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I. Legislation to Prohibit Commonly-owned Semiautomatic Firearms and their Accessories

A ban on “assault weapons” would not reduce violent crime

Long guns of any description are rarely used in violent crime.¹ FBI Uniform Crime Reporting data breaks down homicides by weapon type.² In 2017, the FBI reported that there were nearly four times as many individuals listed as killed with “knives or cutting instruments,” than with rifles of any kind. The data also shows that rifles were listed as being used in less homicides than “blunt objects (clubs, hammers, etc.)” or “personal weapons (hands, fists, feet, etc.).”³

In 1994, a 10-year federal ban on commonly-owned semi-automatic firearms and their magazines (magazines with a capacity greater than 10 rounds) was enacted as part of the Clinton Crime Bill.⁴ Faced with the reality that so-called “assault weapons,” are rarely used to commit violent crime, a 1997 Department of Justice-funded study of the Clinton ban determined that “At best, the assault weapons ban can have only a limited effect on total gun murders, because the banned weapons and magazines were never involved in more than a modest fraction of all gun murders.”⁵

A 2004 follow-up Department of Justice-funded study came to a similar conclusion. The study determined that “AWs [assault weapons] and LCMs [large capacity magazines] were used in

¹ Crime in the United States 2017, Expanded Homicide Data Table 8, Federal Bureau of Investigation (Sept. 24, 2018).

² *Id.*

³ *Id.*

⁴ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 § 110101, 108 Stat. 1996-2021.

⁵ Jeffrey A. Roth & Christopher S. Koper, Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, Urban Institute, 2 (1997).

only a minority of gun crimes prior to the 1994 federal ban,” “relatively few attacks involve more than 10 shots fired,” and “the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement.”⁶ Presented with the overwhelming evidence of the ban’s inefficacy, Congress did not renew it.

In 2018, the RAND Corporation released a comprehensive study that surveyed the available research on several gun control policies. In the study, RAND researchers sought to determine “How Bans on the Sale of Assault Weapons and High-Capacity Magazines Affect Gun Use Outcomes.”⁷ The study stated, “We found no qualifying studies showing that bans on the sale of assault weapons and high-capacity magazines decreased any of the eight outcomes we investigated.”⁸ The “gun use outcomes” studied included “violent crime.”⁹

A ban on standard capacity magazines would not reduce mass shootings or mass shooting casualties
The 1997 U.S. Department of Justice-funded study of the federal magazine ban noted,

*We were unable to detect any reduction to date in two types of gun murders that are thought to be closely associated with assault weapons, those with multiple victims in a single incident and those producing multiple bullet wounds per victim.*¹⁰

The 2004 U.S. Department of Justice-funded study of the 1994 “assault weapons” ban found that, “relatively few attacks involve more than 10 shots fired,” and that, “it is not clear how often the outcomes of gun attacks depend on the ability to fire more than 10 shots (the current limit on magazine capacity) without reloading.”¹¹

A 2016 article published in Justice Research and Policy, examined 23 mass shootings with six or more victims that occurred between 1994 and 2013 and in which the perpetrator used one or more magazines with a capacity of more than 10 rounds.¹² The study determined,

*In sum, in nearly all [large capacity magazine]-involved mass shootings, the time it takes to reload a detachable magazine is no greater than the average time between shots that the shooter takes anyway when not reloading. Consequently, there is no affirmative evidence that reloading detachable magazines slows mass shooters’ rates of fire, and thus no affirmative evidence that the number of victims who could escape the killers due to additional pauses in the shooting is increased by the shooter’s need to change magazines.*¹³

⁶ Koper, *supra* note 2, at 14, 90, 97.

⁷ The Effects of Bans on the Sale of Assault Weapons and High-Capacity Magazines, RAND Corporation (March 2, 2018), <https://www.rand.org/research/gun-policy/analysis/ban-assault-weapons.html>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Roth & Koper, *supra* note 8, 2.

