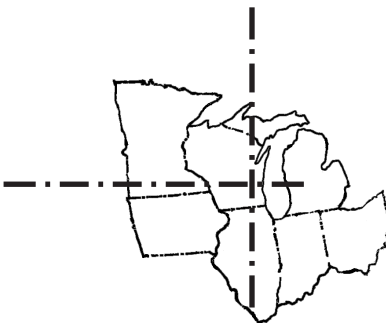

Gun Policy in Seven Midwestern States: A Brief Analysis

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This paper briefly explores certain gun laws in seven states: Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio and Wisconsin. These states, whose laws vary from unusually restrictive to remarkably permissive, present a host of challenges and opportunities for gun violence prevention advocates. Although many questions cannot be answered without further study, we hope that this paper will help identify opportunities for prevention policy in each state.

Our purpose is to review certain key policy areas and explain generally the status of gun policy in each state. The key policy areas we examined include: preemption, child access prevention (CAP) laws, licenses or permits to own or purchase guns, registration, concealed-carry laws, non-dealer transaction regulations, and restrictions on particular types of firearms. We also collected state constitutional provisions concerning the bearing of arms, although we have not adequately explored the case law interpreting these provisions in most states in the sample. A few of the states have other interesting provisions, which we note as appropriate.

We made no effort to evaluate penalty enhancements, the definitions of or punishments for gun-related crimes, or the legislative histories of existing gun laws. We also did not examine the extent to which each state may allow product liability actions against gun manufacturers. Finally, we did not consider the relationship, if any, of each state's gun laws to the epidemiology of gun death and injury in that state. All of these are areas worthy of further study but were outside the scope of this paper.

Summary of Findings

The seven states have widely varying gun laws, and each presents ample policy development opportunities. Illinois and Ohio have not preempted local regulation, which means that community-based activity is viable in those states. New or stronger CAP laws may find significant public support in Illinois, Indiana, Iowa, Michigan, Ohio and Wisconsin, which currently do not hold gun owners fully accountable for irresponsible storage of their guns. The permit or license systems in place in Illinois, Iowa and Michigan could all be strengthened. No state in the sample requires gun owners to pass a proficiency test or to demonstrate an ability to handle a gun safely, although Minnesota arguably imposes this requirement on CCW permit applicants.

Ohio's permissive CCW law stands alone in the sample, although the laws in Indiana and Iowa are not much stronger. Advocates in these states could move to restrict access to CCW permits by promoting a discretionary policy or by emulating the unavailability of permits in Illinois and Wisconsin.

	Constitutional Provision	Preemption	CAP Law	License/Registration	CCW	Private Sales	Bans
Illinois	Yes	No	Yes (14)	Owner's permit	None	Weakly regulated	Junk Guns (800° test)
Indiana	Yes	Yes	No	No	Shall issue	Not regulated	None
Iowa	No	Yes	Yes (14)	Buyer's permit	Weak – May issue	Weakly regulated	None
Michigan	Yes	Yes	No	Purchase license; local registration	May issue	Weakly regulated	None
Minnesota	No	Yes	Yes (18)	No	May issue	Not regulated	Junk Guns (1000° test)
Ohio	Yes	No	No	No	No permit required	Not regulated	None
Wisconsin	Yes	Yes	Yes (14)	No	None	Not regulated	None

Private transactions are uniformly under-regulated in the seven states, in part as a result of the absence of any centralized record keeping or registration systems. California's requirement that private transactions be processed through licensed dealers may be an appropriate starting point for improving the regulation of private sales, but even this solution is incomplete without registration.

A ban on junk guns using the performance tests adopted in California's new law may improve the effectiveness of the prohibitions in Illinois and Minnesota, although the impact of California's approach is not yet known. Similarly, California's new, characteristic-based assault weapon ban may be of interest in some or all of the states in the sample.

