

**TESTIMONY OF
KIM STOLFER, President
Firearms Owners Against Crime**



**Public Hearing:
Pennsylvania Senate State Judiciary Committee
on
Gun Control
and the
PA Constitutional Right to Keep and Bear Arms
ARTICLE 1, SECTIONS 21 & 25**

September 25, 2019

Good afternoon Chairwoman Baker, Minority Chairman Farnese and Honorable Members of the Judiciary Committee, I am Kim Stolfer, President of Firearms Owners Against Crime. I deeply appreciate the opportunity to testify here today regarding these critically important issues; gun control proposals such as Extreme Risk Protection Orders (SB 90) and other gun control proposals and how they impact the individual citizen's Right to Keep and Bear Arms.

My career in politics began with my research into the controversy surrounding the Second Amendment in 1980 whereupon I found a great deal of the public debate to be disingenuous, ill-informed, and lacking common sense or even fact. If anything, the public debate has only gotten worse over the intervening years in these areas. In fact, one state representative told me in the mid-1990s that "*the Constitution was written by men and I'm a man and I will change it however I see fit*". This attitude seems to be even more prevalent in today's legislature.

In Pennsylvania, the highest law of the Commonwealth (the Constitution) consists of Article 1 made up of 28 Sections, commonly known as the Declaration of Rights. Unlike the remainder of the Constitution (which merely serves as an "operating system" for the government), The Declaration of Rights is the exclusive property of the Pennsylvania citizen, their guarantee of liberty, and the essential condition, historically, on which the rest of the Constitution was ratified.

The Declaration of Rights is not simply a laundry list of things that government generously *allows* its humble subjects to do. It is a list of things that government is absolutely forbidden to do by the people, who were meant to own, embrace and control it. A far better name for it would have been the "Declaration of Limits".

As such, the Declaration of Rights was never intended, by its authors, to be readable and understandable, only by so-called or self-appointed elite "experts" but by everyday citizens. Its mandates are not to be trivialized or interpreted away by judges, courts, lawyers, or collectivist legal "scholars", whose real power lies in controlling individual lives by naked, brute force, if necessary.

Ordinary Pennsylvanians are entitled to express any opinion they wish, a right guaranteed to them under Article 1 Section 7. Legislators, political appointees (bureaucrats), and police officers *gave up that right* when they took an Oath of Office -- required by law -- to uphold, defend and 'obey' the Constitution.

Accordingly, any legislator, bureaucrat who attempts to nullify or suspend any part of the Bill of Rights, in any way, is a criminal having committed perjury when he/she took their Oath of Office. Article 1, Section 21, found in the Declaration of Rights, specifically states "*the right of the citizen to bear arms*" (which, in 18th century terminology simply means, "the right of the individual to own and carry weapons in defense of themselves and the state shall not be questioned"). To make it even more clear, Article 1 Section 25 says that, "*To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.*"

The Declaration of Rights is a floor not a ceiling.

We believe that Constitutional ignorance is an existential threat to our Commonwealth and our Republic and our Freedoms. Our founding document(s) are essentially a contract between the governed and the governing. If neither party understands the terms of a contract it becomes impossible to enforce. If we are unwilling to protect the Constitution it is unable to protect us.

Pennsylvania's Current State of Restrictions on Firearms

Despite what some politicians and groups say publicly, Pennsylvania is the 11th most restrictive state in the nation for the exercise of the individual citizen's right to keep and bear arms. There is no shortage in this state of burdensome and restrictive gun laws. This 'grade' comes directly from the Brady campaign which is a gun control group seeking greater restrictions on the exercise of the right embodied under the Second Amendment. Pennsylvania has a rich history of gun control beginning with the enactment of the uniform firearms act in 1931. This legislative action, among other things, ***imposed universal background checks on the sale of ALL handguns within the Commonwealth of Pennsylvania***, thus **eliminating ANY private sales of handguns** and creating Pennsylvania's current record of sale firearm registration system. Yet these changes have had no net effect on the crime rate and handguns are still the weapon of choice for violent criminals throughout Pennsylvania.

For More Information on Firearms Recovery see BATF Firearms Trace Data for Pennsylvania: <https://www.atf.gov/file/137231/download>

Pennsylvania publishes, and has published for decades, a book called 'Laws Relating to Firearms' and it now contains 148 pages, easily demonstrating that there is no shortage or lack of 'laws' restricting/regulating firearms ownership, possession, use and transfer for citizens. What's more, this publication, '*Laws Relating to Firearms*', has grown from 50 pages in 1995 (1931-1995) to the current 148 pages.

As an example of Pennsylvania's current, 'supposedly' Constitutional laws, Title 18, Section 6106 **prohibits** 'law-abiding citizens' (without a license to carry concealed firearms) from 'transporting' a legal, unloaded firearm anywhere in the Commonwealth except to and from 5 places. These are as follows; from home to the range and back, from home to the gun dealer and back, from home to a recreation home and back and from home to a gun turn-in point and back. Hunting is the 5th narrow exception. It is also case law that there is no allowance for stopping in these travels. Violating this section of law carries either a misdemeanor 1 or felony 3 level of punishment thus denying violators their constitutional rights upon conviction. This section of law is **FAR more restrictive** than even the federal standard. Violations of this section of law, by career criminals, are one of the first charges plea-bargained away in our courts today.

How can anyone, who supports a Constitutional form of government, believe that the above does not violate Article 1, Section 21 and Section 25 of the Pennsylvania Constitution and the 2nd Amendment of the US Constitution? Yet, groups advocating for more restrictions of the Right To Bear Arms say nothing. Even more, these very same groups have never objected to 'any' proposed restrictive law on the Right To Bear Arms at the state 'or' federal level.

