



PENNSYLVANIA

SENATE

JUDICIARY

COMMITTEE

HEARING

BEHAVIORAL HEALTH, SECOND AMENDMENT
RIGHTS, AND OTHER GUN RELATED ISSUES
September 25, 2019

ABSTRACT

Testimony on behalf of the Pennsylvania members of Gun Owners of America regarding pending legislation before the Pennsylvania Senate Judiciary Committee.

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Introduction and Summary

The Pennsylvania members of Gun Owners of America (GOA) are opposed to any legislation that would ban the ownership of semi-automatic firearms, restrict magazine capacity, create Extreme Risk Protection Orders (ERPOs), or establish universal background checks (UBCs).

The above legislation, represented by several bills referred to the Senate Judiciary Committee, constitute a violation of Constitutional rights under Article 1, Section 21 of the Pennsylvania Constitution and the Second Amendment of the U.S. Constitution.

Justification for semi-automatic rifle bans and magazine restrictions are often based upon the false premise that there is an “epidemic” of mass shootings. No such “epidemic” exists. The previous Federal assault weapons ban of 1994 was proven ineffective by the government’s own analysis. Semi-automatic rifles are protected under the Second Amendment since they are arguably suitable for military purposes and are in common use.

ERPOs or “Red Flag” laws are ineffective, dangerous to police and civilians, and are an egregious violation of basic due process rights guaranteed under the Commonwealth and US Constitutions.

UBCs would not have stopped the most recent mass shootings but would increase the “false positive” rate in the NICS and PICS instant check systems. These bogus denials would impede firearms purchases by law-abiding citizens without affecting criminal acquisition of firearms. These false denials could also disproportionately affect minorities. UBCs would not deter criminals from acquiring firearms. Moreover, any UBC system could very well lead to future registration schemes and confiscation of firearms.

Instead of unconstitutional and ineffective gun control legislation, Pennsylvania GOA members support the elimination of “gun free” zones where 94% of mass shootings occur. Additionally, passing “Constitutional Carry” (HB 1412) will afford Pennsylvanians greater freedom in protecting themselves and their families.

Bans on Semi-Automatic Rifles and Magazine Restrictions

No “Epidemic” of Mass Shootings

Legislation banning certain semi-automatic rifles and creating magazine restrictions (HB 307, HB 1162, and SB 292) are often based upon the false premise that there is an “epidemic” of mass shootings. This erroneous assumption is fueled by media sensationalism but is not supported by statistics or research.

Figure 1 shows the FBI Uniform Crime Report statistics for the number of people killed by various weapons for 2017, the most recent year for which data are available.

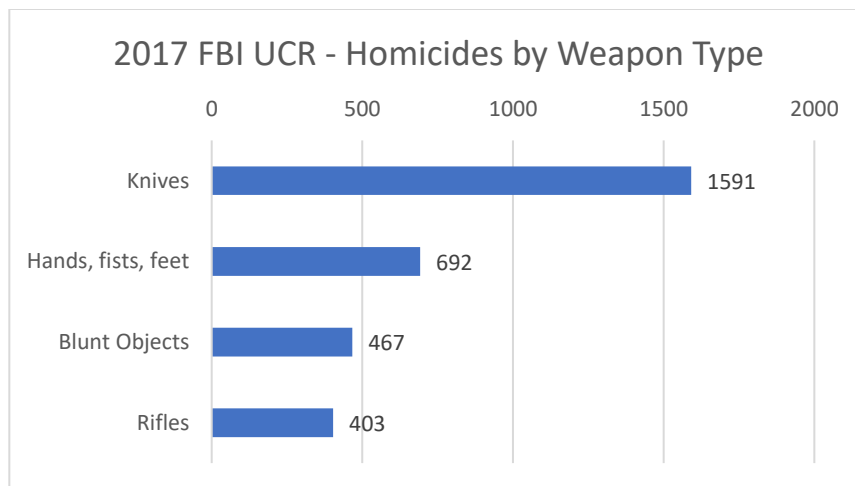


Table 1. Source: 2017 FBI Uniform Crime Report, Table 11

From Table 1, there are almost four times as many people killed with knives or other cutting instruments than rifles and about 50% more by hands, fists, and feet. Yet, there is no outcry about an “epidemic” of knife or fist violence.

The number of deaths from mass shootings is rare. Looking at data from 1982 through 2018, there are an average of 23 deaths per year due to mass shootings. (1) Over a similar time period, the number of people killed in a [lightning strike](#) was about 43 per year. So, one is twice as likely to be killed by a lightning strike than in a mass shooting incident.