¹¹ Koper, *supra* note 2, 3, 90.

¹² Gary Kleck, *Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkages*, *Justice Research and Policy*, 17 *Justice Research and Policy* 28-47 (2016).

¹³ *Id.* at 44.

In the aftermath of the 2007 shooting at Virginia Tech, Virginia Governor Tim Kaine convened a review panel to study the tragedy. The perpetrator had used several magazines with a capacity greater than 10 rounds in the shooting. The report stated,

*The panel also considered whether the previous federal Assault Weapons Act of 1994 that banned 15-round magazines would have made a difference in the April 16 incidents. The law lapsed after 10 years, in October 2004, and had banned clips or magazines with over 10 rounds. The panel concluded that 10-round magazines that were legal would have not made much difference in the incident. Even pistols with rapid loaders could have been about as deadly in this situation.*¹⁴

Ownership of commonly-owned semi-automatic firearms and their accessories is protected by the U.S. Constitution

In the *District of Columbia v. Heller* (2008), the U.S. Supreme Court made clear that the Second Amendment protects an individual right to keep and bear arms.¹⁵ Moreover, the Court determined that the Constitution protects ownership of arms in “in common use” for lawful purposes.¹⁶

The firearms industry has estimated that Americans own more than 16 million semi-automatic rifles.¹⁷ So-called “assault weapons” legislation targets, among other firearms, the AR-15. The AR-15 is the most popular rifle in the U.S.¹⁸ The immense popularity of the AR-15 has come about at a time when Americans cite self-defense as their primary reason for owning a gun.¹⁹

The firearms magazines targeted under “assault weapons” legislation are also “in common use.” Estimates place the number of magazines capable of holding more than 10 rounds of ammunition in the hundreds of millions. Illustrating civilian demand and commonality, Californians acquired an estimated one million such magazines in a single week in 2019.²⁰

In 2015, *Heller* decision author Justice Antonin Scalia reiterated that the Second Amendment and *Heller* preclude so-called “assault weapons” bans when he signed onto a dissent from the denial of certiorari in *Friedman v. Highland Park*.²¹ In the dissent, Justice Clarence Thomas explained,

¹⁴ *Mass Shootings at Virginia Tech April 16, 2007: Report of the Review Panel Presented to Governor Kaine, Commonwealth of Virginia*, August, 2007.

¹⁵ *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

¹⁶ *Id.* at 627.

¹⁷ *Modern Sporting Rifle: Introduction*, National Shooting Sports Foundation (accessed August 16, 2019), <https://www.nssf.org/msr/>.

¹⁸ *Why the AR-15 is America's Most Popular Rifle*, NRA Blog, (Jan. 20, 2016), <https://www.nrablog.com/articles/2016/1/why-the-ar15-is-americas-most-popular-rifle/>.

¹⁹ *Key takeaways on Americans' views of guns and gun ownership*, Pew Research, (June 22, 2017), <https://www.pewresearch.org/fact-tank/2017/06/22/key-takeaways-on-americans-views-of-guns-and-gun-ownership/>.

²⁰ Don Thompson, *Gun groups: Million-plus extended magazines flood California*, Associated Press, April 11, 2019.

²¹ Dissent from Denial of Petition for Writ of Certiorari, *Friedman v. Highland Park* 136 S.Ct. 447 (2015).

*Roughly five million Americans own AR-style semiautomatic rifles. The overwhelming majority of citizens who own and use such rifles do so for lawful purposes, including self-defense and target shooting. Under our precedents, that is all that is needed for citizens to have a right under the Second Amendment to keep such weapons.*²²

II. Legislation to Empower the Government to Confiscate Firearms Without Due Process

NRA has never opposed removing firearms from and abrogating the firearms rights of truly dangerous individuals. However, so-called “Red Flag” or “Emergency Risk Protection Order” (ERPO) legislation must appreciate that the individual right to keep and bear arms is a fundamental right protected by the Second Amendment to the U.S. Constitution. Red Flag/ERPO legislation must provide an alleged dangerous individual with adequate due process of law before depriving them of their Second Amendment rights and include other safeguards to prevent the abuse of such a procedure. The legislation advanced by gun control advocates does not provide due process or safeguards commensurate with the deprivation of a constitutional right.

