

AMERICAN BAR ASSOCIATION**ADOPTED BY THE HOUSE OF DELEGATES****AUGUST 9-10, 2010****RECOMMENDATION**

RESOLVED, That the American Bar Association urges federal, state and territorial governments to enact laws requiring that all newly-manufactured semi-automatic pistols be fitted with microstamping technology which would ensure that when a firearm is fired, an alphanumeric and/or geometric code would be stamped on the cartridge casing by way of the firing pin, breech face or other internal surfaces of the firearm, that would enable law enforcement to identify the serial number of the pistol and hence the first known purchaser of a weapon used in a crime.

REPORT
(REVISED)

I. Introduction

As a firearm is discharged, tool marks on the interior surface of the weapon (unintentional byproducts of the manufacturing process) create markings on the expended cartridge casing. These markings take the form of microscopic scratches and indentations. For close to one hundred years, trained firearms examiners have used these markings to help identify or match a cartridge case with the weapon from which it was discharged. The unintentional markings on an expended cartridge cannot, however, identify a specific firearm unless the firearm has been recovered and a test round has been produced for comparison. This is a significant limitation on the ability of law enforcement to identify a firearm from which a cartridge was fired and to solve crimes involving gun violence.

Intentional firearms microstamping, in contrast, allows guns used in a crime to be identified without the need to recover the gun itself. Microstamping uses the same forces that produce the transfer of unintentional markings to create a unique code that can be extracted from the expended cartridge case by a firearms examiner. The technology uses lasers to make precise, microscopic engravings on the internal mechanisms of a handgun, such as the breech face and firing pin. As the gun is fired, information identifying the make, model and serial number of the gun is stamped onto the cartridge as alphanumeric and geometric codes.

II. Why This Recommendation is Necessary

Microstamping enables law enforcement to identify semi-automatic pistols directly through cartridge casings found at crime scenes, much like a license plate enables law enforcement to identify a car's make, model and VIN number. Since cartridge evidence is much more likely to be recovered at the site of shootings than the gun itself, microstamping enables law enforcement to use the microstamped markings on the cartridge to obtain the serial number and to begin an immediate trace request. As stated by the International Association of Chiefs of Police: "This technology would be used to help law enforcement to identify the first known purchaser of a weapon used in crime, therefore providing leads that would allow for substantial evidentiary information that will help identify, apprehend and arrest criminals."¹

This technology would also deter federal crimes involving "straw purchases" in which a prohibited person recruits an individual with a clean criminal record to pass a background check and purchase a firearm for that person. "Straw purchasers" would be less likely to act in that capacity if they knew that the gun could be successfully traced back to them after the gun was used in the commission of a crime.

¹Resolution of the International Association of Chiefs of Police adopted at the 115th Annual Conference, San Diego, California, November 11, 2008.

Thus, microstamping would give law enforcement a new investigative tool. In most cases, learning the identity of the original purchaser would not be the end but rather just the first step in an investigation. Evidence of the identity of the original purchaser obtained by use of the microstamps does not mean that the original purchaser should be charged with the crime in the absence of other competent and admissible evidence identifying the original purchaser as the actual perpetrator of or accomplice to the crime. Put another way, before any charge is brought against the original purchaser, additional investigation will have to be conducted to determine at the very least that the weapon which has been identified by use of the microstamp has remained in the possession, custody and/or control of the original purchaser and has not been transferred, legally or illegally, to another person such as, for example, by theft. Further, introduction of microstamping evidence at a criminal or civil trial would require that the proponent of the evidence meet the jurisdiction's prerequisites for the admission of scientific evidence. The Court would rule on the question of admissibility upon the record made by the parties.

Microstamping does not require the creation of any new database of gun owners or ballistic information; it simply improves the usefulness of an existing tracing system by adding more information to that system. Microstamping does not collect any new personal information from gun owners in any way and has no Second Amendment implications whatsoever.

Requiring the microstamping capability would not materially increase the cost of guns. It has been estimated to cost about \$6.00 per gun to do the microstamping engraving process. Further, the inventors of the technology have relinquished the patent rights back so that any manufacturer can use the technology at no cost.