Researchers also confirm that there is no “epidemic” of mass shootings. In a recent [interview](#), Northeastern University criminologist James Alan Fox, the leading expert on the subject, stated “There is no evidence that we are in the midst of an epidemic of mass shootings.” (2)

In a peer-reviewed journal article, Fox reported that there has been “no increase in mass shootings and certainly no epidemic...what is abundantly clear from the full array of mass shootings is the largely random variability in the annual counts.” He goes on to say that “journalists and others have speculated about a possible epidemic in response to a flurry of high-profile shootings. Yet, these speculations have always proven to be incorrect when subsequent years reveal more moderate levels.” (3)

The Federal “Assault Weapons” Ban of 1994

The Public Safety and Recreational Firearms Use Protection Act (Federal Assault Weapons Ban) was enacted in 1994. The ban outlawed certain types of semi-automatic firearms and implemented a national 10-round magazine capacity restriction.

The National Institute of Justice (NIJ) and other researchers studied the effectiveness of the ban. Some of these findings are summarized below:

- Significantly relevant to the discussion surrounding mass shootings, the NIJ concluded that the Federal ban “has failed to reduce the average number of victims per gun murder or multiple gunshot wound victims.” (4)
- Murder rates were 19.3% higher when the Federal assault weapons ban was in force. (5)
- In 2004, the year the Federal ban sunset, the NIJ concluded that “we cannot clearly credit the ban with any of the nation’s recent drop in gun violence.” (6)
- In the first seven years since the ban was lifted, murders declined 43%, violent crime 43%, rapes 27%, and robberies 49%. (7)

The above conclusions demonstrate the ineffectiveness of the Federal assault weapons ban of 1994. Murder rates were higher during the ban and fell after the sunset. Recall that the 1994 ban restricted magazine capacity to 10 rounds, but the government’s own study concluded the ban did not reduce the average number of victims per murder or multiple gunshot wound victims.

Constitutional Issues

An extensive Constitutional analysis is beyond the scope of this testimony. Instead, I would like to dispel a common myth that is currently being circulated by politicians and the media—that semi-automatic rifles are military-type weapons and have no justification for civilian ownership. On the contrary, it is exactly these types of weapons that the Second Amendment and the Pennsylvania Constitution were designed to protect.

One Supreme Court case that addressed this issue was *U.S. vs. Miller*. (8) In this case, the Court wanted evidence presented confirming that citizens have a right to military-style weapons. Here is the quote:

“The signification attributed to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. **These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense.** “A body of citizens enrolled for military discipline.” And further, that ordinarily when called for service **these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.**”

In *Miller*, the type of weapon in question was a sawed-off shotgun. Since *Miller* did not show and no arguments were made, the case was remanded to the lower court.

The government’s own arguments in *Miller* are even more to the point:

“The ‘arms’ referred to in the Second Amendment are, moreover, those which **ordinarily are used for military or public defense purposes ...**”

“The Second Amendment does not confer upon the people the right to keep and bear arms; it is one of the provisions of the Constitution which, recognizing the prior existence of a certain right, declares that it shall not be infringed by Congress. Thus, the right to keep and bear arms is not a right granted by the Constitution and therefore is not dependent upon that instrument for its source.”

We see two themes emerge from Miller that also were considered in subsequent Supreme Court cases and even in the Kavanaugh confirmation hearings. The Second Amendment protects:

- Weapons suitable for military purposes
- Firearms in common use at the time

The AR-15 semi-automatic rifle is similar to the military M-16 and M-4. The difference is that the AR platform is semi-automatic while the military rifles are select-fire (i.e. they can be set to fire in fully automatic mode). The AR is also a commonly owned platform in the United States used for a wide variety of legitimate purposes, including self-defense.

Semi-automatic rifles are, therefore, weapons suitable for military purposes and in common use. Arguably, the civilian semi-automatic AR platform is LESS THAN suitable for military use since it is not a select-fire weapon. The true intent of the Second Amendment would preserve the right of citizens to own M-4s and M-16s.

Extreme Risk Protection Orders (ERPOs)

Four separate ERPO bills are being considered by the Pennsylvania legislature (SB 90, SB 293, HB 1075, and HB 1028). All of them will be ineffective in preventing mass shootings, will violate due process rights, and could leave potentially violent criminals on the street. Changes to the Mental Health Procedures Act and enforcement of current laws would make “Red Flag” laws unnecessary. Each of these points will be considered in turn.