Most ERPO legislation would strip constitutional rights without due process

The Red Flag/ERPO legislation advanced by gun control advocates and their allies in state legislatures empowers the government to strip an individual’s constitutional right to keep and bear arms and seize their firearms pursuant to an ex parte order. Under such legislation, a Red Flag/ERPO may be issued without notice to the respondent or a hearing or other opportunity for the respondent to be heard and present evidence with the aid of counsel. Such safeguards are a requirement for adequate procedural due process.²³

Moreover, the legislative proposals typically empower the government to seize firearms based on an insufficient evidentiary standard, often “probable cause.” A person subject to a potential suspension of a Constitutional right should at the bare minimum be entitled to an evidentiary standard equal to the seriousness of the suspension (clear and convincing) and an opportunity to be heard prior to the abrogation of their rights and seizure of their property. The state or other petitioner in a Red Flag/ERPO scenario should carry the burden of proof.

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides that no state shall “state deprive any person of life, liberty, or property, without due process of law.”²⁴ In *District of Columbia v. Heller* (2008), the U.S. Supreme Court determined that the Second Amendment protects an individual right to keep and bear arms; in the Fourteenth Amendment context, a liberty.²⁵ A respondent’s firearms are, of course, their property.

Aside from the constitutional implications, the absence of due process has practical consequences for those wrongfully targeted under Red Flag/ERPO procedures. Connecticut

²² *Id.* at 449.

²³ *Rogin v. Bensalem Township*, 616 F.2d 680, 694 (3d Cir. 2010)

²⁴ U.S. Const. amend. XIV § 1.

²⁵ *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

adopted an ex parte Red Flag/ERPO procedure in 1999.²⁶ An examination of the law found that 32 percent of ex parte orders issued in Connecticut were overturned following a hearing.²⁷²⁸

Safeguards against abuse of Red Flag/ERPO procedures and for the protection of property

In order to safeguard the rights of those targeted under a Red Flag/ERPO procedure, those who petition the court for these orders should be held responsible for the misuse of these procedures. Legislators should use civil remedies in the Red Flag/ERPO context as a tool to craft legislation that incentivizes the government in the judicious use of these powerful procedures and for the protection of Pennsylvanians' personal property.

Red Flag/ERPO legislation must address the underlying individual and their behavior

Often Red Flag/ERPO legislation does not require the court to take measures to address the allegedly dangerous person's underlying condition or conduct. This leaves the potentially dangerous individual free to continue their course of conduct. If a Red Flag/ERPO procedure that does not address a dangerous individual's underlying conduct were to be used in lieu of a more comprehensive method of addressing the individual's condition, the procedure could hurt rather than help a respondent in need of services and those around them.

Pennsylvania already has adequate civil commitment laws

50 P.S. § 4405 provides that, "Whenever a person appears, by reason of his acts or threatened acts, to be so mentally disabled as to be dangerous to himself or others and in need of immediate care, he may be taken into custody for the purpose of examination."²⁹ Once a person is involuntarily committed they are prohibited from possessing firearms under state and federal law.³⁰³¹

Red Flag/ERPO legislation would create dangerous confrontations between citizens and police

Red Flag/ERPO legislation that provides for the seizure of firearms creates confrontations between armed individuals in their abode and the law enforcement officers tasked with disarming them. The problem is potentially even more acute in the ex parte context, where the arrival of an officer may be the individual's first notice that their rights have been abrogated.

At 5:17 a.m. November 5, 2018, police served a "Red Flag" protective order on the home of 60-year-old Gary J. Willis in Anne Arundel, Md.³² According to the Baltimore Sun, Willis

²⁶ C.G.S.A. § 29-38c.