State Summaries

Illinois

Overall, Illinois has the strictest gun laws in the sample. The state constitution provides for an individual right to keep and bear arms, but preserves the ability of government to regulate guns as necessary for the health and safety of the public.¹ State law requires all gun owners to get a Firearm Owner's Identification Card, without which one cannot legally buy or possess any firearm or ammunition.² The usual categories of prohibited purchasers are ineligible for a card.³ Every transfer of a firearm is supposed to result in a written record, which the seller must keep for 10 years.⁴ Licensed dealers cannot transfer guns without first requesting a background check of the buyer, and the buyer must wait 3 days for handguns or one day for long guns.⁵ The waiting period applies to all buyers, although only licensed dealers can request background checks.⁶ Illinois recently passed a CAP law establishing criminal penalties for unsafe storage of a firearm.⁷ Finally, the law expressly allows municipal ordinances establishing stricter licensing or registration systems,⁸ and there is no other preemption provision in the code. Accordingly, local governments in Illinois have broad authority to regulate firearms.

Despite these strong laws, there are a few areas where additional policy development would be valuable. First, because the card need only be renewed every five years and private transactions do not generate background checks, people who become prohibited purchasers after receiving a card can buy guns in private sales until the expiration date displayed on the card. Second, the new CAP law only applies if a child under 14 gains access to an improperly stored firearm and harms himself or others. This allows negligent gun owners with older children to escape accountability, and fails to punish gun owners whose negligence is discovered before someone gets hurt. Third, because only licensed dealers can request a background check, private transactions like those often occurring at gun shows remain open to prohibited purchasers. Fourth, a minor can apply for Firearm Owner's Identification Card with the consent of his or her parent or guardian, although the state is not obligated to grant the application. It may be easy for a minor with a card to buy guns from non-licensed sellers without any accountability. Finally, the short waiting period for long gun purchases might create heightened risk for certain crimes of passion to be committed with long guns.

Indiana

Indiana's gun laws have been weakened considerably in recent years, and the state now has very little regulation of access to guns. The state constitution provides that "[t]he people shall have a right to bear arms, for the defense of themselves and the State." Although recognizing that this right is not absolute, the Supreme Court of Indiana has interpreted this provision to create a protected interest in, among other things, carrying a concealed handgun with a license, so long as all of the licensing requirements are met.⁹ The Court has hinted that the Constitution may prevent cities in Indiana from banning handguns,¹⁰ although the adoption of a broad preemption law four years after this opinion eliminated nearly all local regulation of firearms.¹¹

In preparation for the availability of the national instant check system (NICS) on November 30, 1998, the Indiana legislature repealed a seven-day waiting period and a requirement that transaction records be submitted to local law enforcement.¹² Indiana law does not prohibit a person with drug or alcohol problems, a mental health history, outstanding warrants, or misdemeanor domestic violence convictions from obtaining a retail handgun dealer's license.¹³ For sales of long guns, the state does not require any license other than a federal firearms license (FFL). All background checks are conducted through the NICS, and the state police are required to respond to requests for checks "without delay."¹⁴ The dealer may complete the sale if the system does not return a conclusive rejection within one business day or if the state police notify the dealer that a response will take more than one business day.¹⁵

The one-day response requirement creates a huge loophole. In certain situations, background checks conducted through the NICS system result in inconclusive initial results requiring further investigation. For example, the system may reveal that a potential buyer was charged with a felony, without indicating the disposition of the charge. Because it can take a couple of days to track down the result, Indiana's system may allow felons or other prohibited purchasers to buy guns from licensed dealers.

Another large loophole results from the laxity of Indiana's CCW permit law.¹⁶ The law provides that CCW permit applicants must be "of good character and reputation" and must have a "proper reason," for carrying a handgun.¹⁷ Although these requirements appear to create discretion in the issuance of CCW permits, the law defines these terms so as to prevent discretion. The officer reviewing a CCW permit application must investigate the applicant's "official records" and "verify *thereby* the applicant's character and reputation."¹⁸ This unusual construction prevents law enforcement officials from denying permit applications based on informal awareness of the applicant's bad character or reputation, if the "official records" do not affirmatively demonstrate bad character or reputation. Moreover, judicial interpretations of Indiana's constitutional provision establish that self-defense is a "proper reason" for carrying a handgun. In one important case, *Shettle v. Shearer*, an appellate court found that the state may not consider the validity of an applicant's claim of a need for self defense, but must simply accept the applicant's assertion that he or she needs a concealed handgun for self-defense.¹⁹ Consequently, every applicant who asserts a need for self-defense and does not have any disqualifying "official record" must receive a CCW permit.