Objectively Ineffective

These “Red Flag” Gun Confiscation Orders (GCOs) are an objectively ineffective proposal in the wake of mass public shootings. [A study on the effectiveness of “Red Flag” GCOs, conducted in 2018 using data from 13 states for a combined total of 36 years](#), found that **“Red Flag” Gun Confiscation Orders don’t reduce crime, don’t reduce suicides, don’t reduce murders, and don’t reduce mass murders.** (9)

Mass shooters fall into one of two categories: (1) Either there were no “red flags” that something was wrong, or (2) A governmental authority failed to act when there were warning signs. Regarding the latter, authorities have failed to utilize existing “Red Flag” laws, did not seek an involuntary commitment for the mentally ill, or refused to arrest and prosecute violent individuals.

Some of the failures of “Red Flag” GCOs can be seen in recent high-profile shootings such as:

- **Jacksonville, Florida (2019)**, when “Red Flag” GCOs in both Florida and Maryland failed to disarm a video game shooter. [Not only had the mother called the police on the killer “about 20 times,” he had been involuntary committed six times and was on “antipsychotic medications.”](#)
- **Parkland, Florida (2018)**, where a GCO would have been ineffective because the family defended the murderer’s emotional state to authorities during the [dozens of times he was investigated](#) prior to the attack. Each time [he was reported as a “low risk,” even though police could have arrested him on several occasions.](#)
- **Aurora, Illinois (2019)**, where [state-level Universal Background Checks, Firearm Owner ID cards, “Red Flag” GCOs, and the NICS system failed](#) to stop a “depressed” man with an aggravated assault conviction from purchasing and possessing firearms and later murdering his coworkers.
- **San Bernardino, California (2015)**, when, [despite a 2014 GCO law, authorities ignored “red flags”](#) like inclinations to jihad, martyrdom, and contact with terrorist recruiters.
- **Thousand Oaks, California (2018)**, when, [despite a mental health task force check-up and police considering a “Red Flag” GCO,](#) authorities and gun control failed to stop the attack.

Some recent high-profile shootings where there were *no “red flags” in the life of the shooter* are:

- **Sebring, Florida (2019)**, where [several government-job related background checks](#) and a [\\$400 million gun control package from 2018, including GCOs,](#) found no “red flags” to report to police.
- **El Paso, Texas (2019)**, where [Governor Abbot said “there were no red flags” about the shooter](#) who waited until moments before the attack to publicly upload his racist and hateful beliefs.
- **Santa Fe, Texas (2018)**, where [not only has Governor Abbott stated there were no “red flags” in the life of the school shooter, but the killer stole his weapons](#)—meaning he would have evaded any gun control background check or “Red Flag” law designed to disarm him.
- **Gilroy, California (2019)**, where [despite a 2014 state-level “Red Flag” law, the murderer “showed no reasons for concern,” when purchasing a firearm.](#) Listening to media reports, the shooter’s family initially worried that the shooter (their relative) had fallen victim—not that he was the perpetrator.
- **Poway, California (2019)**, [a man who raised no “red flags” or had any prior run-in with law enforcement spent four weeks planning](#) to shoot up a Synagogue despite state-level GCOs.

Violation of Due Process Rights

In addition to their ineffectiveness, “Red Flag” GCOs violate the due process rights of citizens. Under these bills, the police or an “angry ex” can petition a judge, requesting that the accused be

stripped of his or her Second, Fourth, Fifth, and Fourteenth Amendment rights. Since the hearing for an interim order is *ex parte*, the accuser will be the only one in the room. No one has to demonstrate that a crime was committed or that there is any chance of a crime being committed. Rather, all they have to show is that the accused is—subjectively, “dangerous” to someone—and they only have to show the very low legal standard of “preponderance of the evidence.”

Moreover, at least a third of GCOs are [wrongly issued against innocent people](#). In Connecticut, once a judge eventually hears a case, 32 percent of GCOs are overturned. (10)

While the bills being considered require a hearing 10 days later, the accused will be faced with hiring an attorney and paying thousands of dollars in legal fees to restore his or her rights. And this 10-day requirement may be pure fantasy. According to *Reason*, “While Indiana notionally requires that a hearing be held within 14 days of a gun seizure, a [2015 study](#) found that **gun owners waited an average of more than nine months before a court decided whether police could keep their firearms.**” (11)

Further, in an extensive [14-page analysis](#), the Rhode Island ACLU detailed their “great concern with “the breadth of this [Red Flag] legislation, its impact on civil liberties, and the precedent it sets for the use of coercive measures against individuals not because they are alleged to have committed any crime, but because somebody believes they might, someday, commit one.” (12) Of particular note in the ACLU analysis are the First Amendment concerns where people engaged in “overblown political rhetoric” on social media could be red-flagged.

