

17-56081

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIRGINIA DUNCAN, et al,
Plaintiff and Appellees,

v.

**XAVIER BECERRA, in his Official
Capacity as Attorney General of the State
of California,**
Defendant and Appellant.

On Appeal from the United States District Court
for the Southern District of California

No. 17-cv-1017-BEN-JLB
The Honorable Roger T. Benitez, Judge

**APPELLANT’S EXCERPTS OF RECORD,
VOLUME X, ER 2131-2378**

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SAFETY FOR ALL ACT, 2016 Cal. Legis. Serv. Prop. 63 (PROPOSITION 63) (WEST)

2016 Cal. Legis. Serv. Prop. 63 (PROPOSITION 63) (WEST)

CALIFORNIA 2016 LEGISLATIVE SERVICE

Additions are indicated by **Text**; deletions by

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Vetoed are indicated by ~~Text~~;
stricken material by ~~Text~~.

**PROPOSITION 63
PROPOSITION 63
SAFETY FOR ALL ACT**

[Approved by the Voters on Nov. 8, 2016.]

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

PROPOSED LAW
The Safety for All Act of 2016

SECTION 1. Title.

This measure shall be known and may be cited as “The Safety for All Act of 2016.”

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

1. Gun violence destroys lives, families and communities. From 2002 to 2013, California lost 38,576 individuals to gun violence. That is more than seven times the number of U.S. soldiers killed in combat during the wars in Iraq and Afghanistan combined. Over this same period, 2,258 children were killed by gunshot injuries in California. The same number of children murdered in the Sandy Hook elementary school massacre are killed by gunfire in this state every 39 days.
2. In 2013, guns were used to kill 2,900 Californians, including 251 children and teens. That year, at least 6,035 others were hospitalized or treated in emergency rooms for non-fatal gunshot wounds, including 1,275 children and teens.
3. Guns are commonly used by criminals. According to the California Department of Justice, in 2014 there were 1,169 firearm murders in California, 13,546 armed robberies involving a firearm, and 15,801 aggravated assaults involving a firearm.
4. This tragic violence imposes significant economic burdens on our society. Researchers conservatively estimate that gun violence costs the economy at least \$229 billion every year, or more than \$700 per American per year. In 2013 alone, California gun deaths and injuries imposed \$83 million in medical costs and \$4.24 billion in lost productivity.
5. California can do better. Reasonable, common-sense gun laws reduce gun deaths and injuries, keep guns away from criminals and fight illegal gun trafficking. Although California has led the nation in gun safety laws, those laws still have

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loopholes that leave communities throughout the state vulnerable to gun violence and mass shootings. We can close these loopholes while still safeguarding the ability of law-abiding, responsible Californians to own guns for self-defense, hunting and recreation.

6. We know background checks work. Federal background checks have already prevented more than 2.4 million gun sales to convicted criminals and other illegal purchasers in America. In 2012 alone, background checks blocked 192,043 sales of firearms to illegal purchasers including 82,000 attempted purchases by felons. That means background checks stopped roughly 225 felons from buying firearms every day. Yet California law only requires background checks for people who purchase firearms, not for people who purchase ammunition. We should close that loophole.

7. Right now, any violent felon or dangerously mentally ill person can walk into a sporting goods store or gun shop in California and buy ammunition, no questions asked. That should change. We should require background checks for ammunition sales just like gun sales, and stop both from getting into the hands of dangerous individuals.

8. Under current law, stores that sell ammunition are not required to report to law enforcement when ammunition is lost or stolen. Stores should have to report lost or stolen ammunition within 48 hours of discovering that it is missing so law enforcement can work to prevent that ammunition from being illegally trafficked into the hands of dangerous individuals.

9. Californians today are not required to report lost or stolen guns to law enforcement. This makes it difficult for law enforcement to investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners. We should require gun owners to report their lost or stolen guns to law enforcement.

10. Under current law, people who commit felonies and other serious crimes are prohibited from possessing firearms. Yet existing law provides no clear process for those people to relinquish their guns when they become prohibited at the time of conviction. As a result, in 2014, the Department of Justice identified more than 17,000 people who possess more than 34,000 guns illegally, including more than 1,400 assault weapons. We need to close this dangerous loophole by not only requiring prohibited people to turn¹ in their guns, but also ensuring that it happens.

11. Military-style large-capacity ammunition magazines—some capable of holding more than 100 rounds of ammunition—significantly increase a shooter's ability to kill a lot of people in a short amount of time. That is why these large capacity ammunition magazines are common in many of America's most horrific mass shootings, from the killings at 101 California Street in San Francisco in 1993 to Columbine High School in 1999 to the massacre at Sandy Hook Elementary School in Newtown, Connecticut in 2012.

12. Today, California law prohibits the manufacture, importation and sale of military-style, large capacity ammunition magazines, but does not prohibit the general public from possessing them. We should close that loophole. No one except trained law enforcement should be able to possess these dangerous ammunition magazines.

13. Although the State of California conducts background checks on gun buyers who live in California, we have to rely on other states and the FBI to conduct background checks on gun buyers who live elsewhere. We should make background checks outside of California more effective by consistently requiring the state to report who is prohibited from possessing firearms to the federal background check system.

14. The theft of a gun is a serious and potentially violent crime. We should clarify that such crimes can be charged as felonies, and prevent people who are convicted of such crimes from possessing firearms.

SEC. 3. Purpose and Intent.

The people of the State of California declare their purpose and intent in enacting "The Safety for All Act of 2016" (the "Act") to be as follows:

1. To implement reasonable and common-sense reforms to make California's gun safety laws the toughest in the nation while still safeguarding the Second Amendment rights of all law-abiding, responsible Californians.

SAFETY FOR ALL ACT, 2016 Cal. Legis. Serv. Prop. 63 (PROPOSITION 63) (WEST)

2. To keep guns and ammunition out of the hands of convicted felons, the dangerously mentally ill, and other persons who are prohibited by law from possessing firearms and ammunition.
3. To ensure that those who buy ammunition in California—just like those who buy firearms—are subject to background checks.
4. To require all stores that sell ammunition to report any lost or stolen ammunition within 48 hours of discovering that it is missing.
5. To ensure that California shares crucial information with federal law enforcement by consistently requiring the state to report individuals who are prohibited by law from possessing firearms to the federal background check system.
6. To require the reporting of lost or stolen firearms to law enforcement.
7. To better enforce the laws that require people to relinquish their firearms once they are convicted of a crime that makes them ineligible to possess firearms.
8. To make it illegal in California to possess the kinds of military-style ammunition magazines that enable mass killings like those at Sandy Hook Elementary School; a movie theater in Aurora, Colorado; Columbine High School; and an office building at 101 California Street in San Francisco, California.
9. To prevent people who are convicted of the theft of a firearm from possessing firearms, and to effectuate the intent of Proposition 47 that the theft of a firearm is felony grand theft, regardless of the value of the firearm, in alignment with Sections 25400 and 1192.7 of the Penal Code.

SEC. 4. Lost or Stolen Firearms.

SEC. 4.1. Division 4.5 (commencing with Section 25250) is added to Title 4 of Part 6 of the Penal Code, to read:

pt. 6 t. 4 d. 4.5 pr. § 25250

DIVISION 4.5. LOST OR STOLEN FIREARMS

<< CA PENAL § 25250 >>

25250. (a) Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.

(b) Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days if the firearm is subsequently recovered by the person.

(c) Notwithstanding subdivision (a), a person shall not be required to report the loss or theft of a firearm that is an antique firearm within the meaning of subdivision (c) of Section 16170.

<< CA PENAL § 25255 >>

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25255. Section 25250 shall not apply to the following:

- (a) Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties if he or she reports the loss or theft to his or her employing agency.
- (b) Any United States marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties.
- (c) Any person who is licensed, pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and who reports the theft or loss in accordance with Section 923(g)(6) of Title 18 of the United States Code, or the successor provision thereto, and applicable regulations issued thereto.
- (d) Any person whose firearm was lost or stolen prior to July 1, 2017.

<< CA PENAL § 25260 >>

25260. Pursuant to Section 11108, every sheriff or police chief shall submit a description of each firearm that has been reported lost or stolen directly into the Department of Justice Automated Firearms System.

<< CA PENAL § 25265 >>

25265. (a) Every person who violates Section 25250 is, for a first violation, guilty of an infraction, punishable by a fine not to exceed one hundred dollars (\$100).

(b) Every person who violates Section 25250 is, for a second violation, guilty of an infraction, punishable by a fine not to exceed one thousand dollars (\$1,000).

(c) Every person who violates Section 25250 is, for a third or subsequent violation, guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

<< CA PENAL § 25270 >>

25270. Every person reporting a lost or stolen firearm pursuant to Section 25250 shall report the make, model, and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report.

<< CA PENAL § 25275 >>

25275. (a) No person shall report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. A violation of this section is an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250) for a first offense, and by a fine not exceeding one thousand dollars (\$1,000) for a second or subsequent offense.

(b) This section shall not preclude prosecution under any other law.

SEC. 4.2. Section 26835 of the Penal Code is amended to read:

<< CA PENAL § 26835 >>

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26835. A licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(a) "IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(b) "IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(c) "IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS (\$5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(d) "IF YOU NEGLIGENTLY STORE OR LEAVE A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, WHERE A PERSON UNDER 18 YEARS OF AGE IS LIKELY TO ACCESS IT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO ONE THOUSAND DOLLARS (\$1,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(e) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(f) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."

(g) "NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD."

(h) "IF A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS OR THEFT OCCURRED WITHIN FIVE DAYS OF THE TIME YOU KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE FIREARM HAD BEEN LOST OR STOLEN."

SEC. 5. Strengthening the National Instant Criminal Background Check System.

SEC. 5.1. Section 28220 of the Penal Code is amended to read:

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<< CA PENAL § 28220 >>

28220. (a) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(b) ~~***~~The Department of Justice shall participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and ~~***~~shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to Section 28225, or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(f)(1)(A) The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:

(i) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(ii) The purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(iii) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

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(B) The dealer shall provide the purchaser with information about the manner in which he or she may contact the department regarding the delay described in subparagraph (A).

(2) The department shall notify the purchaser by mail regarding the delay and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser shall report any inaccuracies or incompleteness to the department on an approved form.

(3) If the department ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:

(A) If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

(B) If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact in compliance with subdivision (c) of Section 28220.

(4) If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

(g) Commencing July 1, 2017, upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, the department shall submit the name, date of birth, and physical description of the person to the National Instant Criminal Background Check System Index, Denied Persons Files. The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.

SEC. 6. Possession of Large-Capacity Magazines.

SEC. 6.1. Section 32310 of the Penal Code is amended to read:

<< CA PENAL § 32310 >>

32310. (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, ~~***~~any person in this state who manufactures or causes to be manufactured,

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imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

(b) For purposes of this section, “manufacturing” includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.

(c) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who may not lawfully possess a large-capacity magazine commencing July 1, 2017 shall, prior to July 1, 2017:

(1) Remove the large-capacity magazine from the state;

(2) Sell the large-capacity magazine to a licensed firearms dealer; or

(3) Surrender the large-capacity magazine to a law enforcement agency for destruction.

SEC. 6.2. Section 32400 of the Penal Code is amended to read:

<< CA PENAL § 32400 >>

32400. Section 32310 does not apply to the sale of, giving of, lending of, **possession of**, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

SEC. 6.3. Section 32405 of the Penal Code is amended to read:

<< CA PENAL § 32405 >>

32405. Section 32310 does not apply to the sale to, lending to, transfer to, purchase by, receipt of, **possession of**, or importation into this state of, a large-capacity magazine by a sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, **or sworn federal law enforcement officer**, who is authorized to carry a firearm in the course and scope of that officer’s duties.

SEC. 6.4. Section 32406 is added to the Penal Code, to read:

<< CA PENAL § 32406 >>

32406. Subdivision (c) of Section 32310 does not apply to an honorably retired sworn peace officer, as defined in Chapter 4.5

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(commencing with Section 830) of Title 3 of Part 2, or honorably retired sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer's duties. "Honorably retired" shall have the same meaning as provided in Section 16690.

SEC. 6.5. Section 32410 of the Penal Code is amended to read:

<< CA PENAL § 32410 >>

32410. Section 32310 does not apply to the sale-***, purchase, **or possession** of any large-capacity magazine to or by a person licensed pursuant to Sections 26700 to 26915, inclusive.

<< Repealed: CA PENAL § 32420 >>

SEC. 6.6. Section 32420 of the Penal Code is repealed.

SEC. 6.7. Section 32425 of the Penal Code is amended to read:

<< CA PENAL § 32425 >>

32425. Section 32310 does not apply to **any** of the following:

(a) The lending or giving of any large-capacity magazine to a person licensed pursuant to Sections 26700 to 26915, inclusive, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(b) The possession of any large-capacity magazine by a person specified in subdivision (a) for the purposes specified in subdivision (a).

(c) The return to its owner of any large-capacity magazine by a person specified in subdivision (a).

SEC. 6.8. Section 32435 of the Penal Code is amended to read:

<< CA PENAL § 32435 >>

32435. Section 32310 does not apply to any of the following:

(a) The sale of, giving of, lending of, **possession of**, importation into this state of, or purchase of, any large-capacity magazine, to or by any entity that operates an armored vehicle business pursuant to the laws of this state.

(b) The lending of large-capacity magazines by an entity specified in subdivision (a) to its authorized employees, while in the course and scope of employment for purposes that pertain to the entity's armored vehicle business.

(c) The possession of any large-capacity magazines by the employees of an entity specified in subdivision (a) for purposes that pertain to the entity's armored vehicle business.

(d) The return of those large-capacity magazines to the entity specified in subdivision (a) by those employees specified in

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subdivision (b).

SEC. 6.9. Section 32450 of the Penal Code is amended to read:

<< CA PENAL § 32450 >>

32450. Section 32310 does not apply to the purchase **or possession** of a large-capacity magazine by the holder of a special weapons permit issued pursuant to Section 31000, 32650, or 33300, or pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this division, for any of the following purposes:

- (a) For use solely as a prop for a motion picture, television, or video production.
- (b) For export pursuant to federal regulations.
- (c) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations.

SEC. 7. Firearms Dealers.

SEC. 7.1. Section 26885 of the Penal Code is amended to read:

<< CA PENAL § 26885 >>

26885. (a) Except as provided in subdivisions (b) and (c) of Section 26805, all firearms that are in the inventory of a licensee shall be kept within the licensed location.

(b) Within 48 hours of discovery, a licensee shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located:

- (1) Any firearm **or ammunition** that is merchandise of the licensee.
- (2) Any firearm **or ammunition** that the licensee takes possession of pursuant to Chapter 5 (commencing with Section 28050), **or pursuant to Section 30312**.
- (3) Any firearm **or ammunition** kept at the licensee's place of business.

SEC. 7.2. Section 26915 of the Penal Code is amended to read:

<< CA PENAL § 26915 >>

26915. (a) *****Commencing January 1, 2018, a** firearms dealer **shall** require any agent **or employee** who handles, sells, or delivers firearms to obtain and provide to the dealer a certificate of eligibility from the Department of Justice pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and California firearms dealer number of the firearms dealer with whom the person is employed.

(b) The department shall notify the firearms dealer in the event that the agent or employee who has a certificate of eligibility

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is or becomes prohibited from possessing firearms.

(c) If the local jurisdiction requires a background check of the agents or employees of a firearms dealer, the agent or employee shall obtain a certificate of eligibility pursuant to subdivision (a).

(d)(1) Nothing in this section shall be construed to preclude a local jurisdiction from conducting an additional background check pursuant to Section 11105. The local jurisdiction may not charge a fee for the additional criminal history check.

(2) Nothing in this section shall be construed to preclude a local jurisdiction from prohibiting employment based on criminal history that does not appear as part of obtaining a certificate of eligibility.

(e) The licensee shall prohibit any agent who the licensee knows or reasonably should know is within a class of persons prohibited from possessing firearms pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, from coming into contact with any firearm that is not secured and from accessing any key, combination, code, or other means to open any of the locking devices described in subdivision (g).

(f) Nothing in this section shall be construed as preventing a local government from enacting an ordinance imposing additional conditions on licensees with regard to agents **or employees**.

(g) For purposes of this article, “secured” means a firearm that is made inoperable in one or more of the following ways:

(1) The firearm is inoperable because it is secured by a firearm safety device listed on the department’s roster of approved firearm safety devices pursuant to subdivision (d) of Section 23655.

(2) The firearm is stored in a locked gun safe or long-gun safe that meets the standards for department-approved gun safes set forth in Section 23650.

(3) The firearm is stored in a distinct locked room or area in the building that is used to store firearms, which can only be unlocked by a key, a combination, or similar means.

(4) The firearm is secured with a hardened steel rod or cable that is at least one-eighth of an inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

SEC. 8. Sales of Ammunition.

SEC. 8.1. Section 16150 of the Penal Code is amended to read:

<< CA PENAL § 16150 >>

16150. ***** (a) As used in this part, except in subdivision (a) of Section 30305 and in Section 30306, “ammunition” means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. “Ammunition” does not include blanks.**

(b) As used in subdivision (a) of Section 30305 and in Section 30306, “ammunition” includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. “Ammunition” does not include blanks.

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SEC. 8.2. Section 16151 is added to the Penal Code, to read:

<< CA PENAL § 16151 >>

16151. (a) As used in this part, commencing January 1, 2018, “ammunition vendor” means any person, firm, corporation, or other business enterprise that holds a current ammunition vendor license issued pursuant to Section 30385.

(b) Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Articles 2 (commencing with Section 30300) and 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4.

<< Repealed: CA PENAL § 16662 >>

SEC. 8.3. Section 16662 of the Penal Code is repealed.

SEC. 8.4. Section 17315 of the Penal Code is amended to read:

<< CA PENAL § 17315 >>

17315. As used in ~~***Articles 2 through 5~~ of Chapter 1 of Division 10 of Title 4, “vendor” means ~~***an~~ ammunition vendor.

SEC. 8.5. Section 30306 of the Penal Code is amended to read:

<< CA PENAL § 30306 >>

30306. (a) Any person, corporation, ~~***firm,~~ **or other business enterprise** who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who he or she knows or using reasonable care should know is prohibited from owning, possessing, or having under custody or control, any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) Any person, corporation, firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person whom the person, corporation, firm, or other business enterprise knows or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a person who is prohibited from owning, possessing, or having under custody or control any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(c) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and another provision of law shall not be punished under more than one provision.

SEC. 8.6. Section 30312 of the Penal Code is amended to read:

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<< CA PENAL § 30312 >>

30312. *** (a)(1) Commencing January 1, 2018, the sale of ammunition by any party shall be conducted by or processed through a licensed ammunition vendor.

(2) When neither party to an ammunition sale is a licensed ammunition vendor, the seller shall deliver the ammunition to a vendor to process the transaction. The ammunition vendor shall then promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the vendor's own merchandise. If the ammunition vendor cannot legally deliver the ammunition to the purchaser, the vendor shall forthwith return the ammunition to the seller. The ammunition vendor may charge the purchaser an administrative fee to process the transaction, in an amount to be set by the Department of Justice, in addition to any applicable fees that may be charged pursuant to the provisions of this title.

(b) Commencing January 1, 2018, the sale, delivery or transfer of ownership of ***-ammunition by any party may only occur in a face-to-face transaction with the seller, deliverer, or transferor***, provided, however, that ammunition may be purchased or acquired over the Internet or through other means of remote ordering if a licensed ammunition vendor initially receives the ammunition and processes the transaction in compliance with this section and Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of this part.

*** (c) Subdivisions (a) and (b) shall not apply to ***-the sale, delivery, or transfer of ***-ammunition to any of the following:

(1) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale, delivery, or transfer is for exclusive use by that government agency and, prior to the sale, delivery, or transfer of the ***-ammunition, written authorization from the head of the agency employing the purchaser or transferee is obtained, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency employing the individual.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(3) An importer or manufacturer of ***-ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

(5) A person whose licensed premises are outside this state and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(6) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to Section 26710.

(7) ***-An ammunition vendor.

(8) A consultant-evaluator.

(9) A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.

(10) A person who purchases or receives ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.

(d) A violation of this section is a misdemeanor.

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SEC. 8.7. Section 30314 is added to the Penal Code, to read:

<< CA PENAL § 30314 >>

30314. (a) Commencing January 1, 2018, a resident of this state shall not bring or transport into this state any ammunition that he or she purchased or otherwise obtained from outside of this state unless he or she first has that ammunition delivered to a licensed ammunition vendor for delivery to that resident pursuant to the procedures set forth in Section 30312.

(b) Subdivision (a) does not apply to any of the following:

(1) An ammunition vendor.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(3) An importer or manufacturer of ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6.

(5) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to Section 26710.

(6) A person who acquired the ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.

(c) A violation of this section is an infraction for any first time offense, and either an infraction or a misdemeanor for any subsequent offense.

SEC. 8.8. The heading of Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code is amended to read:

pt. 6 t. 4 d. 10 ch. 1 art. 3 pr. § 30342

Article 3. ~~***~~Ammunition Vendors

SEC. 8.9. Section 30342 is added to the Penal Code, immediately preceding Section 30345, to read:

<< CA PENAL § 30342 >>

30342. (a) Commencing January 1, 2018, a valid ammunition vendor license shall be required for any person, firm, corporation, or other business enterprise to sell more than 500 rounds of ammunition in any 30-day period.

(b) A violation of this section is a misdemeanor.

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SEC. 8.10. Section 30347 of the Penal Code is amended to read:

<< CA PENAL § 30347 >>

30347. (a) An ammunition vendor shall require any agent or employee who handles, sells, delivers, or has under his or her custody or control any ammunition, to obtain and provide to the vendor a certificate of eligibility from the Department of Justice issued pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and address of the ammunition vendor with whom the person is employed, or the name and California firearms dealer number of the ammunition vendor if applicable.

(b) The department shall notify the ammunition vendor in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing ammunition under subdivision (a) of Section 30305 or federal law.

*** (c) An ammunition vendor shall not permit any agent or employee who the vendor knows or reasonably should know is a person described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title or Section 8100 or 8103 of the Welfare and Institutions Code to handle, sell, *** deliver, or have under his or her custody or control, any *** ammunition in the course and scope of employment.

SEC. 8.11. Section 30348 is added to the Penal Code, to read:

<< CA PENAL § 30348 >>

30348. (a) Except as provided in subdivision (b), the sale of ammunition by a licensed vendor shall be conducted at the location specified in the license.

(b) A vendor may sell ammunition at a gun show or event if the gun show or event is not conducted from any motorized or towed vehicle.

(c) For purposes of this section, "gun show or event" means a function sponsored by any national, state, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

(d) Sales of ammunition at a gun show or event shall comply with all applicable laws including Sections 30347, 30350, 30352, and 30360.

SEC. 8.12. Section 30350 of the Penal Code is amended to read:

<< CA PENAL § 30350 >>

30350. *** An ammunition vendor shall not sell or otherwise transfer ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or display for transfer of ownership of any *** ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor.

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SEC. 8.13. Section 30352 of the Penal Code is amended to read:

<< CA PENAL § 30352 >>

30352. (a) Commencing *****July 1, 2019, an ammunition** vendor shall not sell or otherwise transfer ownership of any **
*-ammunition without, at the time of delivery, legibly recording the following information **on a form to be prescribed by**
the Department of Justice:

- (1) The date of the sale or other **transfer**.
- (2) The purchaser's or transferee's driver's license or other identification number and the state in which it was issued.
- (3) The brand, type, and amount of ammunition sold or otherwise transferred.
- (4) The purchaser's or transferee's **full name and** signature.
- (5) The name of the salesperson who processed the sale or other transaction.

- (6) The purchaser's or transferee's full residential address and telephone number.**
- (7) The purchaser's or transferee's date of birth.**

(b) Commencing July 1, 2019, an ammunition vendor shall electronically submit to the department the information required by subdivision (a) for all sales and transfers of ownership of ammunition. The department shall retain this information in a database to be known as the Ammunition Purchase Records File. This information shall remain confidential and may be used by the department and those entities specified in, and pursuant to, subdivision (b) or (c) of Section 11105, through the California Law Enforcement Telecommunications System, only for law enforcement purposes. The ammunition vendor shall not use, sell, disclose, or share such information for any other purpose other than the submission required by this subdivision without the express written consent of the purchaser or transferee.

(c) Commencing on July 1, 2019, only those persons listed in this subdivision, or those persons or entities listed in subdivision (e), shall be authorized to purchase ammunition. Prior to delivering any ammunition, an ammunition vendor shall require bona fide evidence of identity to verify that the person who is receiving delivery of the ammunition is a person or entity listed in subdivision (e) or one of the following:

- (1) A person authorized to purchase ammunition pursuant to Section 30370.**
- (2) A person who was approved by the department to receive a firearm from the ammunition vendor, pursuant to Section 28220, if that vendor is a licensed firearms dealer, and the ammunition is delivered to the person in the same transaction as the firearm.**

(d) Commencing July 1, 2019, the ammunition vendor shall verify with the department, in a manner prescribed by the department, that the person is authorized to purchase ammunition by comparing the person's ammunition purchase authorization number to the centralized list of authorized ammunition purchasers. If the person is not listed as an authorized ammunition purchaser, the vendor shall deny the sale or transfer.

***** (e) Subdivisions (a) and (d) shall not apply to ***-sales or other transfers of ownership of ***-ammunition by *** ammunition vendors to any of the following, if properly identified:**

***** (1) An ammunition vendor.**

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(2) A person who is on the centralized list **of exempted federal firearms licensees** maintained by the department pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

* * *

(3) A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.

(4) A gunsmith.

(5) A wholesaler.

(6) A manufacturer or importer of firearms **or ammunition** licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(7) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer of ownership is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ~~* * *~~ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed.

(8) A properly identified sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or properly identified sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(f)(1) Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a full-time paid peace officer who is authorized to carry a firearm in the course and scope of the officer's duties.

(2) The certification shall be delivered to the vendor at the time of purchase or transfer and the purchaser or transferee shall provide bona fide evidence of identity to verify that he or she is the person authorized in the certification.

(3) The vendor shall keep the certification with the record of sale and submit the certification to the department.

(g) The department is authorized to adopt regulations to implement the provisions of this section.

SEC. 8.14. Section 30363 is added to the Penal Code, to read:

<< CA PENAL § 30363 >>

30363. Within 48 hours of discovery, an ammunition vendor shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the vendor's business premises are located:

(1) Any ammunition that is merchandise of the vendor.

(2) Any ammunition that the vendor takes possession of pursuant to Section 30312.

(3) Any ammunition kept at the vendor's place of business.

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SEC. 8.15. Article 4 (commencing with Section 30370) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:

pt. 6 t. 4 d. 10 ch. 1 art. 4 pr. § 30370

Article 4. Ammunition Purchase Authorizations

<< CA PENAL § 30370 >>

30370. (a)(1) Commencing on January 1, 2019, any person who is 18 years of age or older may apply to the Department of Justice for an ammunition purchase authorization.

(2) The ammunition purchase authorization may be used by the authorized person to purchase or otherwise seek the transfer of ownership of ammunition from an ammunition vendor, as that term is defined in Section 16151, and shall have no other force or effect.

(3) The ammunition purchase authorization shall be valid for four years from July 1, 2019, or the date of issuance, whichever is later, unless it is revoked by the department pursuant to subdivision (b).

(b) The ammunition purchase authorization shall be promptly revoked by the department upon the occurrence of any event which would have disqualified the holder from being issued the ammunition purchase authorization pursuant to this section. If an authorization is revoked, the department shall upon the written request of the holder state the reasons for doing so and provide the holder an appeal process to challenge that revocation.

(c) The department shall create and maintain an internal centralized list of all persons who are authorized to purchase ammunition and shall promptly remove from the list any persons whose authorization was revoked by the department pursuant to this section. The department shall provide access to the list by ammunition vendors for purposes of conducting ammunition sales or other transfers, and shall provide access to the list by law enforcement agencies for law enforcement purposes.

(d) The department shall issue an ammunition purchase authorization to the applicant if all of the following conditions are met:

(1) The applicant is 18 years of age or older.

(2) The applicant is not prohibited from acquiring or possessing ammunition under subdivision (a) of Section 30305 or federal law.

(3) The applicant pays the fees set forth in subdivision (g).

(e)(1) Upon receipt of an initial or renewal application, the department shall examine its records, and the records it is authorized to request from the State Department of State Hospitals, pursuant to Section 8104 of the Welfare and Institutions Code, and if authorized, the National Instant Criminal Background Check System, as described in Section 922(t) of Title 18 of the United States Code, in order to determine if the applicant is prohibited from possessing or acquiring ammunition under subdivision (a) of Section 30305 or federal law.

(2) The applicant shall be approved or denied within 30 days of the date of the submission of the application to the department. If the application is denied, the department shall state the reasons for doing so and provide the applicant an appeal process to challenge that denial.

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- (3) If the department is unable to ascertain the final disposition of the application within 30 days of the applicant's submission, the department shall grant authorization to the applicant.
- (4) The ammunition purchase authorization number shall be the same as the number on the document presented by the person as bona fide evidence of identity.
- (f) The department shall renew a person's ammunition purchase authorization before its expiration, provided that the department determines that the person is not prohibited from acquiring or possessing ammunition under subdivision (a) of Section 30305 or federal law, and provided the applicant timely pays the renewal fee set forth in subdivision (g).
- (g) The department may charge a reasonable fee not to exceed fifty dollars (\$50) per person for the issuance of an ammunition purchase authorization or the issuance of a renewal authorization, however, the department shall not set these fees any higher than necessary to recover the reasonable, estimated costs to fund the ammunition authorization program provided for in this section and Section 30352, including the enforcement of this program and maintenance of any data systems associated with this program.
- (h) The Ammunition Safety and Enforcement Special Fund is hereby created within the State Treasury. All fees received pursuant to this section shall be deposited into the Ammunition Safety and Enforcement Special Fund of the General Fund, and, notwithstanding Section 13340 of the Government Code, are continuously appropriated for purposes of implementing, operating and enforcing the ammunition authorization program provided for in this section and Section 30352, and for repaying the start-up loan provided for in Section 30371.
- (i) The department shall annually review and may adjust all fees specified in subdivision (g) for inflation.
- (j) The department is authorized to adopt regulations to implement the provisions of this section.

<< CA PENAL § 30371 >>

30371. (a) There is hereby appropriated twenty-five million dollars (\$25,000,000) from the General Fund as a loan for the start-up costs of implementing, operating and enforcing the provisions of the ammunition authorization program provided for in Sections 30352 and 30370.

(b) For purposes of repaying the loan, the Controller shall, after disbursing moneys necessary to implement, operate and enforce the ammunition authorization program provided for in Sections 30352 and 30370, transfer all proceeds from fees received by the Ammunition Safety and Enforcement Special Fund up to the amount of the loan provided by this section, including interest at the pooled money investment account rate, to the General Fund.

SEC. 8.16. Article 5 (commencing with Section 30385) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:

pt. 6 t. 4 d. 10 ch. 1 art. 5 pr. § 30385

Article 5. Ammunition Vendor Licenses

<< CA PENAL § 30385 >>

30385. (a) The Department of Justice is authorized to issue ammunition vendor licenses pursuant to this article. The department shall, commencing July 1, 2017, commence accepting applications for ammunition vendor licenses. If an application is denied, the department shall inform the applicant of the reason for denial in writing.

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(b) The ammunition vendor license shall be issued in a form prescribed by the department and shall be valid for a period of one year. The department may adopt regulations to administer the application and enforcement provisions of this article. The license shall allow the licensee to sell ammunition at the location specified in the license or at a gun show or event as set forth in Section 30348.

(c)(1) In the case of an entity other than a natural person, the department shall issue the license to the entity, but shall require a responsible person to pass the background check pursuant to Section 30395.

(2) For purposes of this article, "responsible person" means a person having the power to direct the management, policies, and practices of the entity as it pertains to ammunition.

(d) Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Article 2 (commencing with Section 30300) and Article 3 (commencing with Section 30342).

<< CA PENAL § 30390 >>

30390. (a) The Department of Justice may charge ammunition vendor license applicants a reasonable fee sufficient to reimburse the department for the reasonable, estimated costs of administering the license program, including the enforcement of this program and maintenance of the registry of ammunition vendors.

(b) The fees received by the department pursuant to this article shall be deposited in the Ammunition Vendors Special Account, which is hereby created. Notwithstanding Section 13340 of the Government Code, the revenue in the fund is continuously appropriated for use by the department for the purpose of implementing, administering and enforcing the provisions of this article, and for collecting and maintaining information submitted pursuant to Section 30352.

(c) The revenue in the Firearms Safety and Enforcement Special Fund shall also be available upon appropriation to the department for the purpose of implementing and enforcing the provisions of this article.

<< CA PENAL § 30395 >>

30395. (a) The Department of Justice is authorized to issue ammunition vendor licenses to applicants who the department has determined, either as an individual or a responsible person, are not prohibited from possessing, receiving, owning, or purchasing ammunition under subdivision (a) of Section 30305 or federal law, and who provide a copy of any regulatory or business license required by local government, a valid seller's permit issued by the State Board of Equalization, a federal firearms license if the person is federally licensed, and a certificate of eligibility issued by the department.

(b) The department shall keep a registry of all licensed ammunition vendors. Law enforcement agencies shall be provided access to the registry for law enforcement purposes.

(c) An ammunition vendor license is subject to forfeiture for a breach of any of the prohibitions and requirements of Article 2 (commencing with Section 30300) or Article 3 (commencing with Section 30342).

SEC. 9. Nothing in this Act shall preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to the sale or transfer of ammunition.

SEC. 10. Securing Firearms From Prohibited Persons.

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SEC. 10.1. Section 1524 of the Penal Code is amended to read:

<< CA PENAL § 1524 >>

1524. (a) A search warrant may be issued upon any of the following grounds:

- (1) When the property was stolen or embezzled.
- (2) When the property or things were used as the means of committing a felony.
- (3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.
- (4) When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.
- (5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.
- (6) When there is a warrant to arrest a person.
- (7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.
- (8) When the property or things to be seized include an item or evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.
- (9) When the property or things to be seized include a firearm or other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.
- (10) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.
- (11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.
- (12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

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(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(15) Beginning January 1, 2018, the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a finding pursuant to paragraph (3) of subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law.

(16) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.

(17) (A) When all of the following apply:

(i) A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code.

(ii) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbors and Navigation Code.

(iii) The sample will be drawn from the person in a reasonable, medically approved manner.

(B) This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2)(A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

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(B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make motions or present evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d)(1) As used in this section, a “special master” is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, “documentary evidence” includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney’s ability to request an in-camera hearing pursuant to the holding of the Supreme Court of California in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

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(k) This section shall not be construed to create a cause of action against any foreign or California corporation, its officers, employees, agents, or other specified persons for providing location information.

SEC. 10.2. Section 27930 of the Penal Code is amended to read:

<< CA PENAL § 27930 >>

27930. Section 27545 does not apply to deliveries, transfers, or returns of firearms made pursuant to any of the following:

- (a) Sections 18000 and 18005.
- (b) Division 4 (commencing with Section 18250) of Title 2.
- (c) Chapter 2 (commencing with Section 33850) of Division 11.
- (d) Sections 34005 and 34010.

(e) Section 29810.

