

Testimony of CeaseFirePA Before the Pennsylvania House Judiciary Committee

Shira Goodman, Executive Director

July 17, 2013

Introduction

CeaseFirePA is a coalition of mayors, police chiefs, faith leaders, community organizations and individual Pennsylvanians taking a stand against gun violence. We are the largest gun violence prevention organization in Pennsylvania and engage in education, coalition-building and advocacy with the goals of reducing gun violence, stopping the flow of illegal guns into our communities and keeping guns out of the hands of those who should not have them. Pennsylvania suffers more than 1300 gun deaths a year, and the problem is not limited to our large urban centers. Towns and municipalities across the Commonwealth are struggling with the problem and looking for tools to address it.

We thank the Committee and especially Chairman Marsico and Chairman Caltajirone for holding this hearing and for the opportunity to present testimony. Although CeaseFirePA believes that there are many steps Pennsylvania can and should take to strengthen our gun laws in the effort to reduce gun violence, we proudly acknowledge that the Pennsylvania background check system is working well and has two key elements that should serve as a model for other states. The first is the requirement that every sale of a handgun (with very limited exceptions for close familial transfers) requires a background check. The second is the existence and operation of the Pennsylvania Instant Criminal Background Check System (PICS).

We offer this testimony today to urge the Committee to consider and support measures that would further strengthen and improve this system and to reject measures that would strip it of its effectiveness. Simply put, we urge the expansion of the background check system to cover long gun sales in the same manner as handgun sales; and we urge the maintenance of PICS.

The Pennsylvania Background Check System

Under the Brady Act, any firearms sales by a federally licensed dealer require a background check. Under Pennsylvania law, all handgun sales in Pennsylvania also require a background check, regardless of whether the seller is a federally licensed dealer or a private seller. Private sales of long guns, however, are exempt from the background check requirement.

For the purpose of compliance with the Brady Act, Pennsylvania is a Point of Contact State. This means that Pennsylvania conducts its own background checks, checking both national and state databases for records that would establish someone to be a prohibited purchaser.

As explained by Major Scott R. Snyder, Acting Deputy Commissioner of Staff Pennsylvania State Police in his 2011 Testimony to the Senate Committee on Law and Justice:

Act 17 of 1995, which created PICS, [resulted from] a consensus that Pennsylvania's citizens would best be served by requiring the State Police to establish, maintain, and operate Pennsylvania's own instantaneous background records check system for firearms transactions.

PICS became operational on July 1, 1998. It is housed within the Firearms Division of our Bureau of Records and Identification. The Firearms Division encompasses four different Units: the PICS Instant Check Unit, the PICS Challenge Unit, the Firearms Compliance Unit, and the

Firearms Records Check Unit. Each of these units operates autonomously, but all are reliant on the PICS Instant Check Unit and, in particular, the background checks conducted by this unit.¹

Acting Deputy Commissioner Snyder further testified in 2011 that since its inception, "PICS has processed over 6.6 million calls for background checks – an average of more than 550,000 calls per year. . . . The PICS Instant Check Unit and the Pennsylvania State Police have prevented prohibited persons from illegally obtaining firearms more than 100,000 times."²

The success of PICS is mirrored by the success of the background check system nationally. "Since its creation in 1998, the National Instant Background Check System ["NICS"] has worked well, resolving over 90 percent of checks instantaneously and blocking more than two million gun purchases by prohibited buyers."³

It is clear that the background check system works to prevent prohibited purchasers from buying guns, and it does so quickly and inexpensively. Background checks in no way infringe on the rights of law abiding gun owners. Accordingly, the wide spread support for expansion of the background check system as reflected in Pennsylvania and national polls reflects support from gun owners.⁴

But the gaps in the background check laws are serious -- that certain gun sales are exempt from background checks provides a legal avenue for those who wish to avoid background checks to purchase firearms. In many cases, this proves deadly and tragic.

Pennsylvania has not been immune from such tragedy. In 2011, John Shick - who had a history in multiple states of serious mental illness -- tried to purchase a gun in Portland, OR, but he failed the background check because of that history. Four months later, however, he bought two handguns from a private seller in New Mexico without a background check:

The man who sold him the guns did not know that Shick had been arrested a year earlier after acting erratically at Portland International Airport in Oregon, that police had found a journal filled with paranoid ramblings, and that it had taken six people and a sedative to restrain him when he was taken to a mental hospital for a commitment ordered by a judge. Shick had also been committed in New York City.⁵

Shick came to Pennsylvania, where he would ultimately use these guns to kill one person and injure five

¹ Pennsylvania State Police Testimony, Senate Committee on Law and Justice, May 11, 2011, at 1.