²⁷ *Red Flag Laws: Examining Guidelines for State Action: Hearing Before the Senate Committee Before the Judiciary*, 116th Cong. 5 (2019) (written testimony of David B. Kopel).

²⁸ Michael A. Norko & Madelon Baranoski, *Gun Control Legislation in Connecticut: Effects on Persons with Mental Illness*, 6 Conn. L. Rev. 1609, 1619 (2014).

²⁹ 50 P.S. § 4405.

³⁰ 18 Pa.C.S.A. § 6105.

³¹ 18 U.S.C. § 922(g)(4).

³² Colin Campbell, *Anne Arundel police say officers fatally shot armed man while serving protective order to remove guns*, Baltimore Sun, November 5, 2018.

brought a firearm when he answered the early morning knock at his door. The confrontation ultimately ended with police shooting and killing Willis in his own home.³³

There is no solid evidence to support Red Flag/ERPO laws

Research on the effectiveness of Red Flag/ERPO laws has been limited. The studies that have been conducted claim to have found reductions in firearm suicide with mixed evidence for a replacement effect, but the scope of these studies is limited and questions about the quasi-experimental study should be considered before using the findings to develop policy.

One study found that 27% of people subject to a risk-warrant seizure in Connecticut between 1999 and 2013 were neither detained nor transported in conjunction with the process. There is also evidence of a replacement effect.³⁴ Twenty-one of the people subject an order committed suicide sometime after the seizure.³⁵ Fifteen used something other than a firearm and five of these people committed suicide within 12 months of the seizure. Eleven of the 21 had been transported in conjunction with the seizure.³⁶

Another study focused on Connecticut and Indiana used a synthetic controls methodology, which uses a pool of donor states to build a weighted “synthetic” version of state to estimate the impact of a specific policy - in this case, the effect of risk-based firearm seizure laws on suicide rates.³⁷ This study claimed to have found an effect on firearms suicide but did find mixed evidence of a replacement effect. The study did not consider additional laws enacted or variations in enforcement during their observation period. There were also differences between the states and the synthetic controls in terms of poverty rate, spirit alcohol consumption, population density. Indiana’s synthetic control also had a lower violent crime rate than the “real” state. These variables were among the predictors included in the model, and the differences suggest that the findings may be flawed as the included variables were chosen because they are known to be associated with state-level suicide rates.

III. The Criminalization of the Private Firearm Transfers

“Universal” background checks do not stop criminals

Background checks don’t stop criminals from stealing firearms, getting them on the black market, or getting them from straw purchasers. According to the U.S. Department of Justice, 75 percent of criminals in state and federal state prison who had possessed a firearm during their offense acquired the firearm through theft, “Off the street/underground market,” or

³³ *Id.*

³⁴ Swanson J, Norko M, Lin H-J, et al, *Implementation and effectiveness of Connecticut's risk-based gun removal law: does it prevent suicides?* 80 *Law and Contemporary Problems* 179-208 (2017).

³⁵ *Id.* at 199.

³⁶ *Id.* at 200.

³⁷ Kivisto AJ & Phalen PL, *Effects of risk-based firearm seizure laws in Connecticut and Indiana on suicide rates, 1981–2015.* 69 *Psychiatric Services* 855–62 (2018).

“from a family member or friend, or as a gift.”³⁸ Less than one percent got firearms from dealers or non-dealers at gun shows.³⁹

ATF has reported, “[t]he most frequent type of trafficking channel identified in ATF investigations is straw purchasing from federally licensed firearms dealers. Nearly 50 percent....”⁴⁰ Criminals defeat the background check system by getting guns through straw purchasers. The terrorists who attacked in San Bernardino, California, in December 2015, used firearms they acquired through a straw purchaser.⁴¹

None of the high-profile shootings that former President Barack Obama named in a White House speech on gun control in January 2016 would have been prevented by requiring background checks on private sales of firearms.⁴² Further, background checks would not have prevented any of the high-profile shootings with 10 or more fatalities that have occurred since Obama's speech.⁴³

Pennsylvania law already requires background checks for the private transfer of handguns

18 Pa.C.S.A. § 6111 requires that a private individual who wishes to transfer a pistol or revolver with a barrel less than 15 inches must “do so only upon the place of business of a licensed importer, manufacturer, dealer or county sheriff's office.”