SEC. 10.3. Section 29810 of the Penal Code is amended to read:

<< CA PENAL § 29810 >>

29810. (a) For any person who is subject to Section 29800 or 29805, the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this chapter from owning, purchasing, receiving, possessing, or having under custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. If the prohibition on owning or possessing a firearm will expire on a date specified in the court order, the form shall inform the defendant that he or she may elect to have his or her firearm transferred to a firearms dealer licensed pursuant to Section 29830.

(b) Failure to provide the notice described in subdivision (a) is not a defense to a violation of this chapter.

(c) This section shall be repealed effective January 1, 2018.

SEC. 10.4. Section 29810 is added to the Penal Code, to read:

<< CA PENAL § 29810 >>

29810. (a) (1) Upon conviction of any offense that renders a person subject to Section 29800 or Section 29805, the person shall relinquish all firearms he or she owns, possesses, or has under his or her custody or control in the manner provided in this section.

(2) The court shall, upon conviction of a defendant for an offense described in subdivision (a), instruct the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and shall order the defendant to relinquish all firearms in the manner provided in this section. The court shall also provide the defendant with a Prohibited

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Persons Relinquishment Form developed by the Department of Justice.

(3) Using the Prohibited Persons Relinquishment Form, the defendant shall name a designee and grant the designee power of attorney for the purpose of transferring or disposing of any firearms. The designee shall be either a local law enforcement agency or a consenting third party who is not prohibited from possessing firearms under state or federal law. The designee shall, within the time periods specified in subdivisions (d) and (e), surrender the firearms to the control of a local law enforcement agency, sell the firearms to a licensed firearms dealer, or transfer the firearms for storage to a firearms dealer pursuant to Section 29830.

(b) The Prohibited Persons Relinquishment Form shall do all of the following:

(1) Inform the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and that he or she shall relinquish all firearms through a designee within the time periods set forth in subdivision (d) or (e) by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830.

(2) Inform the defendant that any cohabitant of the defendant who owns firearms must store those firearms in accordance with Section 25135.

(3) Require the defendant to declare any firearms that he or she owned, possessed, or had under his or her custody or control at the time of his or her conviction, and require the defendant to describe the firearms and provide all reasonably available information about the location of the firearms to enable a designee or law enforcement officials to locate the firearms.

(4) Require the defendant to name a designee, if the defendant declares that he or she owned, possessed, or had under his or her custody or control any firearms at the time of his or her conviction, and grant the designee power of attorney for the purpose of transferring or disposing of all firearms.

(5) Require the designee to indicate his or her consent to the designation and, except a designee that is a law enforcement agency, to declare under penalty of perjury that he or she is not prohibited from possessing any firearms under state or federal law.

(6) Require the designee to state the date each firearm was relinquished and the name of the party to whom it was relinquished, and to attach receipts from the law enforcement officer or licensed firearms dealer who took possession of the relinquished firearms.

(7) Inform the defendant and the designee of the obligation to submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within the time periods specified in subdivisions (d) and (e).

(c)(1) When a defendant is convicted of an offense described in subdivision (a), the court shall immediately assign the matter to a probation officer to investigate whether the Automated Firearms System or other credible information, such as a police report, reveals that the defendant owns, possesses, or has under his or her custody or control any firearms. The assigned probation officer shall receive the Prohibited Persons Relinquishment Form from the defendant or the defendant's designee, as applicable, and ensure that the Automated Firearms System has been properly updated to indicate that the defendant has relinquished those firearms.

(2) Prior to final disposition or sentencing in the case, the assigned probation officer shall report to the court whether the defendant has properly complied with the requirements of this section by relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and by timely submitting a completed Prohibited Persons Relinquishment Form. The probation officer shall also report to the Department of Justice on a form to be developed by the department whether the Automated Firearms System has been updated to indicate which firearms have been relinquished by the defendant.

(3) Prior to final disposition or sentencing in the case, the court shall make findings concerning whether the probation

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officer's report indicates that the defendant has relinquished all firearms as required, and whether the court has received a completed Prohibited Persons Relinquishment Form, along with the receipts described in paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e). The court shall ensure that these findings are included in the abstract of judgment. If necessary to avoid a delay in sentencing, the court may make and enter these findings within 14 days of sentencing.

(4) If the court finds probable cause that the defendant has failed to relinquish any firearms as required, the court shall order the search for and removal of any firearms at any location where the judge has probable cause to believe the defendant's firearms are located. The court shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(5) Failure by a defendant to timely file the completed Prohibited Persons Relinquishment Form with the assigned probation officer shall constitute an infraction punishable by a fine not exceeding one hundred dollars (\$100).

(d) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who does not remain in custody at any time within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within five days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within five days following the conviction, along with the receipts described in paragraph (1) of subdivision (d) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within five days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

(e) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who is in custody at any point within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within 14 days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, within 14 days following conviction, along with the receipts described in paragraph (1) of subdivision (e) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within 14 days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

(4) If the defendant is released from custody during the 14 days following conviction and a designee has not yet taken

SAFETY FOR ALL ACT, 2016 Cal. Legis. Serv. Prop. 63 (PROPOSITION 63) (WEST)

temporary possession of each firearm to be relinquished as described above, the defendant shall, within five days following his or her release, relinquish each firearm required to be relinquished pursuant to paragraph (1) of subdivision (d).

(f) For good cause, the court may shorten or enlarge the time periods specified in subdivisions (d) and (e), enlarge the time period specified in paragraph (3) of subdivision (c), or allow an alternative method of relinquishment.

(g) The defendant shall not be subject to prosecution for unlawful possession of any firearms declared on the Prohibited Persons Relinquishment Form if the firearms are relinquished as required.

(h) Any firearms that would otherwise be subject to relinquishment by a defendant under this section, but which are lawfully owned by a cohabitant of the defendant, shall be exempt from relinquishment, provided the defendant is notified that the cohabitant must store the firearm in accordance with Section 25135.

(i) A law enforcement agency shall update the Automated Firearms System to reflect any firearms that were relinquished to the agency pursuant to this section. A law enforcement agency shall retain a firearm that was relinquished to the agency pursuant to this section for 30 days after the date the firearm was relinquished. After the 30-day period has expired, the firearm is subject to destruction, retention, sale or other transfer by the agency, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of the firearm is necessary or proper to the ends of justice, or if the defendant provides written notice of an intent to appeal a conviction for an offense described in subdivision (a), or if the Automated Firearms System indicates that the firearm was reported lost or stolen by the lawful owner. If the firearm was reported lost or stolen, the firearm shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4. The agency shall notify the Department of Justice of the disposition of relinquished firearms pursuant to Section 34010.

(j) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of a firearm pursuant to Section 33880.

(k) This section shall become operative on January 1, 2018.

SEC. 11. Theft of Firearms.

SEC. 11.1. Section 490.2 of the Penal Code is amended to read:

<< CA PENAL § 490.2 >>

(a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

(c) This section shall not apply to theft of a firearm.

SAFETY FOR ALL ACT, 2016 Cal. Legis. Serv. Prop. 63 (PROPOSITION 63) (WEST)

SEC. 11.2. Section 29805 of the Penal Code is amended to read:

<< CA PENAL § 29805 >>

29805. Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, **Section 490.2 if the property taken was a firearm**, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

SEC. 12. Interim Standards.

Notwithstanding the Administrative Procedure Act (APA), and in order to facilitate the prompt implementation of the Safety for All Act of 2016, the California Department of Justice may adopt interim standards without compliance with the procedures set forth in the APA. The interim standards shall remain in effect for no more than two years, and may be earlier superseded by regulations adopted pursuant to the APA. "Interim standards" means temporary standards that perform the same function as "emergency regulations" under the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), except that in order to provide greater opportunity for public comment on permanent regulations, the interim standards may remain in force for two years rather than 180 days.

SEC. 13. Amending the Measure.

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a vote of 55 percent of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act.

SEC. 14. Conflicting Measures.

(a) In the event that this measure and another measure on the same subject matter, including but not limited to the regulation of the sale or possession of firearms or ammunition, shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SAFETY FOR ALL ACT, 2016 Cal. Legis. Serv. Prop. 63 (PROPOSITION 63) (WEST)

SEC. 15. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstance, is for any reason held to be invalid or unconstitutional, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 16. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this Act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this Act for the purpose of defending its constitutionality, whether such action is in trial court, on appeal, or on discretionary review by the Supreme Court of California or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

Footnotes

¹ So in enrolled Prop. 63.

Exhibit 96

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ER2162

PROPOSITION **FIREARMS. AMMUNITION SALES.**
63 INITIATIVE STATUTE.

63

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

- Requires individuals to pass a background check and obtain Department of Justice authorization to purchase ammunition.
- Prohibits possession of large-capacity ammunition magazines, and requires their disposal, as specified.
- Requires most ammunition sales be made through licensed ammunition vendors and reported to Department of Justice.
- Requires lost or stolen firearms and ammunition be reported to law enforcement.
- Prohibits persons convicted of stealing a firearm from possessing firearms.
- Establishes new procedures for enforcing laws prohibiting firearm possession.
- Requires Department of Justice to provide information about prohibited persons to federal

National Instant Criminal Background Check System.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually, related to a new court process for removing firearms from prohibited persons after they are convicted.
- Potential increase in state costs, not likely to exceed the millions of dollars annually, related to regulating ammunition sales. These costs would likely be offset by fee revenues.
- Potential net increase in state and local correctional costs, not likely to exceed the low millions of dollars annually, related to changes in firearm and ammunition penalties.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Restrictions on Firearm and Ammunition Possession

Under federal and state law, certain individuals are not allowed to have firearms. These “prohibited persons” include individuals (1) convicted of felonies and some misdemeanors (such as assault or battery), (2) found by a court to be a danger to themselves or others due to mental illness, and (3) with a restraining order against them. In California, individuals who are not allowed to have firearms are also not allowed to have ammunition.

Regulation of Firearm Sales

Both federal and state law include various regulations related to firearm sales, including the licensing of firearm dealers. Such regulations include:

- **Background Checks.** Under federal law, firearm dealers must request background checks of individuals seeking to buy firearms from the National Instant Criminal Background

Check System (NICS). The NICS searches a number of federal databases to ensure that the buyer is not a prohibited person. As allowed by federal law, California processes all background check requests from firearm dealers in the state directly by using NICS and various state databases.

- **Removal of Firearms From Prohibited Persons.** The California Department of Justice (DOJ) maintains a database of individuals who have legally bought or registered a firearm with the state. DOJ agents use this information to remove firearms from individuals who are no longer allowed to have firearms.
- **Other Regulations.** Other state regulations related to firearms include: limits on the type of firearms that can be bought, a ten-day waiting period before a dealer may give a firearm to a buyer, and requirements for recording and reporting firearm sales.

Fees charged to firearm dealers and buyers generally offset the state’s costs to regulate firearm sales.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Regulation of Ammunition Sales

Prior to this year, the state did not regulate ammunition sales in the same manner as firearms. In July 2016, the state enacted legislation to increase the regulation of ammunition sales. Such regulations include:

- **Licenses to Sell Ammunition.** Beginning January 2018, individuals and businesses will be required to obtain a one-year license from DOJ to sell ammunition. Certain individuals and businesses would not be required to obtain a license, such as licensed hunters selling less than 50 rounds of ammunition per month to another licensed hunter while on a hunting trip. In order to obtain a license, ammunition dealers will need to demonstrate that they are not prohibited persons. In addition, certain entities will be able to automatically receive an ammunition license, such as firearm dealers licensed by both the state and federal government and firearm wholesalers. A vendor who fails to comply with ammunition sale requirements three times would have their ammunition dealer's license permanently revoked. DOJ could charge a fee to individuals and businesses seeking a license to sell ammunition to support its administrative and enforcement costs.
- **DOJ Approval to Buy Ammunition.** Beginning July 2019, ammunition dealers will be required to check with DOJ at the time of purchase that individuals seeking to buy ammunition are not prohibited persons. This requirement would not apply to some individuals, such as persons permitted to carry concealed weapons. In addition, ammunition dealers will generally be required to collect and report information—such as the date of the sale, the buyers' identification information, and the type of ammunition purchased—to DOJ for storage in a database for two years. Failure to comply with these requirements is a misdemeanor (punishable by a fine and/or imprisonment in county jail). DOJ could generally charge an individual seeking to purchase ammunition a fee of up to \$1 per

transaction to support its administrative and enforcement costs. DOJ could adjust this fee cap annually for inflation.

- **Other Regulations.** Beginning January 2018, state law generally will require that most ammunition sales (including Internet and out-of-state sales) take place through a licensed ammunition dealer. In addition, beginning July 2019, most California residents will be prohibited from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer. Failure to comply with these requirements is a misdemeanor.

Status of Recent Legislation

As discussed above, the state recently enacted legislation to increase the regulation of ammunition sales. The state also recently enacted legislation to further limit the ownership of large-capacity magazines and to create a penalty for filing a false lost or stolen firearm report to law enforcement. These laws will take effect unless they are placed before the voters as referenda. If that occurs, voters will determine whether the laws take effect.

PROPOSAL

Proposition 63 (1) changes state regulation of ammunition sales, (2) creates a new court process to ensure the removal of firearms from prohibited persons after they are convicted of a felony or certain misdemeanors, and (3) implements various other provisions. Additionally, Proposition 63 states that the Legislature can change its provisions if such changes are "consistent with and further the intent" of the measure. Such changes can only be made if 55 percent of the members of each house of the Legislature passes them and the bill is enacted into law.

Changes to State Regulation of Ammunition Sales

Proposition 63 includes various regulations related to the sale of ammunition. Some of the regulations would replace existing law with similar provisions. However, other regulations proposed by Proposition 63 are different, as discussed below.

PROPOSITION
63 FIREARMS, AMMUNITION SALES.
INITIATIVE STATUTE.

63

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Requirements to Buy Ammunition. Proposition 63 includes various requirements for individuals seeking to buy ammunition and for DOJ to regulate such purchases. Specifically, the measure:

- Requires individuals to obtain a four-year permit from DOJ to buy ammunition and for ammunition dealers to check with DOJ that individuals buying ammunition have such permits.
- Requires DOJ to revoke permits from individuals who become prohibited.
- Allows DOJ to charge each person applying for a four-year permit a fee of up to \$50 to support its various administrative and enforcement costs related to ammunition sales.

The state, however, enacted legislation in July 2016 to replace the above provisions with alternative ones if Proposition 63 is approved by the voters. (This legislation was enacted pursuant to the provision of Proposition 63 allowing for changes that are “consistent with and further the intent” of the proposition, as described earlier.) Specifically, under the legislation: (1) ammunition dealers would be required to check with DOJ that individuals seeking to buy ammunition are not prohibited persons at the time of purchase and (2) DOJ could generally charge such individuals up to \$1 per transaction. These provisions are similar to current law. Fewer individuals, however, would be exempt from this check than under current law. For example, individuals permitted to carry concealed weapons would be subject to this check.

Licenses to Sell Ammunition. Similar to current law, Proposition 63 requires individuals and businesses to obtain a one-year license from DOJ to sell ammunition. However, the measure changes the types of individuals and businesses that would be exempt from obtaining a license. For example, the measure generally exempts individuals and businesses that sell a small number of rounds of ammunition from the requirement to get a license. The measure also makes various changes in the penalties for failure to follow ammunition sale requirements. For example, it establishes a new criminal penalty—specifically, a misdemeanor—for failing to follow vendor licensing requirements.

Other Ammunition Requirements. This measure prohibits most California residents from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer beginning in January 2018—a year and a half earlier than under current law. Additionally, failure to comply with this requirement would change from a misdemeanor to an infraction (punishable by a fine) for the first offense and either an infraction or a misdemeanor for any additional offense. The measure also requires DOJ to store certain ammunition sales information in a database indefinitely, rather than for two years.

Creates New Court Process for Removal of Firearms

This measure creates a new court process to ensure that individuals convicted of offenses that prohibit them from owning firearms do not continue to have them. Beginning in 2018, the measure requires courts to inform offenders upon conviction that they must (1) turn over their firearms to local law enforcement, (2) sell the firearms to a licensed firearm dealer, or (3) give the firearms to a licensed firearm dealer for storage. The measure also requires courts to assign probation officers to report on what offenders have done with their firearms. If the court finds that there is probable cause that an offender still has firearms, it must order that the firearms be removed. Finally, local governments or state agencies could charge a fee to reimburse them for certain costs in implementing the measure (such as those related to the removal or storage of firearms).

Implements Other Provisions

Reporting Requirements. The measure includes a number of reporting requirements related to firearms and ammunition. For example, the measure requires that ammunition dealers report the loss or theft of ammunition within 48 hours. It also requires that most individuals report the loss or theft of firearms within five days to local law enforcement. An individual who does not make such a report within five days would be guilty of an infraction for the first two violations. Additional violations would be a misdemeanor. This measure

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

also reduces the penalty for an individual who knowingly submits a false report to local law enforcement from a misdemeanor to an infraction and eliminates the prohibition from owning firearms for ten years for such an individual. This measure also requires DOJ to submit the name, date of birth, and physical description of any newly prohibited person to NICS.

Large-Capacity Magazines. Since 2000, state law has generally banned individuals from obtaining large-capacity magazines (defined as those holding more than ten rounds of ammunition). The law, however, allowed individuals who had large-capacity magazines before 2000 to keep them for their own use. Beginning July 2017, recently enacted law will prohibit most of these individuals from possessing these magazines. Individuals who do not comply are guilty of an infraction. However, there are various individuals who will be exempt from this requirement—such as an individual who owns a firearm (obtained before 2000) that can only be used with a large-capacity magazine. Proposition 63 eliminates several of these exemptions, as well as increases the maximum penalty for possessing large-capacity magazines. Specifically, individuals who possess such magazines after July 2017 would be guilty of an infraction or a misdemeanor.

Penalty for Theft of Firearms. Under current state law, the penalty for theft of firearms worth \$950 or less is generally a misdemeanor punishable by up to one year in county jail. Under this measure, such a crime would be a felony and could be punishable by up to three years in state prison. Additionally, individuals previously convicted of a misdemeanor for the theft of a firearm would be prohibited from owning firearms for ten years. Currently, there is no such prohibition for a misdemeanor conviction for theft of firearms.

FISCAL EFFECTS

Increased Court and Law Enforcement Costs. The new court process for removing firearms from prohibited persons after they are convicted would result in increased workload for the state and local governments. For example, state courts and county probation departments would have some increased

workload to determine whether prohibited persons have firearms and whether they have surrendered them. In addition, state and local law enforcement would have new workload related to removing firearms from offenders who fail to surrender them as part of the new court process. They could also have increased costs related to the storage or return of firearms. Some of the increased law enforcement costs related to the removal, storage, or return of firearms would be offset to the extent that local governments and state agencies charge and collect fees for these activities, as allowed by this measure. The total magnitude of these state and local costs **could be in the tens of millions of dollars annually.** Actual costs would depend on how this measure was implemented.

Potential Increased State Regulatory Costs. On balance, the measure's changes to the regulation of ammunition sales could increase state costs. For example, more individuals or businesses would likely be subject to state ammunition requirements under the measure. The actual fiscal effect of the changes would depend on how they are implemented and how individuals respond to them. We estimate that the potential increase in state costs would not likely exceed the millions of dollars annually. These costs would likely be offset by the various fees authorized by the measure and existing state law.

Potential Net Increased Correctional Costs. This measure makes various changes to penalties related to firearms and ammunition. While some changes reduce penalties for certain offenses, other changes increase penalties for certain offenses. On net, these changes could result in increased correctional costs to state and local governments, such as to house individuals in prison and jail. The magnitude of such costs would depend primarily on the number of violations and how the measure is enforced. The potential net increase in correctional costs would **likely not exceed the low millions of dollars annually.**

Visit <http://www.sos.ca.gov/measure-contributions> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> to access the committee's top 10 contributors.

★ ARGUMENT IN FAVOR OF PROPOSITION 63 ★

PROPOSITION 63 WILL KEEP US SAFER BY REDUCING GUN VIOLENCE

Police in Dallas doing their job . . . A nightclub in Orlando . . . An office holiday party in San Bernardino . . . A church in Charleston . . . A movie theater in Aurora . . . An elementary school in Newtown . . .

What's next? How many more people need to die from gun violence before we take bold action to save lives?

More than 300 Americans are shot each day, more than 80 of them fatally.

More than 1 million Americans were killed or seriously injured by guns from 2004–2014.

ENOUGH!

It's time to take action to keep guns and ammo out of the wrong hands.

Proposition 63—the Safety for All Act—will save lives by closing loopholes to prevent dangerous criminals, domestic abusers, and the dangerously mentally ill from obtaining and using deadly weapons.

PROPOSITION 63 WILL:

- Remove illegal guns from our communities by ensuring that dangerous criminals and domestic abusers sell or transfer their firearms after they're convicted.
- Require any business that sells ammunition to report if their ammunition is lost or stolen.
- Require people to notify law enforcement if their guns are lost or stolen, before the weapons end up in the wrong hands.
- Ensure people convicted of gun theft are ineligible to own guns.
- Strengthen our background check systems and ensure that California law enforcement shares data about dangerous people with the FBI.

Proposition 63 keeps guns and ammo out of the wrong hands, while protecting the rights of law-abiding

Californians to own guns for self-defense, hunting, and recreation.

Right now, thousands of dangerous felons remain illegally armed because we don't ensure that people convicted of violent crimes actually relinquish their guns after conviction. The Department of Justice identified more than 17,000 felons and other dangerous people with more than 34,000 guns, including more than 1,400 assault weapons.

Passing Proposition 63 will represent a historic and unprecedented step forward for gun safety.

LEADERS FROM ACROSS CALIFORNIA SUPPORT PROPOSITION 63, INCLUDING:

• Lieutenant Governor Gavin Newsom • U.S. Senator Dianne Feinstein • Law Center to Prevent Gun Violence • California Democratic Party • California Secretary of State Alex Padilla • Speaker Emeritus of the Assembly Toni Atkins • Speaker Emeritus of the Assembly John Pérez • Sheriff Vicki Hennessy, San Francisco • Former Police Chief Ken James, Emeryville • SEIU • League of Women Voters of California • California Young Democrats • California Federation of Teachers • San Francisco Board of Education • Equality California • Courage Campaign • California American College of Physicians • California American College of Emergency Physicians • Southern California Public Health Association • Clergy and Laity United for Economic Justice • Coalition Against Gun Violence • Rabbis Against Gun Violence • States United to Prevent Gun Violence • Stop Handgun Violence • Stop Our Shootings • Women Against Gun Violence • Youth Alive!

To learn more please visit www.SafetyforAll.com.

GAVIN NEWSOM, Lieutenant Governor of California

DIANNE FEINSTEIN, United States Senator

ROBYN THOMAS, Executive Director
Law Center to Prevent Gun Violence

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 63 ★

Terrorists don't follow the law!

Gavin Newsom refuses to acknowledge that the Orlando and San Bernardino attacks were ISIS inspired Islamic radicalism. It is the same ideology that motivated the 9/11 terror attacks that killed 2,996 innocents.

Exploiting terrorist attacks to push sweeping laws affecting law-abiding peoples' civil liberties is misleading, wrong, and dangerous.

None of the proposed laws would prevent terrorist attacks. The reality is terrorists can always find the means to wreak havoc, a box cutter in a plane on 9/11, a homemade bomb in Boston, or a truck in Nice, France. Terrorists and criminals get weapons from the black market, make them, or steal them from law-abiding citizens.

Everyone agrees that preventing weapons from falling into the wrong hands is crucial. We all share the concern about the growing trends of terrorism and radicalization.

But, Prop. 63 is NOT the answer.

Spending tens of millions of taxpayer dollars year after year on useless lists of everyone who buys and sells

ammunition diverts critical resources and focus away from effective anti-terrorism efforts, leaving the public more vulnerable to attack and **LESS SAFE**.

There's a reason law enforcement overwhelmingly opposes Prop. 63.

The public interest would be better served if these resources were used to educate more Californians about what they can do to protect their families and communities from terrorist attacks or to further train law enforcement to do so.

Stop this dangerous abuse of public resources.

Vote NO on Prop. 63!

ALON STIVI, President

Direct Measures International, Inc.

WILLIAM "BILLY" BIRDZELL, U.S. Special Operations
Command Anti-Terrorism Instructor

RICHARD GRENNELL, Longest serving U.S. Spokesman at
the United Nations

★ ARGUMENT AGAINST PROPOSITION 63 ★

Prop. 63 is overwhelmingly opposed by the law enforcement community and civil rights groups because it will burden law abiding citizens without keeping violent criminals and terrorists from accessing firearms and ammunition.

The California State Sheriffs' Association, Association of Deputy District Attorneys for Los Angeles County, California Correctional Peace Officers Association, California Fish & Game Wardens' Association, California Reserve Peace Officers Association, and numerous other law enforcement and civic groups, representing tens of thousands of public safety professionals throughout California, are united in their opposition to this ineffective, burdensome, and costly proposal.

Prop. 63 would divert scarce law enforcement resources away from local law enforcement and overburden an already overcrowded court system with the enforcement of flawed laws that will turn harmless, law-abiding citizens into criminals. In fact, New York recently abandoned its enforcement of a similar proposal after it was passed, finding that it was impossible to implement and effectively maintain.

Doing what actually works to keep the public safe is the highest priority of law enforcement professionals who dedicate their lives to protecting Californians. Unfortunately, Prop. 63 will not make anyone safer. To the contrary, by directing resources away from measures that are truly effective at preventing the criminal element from acquiring guns and ammunition, it would make us all less safe. The immense public resources that Prop. 63

would waste should be used to hire more officers and to target, investigate, and prosecute dangerous individuals and terrorists.

After closely analyzing the language of Prop. 63, the law enforcement community found many problems in the details. Due to strict limitations on the Legislature's ability to amend voter-enacted propositions, most of these problems will be difficult or impossible for the Legislature to fix if Prop. 63 passes, saddling California with the burdens and costs of this flawed proposal forever.

By going around the Legislature, this initiative limits public safety professionals in developing future legislation that would truly promote public safety. California taxpayers should not waste hundreds of millions of their dollars on ineffective laws that have no value to law enforcement and will harm public safety by diverting resources away from effective law enforcement activities that are critical to public safety.

Please visit WWW.WHERESMYAMMO.COM for more information.

PLEASE VOTE NO ON PROP. 63.

DONNY YOUNGBLOOD, President
 California State Sheriffs' Association

KEVIN BERNZOTT, Chief Executive Officer
 California Reserve Peace Officers Association

TIFFANY CHEUVRONT, Principal Officer
 Coalition for Civil Liberties

63

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 63 ★

As law enforcement and public safety officials, we're not surprised that groups such as the NRA and its affiliates oppose Proposition 63. Make no mistake, the so-called "Coalition for Civil Liberties" is actually an NRA front group.

The gun lobby often claims we should focus on enforcing existing gun laws, and that's exactly what this initiative does—*Prop. 63 closes loopholes and helps enforce existing laws to keep guns and ammo out of the wrong hands.*

For example, Prop. 63 *ensures dangerous convicts prohibited from owning weapons follow the law and get rid of their firearms.* Law enforcement professionals have found that felons and dangerous people currently possess thousands of guns illegally—so closing this loophole will save lives.

Prop. 63 also *requires reporting lost and stolen firearms*, to help police shut down gun trafficking rings and locate caches of illegal weapons. Prop. 63 will help police recover stolen guns before they're used in crimes and return them to their lawful owners.

Prop. 63 also *improves background check systems* so that law enforcement can prevent people banned from owning weapons—such as violent felons—from buying guns and ammo.

And Prop. 63 clarifies existing law so that any gun theft is a felony, *ensuring that people who steal guns can't own guns.* That's another common-sense reform to save lives overwhelmingly supported by law enforcement professionals.

Prop. 63 will close loopholes in our existing laws and prevent dangerous criminals, domestic abusers, and the dangerously mentally ill from obtaining and using deadly weapons.

NANCY O'MALLEY, District Attorney
 Alameda County

JEFF ROSEN, District Attorney
 Santa Clara County

VICKI HENNESSY, Sheriff
 San Francisco

subdivision (h) of Section 1170, in connection with a civil action brought against a federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of the award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivisions (e) and (i). The Department of Corrections and Rehabilitation shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages. For any prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency is authorized to make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(o) (1) Amounts transferred to the California Victim Compensation Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation Board. If the restitution payment to a victim is less than twenty-five dollars (\$25), then payment need not be forwarded to that victim until the payment reaches twenty-five dollars (\$25) or when the victim requests payment of the lesser amount.

(2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the Department of Corrections and Rehabilitation, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the Department of Corrections and Rehabilitation, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).

(B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).

SEC. 10. Retroactive Application of Act.

(a) In order to best achieve the purpose of this act as stated in Section 3 and to achieve fairness, equality, and uniformity in sentencing, this act shall be applied retroactively.

(b) In any case where a defendant or inmate was sentenced to death prior to the effective date of this act, the sentence

shall automatically be converted to imprisonment in the state prison for life without the possibility of parole under the terms and conditions of this act. The State of California shall not carry out any execution following the effective date of this act.

(c) Following the effective date of this act, the Supreme Court may transfer all death penalty appeals and habeas petitions pending before the Supreme Court to any district of the Court of Appeal or superior court, in the Supreme Court's discretion.

SEC. 11. Effective Date.

This act shall become effective on the day following the election at which it was approved, pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

SEC. 12. Severability.

The provisions of this act are severable. If any provision of this act or its application is held invalid, including but not limited to Section 10, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

PROPOSITION 63

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The Safety for All Act of 2016

SECTION 1. Title.

This measure shall be known and may be cited as "The Safety for All Act of 2016."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

1. Gun violence destroys lives, families and communities. From 2002 to 2013, California lost 38,576 individuals to gun violence. That is more than seven times the number of U.S. soldiers killed in combat during the wars in Iraq and Afghanistan combined. Over this same period, 2,258 children were killed by gunshot injuries in California. The same number of children murdered in the Sandy Hook elementary school massacre are killed by gunfire in this state every 39 days.

2. In 2013, guns were used to kill 2,900 Californians, including 251 children and teens. That year, at least 6,035 others were hospitalized or treated in emergency rooms for non-fatal gunshot wounds, including 1,275 children and teens.

3. Guns are commonly used by criminals. According to the California Department of Justice, in 2014 there were 1,169 firearm murders in California, 13,546 armed robberies involving a firearm, and 15,801 aggravated assaults involving a firearm.

4. This tragic violence imposes significant economic burdens on our society. Researchers conservatively estimate that gun violence costs the economy at least \$229 billion every year, or more than \$700 per American

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per year. In 2013 alone, California gun deaths and injuries imposed \$83 million in medical costs and \$4.24 billion in lost productivity.

5. California can do better. Reasonable, common-sense gun laws reduce gun deaths and injuries, keep guns away from criminals and fight illegal gun trafficking. Although California has led the nation in gun safety laws, those laws still have loopholes that leave communities throughout the state vulnerable to gun violence and mass shootings. We can close these loopholes while still safeguarding the ability of law-abiding, responsible Californians to own guns for self-defense, hunting and recreation.

6. We know background checks work. Federal background checks have already prevented more than 2.4 million gun sales to convicted criminals and other illegal purchasers in America. In 2012 alone, background checks blocked 192,043 sales of firearms to illegal purchasers including 82,000 attempted purchases by felons. That means background checks stopped roughly 225 felons from buying firearms every day. Yet California law only requires background checks for people who purchase firearms, not for people who purchase ammunition. We should close that loophole.

7. Right now, any violent felon or dangerously mentally ill person can walk into a sporting goods store or gun shop in California and buy ammunition, no questions asked. That should change. We should require background checks for ammunition sales just like gun sales, and stop both from getting into the hands of dangerous individuals.

8. Under current law, stores that sell ammunition are not required to report to law enforcement when ammunition is lost or stolen. Stores should have to report lost or stolen ammunition within 48 hours of discovering that it is missing so law enforcement can work to prevent that ammunition from being illegally trafficked into the hands of dangerous individuals.

9. Californians today are not required to report lost or stolen guns to law enforcement. This makes it difficult for law enforcement to investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners. We should require gun owners to report their lost or stolen guns to law enforcement.

10. Under current law, people who commit felonies and other serious crimes are prohibited from possessing firearms. Yet existing law provides no clear process for those people to relinquish their guns when they become prohibited at the time of conviction. As a result, in 2014, the Department of Justice identified more than 17,000 people who possess more than 34,000 guns illegally, including more than 1,400 assault weapons. We need to close this dangerous loophole by not only requiring prohibited people to turn in their guns, but also ensuring that it happens.

11. Military-style large-capacity ammunition magazines—some capable of holding more than 100 rounds of ammunition—significantly increase a shooter's ability to kill a lot of people in a short amount of time. That is why these large capacity ammunition magazines are common in many of America's most horrific mass shootings, from the killings at 101 California Street in San Francisco in 1993 to Columbine High School in 1999 to the massacre at Sandy Hook Elementary School in Newtown, Connecticut in 2012.

12. Today, California law prohibits the manufacture, importation and sale of military-style, large capacity

ammunition magazines, but does not prohibit the general public from possessing them. We should close that loophole. No one except trained law enforcement should be able to possess these dangerous ammunition magazines.

13. Although the State of California conducts background checks on gun buyers who live in California, we have to rely on other states and the FBI to conduct background checks on gun buyers who live elsewhere. We should make background checks outside of California more effective by consistently requiring the state to report who is prohibited from possessing firearms to the federal background check system.

14. The theft of a gun is a serious and potentially violent crime. We should clarify that such crimes can be charged as felonies, and prevent people who are convicted of such crimes from possessing firearms.

SEC. 3. Purpose and Intent.

The people of the State of California declare their purpose and intent in enacting "The Safety for All Act of 2016" (the "Act") to be as follows:

1. To implement reasonable and common-sense reforms to make California's gun safety laws the toughest in the nation while still safeguarding the Second Amendment rights of all law-abiding, responsible Californians.

2. To keep guns and ammunition out of the hands of convicted felons, the dangerously mentally ill, and other persons who are prohibited by law from possessing firearms and ammunition.

3. To ensure that those who buy ammunition in California—just like those who buy firearms—are subject to background checks.

4. To require all stores that sell ammunition to report any lost or stolen ammunition within 48 hours of discovering that it is missing.

5. To ensure that California shares crucial information with federal law enforcement by consistently requiring the state to report individuals who are prohibited by law from possessing firearms to the federal background check system.

6. To require the reporting of lost or stolen firearms to law enforcement.

7. To better enforce the laws that require people to relinquish their firearms once they are convicted of a crime that makes them ineligible to possess firearms.

8. To make it illegal in California to possess the kinds of military-style ammunition magazines that enable mass killings like those at Sandy Hook Elementary School; a movie theater in Aurora, Colorado; Columbine High School; and an office building at 101 California Street in San Francisco, California.

9. To prevent people who are convicted of the theft of a firearm from possessing firearms, and to effectuate the intent of Proposition 47 that the theft of a firearm is felony grand theft, regardless of the value of the firearm, in alignment with Sections 25400 and 1192.7 of the Penal Code.

SEC. 4. Lost or Stolen Firearms.

SEC. 4.1. Division 4.5 (commencing with Section 25250) is added to Title 4 of Part 6 of the Penal Code, to read:

DIVISION 4.5. LOST OR STOLEN FIREARMS

25250. (a) Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.

