

**Approved by the ABA House of Delegates,
August 1998**

AMERICAN BAR ASSOCIATION

BAR ASSOCIATION OF SAN FRANCISCO

LOS ANGELES COUNTY BAR ASSOCIATION

COORDINATING COMMITTEE ON GUN VIOLENCE

SECTION OF DISPUTE RESOLUTION

COMMISSION ON DOMESTIC VIOLENCE

STEERING COMMITTEE ON UNMET LEGAL NEED OF CHILDREN

SECTION OF CRIMINAL JUSTICE

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association supports a comprehensive approach to address gun violence by young persons at schools that includes preventative school-based peer mediation programs, firearms education programs, support for increased efforts to enforce laws to prevent unauthorized or illegal access to firearms by minors, and enactment of firearm laws that emphasize prevention, adult responsibility, and safety.

REPORT

Background

School shooting incidents in the most recent school year, involving multiple victims in Mississippi, Kentucky, Arkansas, Pennsylvania, Oregon and Virginia, have raised concern about whether our society can protect children from deadly harm even when in school.

Increasingly, guns have come to be a part of the "culture" of young persons in the United States in ways that were not the case until recent years. In the 1980's trafficking in cocaine and firearms became an unfortunate fact of life in American cities. Because of lax gun laws and little enforcement, there has been widespread illegal trafficking of firearms to young persons and gangs. Widespread gun possession by youth gangs became a reality in U.S. cities. In addition, young persons and children often easily obtain unsecured firearms in their own homes and homes of friends and neighbors. According to a 1997 U.S. Department of Justice Office of Juvenile Justice and Delinquency report, 10

percent of American high school students had carried a gun to school in the past month. On any given school day in American, thousands of young persons will have carried a gun with themselves to school. In incidents in recent months, schools and schoolyards have become the scene of multiple homicides by teenage schoolchildren who easily obtained the firearms used against their peers and teachers.

School-based peer mediation programs

Peer mediation programs are a promising approach to de-escalating conflict and tensions that might lead to violence in school settings. These programs can operate as both a violence preventive safety valve by serving as an outlet for pent up emotions before they result in violence and as an early warning system concerning future potential student violence.

The ABA is currently promoting peer mediation through an initiative of the Dispute Resolution Section. Volunteer lawyers in 27 cities are working to bring peer mediation programs to schools without funds to hire a private organization to implement a program, or that do not have volunteer programs available in their communities. Among the schools that are part of this effort is Galileo High School in San Francisco. The ultimate goal of peer mediation programs is to teach and enhance the next generation's (and perhaps their parents) skills in resolving conflict peacefully. Skills learned through the program can be used not only in the schools, but in students' neighborhoods and throughout their lives. Lawyers participating show that they can be problem solvers, as well as acting on a commitment to resolving disputes through a process that places value on all the parties to a conflict, resolution of conflict through communication and compromise, and maintains the integrity of law.

Such programs offer help in the task of prevention of violence at school. Coupled with outreach into the community and impact within the family, they can contribute to strengthening civility and orderly problem solving among young persons and to keeping schools as an institution where children are protected and safe. Lawyers and the organized bar should and can do more to help their communities in establishing school-based peer mediation programs throughout the United States.

School-based firearm education programs

School based programs aimed at teaching youth about firearm risks are an important component of a preventative approach to school-related gun violence. Firearms education is being introduced in jurisdictions throughout the U.S. as primary prevention programs for school-aged youth and their families premised on the belief that all U.S. children and teens are at risk of gun injury or death. Such programs are designed to help youth develop victim prevention skills and to rehearse behaviors needed to manage problems, such as conflict and peer pressure, non-violently without guns. An important element of such programs is training kids on what to do if they hear that a classmate has brought a gun to school or if they are faced with a violent situation.

Federal support is needed to assist communities in developing partnerships between public schools, community organizations, law enforcement, and parents in developing

educational programs for children about preventing gun violence, and has been proposed by Representative Carolyn McCarthy as the "Children's Firearms Education Act of 1998" in H.R.4073, introduced June 17, 1998 in Congress. Such programs should be supported as part of a strategy that emphasizes prevention, education and safety.

