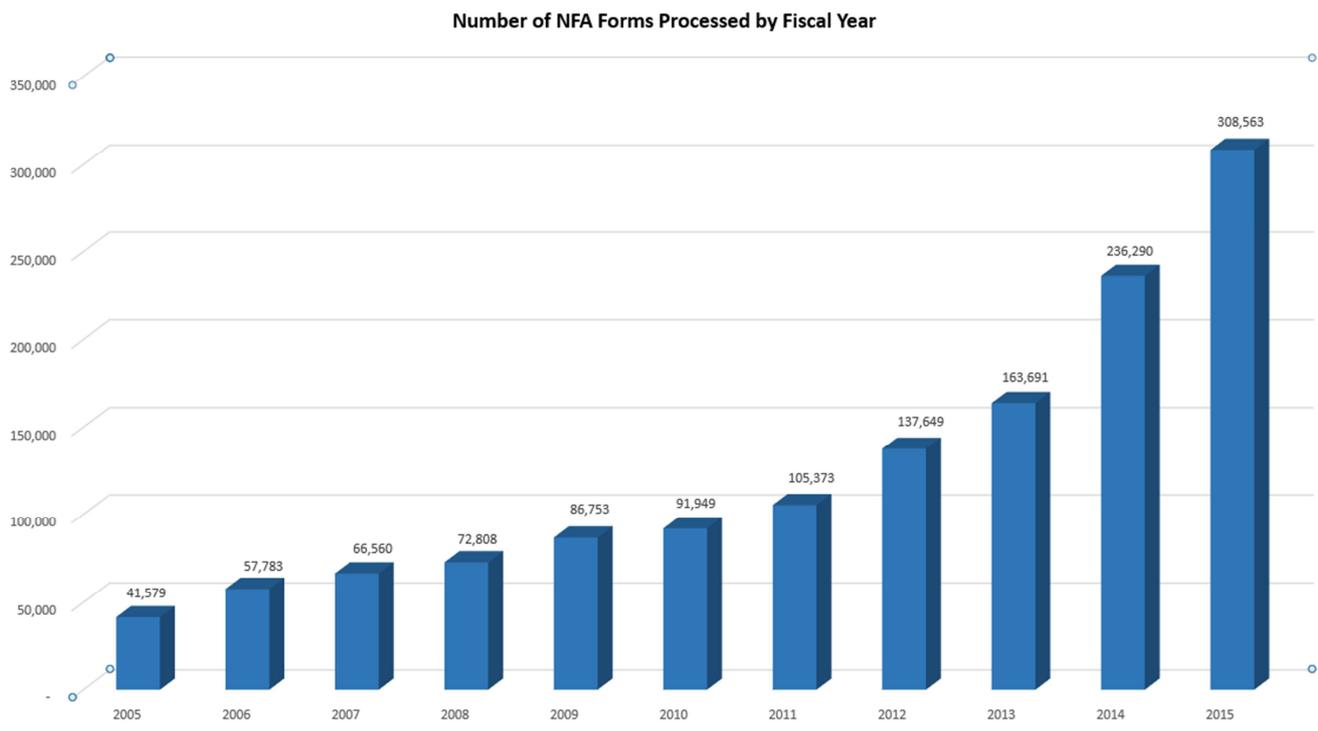


Figure 2. Firearm Applications 2016.

Source: Bureau of Alcohol, Tobacco, Firearms, and Explosives. (2016). Data & Statistics. U.S. Department of Justice. Retrieved from <https://www.atf.gov/resource-center/data-statistics>

Some findings conflict with the previous discussion on the dangers of firearm ownership. Researchers have found fewer than 5% of U.S. homicides are committed in the victim's home by killers using guns kept in that home [17]. Furthermore, the slight risk of such an event occurring is almost completely confined to unusually high-risk subsets of the population because gun violence is largely confined to people with a prior history of criminal behavior. High-risk groups such as street gangs have a higher than average probability of both violence-increasing offensive uses of guns and of violence-reducing defensive uses.

5. Firearms a Protective Measure

A conservative estimate by a major study on gun ownership by Kleck and Gertz [18] revealed 2.5 million protective uses of

guns by adults annually. It should be noted that the research by Kleck and others who argue the benefits of defensive gun use has its critics. In a study by the Violence Policy Center [2017], data from the Department of Justice revealed only 224 justifiable homicides involving a gun in 2014. That same year there were 7,670 justifiable homicides involving a gun. The data suggests a low rate of justifiable shootings, or for every justifiable shooting there were 34 criminal shootings. Despite objections of gun ownership and associated victimizations through the use of guns including suicides and accidents, there is evidence guns offer protection and prevents crime [19]. Based on Gallup opinion polls, Sixty-three percent of Americans believe having a gun in the house provides more safety. This opinion has nearly doubled since 2000, when only one in three agreed with having a gun. The percentage of Americans who say that having a gun in the home makes that

household safer has drastically climbed over the past eight years [20]. The author of a University of Tennessee Law Review article argues that the benefits of guns, as tools to avoid violence, have been ignored for years [21].