(b) Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days if the firearm is subsequently recovered by the person.

(c) Notwithstanding subdivision (a), a person shall not be required to report the loss or theft of a firearm that is an antique firearm within the meaning of subdivision (c) of Section 16170.

25255. Section 25250 shall not apply to the following:

(a) Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties if he or she reports the loss or theft to his or her employing agency.

(b) Any United States marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties.

(c) Any person who is licensed, pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and who reports the theft or loss in accordance with Section 923(g)(6) of Title 18 of the United States Code, or the successor provision thereto, and applicable regulations issued thereto.

(d) Any person whose firearm was lost or stolen prior to July 1, 2017.

25260. Pursuant to Section 11108, every sheriff or police chief shall submit a description of each firearm that has been reported lost or stolen directly into the Department of Justice Automated Firearms System.

25265. (a) Every person who violates Section 25250 is, for a first violation, guilty of an infraction, punishable by a fine not to exceed one hundred dollars (\$100).

(b) Every person who violates Section 25250 is, for a second violation, guilty of an infraction, punishable by a fine not to exceed one thousand dollars (\$1,000).

(c) Every person who violates Section 25250 is, for a third or subsequent violation, guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

25270. Every person reporting a lost or stolen firearm pursuant to Section 25250 shall report the make, model, and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report.

25275. (a) No person shall report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. A violation of this section is an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250) for a first offense, and by a fine not exceeding one thousand dollars (\$1,000) for a second or subsequent offense.

(b) This section shall not preclude prosecution under any other law.

SEC. 4.2. Section 26835 of the Penal Code is amended to read:

26835. A licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(a) "IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(b) "IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(c) "IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS (\$5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(d) "IF YOU NEGLIGENTLY STORE OR LEAVE A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, WHERE A PERSON UNDER 18 YEARS OF AGE IS LIKELY TO ACCESS IT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO ONE THOUSAND DOLLARS (\$1,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."

(e) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(f) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."

(g) "NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD."

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(h) "IF A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS OR THEFT OCCURRED WITHIN FIVE DAYS OF THE TIME YOU KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE FIREARM HAD BEEN LOST OR STOLEN."

SEC. 5. Strengthening the National Instant Criminal Background Check System.

SEC. 5.1. Section 28220 of the Penal Code is amended to read:

28220. (a) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(b) ~~To the extent that funding is available, the~~ The Department of Justice ~~may shall~~ participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, ~~if that participation is implemented,~~ shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to Section 28225, or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of

that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(f) (1) (A) The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:

(i) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(ii) The purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(iii) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(B) The dealer shall provide the purchaser with information about the manner in which he or she may contact the department regarding the delay described in subparagraph (A).

(2) The department shall notify the purchaser by mail regarding the delay and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser shall report any inaccuracies or incompleteness to the department on an approved form.

(3) If the department ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:

(A) If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or

record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

(B) If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact in compliance with subdivision (c) of Section 28220.

(4) If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

(g) *Commencing July 1, 2017, upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, the department shall submit the name, date of birth, and physical description of the person to the National Instant Criminal Background Check System Index, Denied Persons Files. The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.*

SEC. 6. Possession of Large-Capacity Magazines.

SEC. 6.1. Section 32310 of the Penal Code is amended to read:

32310. (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, ~~commencing January 1, 2000~~, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

(b) For purposes of this section, "manufacturing" includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.

(c) *Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2017, any person in this state who*

possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) *Any person who may not lawfully possess a large-capacity magazine commencing July 1, 2017 shall, prior to July 1, 2017:*

- (1) *Remove the large-capacity magazine from the state;*
- (2) *Sell the large-capacity magazine to a licensed firearms dealer; or*
- (3) *Surrender the large-capacity magazine to a law enforcement agency for destruction.*

SEC. 6.2. Section 32400 of the Penal Code is amended to read:

32400. Section 32310 does not apply to the sale of, giving of, lending of, *possession of*, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

SEC. 6.3. Section 32405 of the Penal Code is amended to read:

32405. Section 32310 does not apply to the sale to, lending to, transfer to, purchase by, receipt of, *possession of*, or importation into this state of, a large-capacity magazine by a sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of that officer's duties.

SEC. 6.4. Section 32406 is added to the Penal Code, to read:

32406. *Subdivision (c) of Section 32310 does not apply to an honorably retired sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or honorably retired sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer's duties. "Honorably retired" shall have the same meaning as provided in Section 16690.*

SEC. 6.5. Section 32410 of the Penal Code is amended to read:

32410. Section 32310 does not apply to the sale, or purchase, *or possession* of any large-capacity magazine to or by a person licensed pursuant to Sections 26700 to 26915, inclusive.

SEC. 6.6. Section 32420 of the Penal Code is repealed.

~~32420. Section 32310 does not apply to the importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the same large-capacity magazine.~~

SEC. 6.7. Section 32425 of the Penal Code is amended to read:

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32425. Section 32310 does not apply to either *any* of the following:

(a) The lending or giving of any large-capacity magazine to a person licensed pursuant to Sections 26700 to 26915, inclusive, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(b) *The possession of any large-capacity magazine by a person specified in subdivision (a) for the purposes specified in subdivision (a).*

(c) The return to its owner of any large-capacity magazine by a person specified in subdivision (a).

SEC. 6.8. Section 32435 of the Penal Code is amended to read:

32435. Section 32310 does not apply to any of the following:

(a) The sale of, giving of, lending of, *possession of*, importation into this state of, or purchase of, any large-capacity magazine, to or by any entity that operates an armored vehicle business pursuant to the laws of this state.

(b) The lending of large-capacity magazines by an entity specified in subdivision (a) to its authorized employees, while in the course and scope of employment for purposes that pertain to the entity's armored vehicle business.

(c) *The possession of any large-capacity magazines by the employees of an entity specified in subdivision (a) for purposes that pertain to the entity's armored vehicle business.*

(d) The return of those large-capacity magazines to the entity specified in subdivision (a) by those employees specified in subdivision (b).

SEC. 6.9. Section 32450 of the Penal Code is amended to read:

32450. Section 32310 does not apply to the purchase *or possession* of a large-capacity magazine by the holder of a special weapons permit issued pursuant to Section 31000, 32650, or 33300, or pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this division, for any of the following purposes:

(a) For use solely as a prop for a motion picture, television, or video production.

(b) For export pursuant to federal regulations.

(c) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations.

SEC. 7. Firearms Dealers.

SEC. 7.1. Section 26885 of the Penal Code is amended to read:

26885. (a) Except as provided in subdivisions (b) and (c) of Section 26805, all firearms that are in the inventory of a licensee shall be kept within the licensed location.

(b) Within 48 hours of discovery, a licensee shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located:

(1) Any firearm *or ammunition* that is merchandise of the licensee.

(2) Any firearm *or ammunition* that the licensee takes possession of pursuant to Chapter 5 (commencing with Section 28050), *or pursuant to Section 30312.*

(3) Any firearm *or ammunition* kept at the licensee's place of business.

SEC. 7.2. Section 26915 of the Penal Code is amended to read:

26915. (a) *Commencing January 1, 2018, a* A firearms dealer ~~may~~ *shall* require any agent *or employee* who handles, sells, or delivers firearms to obtain and provide to the dealer a certificate of eligibility from the Department of Justice pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and California firearms dealer number of the firearms dealer with whom the person is employed.

(b) The department shall notify the firearms dealer in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing firearms.

(c) If the local jurisdiction requires a background check of the agents or employees of a firearms dealer, the agent or employee shall obtain a certificate of eligibility pursuant to subdivision (a).

(d) (1) Nothing in this section shall be construed to preclude a local jurisdiction from conducting an additional background check pursuant to Section 11105. The local jurisdiction may not charge a fee for the additional criminal history check.

(2) Nothing in this section shall be construed to preclude a local jurisdiction from prohibiting employment based on criminal history that does not appear as part of obtaining a certificate of eligibility.

(e) The licensee shall prohibit any agent who the licensee knows or reasonably should know is within a class of persons prohibited from possessing firearms pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, from coming into contact with any firearm that is not secured and from accessing any key, combination, code, or other means to open any of the locking devices described in subdivision (g).

(f) Nothing in this section shall be construed as preventing a local government from enacting an ordinance imposing additional conditions on licensees with regard to agents *or employees.*

(g) For purposes of this article, "secured" means a firearm that is made inoperable in one or more of the following ways:

(1) The firearm is inoperable because it is secured by a firearm safety device listed on the department's roster of approved firearm safety devices pursuant to subdivision (d) of Section 23655.

(2) The firearm is stored in a locked gun safe or long-gun safe that meets the standards for department-approved gun safes set forth in Section 23650.

(3) The firearm is stored in a distinct locked room or area in the building that is used to store firearms, which can only be unlocked by a key, a combination, or similar means.

(4) The firearm is secured with a hardened steel rod or cable that is at least one-eighth of an inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has

a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

SEC. 8. Sales of Ammunition.

SEC. 8.1. Section 16150 of the Penal Code is amended to read:

16150. (a) ~~As used in Section 30300, "ammunition" means handgun ammunition as defined in Section 16650. As used in this part, except in subdivision (a) of Section 30305 and in Section 30306, "ammunition" means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. "Ammunition" does not include blanks.~~

(b) As used in subdivision (a) of Section 30305 and in Section 30306, "ammunition" includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. "Ammunition" does not include blanks.

SEC. 8.2. Section 16151 is added to the Penal Code, to read:

16151. (a) *As used in this part, commencing January 1, 2018, "ammunition vendor" means any person, firm, corporation, or other business enterprise that holds a current ammunition vendor license issued pursuant to Section 30385.*

(b) *Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Articles 2 (commencing with Section 30300) and 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4.*

SEC. 8.3. Section 16662 of the Penal Code is repealed.

~~16662. As used in this part, "handgun ammunition vendor" means any person, firm, corporation, dealer, or any other business enterprise that is engaged in the retail sale of any handgun ammunition, or that holds itself out as engaged in the business of selling any handgun ammunition.~~

SEC. 8.4. Section 17315 of the Penal Code is amended to read:

17315. ~~As used in Article 3 (commencing with Section 30345) Articles 2 through 5 of Chapter 1 of Division 10 of Title 4, "vendor" means a handgun ammunition vendor.~~

SEC. 8.5. Section 30306 of the Penal Code is amended to read:

30306. (a) Any person, corporation, ~~or~~ firm, *or other business enterprise* who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who he or she knows or using reasonable care should know is prohibited from owning, possessing, or having under custody or control, any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) *Any person, corporation, firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person whom the person, corporation, firm, or other business enterprise*

knows or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a person who is prohibited from owning, possessing, or having under custody or control any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

~~(b)~~ (c) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and another provision of law shall not be punished under more than one provision.

SEC. 8.6. Section 30312 of the Penal Code is amended to read:

30312. (a) ~~Commencing February 1, 2011, the~~ (1) *Commencing January 1, 2018, the sale of ammunition by any party shall be conducted by or processed through a licensed ammunition vendor.*

(2) *When neither party to an ammunition sale is a licensed ammunition vendor, the seller shall deliver the ammunition to a vendor to process the transaction. The ammunition vendor shall then promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the vendor's own merchandise. If the ammunition vendor cannot legally deliver the ammunition to the purchaser, the vendor shall forthwith return the ammunition to the seller. The ammunition vendor may charge the purchaser an administrative fee to process the transaction, in an amount to be set by the Department of Justice, in addition to any applicable fees that may be charged pursuant to the provisions of this title.*

(b) *Commencing January 1, 2018, the sale, delivery or transfer of ownership of handgun ammunition by any party may only occur in a face-to-face transaction with the seller, deliverer, or transferor being provided bona fide evidence of identity from the purchaser or other transferee, provided, however, that ammunition may be purchased or acquired over the Internet or through other means of remote ordering if a licensed ammunition vendor initially receives the ammunition and processes the transaction in compliance with this section and Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of this part.*

~~(b)~~ (c) ~~Subdivision~~ Subdivisions (a) and (b) shall not apply to or affect the sale, delivery, or transfer of handgun ammunition to any of the following:

(1) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale, delivery, or transfer is for exclusive use by that government agency and, prior to the sale, delivery, or transfer of the handgun ammunition, written authorization from the head of the agency employing the purchaser or transferee is obtained, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency employing the individual.

(2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

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(3) An importer or manufacturer of handgun ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

(5) A person whose licensed premises are outside this state and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(6) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to Section 26710.

(7) ~~A handgun~~ An ammunition vendor.

(8) A consultant-evaluator.

(9) *A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.*

(10) *A person who purchases or receives ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.*

(e) (d) A violation of this section is a misdemeanor.

SEC. 8.7. Section 30314 is added to the Penal Code, to read:

30314. (a) *Commencing January 1, 2018, a resident of this state shall not bring or transport into this state any ammunition that he or she purchased or otherwise obtained from outside of this state unless he or she first has that ammunition delivered to a licensed ammunition vendor for delivery to that resident pursuant to the procedures set forth in Section 30312.*

(b) *Subdivision (a) does not apply to any of the following:*

(1) *An ammunition vendor.*

(2) *A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.*

(3) *An importer or manufacturer of ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.*

(4) *A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6.*

(5) *A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of*

eligibility issued by the Department of Justice pursuant to Section 26710.

(6) *A person who acquired the ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.*

(c) *A violation of this section is an infraction for any first time offense, and either an infraction or a misdemeanor for any subsequent offense.*

SEC. 8.8. The heading of Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code is amended to read:

Article 3. ~~Handgun~~ Ammunition Vendors

SEC. 8.9. Section 30342 is added to the Penal Code, immediately preceding Section 30345, to read:

30342. (a) *Commencing January 1, 2018, a valid ammunition vendor license shall be required for any person, firm, corporation, or other business enterprise to sell more than 500 rounds of ammunition in any 30-day period.*

(b) *A violation of this section is a misdemeanor.*

SEC. 8.10. Section 30347 of the Penal Code is amended to read:

30347. (a) *An ammunition vendor shall require any agent or employee who handles, sells, delivers, or has under his or her custody or control any ammunition, to obtain and provide to the vendor a certificate of eligibility from the Department of Justice issued pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and address of the ammunition vendor with whom the person is employed, or the name and California firearms dealer number of the ammunition vendor if applicable.*

(b) *The department shall notify the ammunition vendor in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing ammunition under subdivision (a) of Section 30305 or federal law.*

(c) ~~A~~ *An ammunition vendor shall not permit any agent or employee who the vendor knows or reasonably should know is a person described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title or Section 8100 or 8103 of the Welfare and Institutions Code to handle, sell, or deliver, or have under his or her custody or control, any handgun ammunition in the course and scope of employment.*

SEC. 8.11. Section 30348 is added to the Penal Code, to read:

30348. (a) *Except as provided in subdivision (b), the sale of ammunition by a licensed vendor shall be conducted at the location specified in the license.*

(b) *A vendor may sell ammunition at a gun show or event if the gun show or event is not conducted from any motorized or towed vehicle.*

(c) *For purposes of this section, "gun show or event" means a function sponsored by any national, state, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.*

(d) Sales of ammunition at a gun show or event shall comply with all applicable laws including Sections 30347, 30350, 30352, and 30360.

SEC. 8.12. Section 30350 of the Penal Code is amended to read:

30350. A An ammunition vendor shall not sell or otherwise transfer ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or display for transfer of ownership of any handgun ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor.

SEC. 8.13. Section 30352 of the Penal Code is amended to read:

30352. (a) Commencing February 1, 2011, a July 1, 2019, an ammunition vendor shall not sell or otherwise transfer ownership of any handgun ammunition without, at the time of delivery, legibly recording the following information on a form to be prescribed by the Department of Justice:

(1) The date of the sale or other transaction transfer.

(2) The purchaser's or transferee's driver's license or other identification number and the state in which it was issued.

(3) The brand, type, and amount of ammunition sold or otherwise transferred.

(4) The purchaser's or transferee's full name and signature.

(5) The name of the salesperson who processed the sale or other transaction.

(6) The right thumbprint of the purchaser or transferee on the above form.

(7) (6) The purchaser's or transferee's full residential address and telephone number.

(8) (7) The purchaser's or transferee's date of birth.

(b) Commencing July 1, 2019, an ammunition vendor shall electronically submit to the department the information required by subdivision (a) for all sales and transfers of ownership of ammunition. The department shall retain this information in a database to be known as the Ammunition Purchase Records File. This information shall remain confidential and may be used by the department and those entities specified in, and pursuant to, subdivision (b) or (c) of Section 11105, through the California Law Enforcement Telecommunications System, only for law enforcement purposes. The ammunition vendor shall not use, sell, disclose, or share such information for any other purpose other than the submission required by this subdivision without the express written consent of the purchaser or transferee.

(c) Commencing on July 1, 2019, only those persons listed in this subdivision, or those persons or entities listed in subdivision (e), shall be authorized to purchase ammunition. Prior to delivering any ammunition, an ammunition vendor shall require bona fide evidence of identity to verify that the person who is receiving delivery of the ammunition is a person or entity listed in subdivision (e) or one of the following:

(1) A person authorized to purchase ammunition pursuant to Section 30370.

(2) A person who was approved by the department to receive a firearm from the ammunition vendor, pursuant to Section 28220, if that vendor is a licensed firearms dealer,

and the ammunition is delivered to the person in the same transaction as the firearm.

(d) Commencing July 1, 2019, the ammunition vendor shall verify with the department, in a manner prescribed by the department, that the person is authorized to purchase ammunition by comparing the person's ammunition purchase authorization number to the centralized list of authorized ammunition purchasers. If the person is not listed as an authorized ammunition purchaser, the vendor shall deny the sale or transfer.

(b) (e) Subdivision Subdivisions (a) and (d) shall not apply to or affect sales or other transfers of ownership of handgun ammunition by handgun ammunition vendors to any of the following, if properly identified:

(1) A person licensed pursuant to Sections 26700 to 26915, inclusive.

(2) (1) A handgun An ammunition vendor.

(3) (2) A person who is on the centralized list of exempted federal firearms licensees maintained by the department pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.

(4) (3) A target facility that holds a business or regulatory license person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.

(5) (4) A gunsmith.

(6) (5) A wholesaler.

(7) (6) A manufacturer or importer of firearms or ammunition licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(8) (7) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer of ownership is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the handgun ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed.

(8) A properly identified sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or properly identified sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

(f) (1) Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a full-time paid peace officer who is authorized to carry a firearm in the course and scope of the officer's duties.

(2) The certification shall be delivered to the vendor at the time of purchase or transfer and the purchaser or transferee shall provide bona fide evidence of identity to verify that he or she is the person authorized in the certification.

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(3) The vendor shall keep the certification with the record of sale and submit the certification to the department.

(g) The department is authorized to adopt regulations to implement the provisions of this section.

SEC. 8.14. Section 30363 is added to the Penal Code, to read:

30363. Within 48 hours of discovery, an ammunition vendor shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the vendor's business premises are located:

(1) Any ammunition that is merchandise of the vendor.

(2) Any ammunition that the vendor takes possession of pursuant to Section 30312.

(3) Any ammunition kept at the vendor's place of business.

SEC. 8.15. Article 4 (commencing with Section 30370) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:

Article 4. Ammunition Purchase Authorizations

30370. (a) (1) Commencing on January 1, 2019, any person who is 18 years of age or older may apply to the Department of Justice for an ammunition purchase authorization.

(2) The ammunition purchase authorization may be used by the authorized person to purchase or otherwise seek the transfer of ownership of ammunition from an ammunition vendor, as that term is defined in Section 16151, and shall have no other force or effect.

(3) The ammunition purchase authorization shall be valid for four years from July 1, 2019, or the date of issuance, whichever is later, unless it is revoked by the department pursuant to subdivision (b).

(b) The ammunition purchase authorization shall be promptly revoked by the department upon the occurrence of any event which would have disqualified the holder from being issued the ammunition purchase authorization pursuant to this section. If an authorization is revoked, the department shall upon the written request of the holder state the reasons for doing so and provide the holder an appeal process to challenge that revocation.

(c) The department shall create and maintain an internal centralized list of all persons who are authorized to purchase ammunition and shall promptly remove from the list any persons whose authorization was revoked by the department pursuant to this section. The department shall provide access to the list by ammunition vendors for purposes of conducting ammunition sales or other transfers, and shall provide access to the list by law enforcement agencies for law enforcement purposes.

(d) The department shall issue an ammunition purchase authorization to the applicant if all of the following conditions are met:

(1) The applicant is 18 years of age or older.

(2) The applicant is not prohibited from acquiring or possessing ammunition under subdivision (a) of Section 30305 or federal law.

(3) The applicant pays the fees set forth in subdivision (g).

(e) (1) Upon receipt of an initial or renewal application, the department shall examine its records, and the records it is authorized to request from the State Department of State Hospitals, pursuant to Section 8104 of the Welfare

and Institutions Code, and if authorized, the National Instant Criminal Background Check System, as described in Section 922(t) of Title 18 of the United States Code, in order to determine if the applicant is prohibited from possessing or acquiring ammunition under subdivision (a) of Section 30305 or federal law.

(2) The applicant shall be approved or denied within 30 days of the date of the submission of the application to the department. If the application is denied, the department shall state the reasons for doing so and provide the applicant an appeal process to challenge that denial.

(3) If the department is unable to ascertain the final disposition of the application within 30 days of the applicant's submission, the department shall grant authorization to the applicant.

(4) The ammunition purchase authorization number shall be the same as the number on the document presented by the person as bona fide evidence of identity.

(f) The department shall renew a person's ammunition purchase authorization before its expiration, provided that the department determines that the person is not prohibited from acquiring or possessing ammunition under subdivision (a) of Section 30305 or federal law, and provided the applicant timely pays the renewal fee set forth in subdivision (g).

(g) The department may charge a reasonable fee not to exceed fifty dollars (\$50) per person for the issuance of an ammunition purchase authorization or the issuance of a renewal authorization, however, the department shall not set these fees any higher than necessary to recover the reasonable, estimated costs to fund the ammunition authorization program provided for in this section and Section 30352, including the enforcement of this program and maintenance of any data systems associated with this program.

(h) The Ammunition Safety and Enforcement Special Fund is hereby created within the State Treasury. All fees received pursuant to this section shall be deposited into the Ammunition Safety and Enforcement Special Fund of the General Fund, and, notwithstanding Section 13340 of the Government Code, are continuously appropriated for purposes of implementing, operating and enforcing the ammunition authorization program provided for in this section and Section 30352, and for repaying the start-up loan provided for in Section 30371.

(i) The department shall annually review and may adjust all fees specified in subdivision (g) for inflation.

(j) The department is authorized to adopt regulations to implement the provisions of this section.

30371. (a) There is hereby appropriated twenty-five million dollars (\$25,000,000) from the General Fund as a loan for the start-up costs of implementing, operating and enforcing the provisions of the ammunition authorization program provided for in Sections 30352 and 30370.

(b) For purposes of repaying the loan, the Controller shall, after disbursing moneys necessary to implement, operate and enforce the ammunition authorization program provided for in Sections 30352 and 30370, transfer all proceeds from fees received by the Ammunition Safety and Enforcement Special Fund up to the amount of the loan provided by this section, including interest at the pooled money investment account rate, to the General Fund.

SEC. 8.16. Article 5 (commencing with Section 30385) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:

Article 5. Ammunition Vendor Licenses

30385. (a) The Department of Justice is authorized to issue ammunition vendor licenses pursuant to this article. The department shall, commencing July 1, 2017, commence accepting applications for ammunition vendor licenses. If an application is denied, the department shall inform the applicant of the reason for denial in writing.

(b) The ammunition vendor license shall be issued in a form prescribed by the department and shall be valid for a period of one year. The department may adopt regulations to administer the application and enforcement provisions of this article. The license shall allow the licensee to sell ammunition at the location specified in the license or at a gun show or event as set forth in Section 30348.

(c) (1) In the case of an entity other than a natural person, the department shall issue the license to the entity, but shall require a responsible person to pass the background check pursuant to Section 30395.

(2) For purposes of this article, "responsible person" means a person having the power to direct the management, policies, and practices of the entity as it pertains to ammunition.

(d) Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Article 2 (commencing with Section 30300) and Article 3 (commencing with Section 30342).

30390. (a) The Department of Justice may charge ammunition vendor license applicants a reasonable fee sufficient to reimburse the department for the reasonable, estimated costs of administering the license program, including the enforcement of this program and maintenance of the registry of ammunition vendors.

(b) The fees received by the department pursuant to this article shall be deposited in the Ammunition Vendors Special Account, which is hereby created. Notwithstanding Section 13340 of the Government Code, the revenue in the fund is continuously appropriated for use by the department for the purpose of implementing, administering and enforcing the provisions of this article, and for collecting and maintaining information submitted pursuant to Section 30352.

(c) The revenue in the Firearms Safety and Enforcement Special Fund shall also be available upon appropriation to the department for the purpose of implementing and enforcing the provisions of this article.

30395. (a) The Department of Justice is authorized to issue ammunition vendor licenses to applicants who the department has determined, either as an individual or a responsible person, are not prohibited from possessing, receiving, owning, or purchasing ammunition under subdivision (a) of Section 30305 or federal law, and who provide a copy of any regulatory or business license required by local government, a valid seller's permit issued by the State Board of Equalization, a federal firearms license if the person is federally licensed, and a certificate of eligibility issued by the department.

(b) The department shall keep a registry of all licensed ammunition vendors. Law enforcement agencies shall be

provided access to the registry for law enforcement purposes.

(c) An ammunition vendor license is subject to forfeiture for a breach of any of the prohibitions and requirements of Article 2 (commencing with Section 30300) or Article 3 (commencing with Section 30342).

SEC. 9. Nothing in this Act shall preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to the sale or transfer of ammunition.

SEC. 10. Securing Firearms From Prohibited Persons.

SEC. 10.1. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

- (1) When the property was stolen or embezzled.
- (2) When the property or things were used as the means of committing a felony.
- (3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.
- (4) When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.
- (5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.
- (6) When there is a warrant to arrest a person.
- (7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.
- (8) When the property or things to be seized include an item or evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.
- (9) When the property or things to be seized include a firearm or other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.
- (10) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

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(11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(15) Beginning January 1, 2018, the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a finding pursuant to paragraph (3) of subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law.

~~(15)~~ (16) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.

~~(16)~~ (17) (A) When all of the following apply:

(i) A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d),

(e), or (f) of Section 655 of the Harbors and Navigation Code.

(ii) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbors and Navigation Code.

(iii) The sample will be drawn from the person in a reasonable, medically approved manner.

(B) This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) (A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make motions or present evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for

determination by the court, any item that appears to be privileged as provided by law.

(d) (1) As used in this section, a “special master” is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, “documentary evidence” includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney’s ability to request an in-camera hearing pursuant to the holding of the Supreme Court of California in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute evidence that tends to show a violation of Section 530.5, the magistrate may

issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

(k) This section shall not be construed to create a cause of action against any foreign or California corporation, its officers, employees, agents, or other specified persons for providing location information.

SEC. 10.2. Section 27930 of the Penal Code is amended to read:

27930. Section 27545 does not apply to deliveries, transfers, or returns of firearms made pursuant to any of the following:

(a) Sections 18000 and 18005.

(b) Division 4 (commencing with Section 18250) of Title 2.

(c) Chapter 2 (commencing with Section 33850) of Division 11.

(d) Sections 34005 and 34010.

(e) *Section 29810.*

SEC. 10.3. Section 29810 of the Penal Code is amended to read:

29810. (a) For any person who is subject to Section 29800 or 29805, the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this chapter from owning, purchasing, receiving, possessing, or having under custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. If the prohibition on owning or possessing a firearm will expire on a date specified in the court order, the form shall inform the defendant that he or she may elect to have his or her firearm transferred to a firearms dealer licensed pursuant to Section 29830.

(b) Failure to provide the notice described in subdivision (a) is not a defense to a violation of this chapter.

(c) *This section shall be repealed effective January 1, 2018.*

SEC. 10.4. Section 29810 is added to the Penal Code, to read:

29810. (a) (1) *Upon conviction of any offense that renders a person subject to Section 29800 or Section 29805, the person shall relinquish all firearms he or she owns, possesses, or has under his or her custody or control in the manner provided in this section.*

(2) *The court shall, upon conviction of a defendant for an offense described in subdivision (a), instruct the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and shall order the defendant to relinquish all firearms in the manner provided in this section. The court shall also provide the defendant with a Prohibited Persons Relinquishment Form developed by the Department of Justice.*

(3) *Using the Prohibited Persons Relinquishment Form, the defendant shall name a designee and grant the designee power of attorney for the purpose of transferring or disposing of any firearms. The designee shall be either a local law enforcement agency or a consenting third party*

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who is not prohibited from possessing firearms under state or federal law. The designee shall, within the time periods specified in subdivisions (d) and (e), surrender the firearms to the control of a local law enforcement agency, sell the firearms to a licensed firearms dealer, or transfer the firearms for storage to a firearms dealer pursuant to Section 29830.

(b) The Prohibited Persons Relinquishment Form shall do all of the following:

(1) Inform the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and that he or she shall relinquish all firearms through a designee within the time periods set forth in subdivision (d) or (e) by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830.

(2) Inform the defendant that any cohabitant of the defendant who owns firearms must store those firearms in accordance with Section 25135.

(3) Require the defendant to declare any firearms that he or she owned, possessed, or had under his or her custody or control at the time of his or her conviction, and require the defendant to describe the firearms and provide all reasonably available information about the location of the firearms to enable a designee or law enforcement officials to locate the firearms.

(4) Require the defendant to name a designee, if the defendant declares that he or she owned, possessed, or had under his or her custody or control any firearms at the time of his or her conviction, and grant the designee power of attorney for the purpose of transferring or disposing of all firearms.

(5) Require the designee to indicate his or her consent to the designation and, except a designee that is a law enforcement agency, to declare under penalty of perjury that he or she is not prohibited from possessing any firearms under state or federal law.

(6) Require the designee to state the date each firearm was relinquished and the name of the party to whom it was relinquished, and to attach receipts from the law enforcement officer or licensed firearms dealer who took possession of the relinquished firearms.

(7) Inform the defendant and the designee of the obligation to submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within the time periods specified in subdivisions (d) and (e).

(c) (1) When a defendant is convicted of an offense described in subdivision (a), the court shall immediately assign the matter to a probation officer to investigate whether the Automated Firearms System or other credible information, such as a police report, reveals that the defendant owns, possesses, or has under his or her custody or control any firearms. The assigned probation officer shall receive the Prohibited Persons Relinquishment Form from the defendant or the defendant's designee, as applicable, and ensure that the Automated Firearms System has been properly updated to indicate that the defendant has relinquished those firearms.

(2) Prior to final disposition or sentencing in the case, the assigned probation officer shall report to the court whether

the defendant has properly complied with the requirements of this section by relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and by timely submitting a completed Prohibited Persons Relinquishment Form. The probation officer shall also report to the Department of Justice on a form to be developed by the department whether the Automated Firearms System has been updated to indicate which firearms have been relinquished by the defendant.

(3) Prior to final disposition or sentencing in the case, the court shall make findings concerning whether the probation officer's report indicates that the defendant has relinquished all firearms as required, and whether the court has received a completed Prohibited Persons Relinquishment Form, along with the receipts described in paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e). The court shall ensure that these findings are included in the abstract of judgment. If necessary to avoid a delay in sentencing, the court may make and enter these findings within 14 days of sentencing.

(4) If the court finds probable cause that the defendant has failed to relinquish any firearms as required, the court shall order the search for and removal of any firearms at any location where the judge has probable cause to believe the defendant's firearms are located. The court shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(5) Failure by a defendant to timely file the completed Prohibited Persons Relinquishment Form with the assigned probation officer shall constitute an infraction punishable by a fine not exceeding one hundred dollars (\$100).

(d) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who does not remain in custody at any time within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within five days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within five days following the conviction, along with the receipts described in paragraph (1) of subdivision (d) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within five days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

(e) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who is in custody at any point within the five-day period following conviction:

(1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within 14 days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.

(2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, within 14 days following conviction, along with the receipts described in paragraph (1) of subdivision (e) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.

(3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within 14 days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

(4) If the defendant is released from custody during the 14 days following conviction and a designee has not yet taken temporary possession of each firearm to be relinquished as described above, the defendant shall, within five days following his or her release, relinquish each firearm required to be relinquished pursuant to paragraph (1) of subdivision (d).

(f) For good cause, the court may shorten or enlarge the time periods specified in subdivisions (d) and (e), enlarge the time period specified in paragraph (3) of subdivision (c), or allow an alternative method of relinquishment.

(g) The defendant shall not be subject to prosecution for unlawful possession of any firearms declared on the Prohibited Persons Relinquishment Form if the firearms are relinquished as required.

(h) Any firearms that would otherwise be subject to relinquishment by a defendant under this section, but which are lawfully owned by a cohabitant of the defendant, shall be exempt from relinquishment, provided the defendant is notified that the cohabitant must store the firearm in accordance with Section 25135.

(i) A law enforcement agency shall update the Automated Firearms System to reflect any firearms that were relinquished to the agency pursuant to this section. A law enforcement agency shall retain a firearm that was relinquished to the agency pursuant to this section for 30 days after the date the firearm was relinquished. After the 30-day period has expired, the firearm is subject to destruction, retention, sale or other transfer by the agency, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of the firearm is necessary or proper to the ends of justice,

or if the defendant provides written notice of an intent to appeal a conviction for an offense described in subdivision (a), or if the Automated Firearms System indicates that the firearm was reported lost or stolen by the lawful owner. If the firearm was reported lost or stolen, the firearm shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4. The agency shall notify the Department of Justice of the disposition of relinquished firearms pursuant to Section 34010.

(j) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of a firearm pursuant to Section 33880.

(k) This section shall become operative on January 1, 2018.

SEC. 11. Theft of Firearms.

SEC. 11.1. Section 490.2 of the Penal Code is amended to read:

(a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

(c) This section shall not apply to theft of a firearm.

SEC. 11.2. Section 29805 of the Penal Code is amended to read:

29805. Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 490.2 if the property taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not

exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

SEC. 12. Interim Standards.

Notwithstanding the Administrative Procedure Act (APA), and in order to facilitate the prompt implementation of the Safety for All Act of 2016, the California Department of Justice may adopt interim standards without compliance with the procedures set forth in the APA. The interim standards shall remain in effect for no more than two years, and may be earlier superseded by regulations adopted pursuant to the APA. "Interim standards" means temporary standards that perform the same function as "emergency regulations" under the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), except that in order to provide greater opportunity for public comment on permanent regulations, the interim standards may remain in force for two years rather than 180 days.

SEC. 13. Amending the Measure.

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a vote of 55 percent of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act.

SEC. 14. Conflicting Measures.

(a) In the event that this measure and another measure on the same subject matter, including but not limited to the regulation of the sale or possession of firearms or ammunition, shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 15. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstance, is for any reason held to be invalid or unconstitutional, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 16. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this Act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this Act for the purpose of defending its constitutionality, whether such action is in trial court, on appeal, or on discretionary review by the Supreme Court

of California or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

PROPOSITION 64

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Business and Professions Code, the Food and Agricultural Code, the Health and Safety Code, the Labor Code, the Revenue and Taxation Code, and the Water Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title.

