

For significant developments regarding waiting periods in 2009, see LCAV's [Recent Developments in Federal and State Law \(by firearms policy\)](#) page.

The following material is from LCAV's February 2008 edition of [Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws](#)

Waiting Periods

Background

Laws imposing waiting periods require that a specified number of days elapse between the time a firearm is purchased and it is physically transferred to the purchaser. The purpose of a waiting period is to: (1) give law enforcement officials sufficient time to perform a background check; and (2) provide a "cooling off" period to help guard against impulsive acts of violence.

Summary of Federal Law

There is no federal waiting period. Under the National Instant Criminal Background Check System (NICS), a dealer may transfer a firearm to a prospective purchaser as soon as he or she passes a background check.¹ If the FBI is unable to complete a background check within three business days, the dealer may complete the transfer by default.²

Federal law does not require private sellers to perform background checks on gun purchasers. Accordingly, persons purchasing firearms from private sellers may take immediate possession of their weapons, unless state or local law provides otherwise.³

SUMMARY OF STATE LAWS GOVERNING WAITING PERIODS

Twelve states and the District of Columbia currently have waiting periods that apply to the purchase of some or all firearms.

States Imposing Waiting Periods for Purchases of All Firearms

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
California	10 days	Cal. Penal Code §§ 12071(b)(3)(A), 12072(c)(1)
Hawaii	14 days	Haw. Rev. Stat. Ann. § 134-2(e)
Illinois	24 hours (long guns) 72 hours (handguns)	720 Ill. Comp. Stat. 5/24-3(A)(g)
Rhode Island	7 days	R.I. Gen. Laws §§ 11-47-35(a)(i), 11-47-35.1, 11-47-35.2

States Imposing Waiting Periods for Purchases of Handguns and Assault Weapons

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
Maryland	7 days	Md. Code Ann., Pub. Safety §§ 5-123, 5-124
Minnesota	7 days ⁴	Minn. Stat. § 624.7132, subd. 4, subd. 12

¹ 18 U.S.C. § 922(t)(1).

² *Id.* See section on [Background Checks](#) for more information on default proceeds.

³ Detailed information about private sales is contained in the section on [Private Sales](#).

⁴ Minn. Stat. § 624.7132, subd. 4 is unclear with respect to the length of the waiting period, referring both to a "five business day waiting period" and a "seven day waiting period."

States Imposing Waiting Periods for Handguns Only

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
District of Columbia ⁵	48 hours	D.C. Code Ann. § 22-4508
Florida	3 days ⁶	Fla. Stat. Ann. § 790.0655(1); Fla. Const. art. I, § 8(b)
Iowa	3 days	Iowa Code § 724.20
New Jersey	7 days	N.J. Stat. Ann. §§ 2C:58-2a(5)(a), 2C:58-3f
South Dakota	48 hours	S.D. Codified Laws § 23-7-9
Wisconsin	48 hours	Wis. Stat. §§ 175.35(2)(d), 175.35(2g)(c)4.c

States Imposing Waiting Periods for Long Guns Only

<i>State</i>	<i>Waiting Period</i>	<i>Citation</i>
Connecticut	2 weeks	Conn. Gen. Stat. § 29-37a

Description of State Laws Governing Waiting Periods

In addition to the District of Columbia, twelve states currently have laws requiring waiting periods: California, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Jersey, Rhode Island, South Dakota and Wisconsin.

1. *States Imposing a Waiting Period on All Firearm Purchases:* California and Rhode Island impose a statutory waiting period on all firearm purchases. Subject to limited exceptions, California requires a ten-day waiting period for all firearm purchases.⁷ Rhode Island imposes a seven-day waiting period for all purchases of firearms unless the purchaser is a concealed handgun license holder or a law enforcement officer. However, the seller must deliver the firearm to the purchaser if within seven

⁵ Note that the District of Columbia bans possession of handguns except in very limited circumstances. In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008. Additional information on the District of Columbia's law prohibiting possession of handguns is contained in the section on [Banning Handguns](#).