This session alone, the Pennsylvania legislature has seen the introduction of **61 Constitutionally repugnant pieces of legislation** that run the gamut from banning firearms, ammunition, taxing a Constitutional right, to banning the exercise of a right because of secret

government lists. These anti-gun groups have tacitly or openly supported these measures with no opposition. This gives the lie to the public statements that 'they' do 'not' want to impinge or take a law-abiding citizens 2nd Amendment rights as each one of these pieces of legislation would expand, significantly, the current intrusive gun laws of the Commonwealth.

Violence in Today's Society

Increasingly, few if any genuinely safe places exist as a refuge from armed, angry, addicted young men pumped up on violent video games, anti-depressant drugs (SSRI's) and suffering from the absence of a moral core. Schools, churches, shopping centers, businesses, and almost every place people gather have become targets for deranged individuals who ignore the 'gun free zone signs' and are set on perpetrating evil and are, in most cases, illegally in possession of lethal weapons. At what point will we have the moral and ethical courage to acknowledge that we have a problem and that all our current gun control laws have failed to impact these situations? In addition, the same groups clamoring for more gun laws, more restrictions are tone deaf to the hypocrisy of their previous promises on the passage of current gun laws.

The frequency and scale of such armed atrocities are symptomatic of a much deeper crisis, fomenting for decades. It is intellectually dishonest for self-serving politicians and some organizations to claim that this crisis is the result of the easy availability of firearms. **Never in the history of our nation** has the ability to exercise the right to keep and bear arms been more restricted. Yet the easy availability of firearms is the flimsy excuse that they use to explain the mass murders that took place in Orlando, Sandy Hook, San Bernardino, Aurora and every other one. Conveniently ignored by these groups and the media is the fact that the majority of them occurred in gun free zones where there was a complete ban on firearms and self-defense was stripped from law-abiding citizens.

While there are policies that could have a beneficial impact on this issue, unfortunately the debate never gets beyond the stalemate over "gun control." As an ardent supporter of the Second Amendment, I am willing to talk about laws impacting possession of guns ***by those who should not have them***. These are the missing components to these discussions such as the importance, impact and culpability of government that fails to enforce the laws we now have and, perhaps more importantly, the moral vacuum created by eliminating values, faith and civility from the public discussion.

Legal gun ownership has increased, yet violent crime with firearms has dropped

- Based on Pennsylvania State Police records in 2006, there were 53,361 violent crimes¹ (murder, nonnegligent manslaughter, forcible rape, robbery and aggravated assault) committed in the Commonwealth. Specifically focusing on violent firearm offenses (homicide, robbery and aggravated assault involving firearms), there were 15,209 in 2006.² In that same year, 415,075 firearms³ were sold to law-abiding Pennsylvanians by or through licensed gun dealers.

¹ See Executive Summary, Crime in Pennsylvania, 2010 Annual Uniform Crime Report, p.8.

² See Pennsylvania 2006 Firearms Annual Report, p. 7.

³ See Appendix B of Pennsylvania 2006 Firearms Annual Report.

- By 2015, the overall violent crime rate had fallen to 40,186.⁴ This reflects an almost 25% reduction in all violent crime since 2006. Violent firearm offenses experienced a 30% reduction, dropping to 10,632 in 2016.⁵ At the same time, annual sales of firearms have more than doubled. In 2016, the Pennsylvania Instant Check System (the background check system for firearm purchases used by gun dealers) logged the sale or transfer of 846,197 firearms by gun dealers.⁶
- **This bears repeating. Based on Pennsylvania State Police statistics, from 2006 to 2016, annual firearm sales in Pennsylvania have more than doubled – all violent crime steadily dropped by almost 25% (2015 figures) - violent firearm offenses dropped by 30%.**⁷

In light of the above, restricting the implements used in violence while ignoring its causes is myopically futile. Our nation's capital, with some of the most restrictive gun-ownership laws in the country, clearly illustrates this point. Washington has a gun murder rate of 18 per 100,000, and the city's gun-control laws have not impeded the violence. Neither have the restrictive laws in Chicago, Illinois or California (the most restrictive state in the nation) impacted the most violent amongst us. Nationwide, as many as 80 percent of gun-related crime involves illegal guns and gangs. Restricting the implements of violence while ignoring the causes is futile. The focus on tools (guns) misses the greater problem.

Do laws virtually eliminating gun ownership stop murder? The United Kingdom, which already has severely restrictive laws on the ownership of firearms, began restricting the sale and possession of knives over three inches long after an epidemic of episodes of knife violence last year. The focus on tools still misses the greater problem.

A deadly game with life-and-death stakes plays out in all cultures when violent people choose to act against their fellow citizens. Rock, paper, scissors, machete, rope, knife, gun – the instruments chosen are secondary to the reasons people strike out.

To achieve safety and security for our families and communities, while preserving the freedom that has made America great, we have only one option: Restore respect for our judicial institutions and law by ensuring the laws get enforced against the most violent amongst us!

In 2007 (04/10-Philadelphia Inquirer), Philadelphia Chief of Detectives Joseph Fox addressed the very same concerns we are facing today when he wrote the following letter to the editor expressing his frustration at a judicial system that refused (*at that time and 'still' valid today*) to hold violent criminals accountable:

We have to stop pointing the finger everywhere but at the very people who prey on us each day. Over time we have allowed our value system to erode. We refuse to hold people accountable for their actions and constantly make excuses for their inexcusable behavior. The incessant cry

⁴ See Executive Summary, Crime in Pennsylvania, 2015 Annual Uniform Crime Report, p. 8. 2016 Annual Uniform Crime Report not yet available as of 10/3/17.

⁵ See Pennsylvania 2016 Firearms Annual Report, p. 7.

⁶ See Appendix C of Pennsylvania 2016 Firearms Annual Report.

⁷ The total for 2016 was 10,632. See Pennsylvania 2016 Firearms Annual Report, p. 7.

for tougher gun laws is a good example. Until we're ready to strictly enforce the current laws there is no reason for tougher ones.