This measure shall be known and may be cited as the Control, Regulate and Tax Adult Use of Marijuana Act ("the Adult Use of Marijuana Act").

SEC. 2. Findings and Declarations.

A. Currently in California, nonmedical marijuana use is unregulated, untaxed, and occurs without any consumer or environmental protections. The Control, Regulate and Tax Adult Use of Marijuana Act will legalize marijuana for those over 21 years old, protect children, and establish laws to regulate marijuana cultivation, distribution, sale and use, and will protect Californians and the environment from potential dangers. It establishes the Bureau of Marijuana Control within the Department of Consumer Affairs to regulate and license the marijuana industry.

B. Marijuana is currently legal in our state for medical use and illegal for nonmedical use. Abuse of the medical marijuana system in California has long been widespread, but recent bipartisan legislation signed by Governor Jerry Brown is establishing a comprehensive regulatory scheme for medical marijuana. The Control, Regulate and Tax Adult Use of Marijuana Act (hereafter called the Adult Use of Marijuana Act) will consolidate and streamline regulation and taxation for both nonmedical and medical marijuana.

C. Currently, marijuana growth and sale is not being taxed by the State of California, which means our state is missing out on hundreds of millions of dollars in potential tax revenue every year. The Adult Use of Marijuana Act will tax both the growth and sale of marijuana to generate hundreds of millions of dollars annually. The revenues will cover the cost of administering the new law and will provide funds to: invest in public health programs that educate youth to prevent and treat serious substance abuse; train local law enforcement to enforce the new law with a focus on DUI enforcement; invest in communities to reduce the illicit market and create job opportunities; and provide for environmental cleanup and restoration of public lands damaged by illegal marijuana cultivation.

D. Currently, children under the age of 18 can just as easily purchase marijuana on the black market as adults can. By legalizing marijuana, the Adult Use of Marijuana Act will incapacitate the black market, and move marijuana purchases into a legal structure with strict safeguards against children accessing it. The Adult Use of Marijuana Act prohibits the sale of nonmedical marijuana to those

Exhibit 97

ER2185


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SB-23 Firearms: assault weapons. (1999-2000)

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Senate Bill No. 23

CHAPTER 129

An act to amend Sections 245, 12001, 12020, 12022, 12022.5, 12280, 12285, and 12289 of, and to add Sections 12079 and 12276.1 to, the Penal Code, relating to firearms.

[Filed with Secretary of State July 19, 1999. Approved by Governor July 19, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 23, Perata. Firearms: assault weapons.

(1) Existing law makes it a misdemeanor for any person to manufacture, cause to be manufactured, import into this state, keep or offer for sale, give, lend, or possess specified weapons and explosives.

This bill would make it a misdemeanor or a felony, beginning January 1, 2000, for any person, except as provided, to manufacture, import into the state, keep or offer for sale, give, or lend any large-capacity magazine. A large-capacity magazine would be defined to mean any ammunition feeding device with the capacity to accept more than 10 rounds. By expanding the definition of, and increasing the penalty for, a crime, this bill imposes a state-mandated local program.

(2) Existing law requires imposition of a longer term of imprisonment on any person convicted of assault with a deadly weapon, and for enhanced terms of imprisonment for a person convicted of a felony, if that person was either armed with, or personally used, an assault weapon or machinegun, as defined, in the commission of, or attempted commission of that felony.

Existing law makes it a crime to engage in specified activities regarding assault weapons and regulates the lawful possession of those weapons. Existing law defines the term "assault weapon" by, among other things, designating a list of specified semiautomatic firearms.

This bill would further define the term "assault weapon" by providing descriptive definitions concerning the capacity and function of the weapon. These expanded definitions would specifically apply to the above-mentioned increased term and enhancement provisions and to related provisions. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(3) Existing law makes it a crime, punishable either as a felony or a misdemeanor, for any person to possess any assault weapon, as defined. However, if a person charged with a first-time violation of that offense presents proof that he or she lawfully possessed the assault weapon within a specified period, and has since registered the weapon or relinquished it, the offense is punishable as an infraction, if the person has also complied with specified conditions. Existing law also provides a period of forgiveness to persons in possession of an assault weapon during a specified period under specified conditions. In addition, existing law exempts specified law enforcement agencies from the prohibition against possession, purchase, or sale of assault weapons.

This bill would make it an infraction, punishable by a fine up to \$500, for a first-time violation of the above-mentioned offense, if the offender was found in possession of no more than 2 firearms in compliance with specified provisions and proves that he or she lawfully possessed the assault weapon prior to the date it was

defined as an assault weapon under the proposed provision set forth in (2). This bill would also add an additional period of forgiveness for persons in possession of assault weapons, as defined, pursuant to the proposed provision set forth in (2), to extend to the one-year period after the weapon was defined as an assault weapon under that proposed provision. By defining a new crime, this bill would impose a state-mandated local program. The bill would also exempt certain additional off-duty and certain retired law enforcement personnel from the prohibition against possession, purchase, or sale of assault weapons.

(4) Existing law requires any person who lawfully possesses an assault weapon, as defined, prior to specified periods, to register that weapon with the Department of Justice, within a specified period of time.

This bill would require any person who lawfully possessed an assault weapon prior to the date it was defined as an assault weapon pursuant to the proposed provision mentioned in (2) above, to register the weapon within one year of the effective date of that provision.

(5) Existing law requires the Department of Justice to conduct a public education and notification program regarding the registration of assault weapons, the limited forgiveness period of the registration requirement and the consequences of nonregistration.

This bill would require that the public education and notification program include the new definition of assault weapons discussed in paragraph (2) above.

(6) The bill would state legislative intent.

(7) The bill would provide that its provisions are severable.

(8) This bill would incorporate additional changes in Section 12020 of the Penal Code proposed by SB 359, to be operative if SB 359 and this bill are both enacted and become effective on or before January 1, 2000, and this bill is enacted last. (9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 245 of the Penal Code is amended to read:

245. (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

(2) Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment.

(3) Any person who commits an assault upon the person of another with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) (1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Any person who commits an assault with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(e) When a person is convicted of a violation of this section in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance, and it shall be confiscated and disposed of in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 2. Section 12001 of the Penal Code is amended to read:

12001. (a) As used in this title, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" shall apply to and include any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length. These terms also include any device that has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

(b) As used in this title, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, the term "firearm" includes the frame or receiver of the weapon.

(d) For the purposes of Sections 12025 and 12031, the term "firearm" also shall include any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signaling purposes.

(e) For purposes of Sections 12070, 12071, and paragraph (7) of subdivision (a), and subdivisions (b), (c), (d), and (f) of Section 12072, the term "firearm" does not include an unloaded firearm that is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code.

(f) Nothing shall prevent a device defined as a "pistol," "revolver," or "firearm capable of being concealed upon the person" from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

(g) For purposes of Sections 12551 and 12552, the term "BB device" means any instrument that expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, CO2 pressure, or spring action, or any spot marker gun.

(h) As used in this title, "wholesaler" means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

"Wholesaler" shall not include a manufacturer, importer, or gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071, 12072, or 12084, "application to purchase" means any of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (b) of Section 12076.

(2) The initial completion of the LEFT by the purchaser, transferee, or person being loaned the firearm as required by subdivision (d) of Section 12084.

(3) The initial completion and transmission to the department of the record of electronic or telephonic transfer by the dealer on the purchaser, transferee, or person being loaned the firearm as required by subdivision (c) of Section 12076.

(j) For purposes of Section 12023, a firearm shall be deemed to be "loaded" whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.

(k) For purposes of Sections 12021, 12021.1, 12025, 12070, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, notwithstanding the fact that the term "any firearm" may be used in those sections, each firearm or the frame or receiver of the same shall constitute a distinct and separate offense under those sections.

(l) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or device enumerated therein shall constitute a distinct and separate offense.

(m) Each application that requires any firearms eligibility determination involving the issuance of any license, permit, or certificate pursuant to this title shall include two copies of the applicant's fingerprints on forms prescribed by the Department of Justice. One copy of the fingerprints may be submitted to the United States Federal Bureau of Investigation.

(n) As used in this chapter, a "personal handgun importer" means an individual who meets all of the following criteria:

(1) He or she is not a person licensed pursuant to Section 12071.

(2) He or she is not a licensed manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(3) He or she is not a licensed importer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) He or she is the owner of a pistol, revolver, or other firearm capable of being concealed upon the person.

(5) He or she acquired that pistol, revolver, or other firearm capable of being concealed upon the person outside of California.

(6) He or she moves into this state on or after January 1, 1998, as a resident of this state.

(7) He or she intends to possess that pistol, revolver, or other firearm capable of being concealed upon the person within this state on or after January 1, 1998.

(8) The pistol, revolver, or other firearm capable of being concealed upon the person was not delivered to him or her by a person licensed pursuant to Section 12071 who delivered that firearm following the procedures set forth in Section 12071 and subdivision (c) of Section 12072.

(9) He or she, while a resident of this state, had not previously reported his or her ownership of that pistol, revolver, or other firearm capable of being concealed upon the person to the Department of Justice in a manner prescribed by the department that included information concerning him or her and a description of the firearm.

(10) The pistol, revolver, or other firearm capable of being concealed upon the person is not a firearm that is prohibited by subdivision (a) of Section 12020.

(11) The pistol, revolver, or other firearm capable of being concealed upon the person is not an assault weapon, as defined in Section 12276 or 12276.1.

(12) The pistol, revolver, or other firearm capable of being concealed upon the person is not a machinegun, as defined in Section 12200.

(13) The person is 18 years of age or older.

(o) For purposes of paragraph (6) of subdivision (n):

(1) Except as provided in paragraph (2), residency shall be determined in the same manner as is the case for establishing residency pursuant to Section 12505 of the Vehicle Code.

(2) In the case of members of the armed forces of the United States, residency shall be deemed to be established when he or she was discharged from active service in this state.

SEC. 3. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fl chette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

(2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.

(3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition.

(4) Carries concealed upon his or her person any dirk or dagger.

However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.29) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of

these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred to in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(19) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(20) The sale to, lending to, transfer to, purchase by, receipt of, or importation into this state of, a large capacity magazine by a sworn peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(21) The sale or purchase of any large-capacity magazine to or by a person licensed pursuant to Section 12071.

(22) The loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

(A) The person being loaned the large-capacity magazine is not prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.

(B) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited and the person who lends the large-capacity magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned.

(23) The importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the large-capacity magazine previously lawfully possessed in the state.

(24) The lending or giving of any large-capacity magazine to a person licensed pursuant to Section 12071, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(25) The return to its owner of any large-capacity magazine by a person specified in paragraph (24).

(26) The importation into this state of, or sale of, any large-capacity magazine by a person who has been issued a permit to engage in those activities pursuant to Section 12079, when those activities are in accordance with the terms and conditions of that permit.

(27) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine, to or by entities that operate armored vehicle businesses pursuant to the laws of this state.

(28) The lending of large-capacity magazines by the entities specified in paragraph (27) to their authorized employees, while in the course and scope of their employment for purposes that pertain to the entity's armored vehicle business.

(29) The return of those large-capacity magazines to those entities specified in paragraph (27) by those employees specified in paragraph (28).

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fl chette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 2 1/2 inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(25) As used in this section, "large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds nor shall it include any .22 caliber tube ammunition feeding device.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 3.5. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fl chette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

(2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.

(3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition.

(4) Carries concealed upon his or her person any dirk or dagger.

However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.29) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by peace officer members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties and the peace officer has

completed a training course in the use of these weapons certified by the Commission on Peace Officer Standards and Training.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred to in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(19) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(20) The sale to, lending to, transfer to, purchase by, receipt of, or importation into this state of, a large capacity magazine by a sworn peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(21) The sale or purchase of any large-capacity magazine to or by a person licensed pursuant to Section 12071.

(22) The loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

(A) The person being loaned the large-capacity magazine is not prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.

(B) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited and the person who lends the large-capacity magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned.

(23) The importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the large-capacity magazine previously lawfully possessed in the state.

(24) The lending or giving of any large-capacity magazine to a person licensed pursuant to Section 12071, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(25) The return to its owner of any large-capacity magazine by a person specified in paragraph (24).

(26) The importation into this state of, or sale of, any large-capacity magazine by a person who has been issued a permit to engage in those activities pursuant to Section 12079, when those activities are in accordance with the terms and conditions of that permit.

(27) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine, to or by entities that operate armored vehicle businesses pursuant to the laws of this state.

(28) The lending of large-capacity magazines by the entities specified in paragraph (27) to their authorized employees, while in the course and scope of their employment for purposes that pertain to the entity's armored vehicle business.

(29) The return of those large-capacity magazines to those entities specified in paragraph (27) by those employees specified in paragraph (28).

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "fl chette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 2 1/2 inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(25) As used in this section, "large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds nor shall it include any .22 caliber tube ammunition feeding device.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 4. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in

addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless the arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, the additional term described in this subdivision shall be three years whether or not the arming is an element of the offense of which he or she was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with an assault weapon or machinegun whether or not the person is personally armed with an assault weapon or machinegun.

(b) (1) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for that offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (c), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 5. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) (1) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of the offense of which he or she was convicted.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be 4, 5, or 10 years. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(b) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(2) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 3, 4, or 10 years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245, or murder if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 6. Section 12079 is added to the Penal Code, to read:

12079. (a) Upon a showing that good cause exists, the Department of Justice may issue permits for the possession, transportation, or sale between a person licensed pursuant to Section 12071 and an out-of-state client, of large capacity magazines.

(b) For purposes of this section, "large capacity magazine" shall have the same meaning as that set forth in paragraph (25) of subdivision (c) of Section 12020.

SEC. 7. Section 12276.1 is added to the Penal Code, to read:

12276.1. (a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following:

(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(B) A thumbhole stock.

(C) A folding or telescoping stock.

(D) A grenade launcher or flare launcher.

(E) A flash suppressor.

(F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

- (A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
- (B) A second handgrip.
- (C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.
- (D) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.
- (6) A semiautomatic shotgun that has both of the following:
 - (A) A folding or telescoping stock.
 - (B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.
- (7) A semiautomatic shotgun that has the ability to accept a detachable magazine.
- (8) Any shotgun with a revolving cylinder.
- (b) "Assault weapon" does not include any antique firearm.
- (c) The following definitions shall apply under this section:
 - (1) "Magazine" shall mean any ammunition feeding device.
 - (2) "Capacity to accept more than 10 rounds" shall mean capable of accommodating more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.
 - (3) "Antique firearm" means any firearm manufactured prior to January 1, 1899.
 - (d) This section shall become operative January 1, 2000.

SEC. 8. Section 12280 of the Penal Code is amended to read:

12280. (a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Except as provided in Section 12288, and in subdivisions (c) and (d), any person who, within this state, possesses any assault weapon, except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year. However, if the person presents proof that he or she lawfully possessed the assault weapon prior to June 1, 1989, or prior to the date it was specified as an assault weapon, and has since either registered the firearm and any other lawfully obtained firearm specified by Section 12276 or 12276.5 pursuant to Section 12285 or relinquished them pursuant to Section 12288, a first-time violation of this subdivision shall be an infraction punishable by a fine of up to five hundred dollars (\$500), but not less than three hundred fifty dollars (\$350), if the person has otherwise possessed the firearm in compliance with subdivision (c) of Section 12285. In these cases, the firearm shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.

(c) A first-time violation of subdivision (b) shall be an infraction punishable by a fine of up to five hundred dollars (\$500), if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

- (1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1.
- (2) The person is not found in possession of a firearm specified as an assault weapon pursuant to Section 12276 or Section 12276.5.

- (3) The person has not previously been convicted of violating this section.
- (4) The person was found to be in possession of the assault weapons within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.
- (5) The person has since registered the firearms and any other lawfully obtained firearms defined by Section 12276.1, pursuant to Section 12285, except as provided for by this section, or relinquished them pursuant to Section 12288.
- (d) Firearms seized pursuant to subdivision (c) shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.
- (e) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.
- (f) Subdivisions (a) and (b) shall not apply to the sale to, purchase by, or possession of assault weapons by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Youth and Adult Corrections Agency, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States for use in the discharge of their official duties.
- (g) Subdivision (b) shall not prohibit the possession or use of assault weapons by sworn peace officer members of those agencies specified in subdivision (f) for law enforcement purposes, whether on or off duty.
- (h) Subdivisions (a) and (b) shall not prohibit the sale or transfer of assault weapons by an entity specified in subdivision (f) to a person, upon retirement, who retired as a sworn officer from that entity.
- (i) Subdivision (b) shall not apply to the possession of an assault weapon by a retired peace officer who received that assault weapon pursuant to subdivision (h).
- (j) Subdivision (b) shall not apply to the possession of an assault weapon, as defined in Section 12276, by any person during the 1990 calendar year, during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault weapon pursuant to Section 12276.1, if all of the following are applicable:
- (1) The person is eligible under this chapter to register the particular assault weapon.
 - (2) The person lawfully possessed the particular assault weapon described in paragraph (1) prior to June 1, 1989, if the weapon is specified as an assault weapon pursuant to Section 12276, or prior to the date it was specified as an assault weapon pursuant to Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.
 - (3) The person is otherwise in compliance with this chapter.
- (k) Subdivisions (a) and (b) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons for sale to the following:
- (1) Exempt entities listed in subdivision (f).
 - (2) Entities and persons who have been issued permits pursuant to Section 12286.
 - (3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.
 - (4) Federal military and law enforcement agencies.
 - (5) Law enforcement and military agencies of other states.
 - (6) Foreign governments and agencies approved by the United States State Department.
- (l) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (g) or (i) which is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.
- (m) Subdivision (b) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon registered under Section 12285 or that was possessed pursuant to subdivision (g) or (i), if the

assault weapon is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.

(n) Subdivision (a) shall not apply to:

(1) A person who lawfully possesses and has registered an assault weapon pursuant to this chapter who lends that assault weapon to another if all the following apply:

(A) The person to whom the assault weapon is lent is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person to whom the assault weapon is lent remains in the presence of the registered possessor of the assault weapon.

(C) The assault weapon is possessed at any of the following locations:

(i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(2) The return of an assault weapon to the registered possessor which is lent by the same pursuant to paragraph (1).

(o) Subdivision (b) shall not apply to the possession of an assault weapon by a person to whom an assault weapon is lent pursuant to subdivision (n).

(p) Subdivisions (a) and (b) shall not apply to the possession and importation of an assault weapon into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon.

(2) The competition or match is conducted on the premises of one of the following:

(i) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(q) Subdivision (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286.

(2) A person who has a permit to possess an assault weapon issued pursuant to Section 12286 when he or she is acting in accordance with Section 12285 or 12286.

(r) Subdivisions (a) and (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286 or 12290.

(s) Subdivision (b) shall not apply to the registered owner of an assault weapon possessing that firearm in accordance with subdivision (c) of Section 12285.

(t) Subdivision (a) shall not apply to the importation into this state of an assault weapon by the registered owner of that assault weapon, if it is in accordance with the provisions of subdivision (c) of Section 12285.

(u) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (b) of that section.

SEC. 9. Section 12285 of the Penal Code is amended to read:

12285. (a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, and any person who lawfully possessed an assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5 shall register the firearm within 90 days with the Department of Justice pursuant to those procedures that the department may establish. Except as provided in subdivision (a) of Section 12280, any person who lawfully possessed an assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276.1, and which was not specified as an assault weapon under Section 12276 or 12276.5, shall register the firearm within one year of the effective date of Section 12276.1, with the department pursuant to those procedures that the department may establish. The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, and any other information that the department may deem appropriate. The department may charge a fee for registration of up to twenty dollars (\$20) per person but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(b) (1) Except as provided in paragraph (2), no assault weapon possessed pursuant to this section may be sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun dealer, as defined in subdivision (c) of Section 12290, or as provided in Section 12288. Any person who (A) obtains title to an assault weapon registered under this section or that was possessed pursuant to subdivision (g) or (i) of Section 12280 by bequest or intestate succession, or (B) lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to Section 12276.5, or subsequently defined as an assault weapon pursuant to Section 12276.1, shall, within 90 days, render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, or remove the weapon from this state. A person who lawfully possessed a firearm that was subsequently declared to be an assault weapon pursuant to Section 12276.5 may alternatively register the firearm within 90 days of the declaration issued pursuant to subdivision (f) of Section 12276.5.

(2) A person moving into this state, otherwise in lawful possession of an assault weapon, shall do one of the following:

(A) Prior to bringing the assault weapon into this state, that person shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

(B) The person shall cause the assault weapon to be delivered to a licensed gun dealer, as defined in subdivision (c) of Section 12290, in this state in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. If the person obtains a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, the dealer shall redeliver that assault weapon to the person. If the licensed gun dealer, as defined in subdivision (c) of Section 12290, is prohibited from delivering the assault weapon to a person pursuant to this paragraph, the dealer shall possess or dispose of the assault weapon as allowed by this chapter.

(c) A person who has registered an assault weapon under this section may possess it only under any of the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

- (1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.
- (2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.
- (3) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.
- (4) While on the premises of a shooting club which is licensed pursuant to the Fish and Game Code.
- (5) While attending any exhibition, display, or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.
- (6) While on publicly owned land if the possession and use of a firearm described in Section 12276 or 12276.1 is specifically permitted by the managing agency of the land.
- (7) While transporting the assault weapon between any of the places mentioned in this subdivision, or to any licensed gun dealer, as defined in subdivision (c) of Section 12290, for servicing or repair pursuant to subdivision (b) of Section 12290, if the assault weapon is transported as required by Section 12026.1.
- (d) No person who is under the age of 18 years, no person who is prohibited from possessing a firearm by Section 12021 or 12021.1, and no person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.
- (e) The department's registration procedures shall provide the option of joint registration for assault weapons owned by family members residing in the same household.
- (f) For 90 days following January 1, 1992, a forgiveness period shall exist to allow persons specified in subdivision (b) of Section 12280 to register with the Department of Justice assault weapons that they lawfully possessed prior to June 1, 1989.
- (g) Any person who registered a firearm as an assault weapon pursuant to the provisions of law in effect prior to January 1, 2000, where the assault weapon is thereafter defined as an assault weapon pursuant to Section 12276.1, shall be deemed to have registered the weapon for purposes of this chapter and shall not be required to reregister the weapon pursuant to this section.
- (h) Any person who registers his or her assault weapon during the 90-day forgiveness period described in subdivision (f), and any person whose registration form was received by the Department of Justice after January 1, 1991, and who was issued a temporary registration prior to the end of the forgiveness period, shall not be charged with a violation of subdivision (b) of Section 12280, if law enforcement becomes aware of that violation only as a result of the registration of the assault weapon. This subdivision shall have no effect upon persons charged with a violation of subdivision (b) of Section 12280 of the Penal Code prior to January 1, 1992, provided that law enforcement was aware of the violation before the weapon was registered.

SEC. 10. Section 12287 of the Penal Code is amended to read:

12287. (a) The Department of Justice may, upon a finding of good cause, issue permits for the manufacture of assault weapons to federally licensed manufacturers of firearms for the sale to, purchase by, or possession of assault weapons by, any of the following:

- (1) The agencies listed in subdivision (f) of Section 12280.
- (2) Entities and persons who have been issued permits pursuant to Section 12286.
- (3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.
- (4) Federal law enforcement and military agencies.
- (5) Law enforcement and military agencies of other states.
- (6) Foreign governments and agencies approved by the United States State Department.

(b) Application for the permits, the keeping and inspection thereof, and the revocation of permits shall be undertaken in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

SEC. 11. Section 12289 of the Penal Code is amended to read:

12289. (a) The Department of Justice shall conduct a public education and notification program regarding the registration of assault weapons and the definition of the weapons set forth in Section 12276.1. The public education and notification program shall include outreach to local law enforcement agencies and utilization of public service announcements in a variety of media approaches, to ensure maximum publicity of the limited forgiveness period of the registration requirement specified in subdivision (f) of Section 12285 and the consequences of nonregistration. The department shall develop posters describing gunowners' responsibilities under this chapter which shall be posted in a conspicuous place in every licensed gun store in the state during the forgiveness period.

(b) Any costs incurred by the Department of Justice to implement this section which cannot be absorbed by the department shall be funded from the Dealers' Record of Sale Special Account, as set forth in subdivision (d) of Section 12076, upon appropriation by the Legislature.

SEC. 12. It was the original intent of the Legislature in enacting Chapter 19 of the Statutes of 1989 to ban all assault weapons, regardless of their name, model number, or manufacture. It is the purpose of this act to effectively achieve the Legislature's intent to prohibit all assault weapons.

SEC. 13. If any phrase, clause, sentence, section, or provision of this act or application thereof is held invalid as to any person or circumstance, such invalidity shall not affect any other phrase, clause, sentence, section, provision, or application of this act, that can be given effect without the invalid phrase, clause, sentence, section, provision, or application and to this end the provisions of the act are declared to be severable.

SEC. 14. Section 3.5 of this bill incorporates amendments to Section 12020 of the Penal Code proposed by this bill and SB 359. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12020 of the Penal Code, and (3) this bill is enacted after SB 359, in which case Section 12020 of the Penal Code, as amended by SB 359, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Exhibit 98

ER2209

**Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment.**

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

February 12, 2013

Prepared Testimony by Laurence H. Tribe*

Mr. Chairman and members of the Committee:

I am honored and grateful for the invitation to testify before you today. I know I am not alone in wanting us to do all we can, consistent with the Constitution, to reduce the awful specter of rampant gun violence and the far too frequent massacres of our children, our friends, and our fellow citizens.

Like all decent Americans, I felt a pang of unspeakable horror on December 14, when I learned that twenty first-grade children had been brutally slaughtered in their first-grade classroom in Newtown, Connecticut. Those children, and the brave grown-ups who died at Adam Lanza's hands as they tried to save the young lives entrusted to their care, deserve every effort to translate our shared grief into shared national action. That action must not be deterred by the defeatist argument that, because we will never solve this problem in its entirety, we might as well give up. Nor should it be deterred by distorted interpretations of the United States Constitution. As others have often reminded us about that great and enduring document, it is many things to many people, but one thing it is *not* is a suicide pact.

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While we debate the pending proposals to reduce gun violence through measures focused on gun safety as part of a holistic national response, it's crucial that we not permit any part of our Constitution to become a collateral casualty of our conversation. Proposals to disarm the American people, to leave firearms solely in the hands of the military and the police, have been decisively taken off the table – if they were ever truly *on* the table – by the Supreme Court's Second Amendment decisions in 2008 and 2010. –Slippery slope” arguments predicated on the unsettled state of the law prior to 2008 have been rendered irrelevant. The only proposals under serious consideration in this body are reasonable measures that would fully respect the basic rights of responsible citizens to use ordinary firearms for self-defense and other lawful purposes. They cannot lead to unacceptably extreme measures as long as the Supreme Court sits.

Having examined those proposals, having looked at the steps announced by the President under his power faithfully to execute the laws of the United States, and having studied the decisions of the Supreme Court and lower courts around the country, I am convinced that nothing under discussion in the Senate Judiciary Committee represents a threat to the Constitution or even comes close to violating the Second Amendment or the Constitution's structural limits either on congressional power or on executive authority.

Undoubtedly we should have a national debate about how best to reconcile the Second Amendment rights of every individual with the full range of proposals to reduce gun violence in America. As someone who has studied and taught constitutional law for four decades and argued dozens of cases in the Supreme Court and dozens more in the lower courts, I am obviously interested in engaging those questions. In today's testimony, however, I will focus not on

competing theories of how the Second Amendment ought to have been interpreted but on the law as it stands. I am here not as an academic theorist but as a constitutional lawyer. As a lawyer, I've won some and I've lost some, and I know a losing argument when I see it. And the argument that any of the proposals to reduce gun violence currently being considered here might be struck down as unconstitutional is decidedly a losing argument.

There is plenty of room for policy debate over the best steps to take to reduce gun violence, but we mustn't confuse those policy differences or the ideological and cultural divisions that underlie them with genuine constitutional doubts about whether any of those steps crosses the constitutional line. Everyone in this room knows that anything Congress or the President does in this field will confront opposition. And in a nation as litigious as ours, some of that opposition will no doubt find its way into the courts. But there is no basis to suppose that the courts will or should rebuff any of the steps being debated here today. They should not, and they will not.

What I hope to do this morning, setting all hyperbole aside and approaching the law on the books with a fair-minded eye, is explain why reforms such as those this committee is considering clearly pass constitutional muster.

I. Introduction:

Taking the Second Amendment Seriously, But Applying it Cautiously

I begin by reaffirming my agreement with the Supreme Court that the Second Amendment guarantees Americans the right as individuals to possess guns for reasonable self-defense. Some of my friends and colleagues devoted to the cause of responsible firearms regulation evidently wish to relitigate this point. They continue to insist that the best reading of the Second Amendment would secure gun rights only in connection with service in the state militia and not for individual possession and use. For nearly a decade and a half, I have disagreed with them and have defended the individual rights view ultimately taken by the Supreme Court in 2008. In October of 1999, for example, I joined a fellow constitutional law scholar in publishing an op-ed in *The New York Times* arguing that “bearing arms [is] a ‘privilege’ of each citizen.”¹ I continue to defend this position today.

That matters only insofar as it bears on my credibility as a witness in today’s hearing. If I were among those who had *opposed* the individual rights interpretation adopted by the Supreme Court in *Heller*, some might wonder whether my conclusions about the regulations *Heller* permits Congress to adopt reflect wishful thinking rather than a realistic and sympathetic appraisal of what the Court that decided *Heller* would in fact permit. But there is no wishful thinking here. I am being a hard-headed realist in reading the *Heller* decision and extrapolating conclusions from the majority opinion.

¹ Laurence H. Tribe & Akhil Reed Amar, *Well Regulated Militias and More*, N.Y. TIMES, Oct. 28, 1999, at A25; 1 Laurence H. Tribe, *American Constitutional Law* 900–902 (3d ed. 2000).

Although many in the community advocating gun rights had long assumed that the individual rights interpretation governed the scope of the Second Amendment, it was not until the Supreme Court's 2008 ruling in *District of Columbia v. Heller*² that a majority of the Court's Justices agreed. In so doing, the Court recognized that the core individual liberty protected by the amendment affords Americans the right to purchase and store operable firearms for self-defense in the home. Two years later, in *McDonald v. City of Chicago*,³ the Court extended the *Heller* ruling to cover restrictions imposed by state and local governments, making it unmistakably clear that the right at issue was not and is not simply a right of the state-organized militia against being overrun by federal authority.

Despite this fundamental affirmation, the *Heller* decision is exceedingly narrow in many important respects. As Judge Brett Kavanaugh of the D.C. Circuit Court of Appeals recently put it, ~~It~~ bears emphasis that *Heller*, while enormously significant jurisprudentially, was not revolutionary in terms of its immediate real-world effects on American gun regulation.” ~~Indeed,~~” he continued, ~~Heller~~ largely preserved the status quo of gun regulation in the United States.”⁴ To understand what he meant, it helps to look first to the Washington, DC ordinance implicated in the *Heller* case. The District had in place one of the most restrictive firearms regulations in the nation; it essentially outlawed the possession of handguns in the home, where the need for self-defense is, as Justice Scalia wrote, ~~most~~ acute.”⁵ For the majority on the Court, a policy like the one the District had adopted, a policy on the outer edge of gun control's reach in the United States, was irreconcilable with the Second Amendment.

² 554 U.S. 570 (2008).

³ 130 S.Ct. 3020 (2010).

⁴ *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1270 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

⁵ *Heller*, 544 U.S. at 628.

The *Heller* decision took great pains to emphasize its relative modesty. It repeated the mantra that the Second Amendment right —is not unlimited”⁶ and devoted an entire section to listing types of regulation – for example, limits on gun ownership ~~by~~ felons and the mentally ill” and, most relevant to today’s hearing, regulation of ~~dangerous and unusual weapons~~” – the constitutionality of which the Court had no intention of casting into doubt.⁷ The decision paused to note that, by specifically giving a constitutional green light to some regulatory efforts, the Court did not mean to signal that others were constitutionally dubious.⁸ Justice Scalia closed his opinion for the Court with an expression of solicitude for the regulatory goals that Washington, DC sought to advance and, more importantly, an invitation to pursue those goals with the ~~variety of tools~~” still available to the District and to other states and localities across the country even in *Heller*’s wake.⁹

Since that decision and its extension to state and local laws in 2010, the vast majority of federal and state courts to adjudicate Second Amendment claims have responsibly hewed to the cautious approach espoused by the Supreme Court in *Heller* and *McDonald*. For example, in a ruling highly relevant to the topic of this hearing, the D.C. Circuit recently upheld the constitutionality of Washington D.C.’s assault weapons ban, which included a restriction on

⁶ *Id.* at 595, 626.

⁷ *Id.* at 626 – 28.

⁸ *Id.* at 627 n. 26. There is no doubt, for instance, that regulatory provisions targeting firearms and ammunitions *manufacturers* in addition to those who transfer, possess, carry, or use the resulting weapons are at least as easy to defend from Second Amendment challenge as are measures that do not take effect until the point of sale.

⁹ *Id.* at 636.

high-capacity magazines, as well as gun registration requirements.¹⁰ The majority in the case, following the broad consensus that has emerged among federal and state judges,¹¹ evaluated the regulations against a standard of heightened judicial scrutiny while preserving both the option to adopt a more skeptical mode of review for restrictions on core self-defense firearm possession and the option to exempt other laws from Second Amendment review entirely when they do not enter the amendment's zone of protected conduct.¹² In another notable decision staking out a similar approach, a panel of the Seventh Circuit Court of Appeals struck down Chicago's firing-range ban given the close nexus between regular firing practice and training and safe, responsible self-defense in the home.¹³ And state appellate courts from North Carolina to Wisconsin to California have joined with their federal brethren in upholding state restrictions on firearms ownership under this middle-of-the-road approach that molds the degree of judicial scrutiny to the extent of a law's burden on the core self-defense right secured by the Second Amendment.¹⁴

The central message of *Heller* and its lower-court progeny is thus to take the application of the Second Amendment seriously but also cautiously. When necessary to vindicate the core right to self-defense respected by *Heller*, neither courts nor lawmakers should be shy about invoking the Second Amendment. But because few public responsibilities are as important to

¹⁰ *Heller v. Dist. of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011).

¹¹ *See, e.g.*, *Kachalsky v. County of Westchester*, 701 F.3d 81, 93 – 94 (2d Cir. 2012); *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011) cert. denied, 132 S. Ct. 1538 (U.S. 2012); *United States v. Masciandaro*, 638 F.3d 458, 469-70 (4th Cir. 2011) cert. denied, 132 S. Ct. 756 (U.S. 2011); *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010);

¹² *Heller*, 670 F.3d at 1256 – 58.

¹³ The court applied what it called “not quite strict scrutiny” because the law's burden struck so close to the core Second Amendment right to self-defense in the home. *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011).

¹⁴ *See, e.g.*, *Johnston v. State*, 735 S.E.2d 859 (N.C. Ct. App. 2012); *State v. Brown*, 815 N.W.2d 407 (Ct. App. Wisc. 2012); *People v. Ellison*, 196 Cal. App. 4th 1342, 1347 (2011).

good governance as legislating to secure public safety, lawmakers and jurists should not casually give the amendment an expansive scope nor unduly scrutinize reasonable firearm regulations. In the wake of the Newtown massacre and the push to propose sensible new rules about firearms, the Obama administration and many leaders in Congress have conducted themselves precisely along these lines.