⁶ Florida's three-day waiting period excludes weekends and legal holidays.

⁷ In California, if the background check information received is incomplete, preventing the background check from being approved or denied within the ten-day period, the California Department of Justice (DOJ) may notify the dealer of that fact. Cal. Penal Code § 12076(d)(4), (5). The DOJ interprets this provision to allow (but not require) DOJ to notify the dealer to delay the transfer until the background check can be completed.

days he or she does not receive background check information that would disqualify the potential buyer from purchasing the firearm.

In Hawaii, all firearm purchases require issuance of a permit. No permit may be issued earlier than 14 calendar days after the date of the application, except for sales to state or federally licensed dealers, law enforcement officers, persons with a license to carry a handgun, or where a firearm is brought into the state and registered in accordance with the state's registration statute.⁸ All permits must be issued or the application denied before the twentieth day from the date of application. Permits issued for long guns can be used for subsequent purchases of long guns for one year from date of issuance.

In Illinois, it is unlawful for anyone to deliver a firearm prior to the expiration of the statutory waiting periods, which are 24 hours for long guns and 72 hours for handguns. The Department of State Police must approve the transfer or inform the dealer of the applicant's ineligibility within these waiting periods. The waiting periods begin to run at the time an application to purchase the firearm is made. "Application" is defined to mean "when a buyer and seller reach an agreement to purchase a firearm." Non-residents of Illinois who purchase long guns at gun shows are not subject to these waiting periods.

2. *States Imposing a Waiting Period on Purchases of Handguns and Assault Weapons:* Both Maryland and Minnesota impose seven-day waiting periods on purchases of handguns and assault weapons.

In Maryland, any person who transfers a "regulated firearm" (handguns and assault weapons) must wait seven days following the time a prospective purchaser completes an application to purchase the firearm and the application is forwarded to the Secretary of the Maryland State Police.

Minnesota imposes a seven-day waiting period on transfers of handguns and assault weapons from the day the dealer delivers a transfer report to the police chief or sheriff.⁹ The police chief or sheriff may waive part of the waiting period in writing if he or she finds that the transferee requires access to a handgun or assault weapon because of a threat to the life of the transferee or a member of the transferee's household. The waiting period does not apply to transfers by private sellers.

3. *States Imposing Waiting Periods on Purchases of Handguns Only:* Florida, Iowa, New Jersey, South Dakota, Wisconsin and the District of Columbia have waiting periods for handgun purchases only.¹⁰

⁸ Hawaii requires registration of all firearms. Firearms brought into the state must be registered within three days of arrival. Haw. Rev. Stat. Ann. § 134-3(a). Additional information on Hawaii's registration requirements is contained in the section on [Registration of Firearms](#).

⁹ In Minnesota, with certain limited exceptions, if a person wishes to acquire a handgun or assault weapon from a federally licensed dealer, but does not have a transferee permit or a permit to carry, then the dealer must file a report with the police chief or sheriff, after which time the police chief or sheriff will conduct a background check of the prospective purchaser. Minn. Stat. § 624.7132.

¹⁰ In addition, dealers in Washington are prohibited from transferring a handgun to a purchaser until five business days have elapsed from the time of receipt of the application to purchase. Wash. Rev. Code Ann.

a. *48 hours:* South Dakota imposes a 48-hour waiting period for retail handgun sales. Wisconsin prohibits federally licensed firearms dealers from transferring any handgun to any person until 48 hours have elapsed from the time the dealer has been notified, via a background check confirmation number from the Wisconsin Department of Justice, that the transferee is an eligible purchaser.¹¹ In the District of Columbia, in the rare circumstances in which handgun possession is lawful, no seller may deliver a handgun to a prospective purchaser until 48 hours have elapsed from the time of the application.