Yes, there is a need to work on the social ills at the core of much of the unrest, but that does not mean we should accept those ills as a reason to excuse the behavior. Those engaged in this violent lifestyle know exactly what they're doing.

They also know it is wrong. And they also know there are no serious consequences for their actions. It's not a matter of not knowing right from wrong, it's a matter of weighing the risk. And today they face very little risk.

Time after time these budding killers are arrested with guns, only to be returned to the streets with a slap on the wrist. Is it any wonder we have trouble getting witnesses to speak up? Instead of holding vigils at murder scenes, groups like Men United for a Better Philadelphia and Mothers in Charge should throw a ring around the Criminal In-Justice Center and demand that our judges hold the criminals accountable.

More than 80 percent of Philadelphia's cold-blooded killers have criminal records. Most of those records are lengthy, many for violent crimes. Every one of those arrests represents an opportunity to send a clear message, before they take another life.

Joseph Fox

Government Failure to Prosecute Criminals with Guns

Many times, over the years, articles have been printed demonstrating a clear connection with the violence in our society and the failure of government to prosecute for violations of our law. Returning criminals to the streets is a key factor in the violent crime issue.

It is a known fact that 80% of the criminal violence with firearms is directly related to gangs. Congressmen Ken Buck filed legislation to target the gangs and their guns just weeks ago and yet his amendment was voted down in the US House of Representatives. This makes many citizens question the seriousness with which government holds regarding violence in our society if not to hold the most violent accountable.

In many cases these are recidivist criminals that the courts have returned to the streets. As an example, the situation with the district attorneys in Philadelphia wherein they were turned hundreds of drug dealers to the streets to commit more crimes! In 2017, a story about this was written in [Newsweek](#). Former district attorney Seth Williams and current district attorney, then a civil rights attorney, joined forces years ago to spring over 1,100 convicted drug dealers out of jail. When the media checked up on the records of these emancipated drug dealers, they found that more than 200 of them had gone on to commit more crimes that included rape, robbery, burglary, aggravated assault, aggravated assault with a gun, attempted murder and murder. <http://www.bigtrial.net/2019/08/a-tale-of-two-philly-das-who-are.html>

In Pennsylvania urban areas there is far too often an air of difference and detachment from the reality of violent recidivist criminals. To make matters worse, this is a decades-old problem that is known throughout the law enforcement community. Case in point; in 2000 a joint project, Operation Target, to focus on recidivist criminals demonstrated that in Allegheny County there were roughly 150 criminals who were responsible for the bulk of violent crime and that these were known “bad actors”.

The same issues abound in Philadelphia, with judges repeatedly dismissing gun charges in a pattern and practice that spans decades. In a May 10, 1998 Philadelphia Inquirer Article, Judge Brady said, "You've got to get more serious," Brady said of gun cases. "Volumewise, you get in an awful spot. There's so darn many, it becomes garden variety. You lose the importance that the gun represents. How deadly it can be." This attitude continues to this day with the current DA, Krasner, giving out sweetheart deals to violent gun wielding criminals who, violate PA Gun Laws, and shoot people such as a deli owner in 2018 with an AK-47. The armed criminal was eventually charged with federal gun crimes by an incensed U.S. Attorney!

CeaseFire PA director Shira Goodman said . . . *When asked about concerns that Krasner might curb Williams-era initiatives, Goodman said she felt confident that the DA-elect and her group were on the same page.* Yet CeaseFire PA has maintained their silence on the record of DA Krasner in failing to deal with the rapidly growing violent crime wave in Philadelphia that many link to his policies. Goodman and CeaseFire PA demonstrate their hypocrisy with their silence on the DA's growing ignorance of the plight of the victims of violent crime, while at the same time calling for more gun control to restrict the rights of law-abiding citizens.
http://www.philadelphiaweekly.com/news/gun-silence-advocates-take-wait-and-see-approach-to-krasner/article_91f37184-d548-11e7-ad51-c7dde9c79c6d.html

Why is there an incessant public clamor about guns on the street and the need for 'more' gun laws from certain groups and politicians but complete silence and zero outrage when government puts hardened and violent criminals back on the street?

It is apparent that there are those amongst us whose baser nature clearly is not changed by passing more laws, especially when they're not used in the courts against the true criminals. Just as clearly is the fact that many in law enforcement see the same problems as well as the important role that the armed citizen plays in today's society:
<https://www.policeone.com/gun-legislation-law-enforcement/articles/6183787-PoliceOnes-Gun-Control-Survey-11-key-lessons-from-officers-perspectives/>

The Facts About Assault Weapons/Rifles, Shotguns and Crime

When it comes to our Second Amendment rights, one major flashpoint seems to be over modern multi-purpose semiautomatic firearms, particularly the AR-15. Now, for those of us who are familiar with [Justice Department statistics](#), we know that rifles are rarely used in murders – in fact, you're more at risk from fists and feet – [696 to 403 in 2017](#), the last full year of stats available at this writing.

In fact, the total number of people killed by rifles of **ALL** types (not just the AR-15 that certain politicians are demanding people be ready to turn in) for the ***last five years*** is less than the total number of people killed by knives in 2017 alone (1,582 to 1,591). Tell that to an average American in normal circumstances, and they'd come away with a clear sense that the AR-15 is not the problem.