II. The Second Amendment Propriety of Recent Policy Proposals

Limits on Large-Capacity Magazines

A core feature of the Assault Weapons Ban of 2013, introduced by Senator Dianne Feinstein, as well as the primary component of a freestanding bill championed by Senator Frank Lautenberg, is a ban on magazines capable of firing more than ten rounds of ammunition without reloading.¹⁵ Before moving into the weeds of the constitutional analysis, it would be useful to contrast such a high-capacity magazine restriction to the law *Heller* struck down. *Heller* axed a local ordinance that adopted about as blunt an approach to restraining gun violence as possible: By its very design, the DC law espoused disagreement with the whole idea of law-abiding gun ownership for self-defense in the home. A limit on large-capacity magazines, by contrast, is a regulation of an entirely different caliber. It does not challenge the fundamental recognition that gun possession for self-defense is a right of every citizen; it merely seeks to reset the parameters of responsible ownership to advance the cause of public safety. It operates with a scalpel rather than an ax. Even Robert Levy, the man who largely funded the challenge to DC's sweeping

¹⁵ The Assault Weapons Ban of 2013 also prohibits firearms with fixed magazines capable of holding more than ten rounds of ammunition.

handgun ban in *Heller* and served as an attorney on the case, concedes that bans on both high-capacity magazines and assault weapons almost certainly do not infringe the Second Amendment rights he successfully fought to vindicate in court.¹⁶

By any reasonable reckoning, this crucial measure might not even trigger heightened Second Amendment review at the threshold stage that the *Heller* ruling requires courts to undertake. But even if the high-capacity magazine prohibition does require further analysis, it safely falls within a zone of regulations that do not unconstitutionally abridge Second Amendment rights.

Most constitutional challenges require lawyers and scholars to carry out two stages of analysis. First, we must assess whether a given government policy even *implicates* a given right in the first place. For example, in 1915, the Supreme Court entertained a First Amendment challenge to a filmmaker's punishment under an Ohio censorship law but, in a clear misjudgment the Court would later correct, decided that movies were not even a form of "speech" entitled to First Amendment protection.¹⁷ More recently, in a ruling that may perhaps give pause to members of this committee (despite the distinct protections of the Constitution's Speech and Debate Clause), the Court concluded that votes by legislators are not a form of "speech" over which any public official can claim a personal First Amendment right.¹⁸ Assuming that a law *does* implicate the right in question, the government must then proceed to justify the challenged

¹⁶ Interview with Robert A. Levy by the Washington Post (Jan. 10, 2013), *transcript available at* http://articles.washingtonpost.com/2013-01-10/lifestyle/36272630_1_assault-weapons-high-capacity-magazines-military-style-guns.

¹⁷ *Mut. Film Corp. v. Indus. Comm'n of Ohio*, 236 U.S. 230, 243 (1915).

¹⁸ *Nevada Comm'n on Ethics v. Carrigan*, 131 S. Ct. 2343, 2350 (2011).

law so that the court hearing the challenge may evaluate, roughly speaking, whether the justification is strong enough to permit the law to stand or, alternatively, whether the measure goes too far and thus violates the Constitution.

I begin with this return to fundamentals because it never ceases to surprise me how often those engaged in legal debate talk past one another by conflating these distinct steps. In the Second Amendment context particularly, there is no excuse for making that mistake. For *Heller* itself makes it absolutely plain that not every gun regulation even triggers Second Amendment review. In other words, sometimes governments may enact regulations addressing the manufacture, transfer, possession or use of firearms that categorically fall outside the Second Amendment's scope, freeing governments of any burden even to make detailed defenses of the provisions in question. For example, the *Heller* opinion specifically named “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings” as illustrative examples of regulations that should not even receive further constitutional review.¹⁹ The importance of this point should not be underemphasized. If too many entirely reasonable firearm regulations, like assault weapon bans and background checks, or rules about trafficking and straw purchases, are subjected to heightened Second Amendment review, it will become difficult if not impossible to separate those regulations categorically from the restrictions that *Heller* specifically approved without subjecting them to any “scrutiny” at all.

¹⁹ Dist. of Columbia v. Heller, 554 U.S. 570, 626 - 27 (2008).

Beyond the examples appearing in the decision, *Heller* also identifies the three primary factors to consider in judging whether other types of regulation trip the Second Amendment's alarm. First, the Court carefully frames the scope of the Second Amendment to cover *only* firearms ~~in~~ common use at the time.²⁰

Second, *Heller* recognized that ~~dangerous or unusual~~ weapons may be and have historically been heavily regulated or banned.²¹ It is not inconceivable – indeed, it seems quite likely – that the Court's pause to distinguish unusually dangerous weapons from widely possessed handguns had precisely the 1994 Assault Weapons Ban, which included a prohibition on high-capacity magazines, in mind. At the very least, the *Heller* majority recognized that the government could keep machine guns — M16 rifles and the like — out of the hands of civilians.²² The Supreme Court thus emphatically rejected the extravagant, or as Justice Scalia characterized it, ~~startling~~ notion, still promoted by some, that the Second Amendment could fulfill its original purposes only if citizens were guaranteed a right to arm themselves to the teeth, matching in their private armories essentially the full array of weapons possessed by the United States Military.²³

Third and finally, the Court emphasized the importance of a nexus to core self-defense needs.²⁴ The majority in *Heller* had no trouble recognizing that handguns represented the

²⁰ *Id.* at 627.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 624.

²⁴ *Id.* at 599 (Justice Breyer's assertion that individual self-defense is merely a "subsidiary interest" of the right to keep and bear arms . . . is profoundly mistaken. He bases that assertion

—quintessential self-defense weapon,” particularly in the home.²⁵ Moreover, handguns were not categorically more dangerous than other types of firearms. So Washington D.C.’s handgun ban clearly fell within the scope of the Second Amendment.

The clarity of *Heller*’s guidance on how to apply these threshold factors begins to dissipate, however, when they no longer align so strikingly in one direction. To begin with, the Court left —dangerousness” undefined, and what the Court meant by that term is not entirely self-evident. In an obvious sense, *all* firearms are dangerous; that is what makes them effective instruments of self-defense. The *Heller* ruling, therefore, asks us to balance any *exceptional* dangerousness of particular firearm design features against the potential self-defense value of those features. For example, even if home possession of machine guns for self-defense might, on rare occasion, deter criminal trespassers more than home possession of handguns, that benefit is simply not sufficient to overcome the substantial hazards to innocent bystanders and intentional targets, in particular the police. *Heller* obviously does not contemplate asking the government to provide an intricately reasoned justification for banning machine guns; instead, it recognizes — and it surely authorizes Congress, and indeed all of us, to recognize — excessive dangerousness in the inherent design of the weapon²⁶ so as to cut off Second Amendment review at the threshold.

solely upon the prologue—but that can only show that self-defense had little to do with the right’s *codification*; it was the *central component* of the right itself.” (emphasis in original)).

²⁵ *Heller*, 544 U.S. at 629.

²⁶ Throughout this debate, opponents of restrictions on large-capacity magazines have repeatedly demanded empirical evidence showing a link between magazine capacity and gun violence. Studies in that mold certainly exist, and I discuss them later. *See, e.g.*, text accompanying notes 48 – 50. But at this threshold stage of the Second Amendment inquiry, the *Heller* decision’s meaning of dangerousness cannot be equivalent to an empirically demonstrated effect on public safety. Rather, the standard is one that asks us to examine design features to assess whether the

All things considered, I conclude that reasonably restricting magazine size and availability does not implicate the core Second Amendment right as *Heller* conceived of it. The reason is not the first factor, that of “common use,” because, of course, large-capacity ammunition magazines and the firearms outfitted for them are, by any reasonable measure, in quite common use in the United States. I note here just a few examples. The standard Glock pistol, the firearm that one reporter called “America’s handgun” in a recent book on the subject, comes equipped with a seventeen-round magazine.²⁷ And America’s most popular rifle, the AR-15 model,²⁸ typically comes with a thirty-round magazine and can accommodate magazines with even larger capacities.²⁹

But to contend that the sizeable market presence of a particular firearm feature is sufficient in itself to trigger full Second Amendment scrutiny is to misrepresent the lesson of *Heller*. The relative dangerousness and self-defense-serving capacity of a firearm or design

weapon poses an aggravated threat to safety as a common-sense matter. First, if the former were the meaning of dangerousness, the threshold inquiry, which may lead courts to conclude that the Second Amendment does not even apply, would become indistinguishable from the more advanced stage of review, in which courts scrutinize a government’s public safety rationale. Second, making empirical evidence of salutary public-safety impacts a prerequisite to gun regulation would defeat efforts to respond to new technologies and lethal features that pose a substantial threat to public safety. The Second Amendment does not require that Americans afford the gun industry a “wait and see” grace period on the (in)famous theory that even a vicious dog deserves one free bite.

²⁷ Erin McCarthy, *Why the Glock Became America’s Handgun*, POPULAR MECHANICS (Jan. 12, 2012, 6:30 AM), <http://www.popularmechanics.com/technology/military/weapons/why-the-glock-became-americas-handgun>

²⁸ Erica Goode, *Rifle Used in Killings, America’s Most Popular, Highlights Regulation Debate*, N.Y. TIMES (Dec. 16, 2012), <http://www.nytimes.com/2012/12/17/us/lanza-used-a-popular-ar-15-style-rifle-in-newtown.html?pagewanted=all>.

²⁹ Steven Almasy, *Newton Shooter’s Guns: What We Know*, CNN (Dec. 19, 2012, 10:11 AM), <http://www.cnn.com/2012/12/18/us/connecticut-landa-guns/index.html>.

feature are also crucial considerations. This approach makes complete sense. The common use and possession of a given firearm feature is, at best, just one helpful indicator of whether restricting that feature will stymie or frustrate the exercise of the core Second Amendment protection of lawful self-defense to a constitutionally cognizable degree. For instance, in the case of high-capacity magazines, significant market presence does not necessarily translate into heavy reliance by American gun owners on those magazines for self-defense. Analysis of the modern development of the U.S. gun market demonstrates that the firearms industry, driven by an obvious profit motive, ushered in a revolution in the state of the market during the 1980s. Manufacturers began to roll out increasing numbers of pistols with ever-larger-capacity magazines rather than revolvers, which take just six rounds of ammunition and had traditionally been the most popular firearm for personal self-defense.³⁰ The frequent purchase of such large-capacity magazines, then, may not be attributable purely or even primarily to actual gun-owner preferences, much less to gun-owner needs. Rather, guns equipped with or ready for large-capacity magazines may simply be the weapons most readily made available on the market. And even if this market presence begins to influence more Americans to purchase firearms with high-capacity magazines because they fear attacks from criminals possessing guns outfitted with the same high-capacity magazines, nothing in *Heller* suggests that it is improper for the government to halt the escalation of this arms race in its tracks. The one-way ratchet of ever more powerful firearms is not a constitutional inevitability. For unlike the doctrine of mutually assured destruction that some say maintained an uneasy peace during the nuclear arms buildup of the

³⁰ See DC Reedy & CS Koper, *Impact of handgun types on gun assault outcomes: a comparison of gun assaults involving semiautomatic pistols and revolvers*, 9 INJURY PREVENTION 151, 151 (2002), available at <http://injuryprevention.bmj.com/content/9/2/151.full#aff-1>.

VIOLENCE POLICY CENTER, BACKGROUND ON GLOCK 19 PISTOL AND AMMUNITION MAGAZINES USED IN ATTACK ON REPRESENTATIVE GABRIELLE GIFFORDS AND OTHERS 1 (2011), available at www.vpc.org/fact_sht/AZbackgrounder.pdf.

Cold War, the propagation of increasingly dangerous guns on American streets has already taken an all-too-violent toll. In other words, tempering the trend toward more dangerous weapons actually *vindicates* the core Second Amendment right of self-defense and personal safety that *Heller* recognizes. In this context, as in many others, less is more.

But even looking beyond the market saturation of large-capacity magazines, this feature runs headlong into the other threshold obstacles that *Heller* requires Second Amendment claims to clear. As experts in effective firearms regulation have preached for years and particularly fervently in recent weeks, higher-capacity magazines pose greater dangers to public safety. By permitting shooters using semi-automatic weapons to continue firing more bullets without interruption, these magazines increase the potential lethality of armed killers.³¹ Though well-trained gun users can change magazines quickly, this interruption may, as we saw last year in the Arizona shooting of Rep. Gabby Giffords, afford time for heroic men or women to intervene and disarm the shooter.³² Moreover, this interruption gives our police a chance to return fire.³³ And it may even provide time for reflection and rethinking before murder becomes massacre.

³¹ BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, ASSAULT-STYLE WEAPONS: HIGH-CAPACITY MAGAZINES, <http://www.bradycampaign.org/legislation/msassaultweapons/highcapacity> (last visited Feb. 2, 2013).

³² Ken Dolak & Justin Wealer, *Woman Wrestled Fresh Ammo Clip From Tucson Shooter as He Tried to Reload*, ABC NEWS (Jan. 9, 2011), <http://abcnews.go.com/Politics/patricia-maisch-describes-stopping-gunman-reloading/story?id=12577933>.

³³ I believe I can speak for many Americans when I thank Baltimore County Police Chief Jim Johnson for the illuminating insights he has publicly offered on the threats of high-capacity weapons not just to public safety in general but also law enforcement officer safety more specifically. See, e.g., John Quinones, *Baltimore Police Chief Wants to Ban High-Capacity Firepower*, ABC NEWS (Dec. 20, 2012), <http://abcnews.go.com/US/baltimore-police-chief-ban-high-capacity-firepower/story?id=18030163>

Against the evident dangerousness of high-capacity magazines as a design feature, we must evaluate the strength and plausibility of asserted self-defense interests. Critics of recent proposals to reestablish a limit on high-capacity magazines have argued that firing more than ten rounds without changing a magazine is necessary for effective self-defense. While I have no doubt that subscription to this perspective among some law-abiding gun owners is sincere, I doubt that it is well-founded. It's rhetorically effective to ask, "How many bullets do *you* want in your magazine when an intruder breaks into your home?" But the answer tells us little that is of relevance to the Second Amendment as *Heller* conceives that provision. I might want a magazine with twice as many bullets as any possible home intruder; I might want a machine gun too. But in the end that can't be the measure of what the Second Amendment says I have a *right* to own and deploy.

Despite the emotional resonance of this kind of appeal, incidents like burglaries and home invasions – even when they lead to the exchange of fire – are unlikely to *require* firing many shots. The NRA publishes a regular column featuring newspaper clippings of gun owners protecting themselves against intruder attacks, and an analysis of these reports over a five-year period demonstrated that in 50% of all cases, two or fewer shots were fired, and the average number of shots fired across the entire data sample was also about two.³⁴ Of course, this data comes from the episodes the NRA chooses to report, so selection bias is possible, meaning the

³⁴ Claude Verner performed the analysis of reporting over the period 1997 to 2001. The findings further show that when many shots were fired, a (presumably frightened) gun owner finished an entire magazine rather than firing the number of shots that necessarily had to be fired in light of the scenario. The analysis can be found reprinted with the author's permission at *Analysis of Five Years of Armed Encounters (With Data Tables)*, GunsSaveLives.net (March 12, 2012), <http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/>.

average number of shots fired per incident could be even lower.³⁵ Even police officers traditionally found revolvers with six-bullet magazines sufficient for their own safety until more dangerous guns flooded the market.³⁶ And we should not lose track of the bigger picture: studies show that self-defense in the home with firearms is rare.³⁷ Additionally, firearms accidents are all too common: between 1965 and 2000, unintentional shootings accounted for the deaths of over 60,000 Americans.³⁸ Firing more bullets quickly may compound their damage.

Another version of the critics' response is that in scary situations, like home invasions, gun owners may go through bullets too quickly in a fit of nervousness or panic.³⁹ That may be true, but it also aggravates the downside hazard in cases of error,⁴⁰ so it is not at all clear that increased access to large-capacity magazines for shooters subject to fragile nerves represents a

³⁵ It seems likely, for example, that merely brandishing a weapon may often lead intruders to flee. A non-exhaustive review of the NRA column reveals several examples of exactly this scenario, giving me the impression that the NRA's reporting is not demonstrably biased toward extreme scenarios or even those in which some shots are fired. *See, e.g.*, Armed Citizen, NRA (March 2012), <http://www.nrapublications.org/index.php/12492/armed-citizen-23/> (“[The resident] met the intruder at her bedroom door, pointed the gun at him and demanded he leave. The trespasser fled without hesitation.”).

³⁶ *See* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda*, 56 UCLA L. REV. 1443, 1489 (2009).

³⁷ A study of Atlanta police records, for example, found that victims of burglaries used guns in self-defense just 3% of the time. For a description of the study and a rich discussion of self-defense uses for firearms, see DAVID HEMENWAY, *PRIVATE GUNS, PUBLIC HEALTH* 67 (2004). The study is A.L. Kellermann et al., *Weapon involvement in home invasion crises*, 273 J. OF THE AM. MED. ASSOC. 1759 (1995).

³⁸ HEMENWAY, *supra* note 38, at 27 – 35.

³⁹ *See, e.g.*, *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011); Emily Miller, *The High Capacity Magazine Myth*, WASHINGTON TIMES (Jan. 27, 2013), <http://www.washingtontimes.com/news/2013/jan/27/the-high-capacity-magazine-myth/>; Jacob Sullum, *The Threat Posed by Gun Magazine Limits*, REASON (Jan. 16, 2013), <http://reason.com/archives/2013/01/16/the-threat-posed-by-gun-magazine-limits>.

⁴⁰ *Heller*, 670 F.3d at 1263 - 64 (“[T]he tendency is for defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders.” (internal quotations omitted)).

net gain for home security or public safety. Finally, some critics of magazine-capacity limits have pointed out that, realistically, many gun owners have not received proper training and for that reason, may fire bullets indiscriminately; a larger magazine – so the thinking presumably goes – will increase the chances that at least one of their wayward shots will hit its mark.⁴¹ As the Supreme Court recognized in *Heller*, however, the Second Amendment protects only the right of ~~responsible~~ *responsible* citizens to use arms in defense of hearth and home.”⁴² In other words, a dangerous firearms feature otherwise outside the Second Amendment’s scope cannot become subject to heightened constitutional scrutiny because of the shortcomings of *irresponsible* gun owners.

To be sure, *some* gun owners may struggle to change magazines quickly not for lack of adequate training but rather by reason of disability or old age.⁴³ Perhaps a ban on high-capacity magazines without any exception for the disabled or elderly might, for this reason, trigger heightened scrutiny of such a ban as applied specifically to those individuals. But the possibility that a prohibition could raise constitutional questions in some subset of its applications does not mean that the prohibition is constitutionally vulnerable on its face.⁴⁴ And it remains the case that

⁴¹ See, e.g., Stephen Hunder, *Why 33 rounds makes sense in a defensive weapon*, WASHINGTON POST (Feb. 6, 2011),

<http://www.washingtonpost.com/wp-dyn/content/article/2011/02/04/AR2011020407083.html>

⁴² Dist. of Columbia v. Heller, 554 U.S. 570, 635 (2008) (emphasis added).

⁴³ Yih Chau-Chang, *High-Capacity Magazines And Their Critical Role In Lawful Self-Defense*, THE EXAMINER (March 10, 2011), <http://www.examiner.com/article/high-capacity-magazines-and-their-critical-role-lawful-self-defense>

⁴⁴ The Supreme Court has exhibited an extreme reluctance to strike down laws on their face – meaning in all applications – when only some applications would fall afoul of a constitutional provision (with the exception of the First Amendment, as facially overbroad laws may chill protected free speech). See RICHARD H. FALLON, DANIEL J. MELTZER & DAVID L. SHAPIRO, HART AND WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 162, 168 (6th ed. 2009).

large-capacity magazines are highly unlikely to be necessary to self-defense in the vast majority of home invasions or burglaries, even those that resort to the exchange of fire. The facial validity of a high-capacity magazine ban is therefore clear.

Despite the considerable market presence of high-capacity magazines, the danger they pose to public safety and the weakness of the self-defense justification for their possession means that two of the three threshold *Heller* factors point strongly against extending Second Amendment protection to high-capacity magazines. The D.C. Circuit Court of Appeals, in a case challenging Washington D.C.'s restriction on magazines with more than ten rounds, recently struggled with this first stage of analysis and determined that the court did not have before it sufficient evidence to decide whether the Second Amendment even *reached* large-capacity magazines.⁴⁵ However, the court went on to conclude that, even if it was proper to extend coverage of the amendment to large-capacity magazines, the government's interest in banning them was strong enough to do so without violating Second Amendment rights.⁴⁶

Having now reviewed the best evidence and argumentation advanced by defenders of high-capacity magazine possession, I doubt that the Supreme Court would find it necessary to reach that second stage of review in dealing with a ban on high-capacity magazines and am quite confident that, in any event, the Court would agree with the ultimate conclusion that, even if the amendment applies, a ban on high-capacity magazines withstands Second Amendment scrutiny.

⁴⁵ *Heller*, 670 F.3d at 1261.

⁴⁶ *Id.* at 1263 – 64.

In explaining that conclusion, I emphasize that commonly advanced rejections of a legitimate government interest in banning high-capacity magazines are deeply misleading. Many opponents of reasonable firearms regulation insist that we tried banning large-capacity magazines in 1994: the results are in, they say, and we failed. One favorite trope is to cite to a 1997 Department of Justice study, which, according to the recent testimony of Wayne LaPierre, “proved that [the] ban had no impact on lowering crime.”⁴⁷ But no one is even *arguing* that a ban on high-capacity magazines (or on assault weapons, for that matter) will necessarily decrease crime rates; highly lethal firearms will still be widely available on the market, and some criminals will use them, just as they do now.

What defenders of a ban on high-capacity magazines *do* argue is that such a ban will help prevent these criminals from killing or maiming as many people when they commit violent crimes. And that argument is solidly grounded. One study, for example, found that between 1984 and 1993, criminals using guns with high-capacity magazines or assault weapons as defined by the 1994 Assault Weapons Ban killed or injured an average of 29 victims, compared to the average 13 victims shot by criminals unequipped with large-capacity magazines.⁴⁸ Another study suggests that, since the lapse of the ban in 2004, high-capacity magazines have once again

⁴⁷ See, e.g., *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (prepared testimony of Wayne LaPierre, Executive Vice President and Chief Executive Officer of the National Rifle Association).

⁴⁸ This study considered all “mass shooting” incidents: those in which six or more were killed or twelve or more were wounded. For an explanation of this study, see Christopher S. Koper, *America’s Experience with the Federal Assault Weapons Ban*, in REDUCING GUN VIOLENCE IN AMERICA 167 (Daniel W. Webster & Jon S. Vernick, eds., 2013). The study is Christopher S. Koper & Jeffrey A. Roth, *The Impact of the 1994 Federal Assault Weapon Ban on Gun Violence Outcomes: An Assessment of Multiple Outcome Measures and Some Lessons for Policy Evaluation*, 17 J. OF QUANTITATIVE CRIMINOLOGY 33 (2001).

become common in episodes of violent crime after the beginnings of a decline, which probably took place because the black market for these magazines had begun to dry up.⁴⁹

Even more misleading is the suggestion that in 1997 we could (or even today that we can) draw meaningful conclusions from the absence of unmistakable evidence of a decrease in violence following the 1994 ban. That legislation grandfathered or exempted many thousands of weapons already owned, and those could still be sold or transferred.⁵⁰ In other words, the 1994 ban was crafted with long-term effects in mind; to measure its effects notwithstanding its untimely end is to misunderstand fundamentally how the legislation was designed to work. It is therefore all the more telling that supporters of reasonable regulation can cite studies based upon identifiable trends emerging during the latter years of the ban, as well as evidence from both before and after the ban, showing that the legal availability of large-capacity magazines is indeed correlated with increased deaths and injuries caused by gun violence. Considered alongside the dangerousness inherent in a large-capacity magazine as a design feature, this evidence provides the government with a sufficient basis to satisfy the Second Amendment under any plausible understanding of the Supreme Court's jurisprudence surrounding that amendment.

⁴⁹ See David S. Fallis and James V. Grimaldi, *Va. data show drop in criminal firepower during assault gun ban*, WASH. POST (Jan. 23, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html> (finding that in Richmond, Virginia, the percentage of guns with high-capacity magazines seized from criminals by police fell to a low of 10% by 2004, when the federal assault weapons ban expired, but has since rebounded to 22%).

⁵⁰ Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 165 – 66.

Assault Weapons Ban

By many accounts, the most important component of the newly proposed assault weapons ban is its prohibition on high-capacity magazines.⁵¹ But that does not mean that the remaining features of the proposal stand on weaker constitutional ground. Far from it. Application of *Heller*'s three threshold factors – dangerousness, commonness of use, and connection to core self-defense interests – demonstrates that the Second Amendment does not provide legal shelter to the features that trigger a firearm's prohibition under the ban.

Opponents of the legislation as well as some proponents of new firearms regulation have observed that some of the “military characteristics” that can lead to prohibition under the legislation⁵² (and, by some accounts, under assault weapons bans in general⁵³) are mostly cosmetic traits designed to make a gun *appear* dangerous and are not, in fact, intrinsically hazardous. But Congress would surely be acting within its constitutional authority if it were to reject this characterization as self-serving or otherwise unreliable. For example, the Brady Campaign to Prevent Gun Violence insists that “[p]istol grips . . . help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position [and that] [b]arrel

⁵¹ Tom Diaz, a researcher for the Violence Policy Center, has repeatedly called on lawmakers to focus their attention on a high-capacity magazine ban. *E.g.*, Tom Diaz, *Ten Ways to Spot a Sell-Out on Gun Control*, FAIRLY CIVIL (Jan. 14, 2013, 2:26 PM), <http://tomdiazgunsandgangs.com/2013/01/14/ten-ways-to-spot-a-sell-out-on-gun-control/> (“An effective law will focus on one prime feature—the ability to accept a high-capacity magazine.”).

⁵² See, e.g., *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (statement by Sen. Ted Cruz) (“Now, what the assault weapons ban instead targets are cosmetic features.”).

⁵³ See, e.g., Nicholas J. Johnson, *Supply Restrictions at the Margins of Heller and the Abortion Analogue: Stenberg Principles, Assault Weapons, and the Attitudinalist Critique*, 60 HASTINGS L.J. 1285, 1295 (2009).

shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession.”⁵⁴ Moreover, even if the characterization of these features as cosmetic were accurate, it would make little difference as a constitutional matter. In a recent televised interview, Justice Scalia explained the basis in history for exempting certain types of regulations from Second Amendment review. Certain limitations on gun ownership are constitutionally permissible, he contended, “because there were some [regulations] that were acknowledged at the time [of the Founding]. For example, there was a tort called affrighting . . . if you carried around a really horrible weapon just to scare people, like a head ax or something. . . .”⁵⁵ What the Justice evidently meant was that regulating weapons because they are chosen specifically for their intimidating appearance is constitutionally unproblematic because the very use of intimidation is unnecessarily disruptive to organized society.⁵⁶

Even more important to the constitutionality of the assault weapons ban is the absence of any connection to the core Second Amendment right to defend oneself with a firearm. At this committee’s hearing on January 30, several witnesses criticized the assault weapons ban on policy grounds, but in my role as a constitutional lawyer listening intently for arguments relevant to the proposal’s Second Amendment propriety, I was struck by the failure of anyone’s

⁵⁴ Brady Campaign to Prevent Gun Violence, The Top 10 NRA Myths About Assault Weapons, <http://www.bradycampaign.org/issues/assaultweapons/nramyths/>.

⁵⁵ Interview with Justice Antonin Scalia by Chris Wallace, FOX NEWS SUNDAY (July 29, 2012), transcript available at <http://www.foxnews.com/on-air/fox-news-sunday/2012/07/29/justice-antonin-scalia-issues-facing-sctus-and-country#p/v/1760654457001>.

⁵⁶ Justice Scalia’s point about the tort of affrighting surfaces in the *Heller* decision itself: the majority opinion cited three illustrative examples of state courts entertaining such actions in the nineteenth century. See *Dist. of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (citing, e.g., *State v. Lanier*, 71 N.C. 288, 289 (1874) (“The elementary writers say that the offence of going armed with dangerous or unusual weapons is a crime against the public peace by terrifying the good people of the land, and this Court has declared the same. . . .”)).

testimony to support these features as essential to self-defense. In fact, I have searched in vain for any reasoned arguments that pistol grips, forward grips, telescoping stocks, grenade or rocket launchers, and barrel shrouds are indispensable or even contribute to self-defense.

Finally, it is relevant to ask how many assault weapons Americans currently own. Data is hard to come by in large part because firearms manufacturers refuse to release data tracking their sales.⁵⁷ What we do know is that the number of weapons that would qualify under either the proposed ban's so-called "characteristics test" or its explicit list of banned models is smaller than the number of guns with standard-issue high-capacity magazines.⁵⁸ One reporter's painstaking analysis estimated that there are 3.75 million AR-15-style rifles owned in the U.S. today, and AR-15s are the most popular although not the exclusive type of qualifying assault weapon.⁵⁹ The NRA's lobbying arm estimates that, depending upon the definition of assault weapon, assault weapons represent 15% of all semi-automatic guns owned in the U.S., which in turn represent about 15% of all firearms owned in the U.S.⁶⁰ Given that the Congressional Research Service recently found that, as of 2009, Americans own about 310 million guns,⁶¹ the NRA's estimate would translate into approximately 7 million assault weapons owned today. Although 7 million is hardly a negligible figure, it still corresponds to quite a small portion of the

⁵⁷ Justin Peters, *How Many Assault Weapons Are There in America? How Much Would It Cost the Government To Buy Them Back?*, SLATE (Dec. 20, 2012), http://www.slate.com/blogs/crime/2012/12/20/assault_rifle_stats_how_many_assault_rifles_are_there_in_america.html.

⁵⁸ See Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 161 (explaining that the universe of large-capacity magazine equipped firearms is broader than the universe of weapons satisfying the criteria for categorization as an assault weapon).

⁵⁹ Peters, *supra* note 58.

⁶⁰ *Top Ten Frequently Asked Questions*, NRA-ILA, <http://www.gunbanfacts.com/FAQ.aspx> (last visited February 2, 2013).

⁶¹ WILLIAM J. KROUSE, CONG. RES. SERV., RL32842, GUN CONTROL LEGISLATION 8 (2012).

overall gun market – hardly enough to justify calling such weapons “common” within the meaning of *Heller*.

But for the purposes of constitutional analysis, debating how to characterize the significance of assault weapons’ market presence would be a waste of time. To make a difference to *Heller*’s threshold inquiry, which must take notice of the complete lack of any connection of assault-weapon features to self-defense as well as these features’ dangerousness in both fact and appearance, the market presence of assault weapons would have to be overwhelmingly large (and even then, I doubt seriously the bottom line would change as a constitutional matter). And overwhelmingly large it assuredly is not.

Universal Registration and Background Checks

All responsible participants in the gun safety debate agree that some groups of people simply should not be allowed to own, keep, or carry guns. Those groups include children, dangerous felons, and those with serious mental illnesses that preclude safe gun ownership. When some observers casually compare the Second Amendment to the First, they forget this essential difference: Although freedom of speech sometimes comes at a price, and although speech can at times pose dangers, our constitutional system addresses those dangers by permitting government to impose carefully crafted limits on speech, not by limiting or licensing eligible speakers. The Constitution’s strategy with respect to guns is entirely different. It addresses the dangers of guns in the wrong hands by permitting government to keep them out of

those hands in the first place, and, of course, by permitting government to regulate where and under what conditions people can bear those weapons in possible confrontation with others.

Accordingly, this Congress might be called upon to consider measures designed to minimize the risk that guns fall into the hands of such prohibited purchasers and owners. Measures dealing with straw purchases and trafficking are obviously important in that effort and are clearly constitutional. Rather than spending the committee's time on those measures, I will focus here on provisions that mandate universal registration requirements or a universal background check, closing the many notorious loopholes that characterize current laws on the subject. There is no serious doubt that requiring universal registration or a universal background check would comply with the Second Amendment.

It is important to recognize, at the outset, that prohibiting particular groups of people from owning or possessing guns is fully compatible with the Second Amendment. In the first place, such prohibitions are consistent with the original and traditional understanding of the Second Amendment. It was widely accepted at the time of the framing that not every person had a right to keep and bear arms; instead, the right was closely tied to the notion of responsible citizenship, and it has long been denied to criminals and others whose possession of guns would pose a severe danger to the public.⁶² On this point, precedent aligns closely with history. The Supreme Court said in *District of Columbia v. Heller*: “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the

⁶² See *United States v. Rene E.*, 583 F.3d 8, 15–16 (1st Cir. 2009).

mentally ill ...”⁶³ The Court fortified this conclusion in *McDonald v. City of Chicago*, when it added: “We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons and the mentally ill” ... We repeat those assurances here.”⁶⁴

Once the constitutionality of prohibiting gun possession by some people is accepted, the constitutionality of a reasonable system of registration or background checks follows automatically. The most powerful argument for this inference is not a technical legal point; it is, instead, common sense. And, although it shouldn’t be necessary to cite authority for the point, it’s worth noting that as eminent an authority as Alexander Hamilton wrote in *The Federalist* that “[t]he rules of legal interpretation are rules of *common sense*,” and that the “true test” of a “just application” of these rules is whether the resulting interpretation is “consistent with reason and common sense.”⁶⁵

Consider, then, whether the Constitution would be “consistent with reason and common sense” if it allowed prohibitions on firearms purchases by felons but disallowed background checks to determine whether a felon was the would-be purchaser of a firearm. As a matter of common sense, we all know that guns do not of their own accord stay out of the hands of prohibited purchasers. Nor are prohibited purchasers likely to confess their legal inability to buy guns when talking to gun dealers. The prohibitions, in short, do not enforce themselves. In order to be effective, in order to be meaningful, in order to be anything more than rules on paper, they

⁶³ 554 U.S. 570, 626 (2008).

⁶⁴ 130 S. Ct. 3020, 3047 (2010) (plurality opinion).

⁶⁵ *The Federalist* No. 83, at 495 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

must be comprehensive and must be carried into operation by the government. It contradicts common sense—it ignores the fact that ~~the~~ framers of the Constitution were not mere visionaries, toying with speculations or theories, but practical men”⁶⁶—to say on the one hand that prohibiting felons from owning guns is constitutional, but to insist on the other hand that the background checks that seek to make those prohibitions effective are unconstitutional.

The Supreme Court’s decisions in *District of Columbia v. Heller* and *McDonald v. City of Chicago* confirm the constitutionality of reasonable background check requirements. *Heller* expressly affirms that the Court was not calling into doubt ~~laws~~ imposing conditions and qualifications on the commercial sale of arms.”⁶⁷ The *McDonald* Court ~~repeat[ed]~~ those assurances,” observing that its holding ~~does not~~ imperil every law regulating firearms.”⁶⁸ The universal registration requirement or background check is simply a ~~condition[]~~” on the transfer of arms; it is therefore expressly within the zone of permissible regulation identified by *Heller* and *McDonald*.