b. *3 days:* Florida¹² imposes a mandatory three-day waiting period between the retail purchase and delivery of any handgun. In Iowa, no handgun may be transferred until the transferee obtains a permit to purchase the handgun, which becomes valid three days after the date of application.¹³

c. *7 days:* New Jersey prohibits retail firearms dealers from delivering a handgun to any person unless the person possesses a valid permit to purchase a handgun and at least seven days have elapsed since the date of application for the permit. The time period to obtain the permit itself can be as long as 30 days (45 days for non-residents)¹⁴ while the permit application is processed.

d. *Exceptions:* Florida, Iowa, South Dakota, and Washington exempt concealed weapons permit holders from the statutory waiting periods. Florida also exempts persons trading in another handgun. Most states exempt sales to law enforcement.

§ 9.41.090(1)(c). The waiting period can be up to 60 days for anyone without a valid Washington driver's license or state identification card, or for anyone who has been a resident for less than 90 consecutive days prior to the dealer's receipt of the application to purchase. *Id.* However, the waiting period does not apply to concealed handgun license holders, or in cases where the dealer is notified in writing by the local sheriff or chief of police in the jurisdiction where the purchaser resides that the purchaser is eligible to possess a handgun. Wash. Rev. Code Ann. § 9.41.090(1).

¹¹ In Wisconsin, if the background check indicates a felony charge without a recorded disposition, the 48-hour waiting period is extended to the end of the third complete working day commencing after the day on which the finding is made. The Department must notify the firearms dealer of the extension as soon as practicable. During the extended period, the Department is to make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable.

¹² Florida's constitution authorizes counties to enact three to five-day waiting periods in connection with the sale of any firearm occurring within the county. "Sale" is defined to include gun shows and other events open to the public outside of retail firearms establishments. Concealed weapons permit holders are not subject to such waiting periods when purchasing a firearm. Fla. Const. art. VIII, § 5(b). Fla. Stat. Ann. § 790.33(2) limits a county's authority to adopt a waiting period on handgun sales to three working days, subject to various exceptions.

¹³ After the permit is issued, the holder may purchase additional handguns without a waiting period for the duration of the license (one year).

¹⁴ Note that federally licensed dealers may not sell handguns to out-of-state residents. Additional information on transfer restrictions imposed on federally licensed firearms dealers is contained in the section on [Dealer Regulations](#).

4. *States Imposing Waiting Periods on Purchases of Long Guns Only:* In Connecticut, it is unlawful for a person to sell a long gun at retail until two weeks have passed after the date the purchase application is completed and the transferor has received authorization to transfer the firearm to the purchaser. This waiting period does not apply to certain law enforcement officers and military personnel, holders of valid permits to carry handguns, holders of valid hunting licenses, or holders of valid eligibility certificates to possess handguns.

SUMMARY OF SELECTED¹⁵ LOCAL LAWS GOVERNING WAITING PERIODS

Local Laws Governing Waiting Periods

Columbus

Columbus, Ohio, Code § 545.06(b)

Columbus provides that no weapon transaction permit may be issued until at least seven days have elapsed from the date of the permit application.

FEATURES OF COMPREHENSIVE LAW GOVERNING WAITING PERIODS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Waiting period is established for all firearm purchases, of sufficient duration to allow a cooling-off period prior to the purchaser taking possession of the firearm (*California-10 days, Hawaii-14 days, Rhode Island-7 days, Columbus-7 days*)
- Transfer of firearms is prohibited until the background check process has been completed, regardless of whether the waiting period has elapsed (*Colorado*)¹⁶

¹⁵ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "[The Legal Background.](#)"

¹⁶ Colorado has addressed the problem of "default proceeds" under federal law, which results when a firearm is transferred at the end of the waiting period, even if the background check has not been completed. Additional information about the problem of default proceeds and the approaches used in these jurisdictions is contained in the section on [Background Checks.](#)