Peer reviewed research has shown that a broad array of pistols outfitted with the microstamping technology has consistently produced extractable markings through thousands of test rounds. Two papers, which were authored by the inventors of the technology, represent the most extensive testing and evaluation of the microstamping technology.² These studies were relied on by the Committee. The Committee acknowledges that other studies pre-dated this research.³

The patents filed on the existing microstamping technology have expired and as a result it

² Todd E. Lizotte and Orest Ohar, Forensic Firearm Identification of Semiautomatic Handguns Using Laser Formed Microstamping Elements, *Optical Technologies for Arming, Safing, Fuzing, and Firing IV*, edited by Fred M. Dickey, Richard A. Beyer, Proc. of SPIE Vol. 7070, 70700K, (2008); Orest P. Ohar, Todd E. Lizotte, Extracting Ballistic Forensic Intelligence: Microstamped Firearms Deliver Data for Illegal Firearm Traffic Mapping – Technology, *Optical Technology for Arming, Safing, Fuzing, and Firing V*, edited by Fred M. Dickey, Richard A. Beyer, Proc. of SPIE Vol. 7434, 743416, (2009).

³ George G. Krivosta, Nanotag Markings From Another Perspective, *AFTE Journal* –Volume 38, Number 1, 41-47, Winter 2006; David Howitt, Frederic A. Tulleners and Michael T. Beddow, What Micro Serialized Firing Pins Can Add To Firearms Identification In Forensic Science: How Viable Are Micro-Machined Firing Pin Impressions As Evidence. Report from Forensic Science Graduate Group, University of California, Davis, downloaded at: http://extension.ucdavis.edu/masters/forensic_science/pdf/UCD-Microserial%20Number%20CPRC%20Report%20May%20April.pdf.

is available for use by manufacturers. Other microstamping technologies that meet the requirements of the Resolution may exist or become available. The ABA is not recommending the adopting of a specific source of microstamping.

III. Enactment in California

On October 13, 2007, California Governor Arnold Schwarzenegger signed microstamping legislation into law, mandating the microstamping of all new models of semi-automatic handgun models sold in the state beginning this year. The provision is codified at Penal Code Section 12126(b)(7). The legislation garnered the support of 65 police chiefs and sheriffs across the state.

IV. Enactment in the District of Columbia

On March 31, 2009, an amendment to the statutes of the District of Columbia to provide for microstamping on semi-automatic pistols became law. The requirements for microstamping become effective on January 1, 2011. The provision is codified at D.C. Code § 7-2504.08 and § 7-2505.03.

V. Conclusion

To the extent that persons who commit violent crimes by the use of firearms are detected and prosecuted, gun violence in this country will decrease and our citizens will be that much safer. Microstamping technology will be a material aid to law enforcement in the effort to solve crimes committed by use of guns. It is cost effective and will not impinge on the rights of any gun owners. The technology should be required on all newly- manufactured semi-automatic pistols manufactured in this country.

Respectfully submitted,
Honorable Robert B. Collings
Chair, Standing Committee on Gun Violence
August 2010

GENERAL INFORMATION FORM1. Summary of the Recommendation:

In trying to solve violent crimes in which guns are used, law enforcement is limited in the investigative use which can be made of the cartridge casing of spent ammunition which are usually left at the scene. Only if a weapon is recovered will law enforcement be able to do forensic tests to determine whether the particular weapon was used in the crime. Unfortunately, more often than not, the weapon is not recovered at the scene. Fitting newly-manufactured semi-automatic pistols with microstamping technology would enable law enforcement to examine the cartridge casing fired from such weapons and learn the serial number of the weapon used. This, in turn, will enable law enforcement to trace the original purchaser of the weapon and to commence an investigation to attempt to identify the person (whether the original owner or someone else) who used the weapon in the violent crime.

2. Approval by the Submitting Entity:

The Standing Committee on Gun Violence voted to submit the report and recommendation in a telephone conference call on March 23, 2010.

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

No.