Analogous Supreme Court doctrine points in the same direction. The right to vote, like the right to keep and bear arms, is a fundamental right of Americans.⁶⁹ But no serious legal scholar doubts that before letting a citizen cast his ballot, the government may require the citizen to register and may take steps to check whether he or she really is an eligible voter. And the

⁶⁶ *NFIB v. Sebelius*, 132 S. Ct. 2566, 2589 (2012) (opinion of Roberts, C.J.) (quoting *South Carolina v. United States*, 199 U.S. 437, 449 (1905)).

⁶⁷ 554 U.S. at 626–27.

⁶⁸ 130 S. Ct. at 3047 (plurality opinion).

⁶⁹ Compare *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) (holding that the right to vote is fundamental), with *McDonald v. City of Chicago*, 130 S. Ct. 2020 (2010) (holding that the right to keep and bear arms is fundamental).

Supreme Court agrees; in *Crawford v. Marion County Election Board*, for example, it concluded that Indiana’s voter ID law was a permissible means of ensuring that only eligible voters participate in an election.⁷⁰ Checking whether a voter is eligible before giving that voter a ballot is comparable to checking whether a purchaser is eligible before letting her acquire a gun. Just as the former is constitutional, so is the latter. And the argument is of course even stronger in the instance of firearms. For, unlike a ballot in the hands of an ineligible voter, which might in the end prove to make no difference to who wins or loses the election at issue, a gun in the hands of even one ineligible owner poses a deadly danger all by itself.

History reinforces common sense and case law in this regard. The Supreme Court in *Heller* and *McDonald* stressed the role of history in interpreting the scope of the Second Amendment; “longstanding” prohibitions upon gun ownership, the Court indicated, are presumptively exempt from Second Amendment scrutiny.⁷¹ Lower courts have likewise noted that history plays an important, though not exclusive, role in determining the scope of permissible regulation under the Second Amendment.⁷² Measures to keep guns out of the hands of prohibited owners – owners who could not safely be entrusted with control of a lethal weapon – have a strong historical pedigree. For example, many states have longstanding laws—sometimes, laws dating back a century or more—requiring sellers to keep registers of all firearm purchasers; the registers had to be open to peace officers.⁷³ The government could use thus use

⁷⁰ 553 U.S. 181 (2008) (plurality opinion).

⁷¹ See 554 U.S. at 626–27; 130 S. Ct. at 3047 (plurality opinion).

⁷² See, e.g., *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011); *Ezell v. City of Chicago*, 651 F.3d 684, 701–04 (7th Cir. 2011); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 800–01 (10th Cir. 2010).

⁷³ See *Heller*, 670 F.3d at 1253–54.

these registers to determine whether any of the purchasers had obtained weapons in violation of the law.

To be sure, modern computerized background checks differ from the more cumbersome historical enforcement measures known to history. But “a constitution [is] intended to endure for ages to come.”⁷⁴ Just as the Second Amendment covers modern weapons, like handguns, that did not exist when the Bill of Rights was ratified in 1791, so too does it cover modern enforcement measures, like mandatory computerized background checks, that could not have been anticipated in 1791. Reasonable background checks fit into the long historical tradition to which registration requirements belong, and that is enough to sustain them without further ado under the tests established by the Supreme Court in *Heller* and *McDonald*.

In short, all relevant legal considerations—logic and common sense, directly applicable precedent, analogies to surrounding legal doctrines, and history and tradition—point to the same conclusion. The Second Amendment does not prohibit Congress from passing laws to carry into effect concededly constitutional prohibitions on firearm purchases. The universal background check, in particular, easily passes constitutional muster as a permissible regulation of the transfer of firearms.

This is not to say that all conceivable background check systems would comport with the Constitution. Suppose, for example, that Congress were to pass a law requiring handgun purchasers to undergo an extensive check on the purchasers themselves and all their family

⁷⁴ *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819).

members and housemates, a check that took years to complete. Such a scheme would plainly impose a very severe burden on the right to keep and bear arms for self-defense. The burden would be entirely disproportionate to the objective the government is seeking to pursue. Where a background check is taken to such lengths that it effectively destroys the right to keep and bear arms, rather than ensuring that the right is enjoyed only by those constitutionally entitled to it, the government has overstepped the lawful boundaries of its power.

Such concerns are entirely out of place here, however. Whether a particular background check scheme that Congress adopts would go too far obviously depends on the specific details of that scheme. But none of the proposals seriously under consideration at the present come remotely close to overstepping constitutional boundaries. The proposed background check frameworks, especially those that rely on checks conducted instantaneously through the National Instant Background Check System, impose a constitutionally insignificant burden upon law-abiding citizens. Indeed, an instant background check is much *less* onerous than the Voter ID law that the Supreme Court upheld in *Crawford v. Marion County Election Board*; it is also much less cumbersome than longstanding registration requirements and other conditions on sale⁷⁵ that are concededly constitutional. Ultimately, therefore, I see no merit to the constitutional objections to the background check proposals presently being seriously considered by Congress.

III. The Consistency of the President's Measures with the Separation of Powers

⁷⁵ See *Heller*, 670 F.3d at 1253.

This January, President Obama announced twenty-three steps that his Administration would take to prevent gun violence.⁷⁶ The President has begun to implement these steps by using the executive powers vested in him by the Constitution and laws of the United States. Because the President adopted these measures by executive action, without specific congressional involvement, some have concluded that the President violated the separation of powers established by the Constitution. This claim is legally untenable; the President is acting well within his powers as head of the executive branch.

Some of the President's measures involve nothing beyond communicating with members of the public. Measure 23, for example, is to "[l]aunch a national dialogue ... on mental health." There is plainly no constitutional problem with executive steps of this sort. The President obviously does not need congressional permission every time he decides to give a speech or publish a press release.

Another category of measures—and this covers the great majority of the actions that the President has committed to take—includes steps that will improve the enforcement of federal laws already on the books. Thus, the President has agreed to "[m]aximize enforcement efforts to prevent gun violence and prosecute gun crime."⁷⁷ He has likewise decided "to require federal law enforcement to trace guns recovered in criminal investigations."⁷⁸ These improvements to

⁷⁶ See, e.g., Colleen Curtis, *President Obama Announces New Measures to Prevent Gun Violence*, Jan. 16, 2013, available at <http://www.whitehouse.gov/blog/2013/01/16/president-obama-announces-new-measures-prevent-gun-violence>.

⁷⁷ Measure 13.

⁷⁸ Measure 9.

federal law enforcement efforts plainly fall within the President's constitutional power—and constitutional responsibility—to ~~the~~ ⁷⁹the Care that the Laws be faithfully executed."

A third group of measures involves the making of rules and regulations under preexisting congressionally granted authority. For instance, step 21—~~h~~finalize regulations clarifying essential health benefits and parity requirements within ACA exchanges"—simply carries into effect authority granted by the Patient Protection and Affordable Care Act.⁸⁰

Step 11, ~~n~~ominate an ATF director," is equally clearly within the President's constitutional powers; the Constitution expressly states that the President ~~shall~~ nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Officers of the United States."⁸¹ Likewise, the Constitution plainly authorizes the President's requests for information from executive branch officials, such as step 15, ~~d~~irect[ing] the Attorney General to issue a report on the availability and most effective use of new gun safety technologies and challenge the private sector to develop innovative technologies"; Article II provides that the President ~~may~~ require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices."⁸²

Finally, and perhaps most controversially, some of the President's measures entail the issuance of interpretations of existing laws. To this class belongs, for instance, step 16, ~~c~~larify[ing] that the Affordable Care Act does not prohibit doctors asking their patients about

⁷⁹ U.S. Const. art. II, § 3.

⁸⁰ Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, § 1321(a).

⁸¹ U.S. Const. art. II, § 2, cl. 2.

⁸² U.S. Const. art. II, § 2, cl. 1.

guns in their homes.” To be sure, the Article III judiciary must ultimately interpret laws when applying those laws in the context of concrete cases or controversies. But it is well established that the President also has the authority to interpret the law—and especially the power to announce legal interpretations concerning issues that have not yet been settled by the courts. In fact, the tradition of presidential clarifications of the law goes back to President George Washington’s Neutrality Proclamation. The tradition also has a solid grounding in the text of the Constitution; it is based on the Constitution’s vesting in the President of “the executive Power,” and in its imposition on the President of the power and duty to “take Care that the Laws be faithfully executed.”⁸³

In sum, although some opponents of gun regulation might disagree with some of the President’s executive actions as a matter of policy, those disagreements cannot plausibly be translated into constitutional objections. From a separation-of-powers perspective, the President has acted well within the bounds of his constitutionally assigned authority.

In closing, I note that I share the beliefs of many that the prevalence of guns in our country is by no means the only significant contributor to the tragedy at Newtown and to the many other gun-related massacres we have seen in recent months and recent years, or to the deaths of an average of over 30 Americans, nearly 5 of them children, *each and every day* as a result of gunfire homicides in less visible, and often virtually unnoticed, tragic incidents.⁸⁴

⁸³ U.S. Const. art. II, §§ 1, 3.

⁸⁴ The Center for Disease Control reports that in 2010, 11,078 individuals in the U.S. died from firearm-related homicides. 1,773 of them were between the ages of 0 and 19. *See* CENTER FOR DISEASE CONTROL, NATIONAL CENTER FOR INJURY PREVENTION & CONTROL, *WISQARS*

Violence has many causes. Violent video games, for example, some of them simulating mass shootings, may well play a significant role in the inculcation of violent attitudes among children.⁸⁵ And mental illness plainly played a significant part in bringing about the massacre at Newtown. If our country is to reduce the incidence of similar unspeakable violence in the future, the widespread availability of high-powered guns to people who should not possess them and who have no constitutional right to do so is by no means the only phenomenon that our government, our society, and our families need to address.

But it is simply not true that the presence of other causes of gun violence means that we neither can nor should do anything significant about the prevalence, too often in the wrong hands, of high-powered guns and high-capacity magazines that turn those guns from means of self-defense into weapons of mass destruction. It is not true constitutionally, it is not true politically, and it is not true morally. We must do our best to address in a serious way *every* source of avoidable death by firearms that we can, and if we always point to other problems still waiting to be solved we will never get started.

The time to get started on sensible gun regulation is not now—it was weeks, months, years, even decades ago. The Second Amendment is not a barrier. We have already delayed too long, and our society has paid a terrible price. We should delay no longer.

Fatal Injury Reports, National and Regional, 1999 – 2010,
http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html (last visited Feb. 4, 2013).

⁸⁵ See *Brown v. Entertainment Merchants Ass’n*, 131 S. Ct. 2729, 2767–71 (2011) (Breyer, J., dissenting).

Exhibit 99

ER2246

Responses to Questions for the Record, March 6, 2013
Professor Laurence Tribe

QFRs from Senator Grassley

- (1) Your prepared testimony quite correctly noted that the Supreme Court's *Heller* decision confirmed the constitutionality of "longstanding prohibitions on the possession of firearms by felons and the mentally ill" as well as historic prohibitions on "dangerous or unusual" weapons. However, on page 11, you wrote, "It is not inconceivable – indeed, it seems quite likely—that the Court's pause to distinguish unusually dangerous weapons from widely possessed handguns had precisely the 1994 Assault Weapons Ban, which included a prohibition on high-capacity magazines, in mind."

I fail to see the basis for the inference. The Court made clear the constitutionality of existing statutory prohibitions on possession of firearms by felons and the mentally ill, which dated back many decades. The analogous longstanding prohibition on dangerous weapons that the Court signaled was constitutional was obviously the longstanding ban on very dangerous machine guns. By contrast, the "assault weapons" ban existed for only ten years, and it had expired by the time of the *Heller* ruling. I do not think any fair reading of this language from the Court's opinion conclusively determines that an "assault weapons" ban, as opposed to a ban on machine guns, is constitutional under the Second Amendment. What is your basis for concluding that this language shows that such a ban would not "even implicate[] a [Second Amendment] right in the first place"?

RESPONSE

In *Heller*, the Supreme Court recognized the "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons'" and unambiguously advised that the decision did not cast doubt upon this tradition.¹ Furthermore, the 1994 Assault Weapons Ban fit soundly within this tradition. At the time *Heller* was argued, the federal assault weapons ban was the most recently enacted – and still to this day remains – the paradigmatic contemporary example of major federal legislation prohibiting dangerous weapons. Thus, when I wrote in my prepared testimony that "it seems quite likely . . . that the Court[] had precisely the 1994 Assault Weapons Ban . . . in mind," I meant simply that, because the federal assault weapons ban was the paradigmatic example of contemporary federal gun-control legislation, it was likely on the minds of the justices and one factor that prompted the Court to reaffirm explicitly the tradition of prohibiting dangerous weapons. Although the federal assault weapons ban was, of course, not

¹ Dist. of Columbia v. Heller, 554 U.S. 570, 627 (2008).

before the Court in *Heller*, it was referenced throughout the briefs submitted to the Court,² confirming that it was almost certainly on the minds of the justices.

I also feel compelled to point out that your question mischaracterizes, in several respects, the point I made in my testimony as well the *Heller* decision itself. First, you assert that no “fair reading of [the] language from the Court’s opinion *conclusively* determines that an ‘assault weapons’ ban . . . is constitutional under the Second Amendment.” (emphasis added). I agree entirely and never contended that the Court’s reference to prohibitions on “dangerous and unusual” weapons or any part of *Heller conclusively* addresses the constitutional questions raised by the proposed assault weapons and high-capacity magazine bans. The majority decision in *Heller* never so much as mentions the term “assault weapon,” so I hardly could have argued that the decision takes a conclusive position on the matter. But a reasonable inference from *Heller* is that the majority went out of its way to affirm the constitutionality of “dangerous” weapon prohibitions to quell any concern that the Second Amendment would restrict future efforts to reauthorize the most well-known contemporary prohibition on “dangerous” weapons.

Second, your reading of *Heller*’s reference to a “historical tradition” of prohibiting “dangerous” weapons seems to presume that the Court meant to freeze that tradition in place, permitting the government to prohibit dangerous weapons historically banned but not newer weapons that lack the same regulatory pedigree. Yet the very nature of a “tradition” is that it links our past with our present. From that perspective, I find it quite significant that the Court did *not* narrowly define the relevant tradition as, for example, “the tradition of banning machine guns.” In defining the tradition as the “tradition of prohibiting . . . ‘dangerous and unusual’ weapons,”³ the Court signaled its support for allowing contemporary legislatures to maintain that tradition by banning especially dangerous weapons that new technologies introduce to American markets.

- (2) On page 21 of your prepared testimony, you criticized the original “assault weapons” ban because it “grandfathered many thousands of weapons already owned, and those could still be sold or transferred.” Do you believe that assuming that an “assault weapons” ban were constitutional, it could only be truly effective if it did not grandfather existing weapons, or at least criminalized the sale or transfer of such weapons?**

RESPONSE:

As someone who supports an assault weapons ban because it will help to stem the tide of gun violence in our country, I of course would like to see the enactment of a ban that is as effective as possible, consistent with all applicable constitutional constraints. Many gun-

² See, e.g., Brief of the American Bar Association as Amicus Curiae Supporting Petitioners, at 13 – 14, *District of Columbia v. Heller*, 554 U.S. 570 (2008), 2008 WL 136349; Brief for State Firearm Associations as Amici Curiae in Support of Respondent at 21, n. 19, *District of Columbia v. Heller*, 554 U.S. 570 (2008), 2008 WL 383519.

³ *Heller*, 544 U.S. at 627.

control experts believe that the best means to effectuate the goals of an assault weapons ban is to get those guns off the streets immediately. However, I recognize that at least some steps designed to achieve that aim would raise substantial constitutional questions. I also understand that, as with any sweeping regulatory change, sometimes the best way to change minds and gain broad-based buy-in from the American public is to take incremental steps.

I believe an assault weapons ban, with or without a grandfathering provision, will be an effective measure in reducing gun violence. The grandfathering approach may, however, take more time to prove its effectiveness. In drawing attention to the grandfathering policy in the 1994 ban, I meant only to rebut unfair criticisms of that ban for failing to contribute to a significant decline in gun violence before its premature expiration. The ban was not designed to work in a single a decade, and the Second Amendment certainly does not require that courts adopt such a short window for evaluating effectiveness.

(3) You testified that universal registration of firearms is constitutional under the Second Amendment. Do you believe that universal registration is an advisable measure to enact?

RESPONSE:

Many states have enacted gun registration laws, and as my prepared testimony demonstrates, there is no Second Amendment bar to reasonable registration requirements at either the state or federal level. As a policy matter, I find that mandatory, loophole-free registration is an eminently sensible means to aid law enforcement efforts to investigate crime and to ensure that firearms do not fall into the hands of felons and mentally ill persons, as well as others to whom the Second Amendment, rightly understood, does not extend a right to keep and bear arms. And federal efforts in particular are essential because no state or locality is an island when it comes to the sea of firearms.

(4) On page 24 of your prepared testimony, you indicated that conditions and qualifications on the commercial sale of arms are constitutional under the Second Amendment. Does this mean that Congress can ban the sale or transfer of all arms that are not handguns? Can Congress constitutionally ban the sale of any arms by citizens?

RESPONSE:

I believe your question mistakenly cites to page 24 of my prepared testimony. Perhaps you intended to reference page 28, in which I quote the Supreme Court in *Heller* as recognizing the common sense proposition that “laws imposing conditions and qualifications on the commercial sale of arms” are constitutionally permissible.⁴ As my testimony demonstrates, this statement in the *Heller* decision means that Congress may

⁴ *Id.* at 626 – 27.

enact reasonable background-check rules for gun sales. I have no doubt that Congress may lawfully enact similar types of regulations governing all firearm sales, including private sales between citizens. Your question further asks whether Congress may ban the “sale of any arms by citizens” or whether Congress may prohibit the sale or transfer of “all arms that are not handguns.” As my prepared testimony makes clear, the constitutionality of any ban on the sale or possession of a certain type of weapon must be determined, *first*, by evaluating the law in light of the three threshold factors that determine the scope of Second Amendment coverage (dangerousness, nexus to self-defense, and commonality of use), and *second*, assuming the law does not implicate core Second Amendment values, by applying an intermediate level of scrutiny to the law, just as most federal and state courts have done in response to Second Amendment challenges. Beyond offering that response, I do not think it would be sensible for me to speculate about the legality of hypothetical laws described at such an abstract level of generality.

QFRs from Senator Graham

- (1) How can the lower courts’ widespread adoption of an “intermediate scrutiny” standard be squared with the *Heller* court’s rejection of the interest-balancing approach advocated by Justice Breyer? Isn’t intermediate scrutiny just another name for interest balancing?**

RESPONSE:

State and federal courts have typically applied some form of intermediate scrutiny when evaluating the constitutionality of gun regulations under the Second Amendment. This approach is not inconsistent with the Court’s rejection of Justice Breyer’s “interest-balancing approach,” and the *Heller* majority expressly said so. In rejecting Justice Breyer’s approach, Justice Scalia’s majority opinion argued that Justice Breyer favored “none of the traditionally expressed levels (strict scrutiny, *intermediate scrutiny*, rational basis), but rather a judge-empowering ‘interest-balancing inquiry.’”⁵ Moreover, the Court in *Heller* expressly noted that the D.C. handgun ban failed to withstand “any of the standards of scrutiny that we have applied to enumerated constitutional rights.”⁶ It is unclear whether Judge Breyer’s “interest-balancing” approach would have meaningfully differed from traditional intermediate scrutiny in practice. The *Heller* majority certainly supposed that it could, and for that reason, we will never find out. What is unambiguously clear is that the plain text of *Heller* forecloses any contention that intermediate scrutiny is inappropriate for evaluating Second Amendment claims.

- (2) You mention the 1915 case in which the Supreme Court held that motion pictures—a new technology at the time—weren’t entitled to First Amendment protection. You call that a “misjudgment,” and I agree. But isn’t this comparable to your argument that certain modern firearms that**

⁵ *Id.* at 634 (emphasis added).

⁶ *Id.* at 628.

you consider “unusually dangerous” aren’t protected by the Second Amendment?

RESPONSE:

My characterization of the Supreme Court’s 1915 ruling in *Mutual Film Corp. v. Indus. Comm’n of Ohio* is not at all analogous to my conclusion that the Second Amendment does not protect assault weapons and high-capacity magazines. First, the explanation for the Court’s decision in *Mutual Film* seems to lie in the Court’s inadequate understanding of film as a new technology and its unduly limited conception of “speech” as a constitutionally protected activity. By contrast, I contend that assault weapons and high-capacity magazines fall outside the Second Amendment’s scope *precisely because of* my understanding of how they operate and the special dangers they pose.

Second, although they are of course comparable in some respects, the First and Second Amendments implicate different values and concerns, making simplistic analogies between the two fields more misleading than instructive. Given the potentially enormous hazards to public safety inherent in the development of new weapons technologies, our Second Amendment doctrine must take cognizance of the dangerousness of modern weaponry when determining whether certain types of weapons are constitutionally protected. It is for this reason that the Supreme Court in *Heller* was so wise to incorporate dangerousness as a threshold consideration. Though certain new types of speech may pose novel threats to public welfare – violent interactive video games, for example – the degree of that threat is not nearly so strong, and the threat is in any event far less direct. This difference means that special judicial caution when construing the First Amendment to embrace new technologies is unwarranted.

(3) You refer to the *Heller* court’s list of “longstanding prohibitions” as “examples of regulations that should not even receive further constitutional review.” But the Court referred to these measures as “presumptively lawful.” In your view, can that presumption ever be rebutted? For example, not every “condition and qualification on the commercial sale of arms” is automatically constitutional, is it? In fact, you say that a background check that took years to complete would be “a very severe burden” on Second Amendment rights, so doesn’t that confirm that the “presumptively lawful” measures mentioned in *Heller* aren’t immune from review?

RESPONSE:

The text of the *Heller* opinion states unequivocally that longstanding regulations are “permissible”⁷ and that these regulations fall within “exceptions” to the right to keep and bear arms.⁸ These statements establish that, if a regulation falls squarely within a historical tradition, then it is no longer subject to Second Amendment scrutiny. There is

⁷ 554 U.S. at 635

⁸ *Id.*

no other way to make sense of *Heller*'s clear statement that such a regulation comes within an "exception" to the right.

To be sure, even if a longstanding regulation is not subject to *Second Amendment* scrutiny, it may still be unconstitutional because it violates *some other constitutional principle*. For example, it is an unfortunate truth that in our country many states historically had laws prohibiting African Americans from bearing arms. Notwithstanding the historical pedigree of these laws, they are obviously unconstitutional; they are blatant violations of the principle of equality expressed in the Fifth and Fourteenth Amendments. Hence, I agree that longstanding regulations are "presumptively lawful"—not automatically so.

But when it comes to the proposed regulations pending before Congress, there can be no suggestion that they violate a constitutional principle apart from the Second Amendment. It follows that, under *Heller*, the long historical pedigree of these types of regulations establishes that they fall within an "exception" to the Second Amendment—without any need for further constitutional review.

(4) You mention the court's reference to "dangerous and unusual weapons." But isn't the historical record clear that the old rule against carrying such arms—going back to 14th century England—was really a time, place and manner restriction? After all, in the 14th century, there wasn't that much variety of swords, spears, crossbows and so on, and in the American cases applying it (notably in North Carolina, well into the 1960s) it was held to refer to perfectly ordinary, unquestionably common guns that were brandished or fired in a dangerous way. In fact, in the Lanier case that you cite, wasn't the North Carolina Supreme Court dealing with a defendant who rode his horse through a courthouse, and didn't the court say it would "attach no importance to the fact that *the defendant had no arms*"?

RESPONSE:

When *Heller* says that historical tradition supports excluding "dangerous and unusual weapons" from Second Amendment coverage, it clearly means that certain *types of weapons* may be prohibited outright—not just that these weapons are subject to time, place, and manner restrictions.

First, as a matter of ordinary English usage, "dangerous and unusual weapons" refers to a category of weapons, not to a category of times, places, or ways to use a weapon. Second, the *Heller* Court explicitly said that the dangerous-and-unusual exception concerns the "sorts of weapons" covered by the Second Amendment.⁹ Third, the Court said that a prohibition on machineguns was an example of a regulation of "dangerous and unusual weapons."¹⁰ Such a regulation obviously cannot be rationalized as a time, place, and

⁹ *Id.* at 627.

¹⁰ *Id.* at 624, 627.

manner restriction; rather, it is an outright prohibition of a type of weapon – and indeed of a type of weapon that could easily have become “common” had it not been banned so quickly.

It is true that legislatures may go beyond prohibiting particularly dangerous and unusual weapons, and may in addition prohibit using ordinary weapons at dangerous times, in dangerous places, or in dangerous ways. For example, *Heller* indicated that longstanding laws “forbidding the carrying of firearms in sensitive places” comport with the Second Amendment.¹¹ But these time, place, and manner restrictions fall within a *separate* exception to the right to keep and bear arms. There is no sound basis in the *Heller* opinion or in the historical record for collapsing that exception into the rule that dangerous weapons may be prohibited altogether.

(5) You suggest that guns with “large” magazines may have become common simply because they’re “most readily ... available on the market.” Are you really suggesting that revolvers or smaller-capacity pistols are not readily available? How can you square this with the ATF manufacturing and export reports, which show that more than 500,000 revolvers were sold in the U.S. in 2011? Surely, between those new guns and all the used ones on the market, anyone who wants a lower-capacity gun can find one.

RESPONSE:

I certainly did not suggest that smaller-capacity pistols are not readily available in the market. Instead, I merely said that “guns equipped with or ready for large-capacity magazines may simply be the weapons *most* readily made available on the market.”¹² To say that large-capacity guns may be the weapons *most* readily available does not imply that small-capacity guns are not readily available at all.

¹¹ *Id.* at 626.

¹² Tribe Testimony, at 12 (emphasis added).

Exhibit 100

**TESTIMONY FOR
CHIEF JIM JOHNSON, BALTIMORE COUNTY, MARYLAND
CHAIR, NATIONAL LAW ENFORCEMENT PARTNERSHIP
TO PREVENT GUN VIOLENCE
Senate Judiciary Committee Hearing
Wednesday, January 30, 2013**

Mr. Chairman, Ranking Member, and Members of the Committee, I want to thank you for the opportunity to testify today. I am here on behalf of the National Law Enforcement Partnership to Prevent Gun Violence, an alliance of the nation's law enforcement leadership organizations concerned about the unacceptable level of gun violence in the United States.

The Partnership, founded in 2010, includes: the Commission on Accreditation of Law Enforcement Agencies; Hispanic American Police Command Officers Association; International Association of Campus Law Enforcement Administrators; International Association of Chiefs of Police; Major Cities Chiefs Association; National Association of Women Law Enforcement Executives; National Organization of Black Law Enforcement Executives; Police Executive Research Forum; and the Police Foundation.

We mourn those lost to gun violence, including the 20 children in Newtown, along with the six brave adults whose lives were cut short by a deranged individual armed with firepower originally designed for combat, not for gunning down innocent members of our communities.

More than 30 homicides occur in America each day. Two-thousand children, ages 18 and under, die of firearm-related deaths in the U.S. every year. In 2011, for the first time in 14 years, firearms were the leading cause of death for police officers killed in the line of duty. In just the two-week period after the Newtown massacre, six police officers were killed and 10 injured in 12 separate shootings.

In a one-week period in 2011, the Police Executive Research Forum (PERF) found that gun crime in six cities cost more than \$38 million, and in the year 2010 cost the entire country more than \$57 billion.

We urgently need Congress to address the rising epidemic of gun violence. Law enforcement leaders support the President's comprehensive approach, which includes enhancing safety at educational institutions and addressing mental health issues. But on behalf of my colleagues across the nation, I am here today to tell you that we are long overdue in strengthening our nation's gun laws. Doing so must be a priority for Congress.

The organizations in the National Law Enforcement Partnership to Prevent Gun Violence are united in urgently calling on Congress to:

- Require background checks for *all* firearm purchasers;
- Ensure that prohibited purchaser records in the National Instant Criminal Background Check System (NICS), are up-to-date and accurate; and
- Limit high capacity ammunition feeding devices to ten rounds.

Seven of our nine groups, including the largest organizations among us, also support a ban on

assault weapons and Senator Feinstein's legislation.

Federal law prohibits dangerous individuals, such as convicted felons and those with mental health disqualifiers, from possessing firearms. While background checks are required for purchases through federally licensed gun dealers, no check is required for private sales, such as those through Internet postings, print ads or gun shows.

From November 2011 to November 2012, an estimated 6.6 million firearm transactions occurred without a background check. Up to 40 percent of firearm transactions occur through private individuals rather than licensed gun dealers. Allowing 40 percent of those acquiring guns to bypass background checks is like allowing 40 percent of airline passengers to board a plane without going through airport security.

Last October, in Brookfield, Wisconsin, seven women were shot by a prohibited purchaser who was under a domestic violence restraining order. The shooter answered an online ad and was able to buy a gun without a background check. Had the sale required a check, this tragedy could have been prevented.

Background checks work. They stopped nearly 2 million prohibited purchases between 1994 and 2009. We already have a national background check system in place. Therefore, extending background checks to *all* firearm purchasers can easily be implemented – and should be, without delay.

States can't do it alone. Interstate firearms trafficking is a serious problem that must be addressed federally. The problem is rampant: According to the ATF, in 2009, 30 percent of guns recovered at crime scenes had crossed state lines.

Submissions to NICS must be improved, especially mental health and drug abuse records. The 2007 massacre at Virginia Tech is a tragic example of a prohibited purchaser slipping between the cracks due to incomplete NICS records.

The ban on assault weapons and high-capacity ammunition magazines must be reinstated. Like assault weapons, high-capacity magazines are not used for hunting, do not belong in our homes and wreak havoc in our communities. Banning these magazines will reduce the number of bullets a shooter can use before having to reload. Reloading can provide a window of time in which to take down a shooter, as we saw in Tucson.

In 1998, four years after the assault weapons and high-capacity ammunition magazine ban was enacted, the percentage of firearms with large-capacity magazines recovered by Virginia police decreased and continued to drop until it hit a low of 9 percent in 2004, the year the ban expired. It hit a high of 20 percent in 2010, according to a Washington Post analysis.

After the 1994 law expired, 37 percent of police agencies saw increases in criminals' use of assault weapons, according to a 2010 PERF survey.

I have been in law enforcement for nearly 35 years, and have seen an explosion in firepower since the assault weapons ban expired. It is common to find many shell casings at crime scenes these days, as victims are being riddled with multiple gunshots.

The common-sense measures we are calling for will not infringe on Second Amendment rights,

but will ensure that we keep guns out of dangerous hands and excessive firepower out of our communities.

Generations of Americans, including our youngest ones, are depending on you to ensure they will grow up and fulfill their roles in the great human experience. None of us can fail them. I urge you to follow the will of the American public and stand with law enforcement to enact these common-sense public safety measures.

Thank you.

Exhibit 101

Written Testimony for Chief Jim Bueermann (Ret.)
President, Police Foundation, Washington, D.C.
Senate Judiciary Committee Hearing
on Gun-related Violence
Wednesday, January 30, 2013

I write to you in my capacity as both President of the Police Foundation and the former Chief of Police of the Redlands, CA Police Department. The Police Foundation, established in 1970 by the Ford Foundation, is a non-partisan, non-constituency research organization. Our mission is to advance policing through innovation and scientific research. The Foundation is committed to disseminating science and evidence-based practices to the field. My written testimony reflects these principles and my personal experience after 33 years as a police officer during which time I witnessed countless acts of violence. I urge the passage of the Assault Weapons Ban Act of 2013 and ask Congress to consider funding additional scientific research to help this country implement evidence-based approaches to reducing gun violence in our communities and schools.

The most recent available data reveal this alarming picture of America's experience with gun-related violence: in 2011, of the 32,163 deaths from firearms, 19,766 were suicides and 11,101 were homicides.¹ Additionally, there were 467,321 non-fatal violent crimes committed with a firearm.² These numbers all reflect the unique position of the United States in relation to other high-income nations: our homicide rate is 6.9 times higher than the combined homicide rate of 22 other high-income countries.³ We all know that gun violence must be stemmed. The Police Foundation supports a comprehensive and holistic approach to preventing and reducing gun violence that includes:

- Legislation that bans assault weapons, requires universal background checks for all firearm purchases and limits high capacity ammunition feeding devices to ten rounds;
- Enhanced funding for research on the availability of firearms, the causes and prevention of gun violence and the connection between mental health and gun violence;
- Specific funding to replicate the 1996 US DOJ, National Institute of Justice study *Guns in America* that provided a comprehensive view of guns in our society;
- Increased funding to states for community-based mental health treatment; and,
- Sustained funding and support of the Justice and Mental Health Collaboration Program Act, which allows for collaborative efforts between law enforcement, criminal justice and mental health professionals.

Gun violence, especially violence that is mental health-related, is a complex social, cultural, health and safety issue. It is one that we do not know enough about. As the leader of a research organization that focuses on policing crime and disorder, I stress the need for scientific research and an evidence-based approach to understanding important societal issues. As a country, we

¹ Ibid.

² Bureau of Justice Statistics. Number of violent victimizations by weapons category. Generated using the NCVS Victimization Analysis Tool at www.bjs.gov. 29-Jan-13.

³ Richardson EG, Hemenway D. Homicide, suicide, and unintentional firearm mortality: comparing the United States with other high-income countries, 2003. *Journal of Trauma* 2011; 70:238-243.

need a robust and rigorous agenda on the causes of gun violence, effective, community-based prevention and intervention strategies and the link between mental illness and gun violence. Lifting the freeze on gun violence research at the Centers for Disease Control is heartening, and I hope Congress will support additional funding for interdisciplinary, scientific research and collaboration across government agencies, including the Department of Justice and the Department of Health and Human Services.

Mental health-related gun violence has been brought to the fore with the shootings in Newtown, CT, Aurora, CO and Tucson, AZ. While these tragic incidents are statistically rare, when combined with the number of gun-related suicides each year, the necessity of addressing the mental health needs of individuals, and the availability of firearms in our communities, is paramount.

We do not want to stigmatize individuals with mental illness nor solely focus the current dialogue on gun violence on the role of mental illness. The best available data on violence attributable to mental illness shows that 3-5% of violent acts are committed by individuals with mental illness⁴ and most of these acts do not involve guns.⁵ Yet, we cannot ignore the number of gun-involved suicides each year and the connection between mass shootings and mental illness. Increased scientific research across the fields of medicine, public health, criminal justice and law will help us understand how to prevent mental health-related gun violence. This requires both robust funding and time.

As a former chief of police, I recognize that local law enforcement agencies require immediate strategies to prevent another incident of mass violence. Earlier this month, the Police Foundation convened a roundtable meeting of expert researchers and practitioners from the fields of law enforcement, mental health, public health, criminal justice and policy. The group discussed how available interdisciplinary research might be used to develop practical strategies for law enforcement that prevent mental health-related gun violence. Existing research establishes the difficulty in predicting a violent act,⁶ but the group committed to three strategies that law enforcement can adopt now. Based on innovative practices defined in the literature, the group proposed that law enforcement executives:

- Create local partnerships with mental health service providers, school officials and appropriate community groups to develop a mental health crisis response capacity;
- Advocate for increased mental health services in their communities. Law enforcement executives should convene local service providers and community members to assess local mental health services and community needs and increase community members' knowledge of the existing science on mental health and gun violence;

⁴ Swanson JW: Mental disorder, substance abuse, and community violence: an epidemiological approach; in Violence and Mental Disorder. Edited by Monahan J, Steadman H. Chicago, University of Chicago Press, 1994. Cited in Appelbaum, PS and JW Swanson. Gun laws and mental illness: How sensible are current restrictions? Psychiatric Services 2010, 61: 652-654.