FBI Uniform Crime Reporting data shows that the vast majority of homicides involving a firearm are perpetrated with a handgun and that by comparison long guns of any kind are rarely used in crime. As previously noted, in 2017, the FBI reported that there were nearly four times as many individuals listed as killed with “knives or cutting instruments,” than with

³⁸ Mariel Alper & Lauren Glaze, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates*, 2016, U.S. Department of Justice Bureau of Justice Statistics, 7 (2019).

³⁹ *Id.*

⁴⁰ *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, Bureau of Alcohol, Tobacco, Firearms and Explosives, 10 (2000).

⁴¹ Richard Winton & James Queally, *Enrique Marquez Jr. faces more charges in San Bernardino terrorist attack*, Los Angeles Times, December 30, 2015.

⁴² Obama mentioned the crimes that took place in Tucson, Fort Hood, Binghamton, Aurora, Oak Creek, the Navy Yard, Santa Barbara, Charleston, Chapel Hill, and Lafayette, all the perpetrators of which passed background checks; Columbine and Kansas City, the perpetrators of which obtained firearms through straw purchasers; San Bernardino, the perpetrators of which obtained firearms through a combination of background checks and straw purchases; Newtown, the perpetrator of which stole the firearms he used; and Blacksburg, the perpetrator of which passed a background check because his disqualifying record hadn't been uploaded to the NICS database.

⁴³ Larry Buchanan, Josh Keller, Richard A. Oppel Jr., Daniel Victor, *How They Got Their Guns*, New York Times, February 16, 2018; Michael Biesecker, Jeff Horwitz, Juan A. Lozano, *Teen held in Texas attack is said to have used father's guns*, Associated Press, May 18, 2018; Richard A. Oppel Jr., *Synagogue Suspect's Guns Were All Purchased Legally, Inquiry Finds*, New York Times, October 30, 2018; John Woolfolk, *Thousand Oaks shooting: Why didn't California's strict gun laws stop it?*, The Mercury News, November 8, 2018. *Virginia Beach shooter bought guns he used legally -federal agent*, Reuters, June 1, 2019; Alanna Autler, *Accused El Paso Mass Shooter, Patrick Crusius Bought Gun Legally*, CBS-DFW, August 5, 2019.

rifles of any kind.⁴⁴ The data also shows that rifles were listed as being used in less homicides than “blunt objects (clubs, hammers, etc.)” or “personal weapons (hands, fists, feet, etc.).”⁴⁵

For 2017, the FBI listed 19 murders in Pennsylvania as having been committed with a rifle or shotgun.⁴⁶ In contrast, handguns were used in 452 murders.⁴⁷ Given this reality, extending the current background check requirement to long guns does not make sense.

Gun control supporters are not being honest

There is no “gun show loophole” or “online sales loophole”

Federal law requires all firearms dealers to be licensed and to initiate a National Instant Criminal Background Check System (NICS) check before transferring a firearm to a non-dealer, regardless of where the transfer takes place.⁴⁸ Federal law is the same, regardless of how people communicate about selling/buying a firearm. Federal law requires those “dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit” to be licensed as firearms dealers.⁴⁹

Background checks are not “the most important thing we can do”

Michael Bloomberg’s gun control group says, “The single most important thing we can do to reduce gun violence is to require a criminal background check for every gun sale.”⁵⁰ The statement is preposterous. Since 1991, when the nation’s violent crime rate hit an all-time high, violent crime has been cut by half, as gun control has been eliminated or ameliorated at the federal, state, and local levels.⁵¹ Most experts attribute the decrease in crime to economic factors, improved policing programs, the reduction in the crack cocaine trade, increased incarceration rates, and other factors unrelated to gun control.⁵² The FBI doesn’t include gun ownership or gun control in its list of crime factors.⁵³

Researchers at the Bloomberg School of Public Health and the UC Davis School of Medicine found that comprehensive background checks and prohibitions based on violent misdemeanors

⁴⁴ Crime in the United States 2017, Expanded Homicide Data Table 8, Federal Bureau of Investigation (Sept. 24, 2018).