The broader problem of youth gun violence in the United States

While homicide rates in the United States, including those of young persons, have decreased in each of the two most recent years, this has occurred against the backdrop of a decade in which youth homicides grew exponentially. From 1983 to 1995, gun homicides by juveniles tripled, while non-gun homicides declined. Weapons violations are among the top three juvenile crimes, growing 103 percent between 1985 and 1994, according to the 1997 DOJ report. Almost all the increase in youth violent crime involves firearms and is due to easy access to guns.

Worldwide statistics show that the epidemic of violence that has hit younger children in recent years is confined almost exclusively to the United States. Firearms are overwhelmingly the instrument used in committing homicides in the United States and our homicide rate, especially for young persons, remains many times higher than the rest of the industrialized world. More American teenagers now die from gunshot wounds than from all natural causes of disease combined. According to a 1993 United Nations report, nine out of ten killings of young people in the industrialized world happen in the United States. A 1997 report by the Centers for Disease Control concluded that children in America under 15 years old are 12 times more likely to be killed by gunfire than children growing up in 25 other industrialized nations combined, including Israel and Northern Ireland. Pervasive, easy access to firearms is the primary reason.

The Need for Increased Law Enforcement Aimed at Eliminating Gun Trafficking to Minors

In an ABA recommendation and report adopted in August 1994, emphasis was placed on the problem posed by the low priority given to enforcement of gun laws since the enactment of the federal Gun Control Act of 1998. Gun trafficking offenses had been seldom prosecuted unless associated directly with a violent crime. The 1993-enacted Brady Act for the first time since the 1968 Act provided an enforcement mechanism -- a mandatory criminal background check -- to prevent sales to felons. Since then a major federal initiative aimed at tracing guns used in crime by young persons to the source was undertaken to trace guns, with a commitment to prosecute the underlying gun trafficking crimes in every case in the cities where it has been undertaken.

In 1996, the Youth Crime Gun Interdiction Initiative in 17 major U.S. cities was begun with the primary goals of: (1) documenting how juveniles and youth illegally obtain firearms; (2) enabling Federal and local law enforcement agencies to assess the illegal firearms problem in their communities and develop strategies to combat it; (3) reporting on greatly increased ATF tracing of firearms recovered by enforcement agencies.

In a report to the Secretary of the Treasury in July 1997, the Bureau of Alcohol, Tobacco and Firearms reported that trace requests had increased to 37,000 from 20,000 in the first

year. The efforts to date have helped to identify criminal activity and focus law enforcement resources on illegal gun trafficking, particularly to minors. The program has reported that firearms are rapidly diverted from first retail sales at federally licensed gun dealers to an illegal market, accounting for at least a quarter of all firearms that police recover from juveniles and youth.

In Boston, the Youth Crime Gun Interdiction Initiative has been recognized as an integral part of community strategies to led to the city going just over two years without a single youth homicide. The program is expected to become a major part of a national strategy to reduce access to firearms by minors by enabling communities to conduct comprehensive, community-based gun tracing which will target the source of crime guns for minors. There is currently strong bipartisan support in Congress for expanding this program significantly over the next several years, though funding remains problematic. This potentially powerful enforcement program to shut down youth access to illegal guns should be supported in a comprehensive national strategy to address gun violence at schools and elsewhere.

Children's firearm injury surveillance

Federally supported research on the incidence of childhood injury and death due to firearms is being conducted by the Centers for Disease Control through its Center for Injury Prevention and Control. The goal of this type of research is to gather information regarding fatal and nonfatal firearm injuries involving children under 21 years of age, including information regarding mortality, morbidity, disability, type and characteristic of the firearm used in the shooting, relationship of the victim to the perpetrator and the time and circumstance of the shooting. The data gathered is regarded by the national scientific community as objective information of use to policy makers and particularly of interest and value to the public health community.

Firearms injury research has been under attack in the U.S. Congress by the pro-gun lobby as "bogus science" and "politically motivated." Proposed legislation in Congress, the Children=s Firearm Injury Surveillance Act of 1998 in H.R.4073, would direct federal funding for continuation of this research by the Centers for Disease Control. The ABA should support this legislation to gather data as an essential step in assisting law makers and others in addressing strategies to prevent future gun violence and help identify policies that increase safety and reduce injury and death.