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⁶

- Adopt specific policies and practices that reduce the availability of guns to people in mental health crisis, institutionalize mental health training for their officers and facilitate community-wide “mental health first aid” training for all community members.

Clearly, more work needs to be done in this area so police departments can effectively operationalize these ideas. With additional Congressional support, strategies like these can be supported by legislation such as the Justice and Mental Health Collaboration Act or through an enhancement of programs at the Department of Justice and the Departments of Health and Human Services and Education. The JMHC Act has bipartisan support across the House of Representatives and Senate, and I ask that Congress sustain funding for these important ideas as part of a targeted approach to specifically reducing gun violence.

Charting a path to respond to gun violence will not be easy, but I encourage Congress to rely on the police, community leaders and science to guide that path. The Police Foundation, along with law enforcement leaders across the country, support reducing the availability of assault weapons and high capacity ammunition feeding device as a first step to reducing gun violence. However, to effectively reduce gun violence, there must be more comprehensive action. Congress should prioritize funding to better understand guns in America, research on the causes and prevention of gun violence and the connection between mental illness and gun violence. It should also enhance the funding and availability of mental health services in communities, and support programs that increase local collaboration between law enforcement, criminal justice and mental health professionals.

Thank you for your consideration of this written testimony.

Written Testimony

Submitted for the record by

Sheldon Greenberg, Ph.D.
Associate Dean

Johns Hopkins University, School of Education, Division of Public Safety Leadership
Former Associate Director, Police Executive Research Forum
Former Officer, Supervisor, and Bureau Commander, Howard County (MD) Police Department
Past President, Maryland Crime Prevention Association

For the hearing before the
Senate Committee on the Judiciary

on

“What Should American Do About Gun Violence?”

Wednesday, January 30, 2013

Two months ago, Johns Hopkins University co-sponsored the National Summit on Multiple Casualty Shootings, in partnership with the Department of Justice, Office of Community Oriented Policing Services (COPS), and the Department of Homeland Security, Federal Law Enforcement Training Center (FLETC). While much attention is being given to multiple casualty shootings, the nation’s public safety personnel are equally concerned about the violence and trauma resulting from gun-related acts of domestic violence, street crime, and suicide that occur every day. These incidents devastating and disrupt neighborhood and community well-being.

We can do more to tend to the public’s safety and provide people with a greater sense of peace and safety where they live, work, shop, and recreate. We believe, and evidence supports, that much of the gun-related violence and subsequent suffering that occurs in our nation’s homes, neighborhoods, small businesses, and schools can be prevented. One of the most effective ways to prevent tragic events from occurring is to do more to control access to guns.

In seeking new and better ways to prevent gun violence, the Division of Public Safety Leadership embraces the principles established by the National Law Enforcement Partnership to Prevent Gun Violence and with Mayors Against Illegal Guns. These principles were embraced by the Ad Hoc Committee of the Maryland Chiefs of Police Association last week. They are:

- The level of gun violence in the United States, specifically firearm-related injuries and deaths including homicides, suicides, and accidental shootings, is unacceptable and demands immediate attention.
- The level and lethality of gun violence directed at police officers requires an organized and aggressive response from policy makers at the federal, state, and local levels.
- Elected officials must close the gaps in the current regulatory system, including those that enable felons, minors, persons with mental illness, and other prohibited persons to access firearms, and those that allow the trafficking of illegal guns.

- Law enforcement plays a critical role in preventing gun violence and solving crime.
- Effective strategies for the strict enforcement of laws concerning the illegal possession, trafficking, and criminal use of firearms are vital, and need to be supported by data, research, technology, training, and best practices.
- Because the public's health and safety depends on the efforts of law enforcement, agencies must have resources sufficient to prioritize the protection of officers and communities against illegal guns and firearm violence.
- The crisis of gun violence in our nation necessitates a sustained, coordinated, and collaborative effort involving citizens, elected officials, law enforcement, and the entire criminal justice system.

In response, we join the above cited organizations in calling upon the President of the United States and members of Congress to:

1. Require background checks for all firearm purchasers.
2. Improve background checks by ensuring that the National Instant Criminal Background Check System (NICS), which maintains records of those who are legally prohibited from purchasing guns, be complete and accurate.
3. Ban new semi-automatic assault weapons.
4. Limit high-capacity ammunition magazines to ten rounds.
5. Oppose federal preemption of state laws governing the carrying of concealed weapons.

In January, the Johns Hopkins University, School of Education, Division of Public Safety Leadership hosted the second national Summit on Campus Public Safety for the Department of Justice, Bureau of Justice Assistance and facilitated the meeting of the Maryland Chiefs of Police Association Ad Hoc Committee on Gun Violence. We have a legacy of scholarship and leadership in this area and welcome the opportunity to support all reasonable efforts to prevent gun violence.

The Johns Hopkins University, School of Education, Division of Public Safety Leadership (DPSL) provides education, research, and technical assistance to the fields of law enforcement, fire/EMS, intelligence analysis, emergency management, public health, security, corrections, and the military. DPSL cultivates viable communities by developing and disseminating educational and technical assistance programs that foster the ethical, social, operational and intellectual development of professionals who serve public safety and related fields. The Division provides graduate, undergraduate, certificate, and noncredit education designed to advance and sustain the well-being of people and their neighborhoods and communities. All students in PSL are active public safety practitioners. Over 1,000 PSL graduates hold leadership positions nationwide in federal, state, and local agencies and play a significant role in shaping the future of American public safety. PSL graduates currently serve as chiefs of police in Denver, San Antonio, Washington, D.C., and Prince George's Counties in Maryland. They also serve as senior executives in federal agencies, such as the U.S. Secret Service, U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, and Immigration and Customs Enforcement.



Written Testimony

Submitted for the record by

Daniel W. Webster, ScD, MPH
Professor and Director
Johns Hopkins Center for Gun Policy and Research

For the hearing before the
Senate Committee on the Judiciary

on

“What Should American Do About Gun Violence?”

Wednesday, January 30, 2013

On January 14-15, 2013, more than twenty of the top researchers and gun policy experts gathered to participate in a Summit on Reducing Gun Violence in America at Johns Hopkins, and presented findings and analyses that were just published in a book.¹ These leading scholars identified numerous weaknesses in current federal firearms policy which enable criminals, those with severe mental illness, perpetrators of domestic violence, and underage youth to obtain firearms. These weaknesses in our firearms policies play an important role in explaining why the United States’ homicide rate is seven times higher than the average rate among other high-income countries.²

A recent national survey we conducted found very broad support – among gun owners and non-gun-owners and across political party affiliation – for laws prohibiting these and other high-risk groups from possessing firearms. There was similarly broad support for measures to keep guns from these groups, such as requiring background checks for all gun sales and stronger laws governing licensed gun dealers.³ Importantly, research shows that prohibiting high-risk groups from possessing firearms reduces violence and saves lives,^{4,5} especially if necessary records are available for law enforcement to deny prohibited individuals.⁶

Opponents of stronger gun laws often claim that we simply need to do a better job of enforcing current gun laws. But current federal laws are written in ways that make it very difficult to hold firearm sellers, whether licensed dealers or private sellers, accountable if they sell firearms to criminals or traffickers.^{7,8} Non-licensed sellers of firearms have no obligation to ensure that the prospective purchasers have passed a background check and can legally possess firearms.

Such a policy is indefensible and is commonly exploited by criminals and traffickers. It is not surprising that nearly eighty percent of handguns used by offenders incarcerated in state prisons report that they acquired their handguns from non-licensed sellers – friends, family, and sellers in the underground market.⁹ Nor is it surprising that states that fail to regulate private handgun transactions export guns to criminals in states that do regulate private handgun sales. If you follow the logic of arguments that requiring background checks for private gun sales is pointless because criminals won’t obey the law, then laws against drunk driving are pointless because drunks will always disobey those laws. Just as drunk

driving laws provide law enforcement with the tools to arrest individuals who break those laws and deter others from driving drunk, requiring background checks for all sales will provide law enforcement with the tools it needs to combat illegal gun trafficking and keep guns from prohibited individuals.

Unfortunately, Congress has enacted several laws that shield scofflaw gun dealers from scrutiny, civil penalties, and criminal prosecution. The 1986 Firearm owners Protection Act weakened penalties for gun sales violations, increased standards of proof for prosecutions and actions against licensed gun dealers, and limited ATF law compliance inspections. The Protection of Lawful Commerce in Arms Act provided special immunity from lawsuits for negligent practices which enable criminals and other prohibited individuals to obtain guns. The Tiahrt amendments provided further protections to licensed gun dealers who sell many guns that subsequently are recovered from criminals.⁸

There is a growing body of research that has consistently demonstrated that laws which increase gun seller accountability and increase the risk to those involved in illegal gun transactions significantly reduce the number of guns diverted for criminal use. Whereas the federal Tiahrt amendments have been shown to increase the diversion of guns to criminals from suspect gun dealers,¹⁰ strong regulation and oversight of gun dealers reduces guns diverted to criminals,¹¹ as does being vulnerable to lawsuits for making illegal sales.^{12,13} Research has also shown that regulation of private sales of handguns,⁸ mandatory reporting of loss or theft of firearms from private owners, and permit-to-purchase licensing for handguns reduces the diversion of guns to criminals.⁹

By adopting many laws shown to be effective at that the state level, Congress could significantly reduce the availability of guns to dangerous individuals, which would translate into fewer lives lost, safer streets and homes, increased quality of life, and reduced government expenditures on health care, disability payments, criminal justice, and corrections.

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Exhibit 102

ER2267

Politics

Senate Judiciary Committee hearing on gun violence on Jan. 30, 2013 (Transcript)

January 30, 2013

Here's a complete transcript of testimony from the Senate Judiciary Committee hearing on gun-related violence on Jan. 30, 2013.

SEN. PATRICK LEAHY: We have more than 200 people here today and hundreds more watching on our committee web cast. I expect everybody in this room to be respectful of the senators and the witnesses speaking about this very serious subject.

That means I do not want applause for or against any position I might take or anybody else takes. The Capitol Police have been notified to remove any audience member who interferes with the orderly conduct of this important hearing.

This incidentally, is a warning I give at many hearings.

We're going to hear a lot of different perspectives on gun violence.

And both Senator Grassley and I will give opening statements . But we have a former member of Congress here, Gabby Giffords, who's going to give a brief message and -- and leave.

And Captain Kelly, thank you for your help in bringing your wife here.

Ms. Giffords?

GIFFORDS: OK . Thank you for inviting me here today. This is an important conversation for our children, for our communities, for Democrats and Republicans.

ER2268

Speaking is difficult. But I need to say something important. Violence is a big problem. Too many children are dying. Too many children. We must do something.

It will be hard, but the time is now. You must act. Be bold, be courageous, Americans are counting on you.

Thank you.

LEAHY: Captain Kelly, do you want to help Ms. Giffords out? And we'll give you a few moments and then...

(RECESS)

LEAHY: We return to the hearing.

LEAHY: And I -- I thank former Congressman (sic) Giffords and -- and her husband. We will be calling up the witnesses shortly. And Senator Grassley and I will give our opening statements.

You know, on December 14th, America's heart was broken when 20 young children and six dedicated educators were murdered. This is the first Judiciary Committee hearing of the 113th Congress. And I want everybody here to join the discussion as part of a collective effort to find solutions, to help ensure that no family, no school, no community ever has to endure such a grievous tragedy again.

We have to come together today as Americans seeking common cause. I hope we can forego sloganeering and demagoguery and partisan recrimination. It's too important for that. We should all be here as Americans. Every American abhors the recent tragedies. In just the last two years, an elementary school in Connecticut; a movie theater in Colorado; in a sacred place of worship in Wisconsin; in front of a shopping mall in Arizona. And Americans are looking to us for solutions and for action. This committee is a focal point for that process.

I've introduced a measure to provide law enforcement agencies with stronger tools against illegal gun trafficking. Others have proposed restrictions on military-style weapons and the size of ammunition clips. Others have proposed modifications to the background check system to keep guns out of the wrong hands while not unnecessarily burdening law-abiding citizens.

I'm a lifelong Vermonter. I know gun store owners in Vermont. They follow the law. They conduct background checks to block the conveyance of guns to those who should not have them. And they wonder why others who sell guns do not have to follow these same protective rules. And I agree with these responsible business owners.

If we could all agree that criminals and those adjudicated as mentally ill should not buy firearms, why should we not try to plug the loopholes in the law that allows them to buy guns without background checks? It's a simple matter of common sense. And if we agree that the background check system is worthwhile, shouldn't we try to improve its content and use it so it could be more effective? What responsible gun owner objects to improving the background check system? When I buy firearms in Vermont, I go through the background check. I would expect everybody else to.

ER2269

Now, at the outset of this hearing, I note that the Second Amendment is secure and will remain secure and protected. In two recent cases, the Supreme Court has confirmed that the Second Amendment, like the other aspects of our Bill of Rights, secures a fundamental individual right. Americans have the right to self- defense; as the court has said, to have guns in their homes to protect their families. No one can take away those rights or their guns.

Second Amendment rights are the foundation on which our discussion rests. They're not at risk. What is at risk are lives. Lives are at risk when responsible people fail to stand up for laws that will keep guns out of the hands of those who use them to commit murder, especially mass murders. I ask that we focus our discussion on additional statutory measures to better protect our children and all Americans. I say this as a parent and as a grandparent.

Ours is a free society, an open society. We come together today to consider how to become a safer and more secure society. No one begrudges the government assistance provided to victims of mass tragedies made possible by the law we passed after the bombing in Oklahoma City. The bill introduced last week against gun trafficking will similarly prove helpful, and I believe will become an accepted part of our crime control framework.

LEAHY: It, too, is common-sense reform. It fills a hole in our law enforcement arsenal so that straw purchasers who acquire weapons for criminals can be prosecuted more effectively. Last Thursday, the president nominated the U.S. attorney for Minnesota -- and we have two from his state here on this committee -- nominated the U.S. attorney to direct the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives. And I trust that all the senators will cooperate in a prompt hearing in action on that nomination. We will join (ph) good faith to strengthen our law enforcement efforts against gun violence and to protect public safety.

As a responsible governor and someone who cherishes all of our constitutional rights, as a senator who has sworn an oath to uphold those rights, as a father and a grandfather, and as a former prosecutor who has seen the results of gun violence firsthand in graphic detail, I undertake these efforts with the hope that this hearing can build consensus around common sense solutions.

Previous measures to close the gun show loophole or to improve the background check system have been bipartisan. And I hope in this new Congress, further improvements will also become bipartisan. We could act together as Americans. I have said what kind of measures I can support. Now I ask other senators to come forward and do, as well. I will ask our witnesses what legislative proposals they support to make America safer, and I thank everybody here for joining in today's discussion.

Senator Grassley?

GRASSLEY: Mr. Chairman, and thank you, as well, for this hearing. And thanks to everybody who is here, and, particularly, our witnesses.

What happened at Newtown shocks our nation. We will never forget where we were or how we reacted when we learned that 20 very young children and six adults were killed that day, or if we forgot about that specific incident, you don't forget about all the tragedies that have happened recently.

ER2270

As a grandfather and great-grandfather, I cannot imagine how anyone would commit an evil act like that. And I cannot ever begin to know what it would be like to be a relative of one of those slain children. We pray for the families who continue to mourn the loss of loved ones. We pray for -- pray for all victims of violence and guns, by guns and otherwise. Clearly, violent crimes and those who commit them are a plague on our society, one that has been with us for far too long. We have looked at these issues before, but I welcome this renewed discussion. I think the need for the judiciary committee to hold hearings after Newtown is very clear. All over America, people were appalled by what happened to those vulnerable and precious victims. And we all want to examine sensible actions that could reduce the likelihood of future crimes.

And we've extended a special welcome to former Congresswoman Giffords. She was doing what a conscientious representative should do, but I hope all of us do, taking the pulse of constituents to represent them in Congress. She was representing the people of her congressional district when a gunman opened fire. The shooting was a horrible tragedy, but her determination to overcome her injuries, progress through rehabilitation, and continued contribution to society are an inspiration, or at least should be an inspiration to all of us. I thank her for being here today and with her husband, Captain Kelly.

Although Newtown and Tucson are terrible tragedies, the deaths in Newtown should not be used to put forward every gun control measure that's been floating around for years. Because the problem is greater than just guns alone, and I think the chairman's speech indicates that, as well. Any serious discussion of the causes of gun violence must include a complex re-examination of mental health as it relates to mass shootings. Society, as a whole, has changed as well, and that statement's made. It's difficult to remeasure, (ph) but I think you see a lack of civility in American society has grown considerably in the last couple decades.

GRASSLEY: You see it here on the -- in the Congress, as well, when we are partisan and don't treat each other with the respect that we ought to. There are too many video games that celebrate the mass killing of innocent people, games that, despite attempts at industry's self-regulation, find their way into the hands of children.

An example: One video game released November 2009, which has sold over 22 million copies in the U.S. and U.K., was for foreign distribution because the opening level depicted shooting innocent civilians in an airport security line.

This game was specifically cited in a manifesto of the Norway mass shooter as, quote, "part of my training simulation," end of quote, for carrying out his attacks.

Where is the artistic value of shooting innocent victims? I share of vice president Joe Biden's disbelief of manufacturer denial that these games have no affect on real-world violence.

Above all, we should not rush to pass legislation that will not reduce mass killings. Banning guns based on their appearance does not make sense. The 1994 assault weapon ban did not stop Columbine. The Justice Department found the ban ineffective. Scholars have indicated that refining or expanding such legislation will not cut gun violence.

I also question the limitation on magazine capacities. Those can be circumvented by carrying multiple guns, as many killers have done.

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We hear that no one needs to carry larger magazines than those that hunters used to shoot deers (sic), but an attacking criminal, unlike a deer, shoots back.

I do not think that we may be able -- I do think that we may be able to work together to prevent straw purchasers from trafficking in guns.

The oversight work I conducted on illegal Operation Fast and Furious shows that there are some gaps in this area of law that should be closed.

Besides legislative proposals, the presently -- president recently took 23 executive actions on guns. And without knowing exactly how they're worded, we don't -- can't find fault with them. And probably should not find fault with a lot of his actions.

Despite this administration's claim to be the most transparent in history, the text of these actions is still not posted on the White House website, only very brief statements about what they do.

But all of those executive actions could have been issued years ago or after the Tucson shooting or after Aurora. Why only now?

One order directs the Center for Disease Control to research causes of gun violence. Contrary to what you may have heard, Congress has never prohibited CDC from researching gun violence rather.

Rather, Congress prevented federal research to, quote, "advocate or promote gun control," which some government researchers had been doing under the guise of taxpayer-supported science.

Had Congress actually prohibited gun violence research, the president could not legally have directed CDC to conduct that research.

I was taken aback when the president cited the Declaration of Independence and the Constitution as sources of government power to restrict gun ownership rights.

The Constitution, in fact, creates a limited federal government. It separates powers among branches of the federal government and preserves state power against federal power.

The framers believed that these structures would adequately control the government so as to protect individual liberty. But the American people disagreed. They feared that the Constitution gave the federal government so much power that it could be tyrannical and violate individual rights. So the Bill of Rights was added.

Each of those rights, including the Second Amendment, was adopted to further limit government power and protect individual rights.

President Obama's remarks turned the Constitution on its head. He said, quote, "The right to worship freely and safely, that right was denied to Sikhs in Oak Creek, Wisconsin."

Quote, "the right to assemble peacefully, that right was denied shoppers in Clackamas, Oregon, and moviegoers in Aurora, Colorado. That most fundamental set of rights to life, liberty, and the pursuit of happiness are fundamental rights that were denied to college students at Virginia Tech and high school students at Columbine and elementary school students in Newtown," end of quote.

But this is not so. Except for its prohibition on slavery, the Constitution limits only actions of government, not individuals.

So, for instance, the right to peacefully assemble protects individual rights to organize, to protest, and seek to change to government action. That right is trivialized and mischaracterized as protecting shopping and watching movies.

GRASSLEY: And those constitutional rights are not the source of governmental power to enact legislation, as the president suggested. In fact, just the opposite: They were included in the Bill of Rights because throughout history, governments have wanted to shut up those who would criticize government, to suppress unpopular religions, or to disarm people.

The president's citing of constitutional protections of individual rights is the basis for expanding federal power over the lives of private individuals. This is the same president who exceeded his power under the Constitution to appoint recess appointments. So, no wonder millions of Americans fear that the president might take executive action and Congress may enact legislation that could lead to tyrannical federal government.

So, I cannot accept the president's claim that, quote, "There will be politicians and special interest lobbyists publicly warning of tyrannical all-out assault on liberty, not because that's true, but because they want to gin up fear," end of quote. This necessarily and understandably leads many citizens to fear that their individual rights will be violated. And that extends well beyond the Second Amendment. It should be a matter of deep concern to all of us. The Constitution for 225 years has established a government that is the servant of the people, not the master.

So, Mr. Chairman, as we consider and debate legislation arising from these tragedies, I hope that we will proceed with proper understanding of the relationship that the Constitution establishes between government power and individual liberty, and I hope we will pass those bills that would actually be effective in reducing gun violence.

I welcome the witnesses and look forward to this hearing. Thank you very much.

LEAHY: Thank you.

I'd ask that Captain Mark Kelly, Professor David Kopel, Chief James Johnson, Ms. Gayle Trotter and Mr. Wayne LaPierre step forward. Just stand behind your chairs for the moment and I can swear in the panel at one time.

Please raise your right hand. Do you solemnly swear that the testimony you're giving us is the truth, the whole truth and

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nothing but the truth, so help you God?

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Let the record show that all witnesses have been sworn in.

Please take your -- take your seat. What I'm going to suggest we do, I'm going to call on each witness. We're going to try to keep to fairly strict time and call on each one to give their testimony. Then, we'll open it to questions in the usual way, alternating on both sides.

Our first witness is Mark Kelly. He's -- our first witness is Mark Kelly. He's a retired astronaut and U.S. Navy captain. Captain Kelly recently co-founded Americans for Responsible Solutions. This is an advocacy group that promotes solutions to prevent gun violence and protect responsible gun ownership. He is with his wife, former Congresswoman Gabrielle Giffords.

So Captain Kelly, please go ahead, sir.

KELLY: Thank you, Chairman Leahy and Ranking Member Grassley for inviting me here today. I look forward to a constructive dialogue with your committee.

I also want to take the opportunity to congratulate Gabby's friend and much-respected former colleague, Jeff Flake, on his new role as Arizona's junior senator.

As you know, our family has been immeasurably affected by gun violence. Gabby's gift for speech is a distant memory. She struggles to walk and she is partially blind. And a year ago, she left a job she loves, serving the people of Arizona.

But in the past two years, we have watched Gabby's determination, spirit and intellect conquer her disabilities. We aren't here as victims. We're speaking to you today as Americans. We're a lot like many of our fellow citizens following this debate about gun violence. We're moderates. Gabby was a Republican long before she was a Democrat.

We're both gun owners and we take that right and the responsibilities that come with it very seriously. And we watch with horror when the news breaks to yet another tragic shooting. After 20 kids and six of their teachers were gunned down in their classrooms at Sandy Hook Elementary, we said: "This time must be different; something needs to be done." We are simply two reasonable Americans who have said "enough."

On January 8th of 2011, a young man walked up to Gabby at her constituent event in Tucson, leveled his gun and shot her through the head. He then turned down the line and continued firing. In 15 seconds, he emptied his magazine. It contained 33 bullets and there were 33 wounds.

KELLY: As the shooter attempted to reload, he fumbled. A woman grabbed the next magazine and others restrained him.

Gabby was the first victim. Christina Taylor Green, nine years old, born on 9/11 of 2001, was shot with the 13th bullet or after. And others followed.

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The killer in the Tucson shooting suffered from severe mental illness, but even after being -- even after being deemed unqualified for service in the Army and expulsion from Pima (ph) Community College, he was never reported to mental health authorities.

On November 30, 2010, he walked into a sporting goods store, passed the background check, and walked out with a semiautomatic handgun. He had never been legally adjudicated as mentally ill, and even if he had, Arizona, at the time, had over 121,000 records of disqualifying mental illness that it had not submitted into the system.

Looking back, we can't say with certainty -- with certainty, "Only if we had done this, this would never have happened." There is not just one thing that would have prevented the Tucson shooting from being written into the history books. Gabby is one of roughly 100,000 victims of gun violence in America each and every year. Behind every victim lays a matrix of failure and inadequacy in our families, in our communities, in our values, in our society's approach to poverty, violence, and mental illness and yes, also in our politics and in our gun laws.

One of our messages is simple, the breadth and complexity of gun violence is great, but it is not an excuse for inaction. There's another side to our story, Gabby is a gun owner and I am a gun owner. We have our firearms for the same reasons that millions of Americans just like us have guns, to defend ourselves, to defend our families, for hunting, and for target shooting.

We believe wholly and completely in the second amendment and that it confers upon all Americans the right to own a firearm for protection, collection, and recreation. We take that right very seriously and we would never, ever give it up, just like Gabby with never relinquish her gun and I would never relinquish mine. But rights demand responsibility and this right does not extend to terrorists, it does not extend to criminals, and it does not extend to the mentally ill.

When dangerous people get guns, we are all vulnerable at the movies, at church, conducting our everyday business, meeting with a government official. And time after time after time, at school, on our campuses, and in our children's classrooms. When dangerous people get dangerous guns, we are all the more vulnerable. Dangerous people with weapons specifically designed to inflict maximum lethality upon others have turned every single corner of our society into places of carnage and gross human loss. Our rights are paramount, but our responsibilities are serious. And as a nation, we're not take responsibility for the gun rights that our founding fathers have conferred upon us.

Now we have some ideas on how we can take responsibility. First, fixed on background checks. The holes and our laws make a mockery of the background check system. Congress should close the private sales loophole, and the dangers people entered into that system. Second, remove the limitations on collecting data and conducting scientific research on gun violence. Enact -- enact a tough federal gun trafficking statute, this is really important . And finally, let's have a careful and civil conversation about the lethality of fire arms we permit to be legally bought and sold in this country.

Gabby and I are pro-gun ownership. We are also anti-gun violence, and we believe that in this debate, Congress should look not toward special interests and ideology, which push us apart, but towards compromise which brings us together. We believe whether you call yourself protest gun, or anti-gun violence, or both, that you can work together to pass laws that save lives.

KELLY: Thank you.

LEAHY: Thank you.

Next witness, David Kopel is the research director for the Independence Institute as well an associate policy analyst with the Cato Institute, an adjunct professor of advance constitutional law at Denver University's Sturm College of Law. Did I get that all correct?

(OFF-MIKE)

LEAHY: Thank you. Go ahead, please.

KOPEL: Thank you, Chairman Leahy and then Senator Grassley.

I think, to -- to continue the themes that the Captain Kelly so eloquently spoken about, gun rights and gun control don't have to be culture-war enemies. Properly conceived, they can work together and reinforce each other. It's important to recognize that the Second Amendment is not absolute any more than the First Amendment is. It certainly has an absolute core that can't be violated under any circumstances, but that doesn't prohibit all firearms controls.

LEAHY: Excuse me, and this won't come out of your time.

KOPEL: OK.

LEAHY: All of the statements will be put in the record in full so we can keep close to the time.

Go ahead.

KOPEL: Thank you, I will keep very close to the time.

And, likewise, gun controls don't violate the Second Amendment if they are constructed so they don't violate the rights of law-abiding citizens, and they actually do something constructive, significant, and effective to protect law-abiding citizens.

Captain Kelly talked about the matrix of failure. 20 years ago, I testified before this committee -- some of the senators are still here -- about one thing that turned out to be part of that matrix of failure. And that was the ban on so-called assault weapons. I warned during that testimony then that it was based, not on the function of guns, or how fast they fired, or how powerful they were, but on superficial, cosmetic characteristics and accessories. As part of the compromise that eventually led to that bill being mistakenly passed by Congress, the bill had a 10-year sunset in it and a requirement that the Department of Justice supervise a study of the effectiveness of that law. That study was -- the people to carry out that study were chosen by Attorney General Reno at the Department of Justice. They did several interim studies, and then a final study. And they concluded that the law had done nothing. It had not save lives. It had did not reduced the number of bullets that were fired in crimes. It had

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been a failure. It had -- to some minor degree, switched the types of guns that were used in crimes, so you had a gun with one name instead of another name, but it didn't -- it didn't reduce crime overall.

And indeed, it was a dangerous bill in the sense that so much political attention was distracted by the focus on this that it took public attention away from debate on measures that might have been more constructive and life-saving.

Today, police and law-abiding citizens choose semi-automatic handguns and rifles such as the AR-15 for the same reason. They are often the best choice for the lawful defense of self and others. To assert that such firearms, and their standard capacity factory magazines, are only meant for mass murder, is truly to libel law-abiding citizens and the many law-enforcement officers who choose these guns, not for hunting, not for collecting, but for the purpose for which police officers always carry firearms, for the lawful defense of self and others.

Great Britain shows the perils of mass gun -- gun confiscation that some people have proposed. It has a high violent crime rate than the United States, and especially high rate of home invasion burglaries. Congress has repeatedly outlawed gun registration because of the accurate recognition that another country's, and in the United States -- in New York city, gun registration has been used as a tool for confiscation. These 1941, 1986, and 1993 congressional statutes are one way that gun rights can be protected against future abuses.

Unfortunately, the bill's that -- about universal background checks that have been proposed in recent Congresses, with the support of mayor -- New York City Michael Bloomberg, have often been -- had provisions in them for gun registration and for many other violations of the civil liberties of law-abiding persons, such as allowing gun bans for people accused but acquitted of drug crimes.

KOPEL: Universal background checks should be available. It was a wise move by President Obama in his January 16th press conference to begin changes in federal regulations and their interpretation to allow private sellers to access the background check system via federally licensed firearms dealer. Many people will choose to take advantage of that, and I commend them. But mandating universal checks can only be enforceable if there is universal gun registration, and we know that universal gun registration, in every country in the world where it's existed, has been a serious peril to gun ownership.

Universal gun registration was imposed by Canada in 1995 and was later repealed in 2012 by the Canadian Parliament because it was such a fiasco.

If we want to save lives right now, not with constructive reforms that might do some good in the future, there is only one thing that will stop the next copycat killer and that is lawful armed self-defense in the schools not only by armed guards, but also by teachers.

Utah provides the successful model. There, a teacher who has a permit to carry after a background check and a safety training class everywhere else in the state is not prohibited from carrying at the schools.

Gun prohibition lobbies come up with all kinds of fantastic scenarios about what -- the harms that these would cause -- and

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teachers will shoot each other or threaten students, or the students will steal the guns.

But we've had this policy in practice in Utah for many years, and we've never had been a single problem. And, quite notably, we've never had an attack on a Utah school.

If we want to save lives, armed defense in schools is the immediate and best choice, while other constructive solutions may take longer to have an effect.

Thank you.

LEAHY: Thank you very much. As I said, the full statement will be placed in the record.

Chief James Johnson is the police chief of the Baltimore County Police Department. He started his career as a police cadet at the age of 18. He has more than 30 years of experience with the department. He's also the chair of the National Law Enforcement Partnership to Prevent Gun Violence and represents nine national law enforcement organizations.

Chief, thank you for taking the time to be here. Please go ahead, sir.

J. JOHNSON: Thank you.

Mr. Chairman, Ranking Member and members of the committee, thank you for the opportunity to testify. I am here on behalf of the National Law Enforcement Partnership to Prevent Gun Violence .

Yes, sir, it is.

I'm here on behalf of the National Law Enforcement Partnership to Prevent Gun Violence. It aligns to the nation's law enforcement leadership organizations concerned about the unacceptable level of gun violence in the United States.

We mourn the loss of gun violence victims including the 20 children and six adults in Newtown whose lives were cut short by an individual armed with firepower originally designed for combat.

More than 30 homicides occur in America each day, 2,000 children and six adults, certainly, in Newtown are amongst those individuals. Folks 18 and under die from fire-related (ph) violence and deaths every year.

In 2011, for the first time in 14 years, firearms was the leading cause of death for police officers killed in the line of duty. In a one-week period in 2011, the Police Executive Research Forum found that gun crime in six cities had cost more than \$38 million. And in the year 2010, the cost in the entire country was more than \$57 billion.

We urgently need Congress to address the rising epidemic of gun violence in this nation.

Law enforcement leaders support the president's comprehensive approach which includes enhancing safety in educational institutions and addressing mental health issues.

On behalf of my colleagues across the nation, I'm here today to tell you that we are long overdue in strengthening our nation's gun laws. Doing so must be a priority for Congress.

The organizations in the National Law Enforcement Partnership to Prevent Gun Violence urgently call on you to require background checks for all firearms purchases, ensure that prohibited purchasers' records in a National Instant Criminal Background Check System, NICS, are complete, and limit high-capacity-ammunition-feeding devices to 10 rounds.

Seven of our nine groups, including the largest among us, also support Senator Feinstein's assault weapons ban legislation.

Federal law prohibits dangerous individuals, such as convicted felons and those with mental health disqualifiers from possessing firearms. While background checks are required for purchases through licensed gun dealers, no check is required for private sales, such as those through online or print ads or gun shows. It's a major problem.

J. JOHNSON: From November 2011 to November 2012, an estimated 6.6 million gun transactions occurred without a background check. Up to 40 percent of firearm transactions occur through private individuals rather than licensed gun dealers. Allowing 40 percent of those acquiring to bypass checks is like allowing 40 percent of passengers to board a plane without going through security. Would we do this? Last October in Brookfield, Wisconsin, seven women were shot by a prohibited purchaser who was under a domestic violence restraining order.

The shooter answered an online ad, was able to buy a gun without a check very quickly. He had -- had the sale been -- or sale required to have a check, this tragedy could have been prevented. Background checks work. They stopped nearly 2 million prohibited purchasers between 1994, and 2009. We already have a national background check system in place. Therefore, extending a background check to all firearms purchases can easily be implemented, and it should be without delay.

States can't do it alone. Interstate firearms trafficking is a -- a rampant problem, and it must be addressed federally. According to ATF, in 2009, 30 percent of guns recovered at crime scenes crossed state lines. Maryland recovered nearly 2,000 last year from outside the state. Submissions to NICS must be approved, especially mental health and drug abuse records. The 2009 -- a 2007 massacre at Virginia Tech is a great example of a prohibited purchaser slipping through the cracks due to incomplete NICS background check.

The ban on assault weapons, and high-capacity ammunition must be reinstated. Like assault weapons, high-capacity magazines are not used for hunting, and they do not belong in our homes. And they wreak havoc on our communities. Banning these magazines will limit the number of rounds a shooter can discharge before he has to reload. Reloading can provide a window to escape, to seek cover, or concealment, or attack the adversary to take down the shooter, as we have heard in Tucson.