Analysis of crimes involving the AR-15 — the so-called "weapon of choice" of mass shooters — produces less-than-impressive numbers. Between 2007 and 2018, 173 people were killed by mass killers using an AR-15, according to a [New York Times analysis](#) — **roughly, 15 per year.** (For perspective, 13 people die per year from [vending machines falling on them.](#)) The

fearmongering regarding this weapon becomes even more apparent when one considers that there are at ‘least’ [8 million AR-15s](#) currently in circulation – the vast majority of which will never be involved in a crime. It’s important to remember that the Las Vegas massacre (58 people killed) and the Pulse Orlando shooting (49 people killed) took place during this same time period. Those two shootings alone accounted for most of those killed during that 11-year span. *Take those out, and a mere 66 people were killed in mass shootings with AR-15s.*

So why are gun control groups getting so much attention for their proposals to ban guns like the AR-15? The obvious reason is that mass murders, like those in El Paso and Dayton, get a lot of media coverage. Gun control groups use the public’s emotional reaction to these tragedies to manipulate support for their agenda in the public and the legislature. [Recent research by the Crime Prevention Research Center](#) shows that there were 71 total shootings from 1998 through June of 2019. A new public tactic is for gun control groups to continuously manipulate [the definitions of what is and is not a mass shooting](#), but CPRC uses the FBI’s definition.

The fact is that in the worst mass shootings, like Las Vegas, Newtown, Parkland, and elsewhere, the weapon used is an AR-15 or some similar rifle. It is also rare, as [the CPRC research](#) shows. According to their data on mass shootings in public places, the weapon most of the shooters use is a handgun, either on its own, or in conjunction with a long gun. Rifles are involved in one way or another with 28 percent of mass shootings. With handguns, it’s 87 percent. (The figures add up to more than 100 percent because some of the mass shooters will use more than one weapon.)

However, the real problem is that with media complicity, some groups have managed to paint a picture that is at odds with the facts intended solely for the purpose of frightening millions of Americans into unjustly infringing on the rights of fellow Americans. This has been a campaign going back three decades, egged on by Josh Sugarmann of the Violence Policy Center, who intentionally waged a campaign of disinformation so that the public would think that all semi-automatic firearms were the same as real machine guns [by exploiting this confusion over the cosmetic features of rifles like the AR-15](#) to advance gun control.

Suspect in Philly Cop Shooting was Prohibited from Possessing Firearms

The recent shooting of six police officers in Philadelphia is being used as a call for gun control. However, revelations that the shooter in question had [a lengthy rap sheet](#) is likely to cause this shooting to fade from the news. Second Amendment supporters should not let that happen.

Like the Parkland and Sutherland Springs mass murders, this was a person who should have been dealt with, from a federal law perspective, long ago by the courts. Very early on, he was caught with a gun that had an altered serial number. That violation of [18 USC 922\(k\)](#) should land someone five years in federal prison.

The Philadelphia cop shooter has a lengthy rap sheet, including a 55-month sentence on gun charges in 2010 for two guns. That really should have been closer to 20 years, not roughly four and a half. This does not include the numerous charges that were plea-bargained away, dropped or which didn’t result in convictions.

This is something those seeking more gun control will try to move on from or ignore, the failure of the courts at the state and federal level to impose the laws we now have!

Why are we not discussing Project Exile that can have a significant impact on those most prone to violence in our inner cities? The provisions of 18 USC 922(d), 18 USC 922(g), 18 USC 922(i), 18 USC 922(j), and 18 USC 922(u) combined with sentencing enhancements from 18 USC 924 can play a big role in this if we are committed to ending the cycle of violence.

The cop shooter in Philadelphia is a classic example of the type of person Project Exile could take out of circulation before they got into a multi-hour shootout with cops (or cause some other tragedy). This guy's state prosecution rap sheet (12 pages long) means that he could have been eligible for the armed career criminal enhancement provided by 18 USC 924(e) – a **15-year mandatory minimum**.

Texas' Response to Mass Murders

The Texas governor has [issued eight executive orders](#) to address what he sees as an information gap that led to the shootings.

WHEREAS, on August 3, 2019, a gunman killed twenty-two people in El Paso and injured dozens more in a despicable act of domestic terrorism; and

WHEREAS, the mother of the El Paso gunman had previously expressed concern to police about her son and the weapon with which he would later commit his cowardly attack; and

WHEREAS, on August 31, 2019, another gunman heinously killed seven people in Odessa and injured dozens more; and

WHEREAS, the Odessa gunman had called both the police and the Federal Bureau of Investigation prior to his shooting spree, had previously failed a background check, and was recently reported to law enforcement for confronting a neighbor while brandishing a semiautomatic rifle; and

WHEREAS, these tragic events come in the wake of other mass shootings in Texas, including one in which a gunman in Santa Fe opened fire in his high school with a shotgun and a revolver, another in which a gunman murdered worshippers at their church in Sutherland Springs, and another in which a gunman fatally ambushed police officers in Dallas; and

WHEREAS, mental instability, racial hatred, extremist ideology, a desire to sow domestic terror, and other factors have contributed to these horrific mass shootings in varying degrees; and

WHEREAS, legislative action has been and will be taken to safeguard against these dangers; and

WHEREAS, in addition to further legislative action, executive action can be taken immediately to help prevent more mass shootings and keep Texans safe; and

WHEREAS, revised and readily available standards for gathering and processing information about potential criminal or terrorist acts can lead to swifter action by law enforcement to prevent such acts, including mass shootings;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order the following:

Order No. 1 Within thirty days of this order, the Texas Department of Public Safety shall develop standardized intake questions that can be used by all Texas law-enforcement agencies to better identify whether a person calling the agency has information that should be reported to the Texas Suspicious Activity Reporting Network.

Order No. 2 Within thirty days of this order, the Department of Public Safety shall develop clear guidance, based on the appropriate legal standard, for when and how Texas law-enforcement agencies should submit Suspicious Activity Reports.

Order No. 3 Within sixty days of this order, the Texas Commission on Law Enforcement shall make training available to educate all law-enforcement officers regarding the standards that will be developed pursuant to Order No. 1 and Order No. 2.