² Id. at 2. These numbers are increasing, as demonstrated by Commissioner Noonan's testimony early this year: 1,025,753 background checks were conducted in 2012 through PICS, represents a 39% increase from 2011. Colonel Frank Noonan, 2013-2014 Budget Request Pennsylvania State Police Statement to House Appropriations Committee (Feb. 20, 2013), http://www.pabudget.com/Display/SiteFiles/154/Documents/HearingTestimony/State_Police_Testimony.pdf.

³ Mayors Against Illegal Guns, http://libcloud.s3.amazonaws.com/9/0f/f/1721/Background_Checks_Fact_Sheet.pdf,

⁴ See, e.g., Quinnipiac University Poll, Jan. 30, 2013, <http://www.quinnipiac.edu/institutes-and-centers/polling-institute/pennsylvania/release-detail?ReleaseID=1836>; Politifact.com, <http://www.politifact.com/truth-o-meter/statements/2013/jul/08/gabrielle-giffords/gabrielle-giffords-says-nh-republicans-gun-owners-/>.

⁵ Moriah Balingit, *John Shick Case Reflects Gun Issues in U.S.*, Pittsburgh Post-Gazette, Jan. 13, 2013, <http://www.post-gazette.com/stories/news/us/john-shick-case-reflects-gun-issues-in-us-670223/>.

others at the Western Psychiatric Institute and Clinic near Pittsburgh before he was fatally shot by police on March 8, 2012.⁶

This Pennsylvania tragedy points out exactly why background checks work. In Oregon, the background check stopped Shick's purchase. In Pennsylvania, a private seller also would have been required to run a background check for the sale of the handguns. But in New Mexico, the background checks were not required. The result: someone who should not have had guns obtained them - through a process that was legal -- and brought them to Pennsylvania to wreak devastation.

There are too many instances just like this that happen all over this country every day. In fact, interviews with prisoners convicted of gun crimes demonstrates how big a problem the exemptions for private sales are: very few of the inmates convicted of gun crimes obtained their guns from a seller where a background check was required; moreover, "96.1% of those inmates who were already prohibited from possessing a gun at the time of the crime obtained the firearm through an unlicensed private seller."⁷

Where private sales are exempt from background checks, they are the avenue of choice for those most likely to be buying firearms with criminal intent. In Pennsylvania, we are fortunate that private sales of handguns require background checks. However, we do have a private seller loophole that should be closed.

CeaseFirePA Supports HB 1010

HB 1010 is a straightforward bill: it simply eliminates the exemption of private sales of long guns from the background check requirement. It ensures that virtually every gun sale in Pennsylvania (except for close familial transfers) requires a background check, regardless of the type of gun or who the seller is. This is a common sense expansion of a system that has been working well in Pennsylvania. It imposes no burden on the rights of law abiding gun owners and closes a legal avenue by which those who seek to avoid background checks can buy certain types of firearms in Pennsylvania.

Although it is true that the majority of gun crimes are committed with handguns, a significant portion of crime guns are long guns. In fact, 25% of firearms recovered in Pennsylvania by the ATF in 2011 (the most recent year for which ATF data is available) were long guns.⁸ This is not insignificant. Moreover, although most homicides in Pennsylvania also are committed with handguns, every year many homicides are committed with long guns.⁹

Since 2006, nine Pennsylvania police officers who have been killed in the line of duty have been killed by long guns. As the chart below reflects, although many of these murders were with semiautomatic rifles, others were with shot guns and other rifles.

⁶ Balingit, *John Shick Case Reflects Gun Issues in U.S.*

⁷ Law Center to Prevent Gun Violence, Private Sales Policy Summary, updated July 2013.

⁸ Bureau of Alcohol, Tobacco and Firearms Gun Tracing Data for Pennsylvania 2011, <http://www.atf.gov/files/statistics/download/trace-data/2011/2011-trace-data-pennsylvania.pdf>.

⁹ Crime in Pennsylvania, Annual Uniform Crime Report 2011, <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2011>; Budget Hearing, Pennsylvania State Police and Office of Homeland Security (February 20, 2013) <http://www.pabudget.com/Display/SiteFiles/154/Documents/HearingTestimony/StatePoliceTranscript.pdf>, at 62-63.

