

Pennsylvania State Police Testimony
Gun Safety Reform
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Responsibility

To facilitate a cogent discussion in the realm of firearms law and policy, it is imperative that all stakeholders share a common understanding of both legal definitions and colloquial terminology; devoid of sensationalism and founded in fact. Nowhere is this need more profound than in an arena which involves fundamental constitutional principles; and complex interplay among federal and state laws as lawmakers struggle to balance individual rights with sound public safety policy.

One need look no further than the term “firearm” which, while seemingly self-explanatory on its face, is often fraught with confusion between legal definition and common use. One might think of a firearm as any weapon capable of expelling a projectile by means of explosive force; in fact, Webster defines it as “a weapon from which a shot is discharged by gunpowder”.

Chapter 61 of the Pennsylvania Crimes Code (known as the Pennsylvania Uniform Firearms Act or PUFA), however, contains more than one definition of “firearm.” Generally, the definition found in 18 Pa. C.S. § 6102, which has broad general application throughout PUFA, defines a firearm with specificity to include a pistol or revolver with a barrel less than 15 inches; a shotgun with a barrel less than 18 inches; or a rifle with a barrel length less than 16 inches (or any of these with an overall length less than 26 inches). However, in other parts of the PUFA, such as 18 Pa. C.S. § 6111(f)(1), the term “firearm” is more broadly defined to include “any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.” Hence, when discussing the topic, it is important to delineate when we use the term “firearm” if we refer to the various definitions delineated in the PUFA, and if so, which one; or if we are referring to “small arms” in general.

This distinction is critical to the discussion because, under Pennsylvania Law, the applicable definition in PUFA will determine which legal requirements apply. For example, PUFA applies the broader definition of “firearm” found in § 6111(f)(1) for purposes of the background check, which means that firearms of any kind (handgun/rifle/shotgun), regardless of barrel length, sold through a Federal Firearms Licensee (FFL) (*i.e.*-a firearms dealer) in the Commonwealth require a query of the Pennsylvania Instant Check System, *i.e.* PICS. Conversely, the broader definition of firearm does not apply to the transfer of a rifle or shotgun between private, unlicensed individuals, if the barrel length is at least 16 or 18 inches, respectively. This means that person-to-person transfers of a rifle or shotgun which meet minimum barrel length requirements are permitted without intervention of an FFL and concomitant PICS query (assuming the seller does not know the buyer to be a prohibited person under Section 6105 of PUFA). The PUFA, does, however, with a few exceptions, require that all handguns, rifles or shotguns which do not meet minimum barrel lengths (“firearms” as defined in 18 Pa. C.S. § 6102) be transferred through a dealer, even if it is a person-to-person transfer.

Furthermore, transfer of a “firearm” as defined in 18 Pa. C.S. § 6102 requires preparation of a Pennsylvania Record of Sale (ROS); whereas the purchase of other small arms (rifles/shotguns) does not. It should also be noted that Pennsylvania law has specific requirements which apply to the sale and possession of antique firearms, as defined in 18 Pa. C.S. § 6118. The ATF does not regulate person to person transfers of firearms and requirements vary from state to state. Currently, some 28 states place no

requirements on person to person (private) transfers; while the remainder have varied requirements.

There is nothing in current law to differentiate any of these classes of small arms further by “action type”. And so, whether bolt action, lever action, or semi-automatic, the defining characteristics are barrel length and overall length. Critically important, a semi-automatic action type is one which requires the trigger be pulled for each round discharged; whereas a selective fire action type discharges multiple rounds with each pull of the trigger. Selective fire weapons (i.e. machineguns) are strictly regulated federally under the National Firearms Act. In fact, as a result of the Firearms Owners’ Protection Act (1986) possession of “machines guns” is prohibited with exceptions only for government agencies and those lawfully possessed and registered before the date of the act (May 19, 1986).

Horrific atrocities in recent years have focused much discussion on semi-automatic rifles of the AR15 design. The rifles designation as “AR” is often assumed to designate “assault rifle”; when, in fact, the genesis of “AR” was attributable to Armalite Corporation (a small arms engineering company which was incorporated as a division of Fairchild Engine and Airplane Corporation in 1954). Armalite Corporation produced a number of small arms designs, numbered more or less sequentially, including the AR1, AR5, AR7 and AR10 and AR15. The terminology “assault rifle” more correctly emanates from the German word “Sturmgewehr” which was used to describe a selective fire rifle firing an intermediate cartridge; denoted as the StG44. Perhaps further adding to this confusion, the *Violent Crime Control and Law Enforcement Act of 1994* included a prohibition on the manufacture of certain semi-automatic small arms that were defined as “*assault*

weapons". The definition encompassed some types of small arms specifically by name; but also included a list of five characteristics, for example; the inclusion of two or more deemed to define an assault rifle: a folding or telescoping stock; a pistol grip; bayonet lug; flash hider or threaded barrel; and grenade launcher. While impact analysis of this ban (which met with a sunset provision in 2004) varies among scholars, the nature of the ban was such that manufacturers did modify existing designs to allow firearms with similar functionality to remain lawful for manufacture and sale.