Order No. 4 The Department of Public Safety shall create and conduct an initiative to raise public awareness and understanding of how Suspicious Activity Reports are used by law-enforcement agencies to identify potential mass shooters or terroristic threats, so that the general public and friends, family members, coworkers, neighbors, and classmates will be more likely to report information about potential gunmen.

Order No. 5 The Department of Public Safety shall work with the Texas Education Agency and the Texas Higher Education Coordinating Board on ways to better inform schools, students, staff, and families about the importance of Suspicious Activity Reports and how to initiate that process.

Order No. 6 The Department of Public Safety shall work with local law enforcement, mental-health professionals, school districts, and others to create multidisciplinary threat assessment teams for each of its regions, and when appropriate shall coordinate with federal partners.

Order No. 7 The Department of Public Safety, as well as the Office of the Governor, shall use all available resources to increase staff at all fusion centers in Texas for the purpose of better collecting and responding to Suspicious Activity Reports, and better monitoring and analyzing social media and other online forums, for potential threats.

Order No. 8 Beginning January 1, 2020, all future grant awards from the Office of the Governor to counties shall require a commitment that the county will report at least 90 percent of convictions within seven business days to the Criminal Justice Information System at the Department of Public Safety. By January 1, 2021, such reporting must take place within five business days.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms, and this order shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding governor.

Given under my hand this the 5th day of September, 2019.

GREG ABBOTT

Governor

All of these efforts on the part of Texas Governor Abbott are ones that minimizes the intrusion on citizen's rights while maximizing the ability for law enforcement to deal with potential threats while they're **still just potential threats**. Pennsylvania would benefit from this approach.

On the other hand, promises of security through more government restrictions will only serve to erode our freedoms, destroy trust in our institutions and our government while providing little protection.

Rather, the solution to the violence with firearms plaguing our nation will be found in a willingness to recognize, as did the Founders, that as a people it is only from such an understanding that morality and public virtue must become commonplace and that those traits are essential for freedom 'and' safety to flourish.

Eroding our basic values and our freedoms through new gun laws never has and never will achieve what their proponents seek, a safer Pennsylvania.

ERPO/Red Flag Laws: Dangerous to Liberty and Rights of the Accused

There are four Extreme Risk Protection Order (ERPO herein) bills currently filed this session. Two of these bills, SB 90 and HB 1075, are the most discussed versions of this concept.

“Extreme Risk Protection Orders” have garnered a great deal of attention, with many states enacting or considering them. However, the relative newness of ERPOs makes analyzing their effectiveness a little complicated.

Before 2016, only two states – Connecticut and Indiana – had ERPOs. Most states with ERPOs have less than three years of experience with these laws.

What we have with the two ERPO states poses a bit of a quandary. First, the states are very different in nature. Connecticut, in the Northeast, has a high population density (741 people per square mile), while Indiana is a relatively low-density state (187) in the Midwest. Very different cultures, very different neighboring states, and likely very different gun ownership rates.

We also have to take into account that the laws, as enacted, are functionally very different: **Indiana:** seizure of a person’s firearms if a *police officer* believes the person has a “mental illness” and is “dangerous,” defined as an imminent or future “risk of personal injury” to self or others.

Connecticut: requires an “independent investigation” by police if they believe that a person poses “a risk of imminent personal injury” to self or others; followed by a warrant request, with several formal checks on the judge’s ability to order the seizure and retention of firearms by law enforcement.

As you can see, in Indiana a person can be disarmed by the assessment of one cop, whereas in Connecticut it requires a fair bit of process. Between culture, population density and the laws themselves, we can expect some differences between these two states.

Are Homicides Valid to Include in the Discussion About ERPO’s?

The twin claims about ERPOs is that they will lower suicide rates and prevent homicides by hotheads and lunatics. It is the claim about homicides that we can dismiss.

It should go without saying that we are interested in keeping guns out of the hands of terrorists, criminals, lunatics and hotheads. It is these last two groups who are the target of ERPOs. The question is, what fraction of the gun owning population are these people? Quite small, actually.

- About 4% of the population has a severe mental illness.
- Common estimates are that 40–50% of households own guns, or about 50 million households, on the low end for the nation.

- Combined, that is about 2 million severely mentally ill people *possibly* in the proximity of a gun. But ...
 - As other testimony before this committee will have established, not all mental illness results in violent behavior
 - Families with a member who is mentally ill are much more likely to avoid owning a gun; or at least they would lock it up. The rate, however, is not known.

The point is that identifying a person with a violent mental illness, who has access to a gun, and who fits an ERPO criteria, is a rapidly shrinking number. Hotheads are even tougher to corner because of the subjectivity of evaluation (a mental health professional has a standard set of tools and definitions for a severe mental illness, whereas a patrol officer lacks the same for hotheads).

At FOAC, we try scrupulously to avoid too much speculation, so we did a quick visualization of the before-and-after for our two ERPO states – Connecticut and Indiana. Connecticut saw **no lasting change in their homicide rate**, and the temporarily lower rate of firearm homicides is more directly explained by the rapidly falling rate of such *before* the enactment of their ERPO. Compared to the states without any ERPO, Indiana did no better or worse. This speaks to the notion that:

- The number of lunatics and hotheads tends to be small (especially compared to gang members).
- Proactively identifying them is subjective, sporadic and loaded with false negatives (people assumed to be agitated but actually were not, or not prone to homicide when cranked).

Suicide (analysis) Connectivity

First, let us take to task researchers and some members of the media for ignoring the obvious (the former intentionally, the latter from a lack of journalistic due diligence).

As has been explained in numerous academic studies, people wishing to end their lives are adaptable to the method of choice. In short, if a gun isn't available, other methods are easily substituted, as is easily evidenced in Japan and Mexico where suicides far exceed American numbers. In the psych and criminology fields, this is called “substitution of means” and thus there is no correlation between gun availability and suicide rates.