⁴⁵ *Id.*

⁴⁶ Crime in the United States 2017, Expanded Homicide Data Table 20, Federal Bureau of Investigation (Sept. 24, 2018).

⁴⁷ *Id.*

⁴⁸ 18 USC 922(t)

⁴⁹ 18 USC (921)(a)(21)(C)

⁵⁰ Facebook Post, Everytown for Gun Safety, April 23, 2014.

⁵¹ Uniform Crime Reporting Statistics Data tool, Federal Bureau of Investigation, <https://www.ucrdatatool.gov/>; Gun control law rollbacks include: The federal “assault weapon” and “large” magazine ban of 1994 expired in 2004. The Brady Act’s waiting period ended in favor of NICS in 1998. The number of states with Right-to-Carry laws increased from 16 in 1991 to 42, accounting for 74 percent of the population today. Almost all states have laws limiting local jurisdictions from imposing gun control restrictions more severe than state law.

⁵² James Q. Wilson, *Hard Times, Fewer Crimes*, Wall Street Journal, May 28, 2011; Husna Haq, *U.S. Crime Rate is Down: Six Key Reasons*, Christian Science Monitor, May 24, 2010.

⁵³ *Uniform Crime Reporting Statistics: Their Proper Use*, Federal Bureau of Investigation (May 2017).

“were not associated with changes in firearm suicide or homicide.”⁵⁴ The study used a synthetic control design, which builds a synthetic California from a weighted combination of “donor states” to estimate the association between the policies and the rates of firearm homicide and suicide.⁵⁵ Ten years after implementation, California and synthetic California had the same firearms-related homicide rate.⁵⁶ The comprehensive background check and violent misdemeanor prohibitions had no effect on firearms-related homicide rates.⁵⁷ “Enactment was not associated with significant and specific changes in rates of fatal firearms violence.”⁵⁸

The “40 percent” myth

In January 2013, the Washington Post gave President Obama “Three Pinocchios” for claiming that 40 percent of firearms are sold without a background check, and noted that the authors of the study upon which the claim is based say, “we don’t know the current percentage, nor does anyone else.”⁵⁹ Colorado’s experience following the enactment of that state’s private transfer restriction law in 2013 also proved the 40 percent figure is a gross overestimate.⁶⁰ Nevertheless, gun control supporters still repeat the “40 percent” claim in their propaganda materials.⁶¹

There is no overwhelming support for “universal” background checks

Gun control supporters claim that 92 percent of Americans support background checks on all firearm transfers.⁶² However, in November 2014, despite gun control supporters spending millions of dollars promoting a private sales background check ballot initiative in Washington (a state more receptive to gun control than most) the initiative was approved by 59 percent of voters.⁶³ Facing the same moneyed interests, in November 2016 Maine voters rejected a

⁵⁴ Castillo-Carniglia, Alvaro et al., *California's comprehensive background check and misdemeanor violence prohibition policies and firearm mortality*, 30 *Annals of Epidemiology* 50-56 (2019).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Glenn Kessler, *The Fact Checker, Obama’s continued use of the claim that 40 percent of gun sales lack background checks*, Washington Post, April 2, 2013.

⁶⁰ *Analysis: Colorado gun law based on flawed estimate*, The Associated Press, July 25, 2014.