The CCW permit law exempts permit holders from any background check at the time of transfer, so permit holders who fall into a prohibited class may be able to buy guns from licensed dealers at least until the license expires.²⁰ This problem is compounded by the fact that the law relies on permit holders to return suspended or revoked licenses, of their own volition.²¹

Indiana does not keep centralized records of firearm transactions. The police may not retain transaction records for more than 30 days, and can keep a log identifying only the purchaser, the dealer, an approval number and the transaction date for up to a year.²² However, the dealer is prohibited from including on the background check request form any information about the handgun involved in the transaction.²³ It appears that federally licensed gun dealers are the only source of information about firearms transactions in Indiana.

Indiana's prohibition on transfers to illegal purchasers is extremely weak. Simply providing a handgun to a prohibited purchaser does not appear to be a crime. Rather, Indiana makes it a felony for a person to purchase a handgun with the intent of providing it to a prohibited purchaser. Private sales are not regulated.

There is no true CAP law, although Indiana does make it illegal for an adult to "knowingly, intentionally or recklessly provide a firearm to a child [under 18]." A second provision makes it a crime for an adult to allow a child under 18 to possess a firearm, if the adult is aware of a *substantial risk* that the child will use the firearm to *commit a felony* and fails to take reasonable steps to prevent it. These very narrow provisions do not require adult gun owners to store their guns locked and beyond the reach of children.

Finally, two Democratic legislators representing Gary, Indiana, in the state House of Representatives, Charlie Brown and Vernon Smith, introduced legislation last year to establish a 5% sales tax on firearms. Revenue from the tax would be split between the general fund of the municipality in which the transaction took place and the state's violent crime victims compensation fund. The bill remained in committee during the 1999 legislative session. If adopted, this measure would create a valuable opportunity to study the impact of a tax-generated price increase on firearm sales.

Iowa

Iowa is the only state in the sample without an existing or pending constitutional provision on firearms. Nonetheless, Iowa has relatively weak gun laws at the state level, and prohibits virtually any local gun regulation.²⁴

Iowa requires all handgun purchasers to get an annual permit from local law enforcement. The usual categories of prohibited purchasers, identified through a required background check, cannot get a permit.²⁵ No permit is required for transfers between close family members, or if the buyer has a CCW permit.²⁶ Purchase permit holders and CCW permit holders do not go through a background check at the point of sale. No permit is required for long gun purchases. There is no waiting period for any gun purchases, and, although handgun buyers in private transactions must have a permit, there is no mechanism for ensuring compliance. Long gun sales are essentially unregulated.

Iowa is technically a “may issue” state, although the law allows “any person who can reasonably justify going armed” to receive a one-year CCW permit.²⁷ The issuing officer may deny a permit application if the applicant is under 18, has a felony record, is addicted to alcohol or drugs, has a history of “repeated acts of violence,” or is determined to be a danger to any person.²⁸ Applicants must also complete an approved training course, although no provision is made for demonstrating proficiency or knowledge of safe handling.²⁹ Iowa also distinguishes between “professional” permits, which are valid statewide and available to peace officers, private security guards, private investigators, etc., and “nonprofessional” permits, which are available to everyone else and may be subject to limitations.³⁰

Iowa has a CAP law, but it applies only to cases in which a child under 14 gets an improperly stored firearm and displays it in public or uses it.³¹ In addition, Iowa defines .22 caliber rim-fire ammunition to be rifle ammunition, which means that it can legally be made available to minors in some circumstances.³² Many handgun manufacturers, including some of the California “Ring of Fire” companies, make highly-concealable, low-quality handguns designed to fire .22 caliber rim-fire ammunition.

One unusual provision worth mentioning expressly allows the state department of public safety to sell guns and ammunition at public auction.³³ Guns recovered in crimes and no longer needed as evidence may be sold back into private hands under this provision. In recent months, shootings committed with guns that had been returned to the street by law enforcement agencies have created significant public opposition to this practice.

Michigan

Michigan's constitution contains a provision referring to a right to keep and bear arms for self defense.³⁴ A broad preemption statute severely limits local regulatory authority.³⁵ However, Michigan imposes a license requirement on handgun purchases and grants CCW permits on a discretionary basis.