Some researchers have published on how ERPOs have reduced just *firearm* suicides but conveniently sidestepped the substitution-of-means equalizer. Here is a hypothetical situation, for illustration's sake. Jim is seriously depressed. His wife left him, due to his drinking, which led to him being fired. His friends know Jim owns a gun, so call the cops, and they take his gun from him. But Jim also has his estranged wife's prescription medication she left behind, so he cracks open a fresh bottle of gin and proceeds to swallow every pill he can find. Jim is just as dead as if he had shot himself. Given the vast variety of common substitution of means, ***no self-respecting researcher*** would publish on just firearm suicides in relationship to ERPOs.

Due to substitution of means, the overall suicide rate is what needs measuring. The theory at play is that the taking of the gun was not what might have stopped a suicide, but the human intervention and any mental health treatment that follows might. After all, when you are

depressed and think the world has disowned you, having a few folks show up and try to rescue you might be enough. Jim might not swallow the pills after all when friends, family and cops try to help.

Sadly, this is not the case, by and large. *Connecticut* had an admirably low suicide rate before they enacted their ERPO, which kind of makes you wonder why they bothered. Indeed, were it not for the sudden drop in the state’s suicide rate two years before their ERPO was enacted, there would be no downward slope at all. In fact, their suicide rate is higher after their ERPO was enacted (we note that the uptick in Connecticut’s suicide rate corresponds with the start of the Great Recession – if we assume the spike is caused by that, then Connecticut’s suicide rate was fundamentally flatlined throughout the post-ERPO years). In a similar vein, **Indiana’s** suicide rate closely tracks those states without ERPOs, both before and after the passage of the law.

There are differences, as in the case of Connecticut, that had declining suicide rates before and after their ERPO was enacted. **But the rate of decline was much less afterwards**. With suicides rising nationally after the year 2000, **both** ERPO states saw impairment to their suicide prevention efforts.

In Connecticut, there was a 38-point shift in the slope of the line from before and after passage, and there was a 37-point shift nationally. ***In short, their ERPO made no difference.***

Indiana was a shade more hopeful, but only a shade. Whereas non-ERPO states shifted 20 suicide slope points between the five years before and the five years after Indiana’s enactment of their ERPO, Indiana shifted 14. Not as large of a move as nationally. But their rate of decline in suicides before their ERPO was enacted was smaller than non-ERPO states, and their increase after ERPO enactment was lower as well. Yet the shift in the slope of the lines between Indiana and non-ERPO states was significant but not huge – 14 and 20 points respectively.

Year Enacted 2017

Connecticut	111	109
Indiana	416	604

What does this really mean? In the year Connecticut passed their law, a little over 100 people shot themselves dead. Seventeen years later, about the same (yes, their population rose 5% during that period, so the tiny reduction means something). Likewise, Indiana’s population rose nearly 7% since they enacted their ERPO law, but the number of people who killed themselves with a gun went up 45%. Now contrast the latest total for those two states – 713 firearm suicides – with the 14,542 firearm homicides, largely gang-related, in the most recent year.

“Extreme Risk Protection Order Laws” present serious Constitutional questions and are potentially dangerous to the accused and our Freedoms:

- There is NO conviction required to confiscate the gun owner’s firearms.
- ERPO’s violate a citizens’ 6th Amendment Rights
- There is NO arrest of the gun owner being accused.
- There is NO indictment of the gun owner being accused.
- There is NO notification that the gun owner’s firearms are about to be confiscated. Police show up at your door and steal/confiscate your firearms with NO Due Process!
- **Turns “presumption of innocence” into “presumption of guilty until proven innocent”.**

Expansion of ERPO/Red Flag Orders: One of the most disquieting aspects of these orders in other states is the rate at which the implementation of these orders is expanding to allow a wider and wider group of people who can initiate these orders. As has been seen in domestic violence situations with PFA's, allowing the misconceptions and/or bias of individuals to weaponize official government actions is unconscionable and abuse of authority.

Further, problems are surfacing in other states with these orders that encompass not only wrongful use but even includes at least one fatality of those wrongfully accused.

<https://baltimore.cbslocal.com/2018/11/05/fatal-officer-involved-shooting-in-anne-arundel-county/>

Will this happen in Pennsylvania? The language in SB 90 (page 10) and HB 1075 (page 12) set the stage for problems with vague language on reasons to initiate one of these orders. Allowing government to confiscate firearms because a person tried to 'buy' a firearm in the last 6 months is a constitutional insult. Exercising a right should NOT be justification to take that right! Another example is the wording about 'brandishing' a firearm that has no connection to Pennsylvania firearms law and is arbitrary and vague and sets the stage for abuse.

Perhaps the worst aspect of both SB 90 and HB 1075 is the standard of evidence for 'interim orders' set at the Preponderance of Evidence level. As you know, this is the very lowest level of evidence 'and' when you couple this unconstitutional level of evidence, that the courts have said cannot be used to deny citizens a right, 'WITH' the fact that these orders are issued 'ex parte' the stage is set for travesties of justice and abuse of rights throughout the Commonwealth.

As stated above, there are significant constitutional due process issues with ERPOs. Federal courts have already examined the Pennsylvania Mental Health Procedures Act (MHPA) provision, 302, and concluded that there are 'no' Due Process protections. ERPO's will receive the same Constitutional scrutiny from the courts and, we expect, the conclusion will be reached.

What we can say with safety is that from an effectiveness standpoint, ERPOs do little. We won't say "nothing at all." But the serious trade-off between a robust deference to due process and the small number of lives ERPOs that might be saved is distinct and that the MHPA is a much better choice to utilize to get help for troubled individuals. The flaws in the MHPA, regarding Due Process, deserve to be corrected, as the courts have recognized, and will make the process for dealing with individuals who may be a danger to themselves or others a better option.