ABA Policy

The American Bar Association has focused on legal policy solutions to prevent access by minors and adult criminals to firearms. The ABA House of Delegates first addressed regulation of firearms in 1965, following the recommendations of a task force created in response to the assassination of President John F. Kennedy. Among its principal recommendations for a system of regulating sales of guns through federally licensed firearms dealers was a prohibition on sales to minors. In 1973 the ABA House approved a recommendation supporting legislation to more carefully regulate possession of firearms, first pointing to the need to carefully restrict the legal circumstances of their possession by minors. In 1991, the House approved a recommendation supporting legislation to

provide criminal penalties for adults' failure to properly safeguard firearms, when injury or death to minors results. The ABA in 1994 approved a recommendation which, among other things, supports enactment of safety standards for guns as consumer products, and enactment of requirements that specific, proven safety features be incorporated in the manufacture and sale of all firearms, such as gun locks and load indicators, to prevent accidents and unauthorized access to guns in the home by teenagers and children.

In all its recommendations, the ABA has emphasized the need for more careful regulation of firearms, with increased legal responsibilities for gun dealers and adult gun owners to keep guns from children and youth. This recommendation is consistent with other ABA positions related to regulation of firearms and gives further specific emphasis to new programs and laws to prevent access to firearms by minors, increase adult responsibility and reduce injury and death through safety measures.

GENERAL INFORMATION FORM

Submitting Entity:

Los Angeles County Bar Association (LACBA)

Bar Association of San Francisco (BASF)

Submitted By:

Lee Edmon, President, LACBA

Lindberg Porter Jr., President, BASF

1. Summary of Recommendation(s).

That the American Bar Association support a comprehensive approach to address gun violence by young persons at schools that includes school-based peer mediation programs, firearms education programs, support for increased efforts to enforce laws to prevent unauthorized or illegal access to firearms by minors, and enactment of firearm laws that emphasize prevention, adult responsibility, and safety.

2. Approval by Submitting Entity.

Approved by both LACBA and BASF on July 27, 1998.

Approved by the Section of Dispute Resolution and Coordinating Committee on Gun Violence on July 28, 1998.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The ABA House of Delegates first addressed regulation of firearms in 1965, following the recommendations of a task force created in response to the assassination of President John F. Kennedy. Among its principal recommendations for a system of regulating sales of guns through federally licensed firearms dealers was a prohibition on sales to minors. In 1973 the ABA House approved a recommendation supporting legislation to more carefully regulate possession of firearms, first pointing to the need to carefully restrict the legal circumstances of their possession by minors. In 1991, the House approved a recommendation supporting legislation to provide criminal penalties for adults' failure to properly safeguard firearms, when injury or death to minors results. The ABA in 1994 approved a recommendation which, among other things, supports enactment of safety standards for guns as consumer products, and enactment of requirements that specific, proven safety features be incorporated in the manufacture and sale of all firearms, such as gun locks and load indicators, to prevent accidents and unauthorized access to guns in the home by teenagers and children

5. What urgency exists which requires action at this meeting of the House?

Appropriation's legislation in the U.S. Congress will likely be finalized in September for the Departments of Commerce, Justice and State, including provisions to expand enforcement efforts through the Youth Crime Gun Jurisdiction Initiative. Other pending issues are of strong public concern, as indicated by the scheduling of a National Summit on School Safety and School Violence for October 15, 1998. Adoption of the resolution would permit the Association to play a role in contributing to the Summit and to the national discussion of these issues.

6. Status of Legislation. (If applicable.)

The Children's Gun Violence Prevention Act, H.R.4307 and S.2185, would address school-based firearm education programs, the Youth Crime Gun Interdiction Initiative, and the Children's Firearms Injury Surveillance program, discussed in the Report, and is expected to receive Congressional attention when the next school year begins late next month. As noted above, the gun tracing program and firearms injury research legislation will be voted on as a part of appropriations legislation as well, expected to be finalized by Congress in September.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

The Recommendation and Report is being circulated to all Sections and Division staff directors and will be placed on the House of Delegates List Serve.

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.) Edward E. Kallgren