Michigan's handgun purchase license is valid only for ten days after issuance.³⁶ The license is issued by local law enforcement, and requires passage of a written safety test.³⁷ Applicants who fail the test must have their errors explained to them, and may repeat the test on the same day.³⁸

Michigan does not keep centralized records of firearm transactions. A local law enforcement agency issuing a handgun purchase license may keep a copy of the completed license, which includes a description of the handgun, for up to six years.³⁹ The state also requires gun owners to report the theft of a gun within 5 days of discovery of the theft.⁴⁰

Michigan's CCW system is more complex than most. Each county has a concealed weapon licensing board comprising the prosecuting attorney, the sheriff, and the director of the Department of State Police.⁴¹ This board reviews all applications for CCW permits, which may be granted by majority vote. However, city supervisors and police chiefs have the ability to block CCW applications from residents of their communities, subject to appeal directly to the licensing board.⁴² If granted, CCW permits are valid for three years.⁴³ Case law makes clear that the discretion of CCW boards is extremely broad.⁴⁴

Michigan has one unique statute, which could, in theory, provide some interesting data. Every owner of a handgun in Michigan is required to present that gun to the local law enforcement agency for a "safety inspection."⁴⁵ The chief or sheriff issues a "certificate of inspection," keeps a copy, and forwards a copy to the Department of State Police. This is essentially a local, one-time-only registration requirement for handguns, although compliance is probably extremely low and there is no mechanism for monitoring compliance.

Minnesota

Minnesota's gun laws present an odd mix of statutes, some fairly strong and some extremely permissive. Although there is no constitutional provision currently, two constitutional amendments were proposed this year. The state has a strong preemption law that eliminates virtually all local regulation of firearms, except that municipalities may regulate discharge and zoning.⁴⁶ However, school districts also have the authority to regulate guns on school property.

Minnesota was one of the first states to try to ban the manufacture and sale of Saturday night specials, in 1975.⁴⁷ The statute defines "Saturday night special" to include any pistol that has certain components with a melting point below 1,000 degrees F, or a tensile strength below a specified value.⁴⁸ It would be instructive to compare the population of guns banned by this legislation with the population banned by California's new junk gun law, which uses a different definition.

In contrast, Minnesota allows the sale and possession of “semi-automatic, military-style assault weapons,” treating them the same way as pistols.⁴⁹ Minors under 18 can possess these weapons, unsupervised, if they have completed a course “designed to teach marksmanship and safety.”

Minnesota has two mechanisms for purchasing handguns from dealers, neither of which creates meaningful oversight. First, any person may apply for a free transferee permit.⁵⁰ The application must be approved or denied within seven days,⁵¹ and may be denied only if the applicant is a prohibited purchaser.⁵² Permits are valid statewide for a year.⁵³ Permit holders may buy handguns without a waiting period.⁵⁴ A permit holder may buy as many guns as he chooses during the period of validity of the permit.⁵⁵

Second, a buyer who does not have a transferee permit may submit to a five-day wait and a background check at the point of purchase.⁵⁶ The dealer must submit a report of the transaction to the chief law enforcement officer of the jurisdiction for the purpose of conducting the background check. However, the chief law enforcement officer may waive the waiting period if he wishes. If there is no clear denial within five days, the dealer may complete the sale. Again, there is no limit on how many guns may be purchased in a single transaction. Further, if the buyer requests it, the chief law enforcement officer must return the report of the transfer, and no governmental agency may retain any record of the transaction. No report is required for transfers by a non-dealer.⁵⁷

Concealed-carry permits are regulated more strictly than in most other states, although in actual practice they may not be any harder to obtain. The law prohibits local law enforcement from issuing a CCW permit unless the applicant has completed a hunter safety course or has passed “a test of ability to use a firearm.”⁵⁸ Applicants must also have “an occupation or personal safety hazard requiring a permit to carry.”⁵⁹ The Supreme Court of Minnesota has found that law enforcement officials may exercise discretion in evaluating the validity of an applicant’s claim of a “personal safety hazard,” and suggested that such a claim must demonstrate a “real and immediate danger” to justify the issuance of a permit.⁶⁰

Minnesota has a CAP law that applies to minors under 18.⁶¹ However, the law only applies if the gun is stored loaded, which is defined to mean that there must be ammunition in the chamber or in a magazine that is in the gun. It is not a crime, therefore, to store a firearm unlocked with a loaded magazine, as long as the magazine is not in the gun.