The Problems with Universal Background Checks, Real and Unforeseen

Everyone wants to keep criminals from getting guns. But the current background check system is a mess at the state and federal level. It primarily disarms our most vulnerable citizens, particularly law-abiding minorities. Virtually every time the government stops someone from buying a gun, it is a mistake. We're not talking here about preventing guns from falling into the wrong hands — these are people who legally can buy a gun.

There are three basic problems with universal background checks; it will have no effect, the numbers don't prove the case, and the only way to make the scheme remotely effective is repugnant to the people. Those are three big hills to climb. That's why few politicians seem ready to take the hike.

Expanding the background check requirement makes no sense as a response to mass shootings (even though that is how it has been presented), because the perpetrators of these crimes typically either have actually passed background checks or could do so because they do not have disqualifying criminal or psychiatric records.

Crimes with Rifles and Shotguns in Pennsylvania

- *In 2016*, Rifles and Shotguns (of ALL types) were used in 10 and 12 homicides, respectively, for the whole state.
- *In 2017*, Rifles and Shotguns (of ALL types) were used in 11 and 8 homicides, respectively, for the whole state.

(These figures are from the FBI/Uniform Crime Report)

This group of criminal misuse of these types of firearms is the entire universe of homicides that the gun control groups are seeking to interdict with Universal Background Checks (UBC) as, again, Pennsylvania already has eliminated the private sale of handguns. It is important to note that 'none' of these long guns (rifles and shotguns) were privately transferred and ALL of them had a background check conducted during the purchase at a legal Federally Licensed Firearms Dealer.

Most important is that criminals disobey such laws (and according to the Supreme Court in the *Haynes vs. U.S. decision*, **criminals are not legally obligated to**). In a report titled "Firearm Use by Offenders", our own Federal Government noted that *nearly 40 percent of all crime guns are acquired from street level dealers*, who are criminals in the black-market business of peddling stolen and recycled guns. Standing alone, this shows that, at a minimum, "universal" background checks would have an incomplete effect on guns used in crimes.

The story gets worse. The same study notes that just as many crime guns were acquired by acquaintances, be they family or friends (this rather loose category also includes fellow criminals, who are equally unlikely to participate in "universal" background checks). Totaled, nearly 80 percent of crime guns are already outside of retail distribution channels (which are 14 percent of crime gun sources) and outside of transactions made by the law-abiding folks who would participate in "universal" background checks at gun shows (0.7 percent).

When 80 percent of the problem is not addressed by legislation, even if the law was enforced it would be nearly useless. Yet, seemingly, in every tragic case when violence with a firearm occurs, it is all too common to hear calls for an [expansion of background checks](#) for guy buyers or traders. In many cases this expansion is intentionally focused on the private sale of firearms when, in reality, private sales of firearms are not routinely involved in these mass shooting tragedies! This strategy seems logical on its face, and indeed it polls well for the politicians and pundits who suggest it, but an examination of the facts reveals that it is doomed to fail, for numerous reasons.

Not Effective

Existing background checks already cover practically everyone who legally buys a gun. The [mass killers who appear on the news](#) have either managed to pass a background check, or managed to obtain their firearm some other way—either by [purchasing it illegally](#), obtaining it through a straw person purchase, or by using one that belonged to somebody else. A check will not reveal if a seemingly law-abiding individual has been radicalized over internet content, as many in these cases have, or will suddenly snap for other reasons such as abusing antidepressant medication; neither will it prevent people from stealing a firearm from a friend or relative who managed to pass a background check.

Gun control advocates keep claiming that federal background checks have stopped 3 million dangerous or prohibited people from buying a gun. However, what they should say is that there were 3 million “initial denials.” Relying on phonetically similar names along with birth dates doesn’t allow for much accuracy. The same thing happens with the Pennsylvania Instant Check System wherein the true measure of the failure of the system is directly shown by the large number of successful challenges to denials and the low number of successful prosecutions of individuals stopped from purchasing a firearm.

Won’t Stop Illegal Acquisition and Criminal Misuse

The vast majority of violent crime is committed by people who already have a criminal record and obtain firearms illegally; this is especially true of “normal” firearm-related violence, such as that done between gangs or drug dealers. People with felony convictions primarily attain guns from the [black-market](#), and black-market dealers are obviously less willing to examine their customers’ records. If the government was interested in truly impacting these sorts of crimes, they would pursue the strict enforcement of current gun laws through projects such as Project Exile. Expanding the intrusiveness of current background check laws on the exercise of a constitutional right is not the answer and will not help.

To prove this point, one only has to look at the state of California. California has had universal background checks, since the early 90s, on all firearms. Researchers at the University UC Davis completed a survey that builds on a body of work completed by the university’s Violence Prevention Research Program, including [a recent study that concluded gun control policies from the early 1990s did not significantly affect the firearm homicide or suicide rates](#) in the decade after becoming law.

<https://www.sacbee.com/news/california/article221595360.html#storylink=cpy>

It’s important to note that California is the #1 state for mass public shootings ‘and’ all the currently proposed legislation for Pennsylvania is already enacted law in this state. Further, gun control groups have graded California with an ‘A’ for their so-called ‘gun safety grade’.

Additionally, the [Crime Prevention Research Center](#) has found that “*states with these background checks experienced an increase of 15 percent in per capita rates of mass public shooting fatalities. They also saw a 38 percent increase in the injury rate. Nor is there evidence that expanded background checks reduce rates of any type of violent crime, including mass public shootings, suicide, the murder of police officers and domestic violence against women.*”

Michael Bloomberg’s group Everytown—the source of glowing praise for these laws — never actually examines how crime rates change before and after the law is adopted.”

<https://crimeresearch.org/2019/02/at-townhall-background-checks-bill-would-turn-many-well-intentioned-americans-into-criminals/>

Public Support?