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

The proposed policy recommendation builds upon a recommendation adopted by the House of Delegates in August 2004 in support of strengthened investigation, apprehension and prosecution of violent gun offenses. The 2004 approved policy provided for Association support for federal, state and territorial efforts to implement and enforce the nation's gun laws. Specifically, it called for more federal prosecutorial and investigative resources to be devoted to enforcement of laws dealing with illegal trafficking in firearms, corrupt dealer practices, and illegal sales to minors, among others. It supported legislation and administrative steps to implement fully the National Instant Check System (NICS) by requiring federal agencies and departments to cooperate with NICS, by supporting state efforts to automate background records of persons prohibited under existing law from possessing or purchasing firearms, including felony, domestic violence misdemeanor offenses, and mental health-related adjudications. Last, it recommended repeal of a recent legislative amendment that requires destruction of NICS background records within 24 hours and would permit sharing of NICS records and crime trace data with state and local police, which was the longtime practice until adoption of an amendment in January 2004. These steps would help to provide a reliable background

check system to prevent sales of firearms to persons now disqualified under federal law from possessing or purchasing firearms and would focus federal enforcement resources more carefully on illegal trafficking in firearms.

Adoption of the proposed recommendation supporting laws to implement microstamping technology would put the Association on record in support of a step to support stronger law enforcement investigation, apprehension, and prosecution of violent offenders using firearms without posing barriers to lawful gun owners' use and possession of firearms.

5. What urgency exists which requires that action on this matter be taken at this meeting of the House?

To the extent that law enforcement can identify and apprehend those persons who use firearms to commit violent crimes, the public at large will be safer. Since implementation of this recommendation will require the enactment of legislation which usually takes some time, it is important that the effort to get the legislation enacted begin as soon as possible.

6. Pending Legislation.

There is no pending legislation in Congress. Bills to require microstamping are currently pending in Illinois (S.B. 3425), Massachusetts (H.B. 2247), New York (A.B. 6468 and S.B. 6005) and Wisconsin (A.B. 221).

7. Costs to the Association.

None.

8. Disclosure of interests.

No known conflict of interest exists.

9. Referrals.

The report and recommendation will be referred to the following Sections, Divisions, Forums and bar associations within ten days.

Alameda County Bar Association
 Association of the Bar of the City of New York
 Bar Association of San Francisco
 Beverly Hills Bar Association
 Criminal Justice Section
 Dispute Resolution Section
 Domestic Violence Commission
 Family Law Section
 Government and Public Sector Lawyers Division

Individual Rights and Responsibilities Section
Judicial Division
Litigation Section
Los Angeles County Bar Association
Minority Bars Caucus
National Association of District Attorneys
Philadelphia Bar Association
Santa Clara Bar Association
State and Local Government Law Section
Tort Trial and Insurance Practice Section
Young Lawyers Division

10. Contact Person. (Prior to the meeting, please include name, address, telephone number and email address.)

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11. Contract Person. (Who will present the report to the House.)

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EXECUTIVE SUMMARY1. Summary of the Recommendation:

In trying to solve violent crimes in which guns are used, law enforcement is limited in the investigative use which can be made of the cartridge casing of spent ammunition which are usually left at the scene. Only if a weapon is recovered will law enforcement be able to do forensic tests to determine whether the particular weapon was used in the crime. Unfortunately, more often than not, the weapon is not recovered at the scene. Fitting newly-manufactured semi-automatic pistols with microstamping technology would enable law enforcement to examine the cartridge casing fired from such weapons and learn the serial number of the weapon used. This, in turn, will enable law enforcement to trace the original purchaser of the weapon and to commence an investigation to attempt to identify the person (whether the original owner or someone else) who used the weapon in the violent crime.

2. Summary of the Issue which the Recommendation addresses:

The Recommendation addresses the issue of the inability of law enforcement to identify guns used in violent crimes when the cartridge casing, but not the gun, is retrieved at a crime scene.

3. An explanation of how the proposed policy position will address the issue:

Requiring all newly-manufactured semi-automatic pistols to be equipped with microstamping technology will enable law enforcement to identify the gun from the microstamped markings on the spent casing.

4. A summary of any minority views:

None known.