⁶¹ E.g., Everytown for Gun Safety: Gun Background Checks Reduce Crime and Save Lives, April 2014; Mayors Against Illegal Guns: Frequently Asked Questions About Background Checks, no date; and Brady Campaign: Press release, Brady Campaign Releases Policy Recommendation Made to White House Task Force, January 11, 2013; Point, Click, Fire, December 2011; Online And Off The Record, September 2014; and Gun Violence in Washington State, no date; Mayors Against Illegal Guns: In The Business Outside The Law, December 2013; and Coalition to Stop Gun Violence, Universal Background Checks.

⁶² Background Checks Save Lives, Everytown for Gun Safety (2015), https://everytownresearch.org/wp-content/uploads/2015/07/Background-Check-Fact-Sheet_70615-3.pdf.

⁶³ Washington Secretary of State, November 4, 2014 General Election Results.

background check referendum by a margin of 52 to 48 percent.⁶⁴ That same year, Nevada voters adopted an unenforceable background check measure 50.45 to 49.55 percent.⁶⁵

“Universal” background checks facilitate firearms registration

NICS would become a registry of firearm transfers if all firearms transfers were subject to NICS checks and the FBI retained records of approved checks indefinitely, both of which gun control supporters have proposed, and such records included information currently maintained on federal Form 4473, documenting the identity of the firearm purchaser and the make, model and serial number of the firearm transferred.⁶⁶ Over time, as people sell or bequeath their firearms, a registry of firearm transfers would become a registry of firearms possessed.

IV. Inadequate Resources for Those Suffering from Mental Illness

As noted previously, Pennsylvania has strong civil commitment laws that empower a variety of persons to intervene when an individual is suffering a mental health crisis.⁶⁷ Further, if a person is involuntarily committed they are then prohibited from possessing firearms under state and federal law.^{68,69} However, much more could be done to ensure that those who suffer from mental illness receive adequate care.

According to the Treatment Advocacy Center, states should strive to provide a minimum of 50 public psychiatric beds per 100,000 residents.⁷⁰ Pennsylvania falls well short of this number. In 2016 there were with only 10.4 beds per 100,000 residents, placing the commonwealth in the bottom half of states for beds per capita.⁷¹ Worse, between 2010 and 2016 the state lost more than 500 public psychiatric beds.⁷²

Civil liberties advocates have criticized the state for inadequate mental health treatment.⁷³ The American Civil Liberties Union and others have pointed out that the state’s lack of commitment to treating those with severe mental illness has led the state to incarcerate individuals who should be receiving mental health treatment.⁷⁴

⁶⁴ Michael Shepherd, *Maine rejects expanded gun background checks in rebuke to Bloomberg*, Bangor Daily News, November 9, 2016.

⁶⁵ Colton Lochhead, *Measure to expand background checks for gun sales passes by razor-thin margin*, Las Vegas Review-Journal, November 9, 2016.

⁶⁶ H.R.661, 113th Congress (2013-2014).

⁶⁷ 50 P.S. § 4405.

⁶⁸ 18 Pa.C.S.A. § 6105.

⁶⁹ 18 U.S.C. § 922(g)(4).

⁷⁰ *Psychiatric Bed Supply Need Per Capita Background Paper*, Treatment Advocacy Center (2016), <https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/bed-supply-need-per-capita.pdf>.

⁷¹ Pennsylvania, Treatment Advocacy Center (accessed September 16, 2019), <https://www.treatmentadvocacycenter.org/pennsylvania>.

⁷² *Id.*

⁷³ Riley Yates, *With Pennsylvania mental hospitals full, jails become way stations*, The Morning Call, October 8, 2016.

⁷⁴ Witold Walczak, *Pennsylvania Is Jailing Mentally Ill People Who Belong in Treatment*, American Civil Liberties Union, March 25, 2019.

Given the gap between the mental health treatment needs of Pennsylvanians and the resources allocated to address this matter, state lawmakers should seek to rectify this dearth in mental health funding before further burdening the Second Amendment rights of law-abiding gun owners.