Mental Health Concerns

While the Pennsylvania “Red Flag” legislation includes a provision for a mental health evaluation, not all GCOs will involve mental health concerns. This leaves the possibility of potentially violent people remaining at large, the only difference being they won’t have their guns. But removal of firearms alone will not stop a determined person from using another method to harm an intended victim.

Tragically, this happened recently in Chicago where David Krystyniak was red-flagged, had his guns seized, and then [killed his mother with a samurai sword](#) by stabbing her in the chest multiple times.

One solution to these problems is to amend the Mental Health Procedures Act (MHPA) by removing the lifetime firearm ownership disability for a Section 302 involuntary commitment. This simple change will eliminate barriers and encourage people to get the assistance they need without concern over permanent loss of gun rights. Potentially violent people would be confined making “Red Flag” laws unnecessary.

Existing Laws Obviate the Need for “Red Flags”

Existing criminal law and mental health law obviates the need for “Red Flag” legislation. Police can already arrest people for terroristic threats, stalking, and harassment. Additionally, someone

who is a danger to himself or others can be involuntarily committed under Section 302 of the MHPA, although the MHPA should be amended for the reasons noted above.

To summarize, “Red Flag” GCOs are ineffective, violate the due process rights of individuals, and can leave potentially violent people on the street. Instead, existing laws should be enforced and the MHPA amended to eliminate the permanent disability for gun rights.

Universal Background Checks (UBCs)

Another “solution” touted in the wake of the recent mass shootings is universal background check (UBC) legislation (HB 159, HB 673, HB 738, and SB 88). Not only would UBCs not have stopped the recent murders, but they would be ineffective to prevent future ones. Additional background checks would also flood the instant check system to more bogus denials that could disproportionately affect minorities. Criminals will not be deterred from obtaining firearms through expanded checks. UBCs also set the stage for registration and confiscation of firearms.

UBCs Ineffective in Preventing Mass Shootings and Crime in General

There are two reasons why UBCs are ineffective in preventing mass shootings and crime in general.

First, the attackers in the El Paso and Dayton shootings passed background checks and purchased their firearms from a federally licensed firearm dealer. The perpetrator in the 2012 Sandy Hook massacre did not have to pass a background check. His mother passed the background check, and he stole her guns.

Likewise, an underage male perpetrator of the 1999 Columbine shooting obtained a handgun through an older female who acted as a straw purchaser. Using a straw purchaser to obtain a firearm is already illegal.

Second, there is no way to proactively police UBCs for private sales. Law enforcement would only discover a UBC violation after a crime has been committed. The Odessa shooter, Seth Aaron Ator, is the clearest example of how a UBC would fail. Ator was already prohibited from purchasing a firearm legally, so he obtained his gun from a private seller who may have illegally manufactured it. (13) If a UBC was in place, Texas authorities would only have discovered the violation as part of their investigation, the same way they are discovering the illegal sale now. The Odessa example further proves the point that criminals will continue to evade the law to obtain firearms. UBCs will only affect the ability of law-abiding citizens to obtain guns due to increased false denials.

Finally, peer-reviewed research has demonstrated the ineffectiveness of UBCs. [UC Davis studied](#) California’s law over a 10-year period. No “population-level changes in firearm homicide or suicide rates” were discovered during the ten years after the law was passed. (14)

Crime Guns and the Gun Show “Loophole”

The above begs the question as to where criminals obtain crime guns. In a [study of incarcerated felons](#), the Bureau of Justice Statistics found that most crime guns are bought off the street from illegal sources (39.2%) or through straw purchases (39.6%). Of the remaining 20%, only 0.7% of these were purchased at gun shows. (15) A later [DOJ study](#) of “crime guns” confirmed that less than 1% of these firearms were purchased at shows. (16)

If UBCs were put into place, criminals would either shift the balance of purchases to illegal sources or just ignore the law. Police officers agree that criminals will not be deterred in acquiring firearms. In a 2013 [national survey](#) of 15,000 police officers, nearly 80% thought outlawing private firearms sales would not reduce violent crime. (17) Importantly, nearly all (97.9%) of cops surveyed believe criminals are able to obtain any type of firearm through illegal means. (18)

Given the miniscule percentages of illegal sales at gun shows and criminal intransigence, closing the so-called gun show “loophole” through UBCs is a solution in search of a problem.