Gun-control advocates falsely claim, repeatedly, that 80 percent to 90 percent of Americans support these laws. Yet ballot initiatives in November 2016 in Maine and Nevada were the same as the bill now before Congress, with Maine's initiative defeated by four percentage points while Nevada's barely won by 0.8 percent and is still embroiled in controversy.

What the above indicates is that there is a great disparity between anti-gun rhetoric and reality and that once the public discussion centers and expands on these issues of the efficacy of universal background checks and the public is informed as to what the law is currently, how these laws work now and their flaws and what they cannot do, support for this concept rapidly evaporates. Voters quickly realize they've been hoodwinked into thinking that this process is an answer to violent crime.

Requires Registration of Purchasers to Work

In the rush to do "something," bad legislation is proposed and then has to be justified. When public support for "universal" registration in Congress started slipping, politicians brought out statistics to bolster their case. Unsurprisingly those statistics were as weak as the legislation itself.

"As many as 40 percent of all gun purchases are conducted without a background check," was President Barack Obama's assertion concerning the National Instant Check System (NICS) which is exercised by every licensed gun retailer in the country. Aside from problem that 80 percent of crime guns come from non-retail acquisitions, the president's 40 percent number is horribly mangled and completely inaccurate.

Obama's quoted statistic (which actually totaled 36 percent, not 40 percent) came from a survey conducted before NICS came into being in 1998. The 1994 survey, reported in the 1997 study "Guns in America: National Survey on Private Ownership and Use of Firearms", 36 percent of transfers (not sales just simple transfers of possession) were outside of background checks. "Transfer" is another very loose category which include gifts, trades, inheritances, and loans as well as sales. Indeed, 17 percent of all those transactions were non-sales, and 27 percent were outside of normal retail channels. So "universal" background checks would only extend to an additional 9% of firearm transactions *under the most favorable circumstances*.

To achieve any degree of success, the "universal" background check system would require universal gun registration. [Rep. Sheila Jackson Lee \(D-Texas\) has already acknowledged this](#), which doomed the bill before it was drafted. Despite denials by some politicians, registration has already led to gun confiscation in the United States – in New York, California, Chicago, District of Columbia. Voters are wary of repeating the same process in their home towns. National registration to support "universal" background checks is almost universally repugnant. This is the insurmountable hill representatives and senators face.

According to the Obama Justice Dept. in 2013, National Institute of Justice, “*Universal background checks.... Effectiveness depends on ... gun registration....*” So says the National Institute of Justice, part of the Obama Justice Department, in a 2013 study.

<https://d3uw8jpw49g.cloudfront.net/sharedmedia/1507342/nij-gun-policy-memo.pdf>

The 2nd Amendment provides that “the right of the people to keep and bear arms, shall not be infringed.” Incarcerating persons who fail to register to exercise this constitutional right, to say the least, infringes that right.

Prohibitively Difficult

Proponents of universal background checks hope that they can also monitor gun transfers, but here the infrastructure (gun registration) required is so lacking as to render this a virtual impossibility. Many states lack a centralized registry to keep track of guns, as does the federal government, which means that it is effectively impossible to make sure that any new laws would be followed.

When Oregon tried to expand checks back in 2015, many law enforcement officers said that they were not even going to bother [trying to follow the new rules](#), simply because it would have been too difficult with their limited resources. Combined with the fees and waiting periods for more checks, many shooting enthusiasts will end up ignoring the process, turning law-abiding citizens into instant criminals while not reducing the real problem.

In conclusion, existing firearm background check systems are already taxed to the limit and their functions, especially at the state level, failing in many regards. To expand the pressure on the current systems even further with a new range of duties and obligations without any regard to the impact this will have on citizens’ rights as well as the business and legal environment is beyond irresponsible and will only exacerbate problems without improving them.

Closing Thoughts

It is the oldest mistake in Congress or in the Pennsylvania Legislature. “We must do *something!*” It’s a classic error of logic known as *appellare desperadi*, the appeal to desperation. It inevitably leads to disaster.

You must do *the right thing*, not just anything. This requires thought, reason, facts and a solid plan. Stop perpetual broadcasts and publication of mass murders, especially from the past. “Refrain from gratuitous or repetitious portrayal of mass murderers’ names and images.” The criminals want fame. *Deny them their infamy.*

“We must starve terrorists of the oxygen of publicity which they seek.”

— Margaret Thatcher

At the same time, we simply MUST foster a culture of respect for all human life, from conception to natural death. Also, in response to mass shootings, the response should be focused on the shooter’s depraved heart and the religion or philosophy that drives him, ***not on the instrument used to kill.***

Individuals must start to control what comes into the heart, and society must root itself in virtue, the Commandments, the Beatitudes, and spirituality.

Violence is not something new to this world. Before guns there was violence and mass killings. What has changed is the *mass production of violence and its glamorization*. Movies and video games romanticize violence or make it grotesque, desensitizing the conscious and natural disdain towards it. When the heart becomes numb to violence and taught to act on passions, a violent reaction will occur when someone decides to act. As Jesus said, it is not what is put into the mouth that defiles a man, but what comes out of the heart.

School education needs to include moral and ethical principles founded on the natural law. Last, offering free classes on firearm safety will teach responsible use of firearms, decreasing its glamorization. Wars and crimes will never be eradicated, but violence can be substantially reduced.

Pennsylvania's own Benjamin Franklin said it best:

"They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

---**Benjamin Franklin**, Historical Review of Pennsylvania, 1759.

This is inscribed on the granite façade at the end of the steps, on the left-hand side, leading in to the Harrisburg Capitol building. Perhaps we should stop ignoring this most important historical guidepost of our founding fathers!

Respectfully Submitted,
Kim Stolfer, President
Firearms Owners Against Crime
E-Mail: kimstolfer@foacpac.org
Cell: 412-352-5018