*PA Officers Shot in the Line of Duty by a Long Gun 2011-2006
2007-2011*

OFFICER NAME	TYPE OF LONG GUN	DATE OF DEATH
Robert Allen Lasso	<i>Shotgun</i>	8/11/2011
Kyle David Pagerly	<i>Rifle; AK-47</i>	6/29/2011
Paul Garmong Richey	<i>Rifle; .30-.30</i>	1/13/2010
Michael James Crawshaw	<i>Rifle; AK-47</i>	12/6/2009
Eric Guy Kelly	<i>Rifle; AK-47</i>	4/4/2009
Stephen James Mayhle	<i>Rifle; AK-47</i>	4/4/2009
Paul John Rizzo Domenic Sciuillo, II	<i>Shotgun</i>	4/4/2009
Stephen Liczbinski	<i>Rifle; SKS</i>	5/3/2008
Gary F. Skerski	<i>Shotgun</i>	5/8/2006

Source: Officer Down Memorial Page

URL: <http://www.odmp.org/search/browse?state=PA>

Without question, our police officers have been preyed on by criminals using long guns. The know that those intent on criminal activity can do great harm with any type of firearm. Accordingly, the avenues for purchase of firearms without background checks should be closed.

Also chilling is the high prevalence of the use of long guns in domestic violence murders. As the chart below demonstrates, in Pennsylvania, homicides in domestic violence cases increasingly involve firearms.¹⁰

PA Domestic Violence Related Homicides By Gun By Year			
Year	Total Number of Homicides	Number Committed Use of Firearm	Percentage by Firearm
2012	141	85	60%
2011	166	66	40%
2010	169	61	36%
2009	180	73	41%
2008	147	62	42%
2007	121	46	38%
2006	127	50	39%
2005	180	68	38%
2004	153	72	47%
2003	163	57	35%
2002	157	74	47%
2001	135	51	38%
2000	115	46	40%

Source: Fatality Reports published by the Pennsylvania Coalition Against Domestic Violence

¹⁰ Fatality Reports published by the Pennsylvania Coalition Against Domestic Violence 2000-2012.

Moreover, national statistics demonstrate that about 30% of the homicides committed in the context of domestic violence cases are committed with long guns.¹¹ This makes clear that long guns present a serious danger in the domestic violence context, even if they represent a smaller percentage of crime guns over all.

A recent case here in Pennsylvania demonstrates this all too starkly. In April of this year, in Bucks County, a man subject to a protection from abuse order killed his ex-wife with a shot gun and fired several shots at a police officer with the same gun:

Violeta Isackov was set to marry on April 28. She had an appointment for a final fitting of her light rose-colored wedding dress Thursday night.

But the 45-year-old Northampton resident never showed, never even made it out of her car. She was shot dead in the parking lot of the Feasterville dress shop, allegedly by ex-husband Kenneth Philipp.¹²

During the incident, Isackov's sixteen year old daughter was also injured: "Her daughter, whose father is not Philipp, slightly injured her hand after she was hit with birdshot as she tried to protect her mother by pulling her into the passenger seat with her."¹³ This tragedy followed months of problems:

When the paths of Timothy Friel and Kenneth Philipp crossed at rush hour near a Northampton shopping center last month, it hadn't been their first meeting. Five months earlier, Friel, a Northampton patrolman, had filed charges of terroristic threats and stalking against Philipp after responding to Philipp's former home for a violation of a protection from abuse order his ex-wife Violeta Isackov had obtained.

This second meeting had a more tragic ending, with Philipp shot dead in his Lincoln Town Car while attempting to reload the Winchester 12-gauge pump-action shotgun that he used to fire three rounds at Friel, less than an hour after he murdered Isackov.¹⁴

It is beyond dispute that those intent on doing harm or committing crime can do so with long guns just as effectively -- if not more effectively - - with long guns as with handguns. Had John Shick tried to purchase a long gun in Pennsylvania, he could have obtained one here in a private sale without a background check.

The background check system prevents guns from getting into the wrong hands. The type of gun and type of seller should not matter. When guns get into the wrong hands, tragedy results. The sale and transfer of long guns should be subject to the same requirement as the sale and transfer of handguns. This is common sense, and it is precisely what H.B. 1010 provides.

¹¹ Law Center to Prevent Gun Violence, *When Murder Women: An Analysis of 2010 Homicide Data, 2012*, <http://www.vpc.org/studies/wmmw2012.pdf>

¹² Jo Ciavaglia, *Police: Feasterville Murder Victim Planned to Marry Later This Month*, Phillyburbs.com, April 21, 2013, http://m.phillyburbs.com/my_town/hamptons/police-feasterville-murder-victim-planned-to-marry-later-this-month/article_dd5e129f-d38c-5171-a470-b834dd53a9e0.html.