UBCs will Increase False Denials and Disproportionately Affect Minorities

Researcher Dr. John Lott has shown that, according to Department of Justice data, 94 percent of initial NICS denials are “false positives.” (19) This can happen when an honest citizen attempts to purchase a gun—his or her name can be erroneously matched with a criminal’s name, and the citizen is then denied a gun. This is because the system works on a lookalike-soundalike database.

If UBCs come online, thousands more false denials will flood the system. Due to the lookalike-soundalike database, people with similar sounding names are often wrongly flagged. This could disproportionately affect the Hispanic and African American communities and wrongly prevent law-abiding citizens in these populations from acquiring firearms for self-defense.

UBCs: Gateway to Registration and Confiscation

As shown above, UBCs cannot be proactively policed. The only way for UBCs to be “effective” is for them to be tied to a firearms registration system. This is currently forbidden by law. GOA was against background checks from the beginning due to the real threat instant check systems represent for a potential registration mechanism for firearms. Any UBC law would further expand the system and set the stage for a future “flip the switch” bill to register firearms.

Firearms registration is the precursor to confiscation. We saw this happen most recently in New Zealand after the mosque massacre. But we do not need to look to foreign countries for examples, it has already happened in the United States.

In the mid-1960’s, officials in New York City began registering long guns. They promised they would never use such lists to take away firearms from honest citizens. But in 1991, the city

banned (and soon began confiscating) many of those very guns. In 1992, a New York City paper reported that, “Police raided the home of a Staten Island man who refused to comply with the city’s tough ban on assault weapons, and seized an arsenal of firearms.... Spot checks are planned [for other homes].” (20)

Solutions

In addition to reforming the MHPA, GOA supports two common-sense solutions to reduce the impact of mass public shootings that enhance the ability of citizens to protect themselves and their families. First, “gun free” zones should be eliminated, and concealed carry rights expanded through Constitutional Carry legislation (HB 1412).

“Gun-Free” Zones Shelter Killers

Mass public shootings share a common characteristic: the overwhelming majority of them occur in locations where lawful carrying of firearms by citizens is restricted. According to data compiled from 1950 through June of 2019, 94% of all mass public shootings occur in such “gun-free” zones. (21)

Although the last two mass public shooting in El Paso and Dayton did not occur in such zones, it is clear that the attackers deliberately targeted unarmed victims. In El Paso, unarmed Mexican nationals were singled out at a Wal Mart. In Dayton, those consuming alcoholic beverages were attacked. This detail is important since it is illegal to consume alcoholic beverages if one holds an Ohio concealed handgun license (CHL).

The only factor that is significant for stopping an active shooter is the presence of an immediate, armed response. Given that the average police response time for an active shooter incident is 3 minutes (22), citizens must be prepared to meet the threat of an armed assailant immediately. “Gun free” zones only serve to make law-abiding citizens defenseless in these situations.

The Pennsylvania legislature should immediately take steps to allow lawful carry of firearms in all state, county, and municipal buildings.

Constitutional Carry

The right to keep and bear arms is a fundamental human right. In principle, citizens should not have to seek government permission in order to carry a firearm openly or concealed. HB 1412, sponsored by Representative Bernstine (R-10) would affirm the Constitutional right of every law-abiding person inside Pennsylvania to keep and bear firearms without a permit, including the right to carry openly or concealed, loaded or unloaded. For those who wish, the bill includes an optional license to carry firearms that will provide reciprocity with any state with which Pennsylvania has an agreement.

Seventeen states currently have Constitutional Carry and those that have adopted it rank among the safest in the nation, as repeatedly demonstrated by states like New Hampshire, Maine and North Dakota -- states which consistently rank near the top of the list of safest places.

By removing legal barriers to lawful carrying of firearms, the Pennsylvania legislature can ensure that citizens have the ability to defend themselves and their families.

Conclusion

Article 1, Section 21 of the PA Constitution is clear: “the right of the citizens to bear arms in defense of themselves and the State shall not be questioned.” Gun bans, magazine restrictions, “Red Flag” laws, and universal background checks are all “questioning,” and hence, they are illegitimate under our Commonwealth’s highest law. But to be clear, the statistical evidence and research shows all of these proposals to be ineffective as well. So, we ask you to reject them and instead repeal “gun free” zones and enact HB 1412 to enhance the safety and well-being of all Pennsylvanians.

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