The AR15 design, produced by numerous vendors, is modular in nature. What this means is the serialized part that constitutes the "firearm" is designated the lower receiver. This lower receiver must be purchased from a licensed dealer; though, as previously mentioned, can be transferred from one individual to another after initial purchase providing it is sold incidentally and not in the course of engaging in the firearms business. The remainder of the approximately 100 parts necessary to construct an AR15 are not federally regulated or serialized and are available at retail; subject to restrictions in some venues. Purchase or transfer of a "naked lower", as per ATF guidance, is handled as a rifle would be; although it is possible to lawfully construct an AR15 in a pistol configuration. As such, the purchase of an AR15 lower receiver does not require the preparation of a Pennsylvania Record of Sale.

The AR15 platform, because of its modularity, may be purchased in various calibers. In its original configuration, the caliber designation is 5.56 x 45 NATO. This designation simply means the projectile is 5.56 mm in diameter; and the cartridge case is approximately 45 mm in length. References citing the AR15 as .22 caliber class cartridge simply refer to the diameter of the projectile in English measurements. Common projectile

weights in this caliber range from 40 grains to 85 grains and generate on average 1200 foot-pounds of energy. Other calibers in which the AR15 platform is available range from .204 Ruger through .50 Beowulf; allowing its use for small and large game hunting; target shooting; and military and tactical applications. This versatility is likely one reason for the popularity of the platform.

Many (most) semi-automatic designs are fed by an external, self-contained magazine; sometimes errantly referred to as a clip. This technically incorrect terminology emanates from designs such as the M1 Garand which used a disposable “clip” to load an internal magazine. Capacity is dependent on magazine design, and the cartridge being utilized and may be 5 rounds or 100 rounds; with 10, 20 and 30 round magazines being most common in the 5.56 caliber.

No discussion of the topic seems complete without mentioning the “80% Lower” which most often is used to construct an AR15; but variations exist for other firearms as well. BATFE does not strictly define “80% lower”; but, there is some admittedly vague point at which a cast or machined part crosses a threshold and meets the definition of a firearm. Several vendors sell what is deemed an “80% lower” which is best described as a lower receiver which hasn’t undergone final machining steps. So, for example, in the case of an AR15, the area of the lower receiver into which the fire control mechanism is inserted remains a monolithic piece of aluminum. In addition, some or all the holes into which various pins must be inserted to retain components are not bored. These “80% lowers”, because they don’t meet the definition of a firearm, are unregulated. An individual may purchase such a lower and finish required machining steps with a mill, drill press or hand drill; depending upon what level of refinement is desired in the final product.

From this a fully functional firearm can be fabricated and is lawful; provided the individual is doing so for personal use and, again, not while engaged in manufacturing as a business.

In Pennsylvania, the requirements for a transaction occurring at a gun show are no different than a transaction elsewhere. All small arms purchases from an FFL are subject to a PICS query; and firearm (as defined in 18 Pa. C.S. § 6102) sales also require completion of Record of Sale. Any person to person sale of a firearm as defined in 18 Pa. C.S. § 6102 must also proceed through an FFL; while “long guns” may be transferred without intervention of a licensed dealer. Federal Firearms Licensees may conduct business at their licensed premises; or a legitimate “gun show”; but may not conduct business elsewhere.

Internet sales are an oft cited concern. An individual purchaser may enter an order from a licensed FFL via an internet transaction. The firearm must, however, be shipped to another FFL and the actual transaction must occur in-person; and is subject to the same requirements (including the PICS query) as a firearm purchased from dealer inventory would be.

Perhaps more so than any specific piece of information contained herein, testimony today demonstrates the complexity of the topic and the level of detail required to engage in fruitful discussion. Nonetheless, as we all struggle with the devastating personal losses and horrific societal costs resulting from the scourge of gun violence, time spent to facilitate productive discourse is well worth the investment as we, as a community, pursue what have proven to be elusive solutions.