The City of St. Paul recently adopted a resolution to prohibit gun shows on city property, in response to a shooting at an event at the city’s “RiverCentre” facility. This action will likely result in a test of the state preemption statute.

Ohio

Ohio's constitution provides for a "right of the people to bear arms for their defense and security...."⁶² Although judicial interpretations have repeatedly found that this provision does not create a constitutional right to carry concealed weapons,⁶³ Ohio's laws provide very few limitations on access to firearms. Gun buyers do not need a permit, and the state apparently does not maintain records of gun purchases. Gun dealers are not licensed or subject to any limitations, except that it is illegal to sell any firearm to a person under 18, or a handgun to a person under 21, in most circumstances.⁶⁴ It is also illegal for minors to buy or attempt to buy guns.⁶⁵

Concealed carry is especially unregulated in Ohio. State law generally prohibits carrying a concealed firearm, but provides two extremely broad exceptions that nullify the prohibition.⁶⁶ These exceptions allow carrying a concealed firearm while engaged in one's business or occupation, or while engaged in a lawful activity, if the carrier has a reasonable fear of a criminal attack "such as would justify a prudent man in going armed."⁶⁷ Similar exceptions also apply to the state's general prohibitions against going armed into a liquor establishment or while in a car or on a boat. Case law suggests that satisfying the terms of these exceptions is not difficult.⁶⁸

Despite this remarkably permissive arrangement, a measure was introduced last year to formalize Ohio's liberal CCW policy. The bill, HB 23 (Hood), would import Vermont's no-permit concealed carry system, under which any person can carry a concealed weapon at any time.

The paucity of gun laws in Ohio means, however, that local governments probably have very broad regulatory powers. The state has certainly not occupied any substantial portion of the field, and there are no express preemption statutes. A number of cities have adopted their own relatively strict gun laws, including registration and permits, waiting periods, and junk gun bans.

Ohio has no CAP law and no licensing or registration. Gun transactions, whether private or through licensed dealers, appear to be completely unregulated.

Wisconsin

Wisconsin's constitution was silent on guns until November, 1998, when an unusually broad provision was added establishing a right to keep and bear arms "for security, defense, hunting, recreation, or any other lawful purpose."⁶⁹ Although the breadth of this provision has not been established, the inclusion of "recreation" as a protected use of firearms could invalidate some of the state's existing laws, and could limit the viability of new laws. On the other hand, the inclusion of "lawful purpose" suggests a recognition that some purposes are unlawful, and may support the ability of the state to restrict access to firearms.

In 1995, Wisconsin adopted a very broad preemption statute eliminating all local regulation of firearms except for discharge ordinances and zoning restrictions on new shooting ranges.⁷⁰ Local governments may also apply their general sales tax to firearms, although they may not impose any additional tax, such as a gross receipts tax, on firearms sales.⁷¹

Wisconsin has a two-day waiting period for handgun purchases from licensed dealers, although the period may be extended to a third day if necessary to complete a background check.⁷² Private sales are not regulated; indeed, private citizens are prohibited from requesting a background check of a potential buyer.⁷³

There is no provision in Wisconsin for the issuance of CCW permits, and carrying a concealed and dangerous weapon is a misdemeanor.⁷⁴ It is illegal to go into any publicly-owned building while armed, although this prohibition does not prevent gun shows on public property because sellers of guns would not be considered to be "armed" unless the guns were loaded.⁷⁵

Wisconsin also has a CAP law that applies when a child under 14 gains unauthorized access to a loaded firearm and possesses or exhibits it in public, or discharges it.⁷⁶

Pending legislation in Wisconsin would expand the CAP law to apply to children under 18, and prohibit municipal lawsuits against the gun industry.

Conclusion

This brief exploration of gun policy in seven Midwestern states reveals many opportunities for policy advocacy in the region. A more thorough analysis than was possible here would generate a comprehensive menu of policy needs in each state. Meanwhile, however, we hope this paper will be useful to public health advocates as they focus their activities and develop a strategy for improving the gun laws in their states.