¹³ *Id.*

¹⁴ Jo Ciavaglia, *Northampton Cop Cleared For Fatally Shooting Man Who Killed Ex-Wife in Lower South*, Philly Burbs.com, May 12, 2013, http://www.phillyburbs.com/news/crime/northampton-cop-cleared-for-fatally-shooting-man-who-killed-ex/article_7fa81d30-2663-538f-a8cf-6c7b876931a0.html.

The Pennsylvania Instant Criminal Background Check System Should Be Maintained

PICS has been a highly effective system that prevents prohibited purchasers from obtaining firearms, offers access to a broader range of records than NICS and offers additional law enforcement benefits. Pennsylvania should maintain PICS as a system that is working. Accordingly, we urge the Committee to reject any efforts to eliminate PICS.

Over the years that PICS has been in effect, there have been attempts or proposals to eliminate PICS and fully rely on NICS for background checks. These efforts have been opposed by the State Police for good reason. During his 2011 testimony, Acting Deputy Commissioner Snyder explained why PICS is a highly valuable system that should be maintained in Pennsylvania:

- PICS includes records NICS does not, including full access to the Commonwealth Law Enforcement Access Network ("CLEAN"), which contains arrest warrants; all protection from abuse orders; and -- until recently when 642,000 records were uploaded, certain mental health records.
- PICS offers better procedures for keeping guns out of the hands of those who should not have them: under NICS procedures, if a determination cannot be made in three days, a sale can go through. However, under PICS, a delay status may persist for fifteen days, after which the sale does not go through but the purchaser has a right to challenge the "undetermined" status. As Acting Deputy Commissioner Snyder stated, "the PICS process provides additional assurance that no firearm will be sold or transferred to a prohibited person once the background check is initiated."
- PICS offers an easier way for a denied purchaser to challenge the denial status, and in fact, unlike the NICS challenge process which places the burden on the challenger, the PICS challenge unit assumes the burden of proof and investigates the validity of the denial.¹⁵

Acting Deputy Commissioner Snyder also testified about some of the additional benefits of the PICS. He explained that PICS has assisted in the capture of hundreds of fugitives by its identification and follow-up investigative procedures.¹⁶ He also noted, "PICS also provides a proactive means to fight domestic violence. When a background check call is forwarded to a legal assistant and the subject has an outstanding protection from abuse order, PICS personnel immediately notify the applicable police agency that the subject is attempting to acquire a firearm."¹⁷ Given the statistics reported above about the increasing use of firearms in domestic violence cases, the ability of PICS to alert law enforcement that someone subject to a protection from abuse order is trying to purchase a firearm is a critical life-saving tool.

Finally, Acting Deputy Commissioner Snyder noted that PICS, unlike NICS, can provide law enforcement officers and agencies in Pennsylvania with a background check prior to returning firearms to those who are claiming a right to the firearm.¹⁸ Commissioner Noonan in his testimony earlier this year before the House Appropriations Committee also commented on the effectiveness of PICS.¹⁹

PICS works, and law enforcement relies on it as a critical tool that keeps firearms out of the hands of those who should not have them. In addition, PICS assists law enforcement in other aspects of their all too difficult jobs.

¹⁵ Pennsylvania State Police Testimony, Senate Committee on Law and Justice, May 11, 2011, at 2-5.

¹⁶ *Id.*, at 3.

¹⁷ *Id.*, at 4.

¹⁸ *Id.*

¹⁹ Budget Hearing, Pennsylvania State Police and Office of Homeland Security (February 20, 2013)

<http://www.pabudget.com/Display/SiteFiles/154/Documents/HearingTestimony/StatePoliceTranscript.pdf>, at 69.

Pennsylvania should be proud of the PICS system and ensure that we maintain it and appropriate the necessary funding to ensure it operates at full capacity.

Conclusion

CeaseFirePA believes that the already strong Pennsylvania background check system can be made stronger and more effective by expanding the law to eliminate the exception for private sales of long guns. This is a simple amendment that would close a legal avenue on which prohibited purchasers rely to purchase long guns.

A crucial part of the success of the Pennsylvania background check system is PICS. This system should be maintained. It is working for Pennsylvania, as ably demonstrated by our top law enforcement officers. Any efforts to dismantle PICS should be soundly rejected.