Table 3. *California Law on Justifiable Homicide.*

<p>California Law on Justifiable homicide (California Penal code Section 197)</p> <p>Homicide is justifiable when committed by any person in any of the following cases:</p> <ol style="list-style-type: none"> 1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or, 2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or, 3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or, 4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

From another perspective, studies suggest that urban homicide rates combined with the level of police activity can determine increased handgun ownership [22]. And with fiscal problems confronting many cities such as Detroit and Chicago plagued with high homicide rates and decreased law enforcement resources, one can assume increased citizen ownership of guns. In a 1986 survey of 1,900 incarcerated felons by sociologists James Wright and Peter Rossi, they discovered 40% of the inmates had at some time decided not to commit a crime because they believed the intended victim was armed. Three-fifths of the felons said criminals are more worried about meeting an armed victim than meeting the police [23]. While there are many instances of unlawful gun usage, including suicides and accidental shootings, evidence exists of defensive use of guns by armed citizens. Media reports collected by the National Rifle Association and reviewed by this writer indicate a number of cases where citizens used firearms to deter or prevent home invasions [24]. Between January 1, 2017 and June 30, 2017 ninety-one media reports from across the nation reported citizens using guns to deter or shoot home invaders [25]. And of those intrusions, the news reports indicated that 46 percent or 42 of the intruders were armed with a weapon.

A home invasion is when an intruder enters a residence to commit a robbery or burglary and the resident is present. Regarding a completed burglary of residences when someone was home (although unknown to the intruder), this can also be considered a robbery if there is a force or fearful confrontation with the intruder. Research conducted by the U.S. department of Justice between 2003-2007 revealed households composed of single female's home with children had the highest rate of burglary intrusion.

Thirty percent of individuals experiencing violence during a completed burglary faced an armed offender. And, household members were more likely to be injured during a completed burglary (48%) than an attempted forcible entry (8%) when a household member was present and violence occurred [26]. Robbery of residences (or the attempt) is the third type of robbery reported by the FBI in 2015. And, most home invasions occur between midnight and 6:00 a.m. [27]. Additionally, home intrusions increase when homes do not have the level of security found in businesses or more expensive gated or walled communities.

Attempts to ban guns in some cities has been met with legal challenges. Additionally, in 2008 in the case of *Heller v. District of Columbia* [28] the U.S. Supreme court struck down an ordinance preventing private gun ownership in Washington, D.C. In a Chicago case in 2010, the U.S. Supreme court ruled in a 5 to 4 decision that the Second Amendment applies to state and local governments in addition to the federal government as ruled in the *Heller* case (29). In other words the Second Amendment, which protects the individual's right to "keep and bear arms," applies to state and local gun-control laws. However, In the case of *Peruta v. County of San Diego* [30], the Ninth Circuit ruled the Second Amendment right to keep and bear arms does not apply to laws governing the concealed carry of firearm in public. Thus the court upheld restrictions on open carry laws. This case applies to California and Hawaii.

6. Conclusion

To maintain an orderly society, there is an obvious need to regulate gun ownership and gun violence, while recognizing the right of legal ownership of firearms. The myriad gun laws, both state and federal, have done little to reduce violent crime and victimization from dedicated criminals and gang members especially in many American cities. And, the same can be said for the many drug laws which haven't reduced the appetite for illegal substances. All states need consistent restrictions on gun ownership, licensing, and sharing data bases, something that currently isn't practiced. The challenge of restricting gun ownership from the mentally ill, preventing purchases from unlicensed or corrupt gun dealers, internet sales, straw purchases are genuine concerns. Aside from legislation, more aggressive enforcement, prosecutions, and punishment for those who violate gun laws is needed. The United States Supreme Court has ruled the police may search a person if there is reason the person may have a weapon. The search is for the safety of the officer [31]. More aggressive but reasonable stop and frisk policies should be implemented in communities with high crime rates, gang violence, and gun crimes. This would also include vehicle stops where there is possibility of a firearm in the vehicle. The issue is safety of the community and the officer. We cannot ignore the defensive use of guns by citizens, especially those living in high crime communities, living alone, or residing in remote areas. More citizen firearms training and safety programs should be implemented and required in all states. Gun ownership by responsible citizens has proven to reduce violent

victimization or at least provide a sense of security. The second amendment is firmly imbedded right, but the debate about gun regulation, restrictions and shoot don't shot policies will undoubtedly continue for years.

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