¹ Ill. Const. Art. I, Sec. 22.

² 430 I. L. C. S. 65/0.01 et seq.

³ 430 I. L. C. S. 64/4.

⁴ 430 I. L. C. S. 65/3.

⁵ 430 I. L. C. S. 65/3.1; 720 I. L. C. S. 5/24-3.

⁶ *Id.*

⁷ 720 I. L. C. S. 5/24-9.

⁸ 430 I. L. C. S. 65/13.1.

⁹ *Kellogg v. City of Gary* 562 N.E. 2d 685 (Ind. 1990).

¹⁰ *Id.* at 696.

¹¹ I. C. 35-47-11-1 et seq.

¹² I. P. L. 17-1997.

¹³ I. C. 35-47-2-15.

¹⁴ I. C. 35-47-2-5-7.

¹⁵ *Id.*

¹⁶ I. C. 35-47-2.5-1; 35-47-2-3.

¹⁷ I. C. 35-47-2-3.

¹⁸ I. C. 35-47-2-3(c) (emphasis added).

¹⁹ *Shettle v. Shearer*, 425 N.E. 2d 739 (Ind. App. 1981).

²⁰ I. C. 35-47-2.5-2.

²¹ I. C. 35-47-2-5.

²² I. C. 35-47-2.5-8.

²³ I. C. 35-47-2.5-3.

²⁴ I. C. A. 724.28.

²⁵ I. C. A. sec. 724.15.

²⁶ *Id.*

²⁷ I. C. A. 724.7.

²⁸ I. C. A. 724.8.

²⁹ I. C. A. 724.9.

³⁰ I. C. A. 724.6; 724.7.

³¹ I. C. A. 724.22(7).

³² I. C. A. 724.22(6).

³³ I. A. C. 809.21.

³⁴ Mich. Const. Art I, sec. 6.

³⁵ M. C. L. A. sec. 123.1101 et seq.

³⁶ M. C. L. A. 28.422.

³⁷ *Id.*

³⁸ *Id.* at 28.422(3)(i).

³⁹ *Id.* at 28.422(6).

⁴⁰ M. C. L. A. 28.430.

⁴¹ M. C. L. A. 28.426.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Pencak v. Concealed Weapon Licensing Board for County of St. Clair* 872 F.Supp. 410 (E.D. Mich. 1994) (upholding policy of blanket denial of CCW permit applications).

⁴⁵ M. C. L. A. 28.429.

⁴⁶ M. S. A. 471.633; 471.635.

⁴⁷ M. S. A. 624.712.

⁴⁸ *Id.*

⁴⁹ M. S. A. 624.713.

⁵⁰ M. S. A. 624.7131.

⁵¹ *Id.* at subd. 5.

⁵² *Id.* at subd. 4.

⁵³ *Id.* at subd. 6.

⁵⁴ M. S. A. 624.7132.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ M. S. A. 624.714.

⁵⁹ *Id.*

⁶⁰ *In the Matter of the Application of Atkinson*, 291 N.W. 2d 396, 401 (1980).

⁶¹ M. S. A. 609.666.

⁶² Ohio Const. Art. I, sec. 4.

⁶³ *State v. Pauley*, 457 N.E. 2d 864, 867 (Ohio App. 1982) (citing *Mosher v. Dayton* 358 N.E. 2d 540 (1976) and *State v. Fant*, 371 N.E. 2d 588 (1977)).

⁶⁴ R. C. 2923.21.

⁶⁵ R. C. 2923.211.

⁶⁶ R. C. 2923.12.

⁶⁷ *Id.*

⁶⁸ See, e.g., *State v. Assad* 83 Ohio App. 3d 114 (1992) (overturning conviction of store owner for carrying concealed handgun).

⁶⁹ Wis. Const. Art. I, sec. 25.

⁷⁰ Wis. Stat. Ann. 66.092.

⁷¹ *Id.*

⁷² Wis. Stat. Ann. 175.35.

⁷³ *Id.* at 175.35(2f).

⁷⁴ Wis. Stat. Ann. 941.23.

⁷⁵ Wis. Stat. Ann. 941.235.

⁷⁶ Wis. Stat. Ann. 949.55.