In 1998, four years after the assault weapons and high-capacity magazine ban was enacted, the percentage of firearms with

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large capacity magazines recovered by Virginia police decreased and continued to drop until it hit a low of 9 percent of the weapons recovered in 2004. The year the ban expired, it hit a high of 20 percent in 2010. I've been in law enforcement for nearly 35 years, and I've seen an explosion of fire power since the assault weapons ban expired. It is common to find many shell casings at crime scenes when you go out, and you investigate these days. Victims are being riddled with multiple gunshots. The common-sense measures we call for will not infringe on the Second Amendment rights, but will keep guns out of the dangerous hands of -- of people who are out there to commit danger in our society, and excessive firepower out of our communities.

Generations of Americans, including our youngest ones are depending on you to ensure that they will grow up, and fill their roles in the great human experience. None of us can fail them and I urge you to follow the will of the American people on this issue, and stand with law enforcement on these common-sense public safety measures. Thank you.

LEAHY: Thank you, Chief. Our next witnesses is Gayle Trotter. She was in the co-founder, Shaffer and Trotter, PLC. It's a law firm here in Washington. She's also a senior fellow with the Independent Women's Forum. Attorney Trotter,, good to have you here. Go ahead, please?

TROTTER: Chairman Leahy, Ranking Member Grassley, and members of this committee, thank you for inviting me to appear before you today.

We all want a safer society. We differ on how to make our society safer, and we differ whether some proposals will actually increase public safety. I urge you to reject any actions that will fail to make American's safer, and in particular, harm women the most. I would like to begin with the compelling story of Sara McKinley.

Home alone with her baby, she called 911 when two violent intruders began to break down her front door. These men were forcing their way into her home to steal the prescription medication of her recently deceased husband. Before police could arrive, while Ms. McKinley was still on the phone with 911, these violent intruders broke down her door. One of the men had a foot-long hunting knife.

TROTTER: As the intruders forced their way into their home, Ms. McKinley fired her weapon, fatally wounding one of the violent attackers. The other fled. Later Ms McKinley explained; "It was either going to be him, or my son. And it wasn't going to be my son." Guns make women safer. Over 90 percent of violent crimes occur without a firearm which makes guns the great equalizer for women. The vast majority of violent criminals use their size and their physical strength to prey on women who are at a severe disadvantage. In a violent confrontation guns reverse the balance of power. An armed woman does not need superior strength or the proximity of a hand-to- hand struggle.

Concealed carry laws reverse that balance of power even before a violent confrontation occurs. For a would-be criminal concealed carry laws dramatically increase the risk of committing a crime. This indirectly benefits even those who do not carry. Research shows that in jurisdictions with concealed carry laws, women are less likely to be raped or murdered than they are in states with more restrictions on gun ownership. Armed security works.

Brave men and women stand guard over Capitol Hill, including this building where we are now. Armed guards protect high-profile individuals including prominent gun-control advocates, some of whom also rely on personal gun permits.

While armed security works, gun bans do not. Anti-gun legislation keep guns away from the sane and the law-abiding but not criminals. No sober minded person would advocate a gun ban instead of armed security to protect banks, airports, or government buildings. We need sensible enforcement of laws that are already on the books.

Currently, we have thousands, thousands of under-enforced or selectively enforce gun laws, and we fail to prosecute serious gun violations and impose meaningful, consistent penalties for violent felonies involving firearms.

Instead of self-defeating gestures, we should address the gun violence based on what works. Guns make women safer. The Supreme Court has recognized that lawful self-defense is a central component of the Second Amendment's guarantee of the right to keep and bear arms. For women, the ability to arm ourselves for our protection is even more consequential than for men. Because guns are the great equalizer in a violent confrontation. As a result, we protect women by safeguarding our Second Amendment rights. Every woman deserves a fighting chance.

Thank you.

LEAHY (?): Excuse me, thank you very much, Ms. Trotter.

Our last witness, then we'll go to questions.

Wayne La Pierre the executive vice president CEO of the National Rifle Association. I believe, Mr. La Pierre you have been there since 1970?

Is that correct?

LAPIERRE: That is correct.

LEAHY (?): Please go ahead.

LAPIERRE: Thank you, Mr. Chairman and members of the committee. It's an honor to here today on behalf of the more than 4.5 million moms and dads and sons and daughters...

(UNKNOWN): Press that white button.

LAPIERRE: Thank you.

It is an honor to be here today on behalf of the more than 4.5 million moms and dads, sons and daughters in every state across our nation who make up the National Rifle Association of America. There are 4.5 million active members of the NRA, and

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they're joined by tens of millions of supporters throughout the country. It's on behalf of those millions of decent, hard-working, law-abiding citizens that I am here today to give voice to their concerns.

The title of today's hearing is "What Should America Do About Gun Violence?" We believe the answer is to be honest about what works and honest about what doesn't work.

Teaching safe and responsible gun ownership works, and the NRA has a long and proud history of doing exactly that. Our Eddy Eagle Child Safety Program has taught 25 million young people that if they see a gun, they should do four things: stop, don't touch it, leave the area, and call an adult. As a result of this and other private-sector programs, fatal fire arms accidents are at the lowest level in 100 years.

LAPIERRE: The NRA has over 80,000 certified instructors to teach our military personnel, law enforcement officers, and hundreds of thousands of other American men and women how to safely use firearms.

We do more and spend more than anyone else on teaching safe and responsible gun ownership. We join the nation in sorrow over the tragedy that occurred in Newtown, Connecticut. There is nothing more precious than our children and we have no more sacred duty than to protect our children and to keep them safe.

That's why we asked former congressman and under secretary of homeland security, Asa Hutchinson, to bring in every available expert to develop a model school shield program, one that can be individually tailored to make our schools as safe as possible.

It's time to throw an immediate blanket of security around our children. About a third of our schools right now have armed security already because it works, and that number is growing every day. Right now, state officials, local authorities and school districts in 50 states are considering their own plans to protect children in schools.

In addition, we need to enforce the thousands of gun laws already on the books. Prosecuting criminals who misuse firearms works. Unfortunately, we've seen a dramatic collapse in federal gun prosecutions in recent years. Overall in 2011, federal firearms prosecutions per capita were down 35 percent from their peak in the previous administration. That means violent felons, violent gangmembers and drug dealers with guns, and the mentally ill who possess firearms are not being prosecuted. And that is completely and totally unacceptable.

And out of more than 76,000 firearms purchases supposedly denied by the federal instant check system, only 62 were referred for prosecution and only 44 were actually prosecuted. Proposing more gun laws while failing to enforce the thousands we already have, it's not a serious solution for reducing crime.

I think we can also agree that our mental health system is broken. We need to look at the full range of mental health issues from early detection to treatment to civil commitment laws to privacy laws that needlessly prevent mental health records from being included in the national instant check system.

While we're ready to participate in a meaningful effort to solve these pressing problems, we must respectfully (sic), but honestly and firmly disagree with some members of the committee and many in the media, and all the gun control groups, on what will keep our kids and keep our streets safe. Law-abiding gun owners will not accept blame for the acts of violent or deranged criminals, nor do we believe that government should dictate what we can lawfully own and use to protect our families.

As I said earlier, we need to be honest about what works and what does not work. Proposals that would only serve to burden the law-abiding have failed in the past and they'll fail again in the future. Semi-automatic firearms technology has been around for 100 years. They're the most popular guns for hunting, target-shooting, self-defense.

Despite this fact, Congress banned the manufacture and sale of hundreds of semi-automatic firearms and magazines from '94 to 2004. And independent studies, including one from the Clinton Justice Department, proved that it had no impact on lowering crime. And when it comes to background checks, let's be honest. Background checks will never be universal because criminals will never submit to them.

There are a lot of things that can be done and we ask you to join with us. The NRA is made up of millions of Americans who support what works. The immediate protection for all, not just some of our school children is what's needed, and swift, certain punishment of criminals who misuse guns, and fixing our mental health system.

We love our families. We love our country. We believe in freedom. And we're the millions from all walks of life who take responsibility for our safety and protection as a God-given fundamental American right.

Thank you, Mr. Chairman.

LEAHY: Thank you.

Now, Chief Johnson, let me begin with you, sir, if I could. I've found in my experience that many criminals are able to get guns illegally because they use straw purchasers. In other words, the person who has no criminal record can easily pass background check, goes in and buys the guns, and turns around and gives them to criminals.

LEAHY: There's no federal law that makes it illegal to act as a straw purchaser of firearms. So last week I -- I introduced a bill that will strengthen federal law to combat firearms trafficking. It would specifically target straw purchasers.

Do you think there should be such a law?

J. JOHNSON: The background procedures in this nation are seriously in need of -- of modification. Again, 40 percent of those acquiring firearms tried to do it outside that background procedure.

Senator, you are absolutely correct, many will use a straw purchaser to go in and acquire these firearms. It happens each and every day across America. It is a serious problem. And the National Law Enforcement Partnership To Prevent Gun Violence

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LEAHY: Thank you, chief. We also heard testimony about the safety of women and gun violence. Now I'm seeking immediate consideration of the Leahy-Crapo Violence Against Women Reauthorization Act. I was told yesterday that sometime in the next couple weeks we'll have it on the floor of the Senate for a vote.

I do this out of concern for domestic violence victims. We -- we have statistics that show women in this country are killed at alarming rates by domestic abusers with guns. Fortunately if a woman has a protective order against her abuser, if he is able to get a gun with a straw purchaser, of course, he still gets it, but he is not going to be able to purchase a gun and a background check is conducted. And we have at least one side that says in states that require a background check for every handgun sale, 38 percent fewer women are shot by their partners (inaudible).

Do you agree that if we want to keep firearms away from domestic abusers, who are not supposed to have them anyway, we have to have to improve the background check system and require a background check for every firearm purchasers?

J. JOHNSON: Absolutely.

I'd like to stand before this group today and say, I've spent my years of chasing down violent armed robbers each and every day. The fact of the matter is, as a young patrol officer, most of my day was one domestic to another it was the post that I had. Statistics show that when females are killed, it's more likely -- over 50 percent of the time to be by a spouse or household member. A gun and a home where there is a history of domestic violence, statistics show that there is a 500 percent increase of chance that, that person will be victimized by gun violence.

The state of Maryland in the last several years enacted legislation to address this domestic violence issue to allow us to go out and seize the guns of domestic violence abusers where the spouse has won and obtained a protective order. This has been very effective. And in my jurisdiction, which averages generally about 35 homicides a year, unfortunately most being domestic violence related, this has had a significant impact in reducing the amount of those domestics.

Two of the last three years, the statistic was below the 41 year homicide rate. And I credit, in this case, lieutenant governor state of Maryland, Lieutenant Governor Brown for this initiative, and it's helped us tremendously.

LEAHY:

Thank you.

Captain Kelly Mr. La Pierre has testified that universal background checks won't work because criminals would never submit to them. And I understand that, but under current law, criminals don't have to go through background checks because there are so many loopholes, gun show loophole, no real punishment for straw purchasers.

Do you agree that there is nothing that we can do to strengthen our background checks?

ER2284

KELLY: Chairman Leahy, I disagree. There is a lot we can do. 472

The situation that I know best is what happened in Tucson, January 8th, 2011. Jared Loughner (ph), the shooter in this case, when he purchased a gun, he did purchased it through a background check. But there was a lot of evidence that could possibly been in the national instant criminal background check system about him that would have prevented him from buying a gun through a background check. So that's part of the solution.

KELLY: Now, the other problem is, let's say, he was denied, denied the purchase of the gun which he purchased in November of 2010. It would have been very easy for him to go to a gun show and purchase a gun without a background check.

So, you know, there are several things that need to be done. And in my opinion, and in Gabby's opinion, this is one of the most important things that we must do to prevent criminals, terrorists and the mentally ill from having easy access to guns, I mean, closing the gun-show loopholes and requiring private sellers to require a background check before they transfer a gun is -- I mean -- I mean, for us, I mean, I can't think of something that would make our country safer than doing just that .

LEAHY: Thank you.

And, Mr. LaPierre, in 1999, you testified before the House Judiciary Committee. And you testified, quote, "Nobody is more committed than we are to keeping guns out of criminals' hands. That's obviously in our best interest," close quote.

I assume you are still just as committed to keeping guns out of the hands of criminals. Is that correct?

LAPIERRE: Yes, sir.

LEAHY: And would you agree that we should prosecute and punish those who help criminals get guns?

LAPIERRE: If you're talking about strawman sales, we've said strawman sales should be prosecuted for years. There are about six to eight statutes on the books right now...

LEAHY: So you agree that we should prosecute and punish those who help criminals get guns?

LAPIERRE: Absolutely. If someone is doing a strawman sale, they should be prosecuted. Absolutely.

LEAHY: And in your testimony in '99, you supported mandatory instant criminal background checks for every sale and every gun show. You said, quote, "No loopholes anywhere, for anyone."

Now, today, of course, you say criminals would never submit to background checks. Statistics show that plenty of them do. Nearly 2 million convicted criminals and other dangerous people have tried to buy firearms and (inaudible), as Chief Johnson said, were prevented.

So let me ask you this: Do you still, as you did in 1999, still support mandatory background checks at gun shows? Yes or no?

LAPIERRE: We supported the National Instant Check System on dealers. I -- we were here when Senator Birch Bayh, one of your colleagues, held the hearings in terms of who would be a dealer and who would be required to have a license. If you did it for livelihood and profit, yes. If you were a hobbyist, then no.

LEAHY: Let's make -- let's make it easier, though. I'm talking about gun shows. Should we have mandatory background checks at gun shows for sales of weapons?

LAPIERRE: If you're a dealer, that's already the law. If you're talking...

LEAHY: That's not my question. Please, Mr. LaPierre, I'm not trying to play games here. But, if you could, (inaudible) just answer my question.

LAPIERRE: Senator, I do not believe the way the law is working now, unfortunately, that it does any good to extend the law to private sales between hobbyists and collectors.

LEAHY: OK, so you do not support...

(CROSSTALK)

LEAHY: ... mandatory background checks in all instances at gun shows?

LAPIERRE: We do not, because the fact is, the law right now is a failure the way it's working. The fact is, you have 76,000-some people that have been denied under the present law. Only 44 were prosecuted. You're letting them go. They're walking the streets...

(CROSSTALK)

LEAHY: And do you -- then, I understand, back in 1999, you said no loopholes anywhere for anyone. But now you do not support background checks for all buyers of firearms?

LAPIERRE: I think the National Instant Check System, the way it's working now, is a failure. Because this administration is not prosecuting the people that they catch.

They're not -- 23 states are not even putting the mental records of those adjudicated mentally incompetent into the system. Now, assume that if you don't prosecute and they try to buy a gun, even if you catch 'em, and you let 'em walk away, to assume they're not going to get a gun -- they're criminals, they're homicidal maniacs, and they're mentally ill.

I mean, we all know that homicidal maniacs, criminals and the insane don't -- don't -- don't -- don't... LEAHY: Mr. LaPierre...

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LAPIERRE: ... don't abide by the law.

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LEAHY: Mr. LaPierre, my time is up. With all due respect, that was not the question I asked. Nor did you answer it.

LAPIERRE: But I think it is the answer. I honestly do. I -- the fact...

LEAHY: All right. It's your testimony.

Senator Grassley?

GRASSLEY: Yes.

Before I ask questions, Senator Hatch asked if I would explain to everybody here why he left. He's ranking member Finance Committee, and Senator Baucus has scheduled a hearing for 10:45 and he has to be there for that.

Professor -- Professor Kopel, was the 1994 assault weapons ban a sensible and effective means of reducing gun violence?

And, secondly, is there any reason to re-enact a more extensive assault weapons ban?

KOPEL: (OFF-MIKE)

GRASSLEY: Turn it up. Turn...

KOPEL: Sorry.

Based on the Department of Justice study, the answer was no, that it was something that was tried with great sincerity. A lot of people thought it would be a good idea, but it didn't seem to save any lives -- that the researchers could -- could find.

The revised law is just more of the same, but it suffers from the same fundamental problem. You can have a 1994 law that lists some guns by name and a 2013 law that lists more guns by name. But the very fact that you're banning guns by name, what's -- that's just an example of how the law doesn't address the guns firepower or their rate of fire. It simply -- if there's something that makes these guns more dangerous then legislation ought to be able to describe it in neutral terms. So all these -- these names, I think, are a sign of exactly what's wrong with the bill.

Now, the -- the present bill, like its 1994 predecessor, also has outlaws that is based on various features. But, again, these are -- there aren't things that have to do with internal mechanics of the gun, how fast it fires or how powerful the bullets are.

There're things like whether a rifle has a forward grip. Well, a forward grip on a rifle helps the user stabilize it and make the gun more accurate. So that if you're deer hunting the second shot is almost as accurate as the first, or if you're target shooting, or more importantly -- most importantly, if you're engaged in lawful self- defense.

ER2287

And that's why you see guns like the AR-15 with their standard, factory-issued 30-round magazines in police cars all over the country, is because they make the gun more accurate for the core purpose of the Second Amendment, which is lawful self-defense.

GRASSLEY: OK.

Chief Johnson and Professor Kopel, listen while I read, and I'll ask each of you a question. Recently, Iowa law enforcement officials were quoted in an article -- that I ask consent to include in the record -- entitled, "Law Officers Tell Congressmen Mental Health Issues More Important than Gun Ban," end of quote.

In it, a bipartisan group of elected sheriffs and police chiefs offered candid assessments of current legislative proposals. One chief of police stated, quote, "I think banning assault weapons and high-capacity magazines is strictly a feel-good measure. It's not going to accomplish anything," end of quote.

Instead, they asked for options for getting mentally ill individuals treatment. Chief Jim Clark, Ottumwa, Iowa, added, quote, "We identify some that are mentally ill. They need treatment. But we can't access the system."

So Chief Johnson, what options do your officers have, from your experience -- because I quoted in Iowa -- (inaudible) currently have in dealing with individuals they believe to have untreated mental illness?

J. JOHNSON: It is a major problem in America today, in my jurisdiction. I'm here today to talk about guns and ways to stop gun violence. We know a comprehensive background check that picks up these mental health issue disqualifiers will make our nation a safer place.

We know that banning high-capacity magazines will make our police officers safer. We've lost dozens of police officers in America due to assault weapons. And we've seen tragedies all across this great nation (inaudible) Newtown, in Webster, New York -- an off-duty police officer -- we're never off duty, he's a police officer -- shot down by an assault weapon. It's a serious problem, and it must be addressed.

GRASSLEY: Professor Kopel, you authored an article, Wall Street Journal, last month entitled, "Guns, Mental Illness, Newtown." And I would also like to have that included in the record.

Is there evidence that mental illness and changes to civil commitment laws that play a part in mass shootings? And what can we do to keep guns away from mentally ill consistent with our Second Amendment?

KOPEL: Well, certainly, they play quite a major role in -- in homicides in general, probably about -- according to the Department of Justice research, about one-sixth of the people in state prisons for homicide are mentally ill. If you look at the -- these mass murders where suicidal people try to end their lives in the most infamous way possible -- in -- in Tucson, Virginia Tech, Newtown, Aurora, you have a very strong threat of mental illness running through that.

And certainly, improving the background -- the data about mental health adjudications, not just a psychiatrist

recommendation or something like that, but what due process and the Constitution require, which is an adjudication, a fair decision by a neutral decision-maker. Getting those into the background check system is something that Congress started working on after Virginia Tech, and there's -- there's more progress to be made.

But that's -- it's not just a matter of checks. It's -- even if you have the most ideal check system in the world, at the least -- and imagine these criminals, violently insane criminals could never get a gun anywhere else. You know, Adam Lanza at Newtown didn't have background checks. He stole the guns after murdering his mother.

So, the long-term solution is not just about background checks. It's about why are these people on the streets in the first place. All of these killers I've just mentioned could have been civilly committed under the civil commitment laws we had several decades ago. Those laws were changed. Sometimes -- because they were sometimes abused, but I think we can move back to a more sensible position that strongly protects the due process rights of people against involuntary commitment, but also gets dangerous people off the streets. And that will cost money at the state level, but it's money that will be greatly saved in the long term through reduced incarceration costs for crimes.

GRASSLEY: OK.

Ms. Trotter, your testimony discussed the need for women to be able to use firearms to defend themselves and their families. The law currently permits the lawful possession of semi-automatic rifles such as AR-15s. Can you tell us why you believe a semi-automatic rifle such as AR-15 has value as a weapon of self-defense? And does banning weapons -- banning guns which feature designed to improve accuracy disproportionately burden women?

TROTTER: I believe it does. Young women are speaking out as to why AR-15 weapons are their weapon of choice. The guns are accurate. They have good handling. They're light. They're easy for women to whole. And most importantly, their appearance. An assault weapon in the hands of a young woman defending her babies in her home becomes a defense weapon. And the peace of mind that a woman has as she's facing three, four, five violent attackers, intruders in her home with her children screaming in the background -- the peace of mind that she has knowing that she has a scary-looking gun gives her more courage when she's fighting hardened violent criminals.

And if we ban these types of assault weapons, you are putting women at a great disadvantage, more so than men, because they do not have the same type of physical strength and opportunity to defend themselves in a hand-to-hand struggle. And they're -- they're not criminals. They're moms. They're young women. And they're not used to violent confrontations.

So, I absolutely urge -- I -- I speak on behalf of millions of American women across the country who urge you to defend our Second Amendment right to choose to defend ourself.

GRASSLEY: Thank you.

LEAHY: Thank you.

ER2289

FEINSTEIN: Thank you very much, Mr. Chairman, for holding this hearing. And I want to thank everybody for being here, particularly our witnesses. Even you, Mr. LaPierre -- it's good to see you again.

(LAUGHTER)

I guess we tangled...

LAPIERRE: We have.

FEINSTEIN: ... we tangled, what was it? Eighteen years ago. You look pretty good, actually.

(LAUGHTER)

LEAHY: I will give a little prerogative to the laughter.

(CROSSTALK)

FEINSTEIN: I'd like to add something to the record, Mr. Chairman -- page 44 of the Department of Justice report, "Assault Weapons As A Percentage of Gun -- of Gun Traces," which shows a 70 percent decline from '92-'93 to 2001-2002.

LEAHY: Without objection, so ordered.

FEINSTEIN: Thank you. Thank you very much.

Chief Johnson, I'd like to talk with you. First of all, I am very grateful for the support of your organization, of the major chiefs, and the International Association of Chiefs of Police, as well as trauma surgeons who see what these guns do in tearing apart bodies.

FEINSTEIN: I have become very concerned as I looked at the bill before, in '93, at the technological improvement in these weapons over this -- these years. And one of the things that we've tried to do in this new bill is prevent that from happening in the future. In looking at the AR-15 magazine on a device, which is legal, called a slide fire, I note that with practice, a shooter may control his rate of fire from 400 to 800 rounds per minute, or shoot two, three, or four rounds at a time, and just as easily fire single shots. So this is a weapon, and I think Ms. Trotter's right, it apparently is versatile. It apparently is rather easy to use, but it has tremendous philosophy -- velocity, and tremendous killing power, and I suspect tears young bodies apart.

Additionally, it's my understanding that Mrs. Lanza actually gave this gun to her son. Is that correct?

J. JOHNSON: These guns used in Newtown were not stolen, Professor. They were in the home, accessible to the shooter.

J. JOHNSON: It's a major problem, safety and security of weapons. In my jurisdiction, two school shootings, safety and security of weapons would have made a difference in that case. And Senator, you bill, I salute, and applaud you for including a safety and security measure.

FEINSTEIN: Well, thank you very much, Chief. This is such a hard debate because people have such fixed positions. Police, I think see killings as they are. Many people do not. So in a sense, the streets speak about this issue. The more you add highly technologically efficient weapons, which are originally designed to kill people in close combat, and they fall in the hands of the wrong people.

It's my understanding that Mrs. Lanza's son, the shooter in this case, had no mental health record. Is that correct?

J. JOHNSON: It is my understanding that no record exists. It is my understanding that there was ample evidence though, amongst those close to him, that there was a serious problem.

FEINSTEIN: Which is really something that I think we need to tackle today. Mental health laws are usually the preserve of the state, and the local governments. They provide the facilities. Do you have any suggestions there with respect to anything that we might be able to do, to improve mental health laws nationally, which might catch people who are a danger to themselves, or others in this area?

J. JOHNSON: It's a -- a major problem for law enforcement. Citizens, police officers, doctors, parents, can petition for an emergency evaluation when they see behavior that presents an individual as being a danger to themselves, or others. It's really important that we all do this. It's a tough decision, but sometimes you have to make it against your own son. Very, very hard. It could affect their entire life, but it has to be done.

The improvement that needs to be made is, we need to have this information entered instantly into a data system in the event that the -- the individual tries to go out within 24 hours to get a gun. The fellow in Wisconsin who went into the salon to shoot his wife, he wanted a gun fast. He wanted it fast. He as hot, he was emotional, he was out of control. And he wanted to get a gun fast.

And the way you do that, is you reach outside the established background check system and acquire it. If that record would have been entered into the system's domestic violence order, it would have been entered instantly, like we can do today all right? In many areas. That gun could have been -- a gun could have been prevented from getting in the hands of a person who is going to carry it out when they're in a high emotional stage. This is really, really important.

FEINSTEIN: We have millions and millions of big clips. The Aurora shooter used a 100 round drum. Fortunately it jammed. Otherwise he would have killed more people. I think most people believe that, sure we can have guards at schools. I'm well aware that at Columbine there was a deputy sheriff who was armed, who actually took a shot, but couldn't hit the shooter there.

FEINSTEIN: The question comes, what do you do about the malls then? What do you do about our movie theaters? What do you do about businesses? We can't have a totally armed society. And that's my feeling in terms of the need to say that there are certain categories of guns. We actually exempt over 2,000 specific weapons by make and model name to create and then ban about 158 assault weapons, and then go to a one-characteristic test.

You have looked at this bill. Do you believe it will be effective?

J. JOHNSON: Yes, ma'am, I do. I believe that holistically addressing all of the issues in the president's plan, as well as a comprehensive, universal background check procedure, banning high- capacity magazines, and banning the sale of assault weapons, frankly, collectively all these together will create a system. The best way to stop a bad guy from getting a gun in the first place is a good background check.

FEINSTEIN: Thank you, very much.

Thank you, Mr. Chairman.

LEAHY: Thank -- thank you.

As Senator Grassley noted, Senator Hatch has to be at other thing. Recognize him when he comes back. I'm gonna go back and forth, go in seniority. We'll go to Senator Sessions. But I'll talk -- announce that all members can put statements in the record by the close of business today as -- as (inaudible) read (ph).

Senator Sessions?

SESSIONS: Thank you, Mr. Chairman.

I've spent the better part of our career, I guess, prosecuting cases, 12 years as a United States attorney, and during that time I gave a high emphasis to prosecutions of gun violations. We were one of the top prosecuting districts in the country. I note, in the latest University of Syracuse report, they list my district, the southern district of Alabama as number one in the nation still today in prosecutions of gun violations.

This is what the University of Syracuse study said, however, in its lead comment, "Weapons prosecution's declined to the lowest level in a decade," quote, "The latest available data from the Justice Department shows that during January of 2011, the government reported 484 new weapons prosecutions. This is the lowest level to which prosecutions federally have fallen since January of 2001, when 445 at the time that President Bush assumed office," close quote.

They go on to note some of the declines in various categories. And so first and foremost, I would say to you, as someone who has personally tried a lot of these cases before a jury, written appellate briefs on these cases, that these -- the bread and butter criminal cases are felons in possession of a firearm, and carrying a firearm during a crime, both of which are serious offenses. Carrying a firearm during a crime, drug crime, or crime of violence, or other serious crimes is a mandatory five-year sentence

Those prosecutions have declined, unfortunately, substantially, under President Obama's presidency. Chief, does it concern you that in -- comparing total prosecutions per month for guns in federal court with those for a month in , with those for the same period in 2010, the number of filings went down 7.9 percent and were down 28.8 percent from 2006 in federal court.

Does that concern you?

J. JOHNSON: Senator, I can tell you that in the Baltimore County Police Department...

SESSIONS: I'm asking if those are the numbers, did that concern you?

J. JOHNSON: No, because you don't -- sir, you're...

SESSIONS: It doesn't concern you?

J. JOHNSON: ... not including local prosecutions. I can't stand before you today and tell you of a single case in Baltimore County of an illegal possessed gun that was not prosecuted...

SESSIONS: Are we trying to pass a state or federal law today?

J. JOHNSON: Certainly, background checks...

SESSIONS: That's what you guys call a federal law. We'd like to see the federal laws that are on the books enforced. I suggest and with with regard to the crimes of -- of carrying a firearm during the furtherance of a violence or drug trafficking offense, those prosecutions declined 28.5 percent between 2007 and 2011.

SESSIONS: So I would say that, first of all, we need to make sure we are doing our job there. I would also note that although crime is a very, very important matter, we should never lose our emphasis on bringing down crime -- the murder rate in America today is half what it was in 1993. We have made progress on that. And -- and we can continue to drive those numbers down. It's not as if we have an unusual surge in violent crime in America.

Now, with regard to the background checks and straw purchases, let's -- let's be frank: Straw purchases are a problem and should be prosecuted. I have prosecuted those cases before on a number of occasions. I've prosecuted gun dealers who fail to keep records as required by the law.

But the number of defendants charged under 18 USC 922(a)(6), making material misrepresentations under the federal firearms law regarding the lawfulness of a transfer, have declined from 459 in 2004 to 218 in 2010. That's -- that's about half, 52 percent decline under this administration's leadership.

And I -- I would just say to you, mathematically speaking, violence in America is impacted mostly when you're enforcing these bread-and-butter violations that are effective, they're proven and they work. They have support of Mr. LaPierre, I think -- I know that group (inaudible) support 'em. I think everybody supports these strong laws. And that's where the rubber meets the road. That's where you really begin to impact crime.

If you can intimidate -- and I believe the word is getting out -- it did in our district -- that if you carry a gun in a crime, a drug dealing offense, you could be prosecuted in federal court, given five years in jail without parole. And I believe we saw a decline in the violent rate -- violence rate and the number of drug dealers and criminals carrying guns. But you have to prosecute those cases.

Mr. LaPierre, it does appear that the straw purchase prohibition that's out there, that prohibition seems to me to be legitimate. And I support -- and you said you support the prosecutions of it. But if we expand the number of people covered (inaudible) we don't have any prosecutions -- I believe you used the number 44, was all. There're 90 United States attorneys in America. Only 44, only one out of every two, apparently, is prosecuting a single case in a single year. That's the weakness in the system.

LAPIERRE: Senator, there needs to be a change in the culture of prosecution at the entire federal level. It's a national disgrace. The fact is, we could dramatically cut crime in this country with guns and save lives all over this country if we would start enforcing the 9,000 federal laws we have on the books.

I'm talking about drug dealers with guns, gangs with guns and felons with guns. There're simply not being enforced. The numbers are shocking. I mean, in Chicago, one of the worst areas in the country in gun violence by criminals, it is 89 of 90 in terms of federal prosecutions in the entire United States; 62 people prosecuted under all of the federal gun laws.

I mean (inaudible) Dave Schiller and Project Exile cleaned up Richmond years ago, they did 350 cases in Richmond. I mean, if you want to stop crime, interdict violent criminals, incarcerate 'em and get 'em off the street before they get to the next crime...

(CROSSTALK)

SESSIONS: Well, I -- I agree. My time is up.

LAPIERRE: ... or worse.

SESSIONS. And I -- Richmond was a great model. And I would just say, I would call on President Obama to call in Attorney General Eric Holder and ask him why the prosecutions have dropped dramatically across all categories of federal gun laws. And he should call in his U.S. attorneys and tell them, you need to look at your numbers and get them up and emphasize these prosecutions.

Thank you, Mr. Chairman.

LEAHY: Senator Schumer?

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SCHUMER: Well, thank you.

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First, let me apologize to the witnesses. At the end -- we have a Finance Committee meeting on reconciliation, which probably affects our police chief anyway. And so I had to be there.

And I want to thank you, Chairman Leahy, for organizing this important hearing.

Thank all the witnesses for being here, particularly Congresswoman Giffords and Captain Kelly for your testimony. We've been moved by your strength, your courage that your family has demonstrated in this face of unspeakable tragedy.

By being here instead of cursing the darkness you're lighting a candle. Thank you.

Now, I do believe today we have a chance to do something reasonable in the aftermath of the Sandy Hook tragedy. But when we discuss ways to stop violence, guns must be included in that discussion.

SCHUMER: I heard Ranking Member Grassley say that we must go beyond guns. That's true. But we must include guns as well. Not including guns when discussing mass killings is like not including cigarettes when discussing lung cancer.

But at the same time, I agree. We can't simply replay the usual sum zero political game on guns, or the moment'll pass us by.

The Supreme Court ruling in Heller, which struck down the District of Columbia's ban on handguns laid out a good framework. It said an individual right to bear arms does exist, but it comes with limitations, like very amendment.

In other words, it is now settled law that the government is never going to take away America's guns -- Americans' guns.

Progressives need not to accept this decision, but to endorse it. We've got to follow it, not just de jure, but de facto. And it makes sense. You can't argue for an expansive reading of amendments like the First, Fourth and Fifth, but see the Second Amendment through the pinhole of saying it only affects militias.

At the same time, those on the pro-gun side must recognize no amendment is absolute. The First Amendment protects freedom of speech. It's hallowed. But you still can't falsely shouts fire in a crowded theater or traffic in child pornography. Those are reasonable limits on the First Amendment.

The Second Amendment has sensible limits, too. My colleagues have offered a range of impressive and thoughtful proposals on the topic of gun violence.

For example, Chairman Leahy has introduced a bill on trafficking. Senator Feinstein has introduced one of assault weapons. Senator Blumenthal on ammunition.

But for the last several years, my particular focus in the area of gun safety has been on responsible gun ownership and

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background checks. Universal background checks is a proven, effective step we can take to reduce gun violence. And I believe it has a good chance of passing.

Federally licensed firearm dealers have been required to conduct background checks on prospective gun purchasers since we passed the Brady bill. And we've that they work. Since 1999, the federal background check system has blocked 1.7 million prohibited purchasers from buying firearms at federally licensed dealers.

Yes, we should prosecute them. But the number one goal is to prevent a felon from getting a gun in the first place. That's what this did 1.7 million times.

The current system works well. But there are some glaring holes.

First of all, not all gun sales are covered by a background check. The problem, sometimes referred to as the gun-show loophole, means that a private seller could set up a tent at a gun show or somewhere else and not have to conduct background check on his purchasers.

Current estimates show because of these loopholes 48 percent of gun sales are made without a background check. If you're a felon, if you're a gun trafficker, if you're a -- a mentally ill person, you know that you can go to a gun show and not have any check. So, of course, that's what they do.

This isn't fair, also, to dealers who follow the rules and conduct checks. The registered dealers at their gun stores have to obey the rules. Why should someone going to a gun show have a different rule? There's no logic to it. None.

I was there. I was the author of the Brady bill, and that was something that we were forced to put in the bill, those of us who weren't for it, as a way to get the bill passed. But the last 15 years has proven it doesn't make sense.

The second problem with the current system is that not all records are fed into the system. This is especially true with mental health records. Nineteen states have submitted fewer than 100 mental health records to NICS.

I think we can get bipartisan agreement on a bill that solves these problems by doing two things. One, it'll prevent felons and mentally ill from getting guns by requiring a background check before all purchases. And, two, it will get relevant records into the system.

Now, at the moment, right now, as we meet here today, I am having productive conversations with colleagues on both sides of the aisle, including a good number with high NRA ratings. And I'm hopeful that we are close to having legislation we can introduce.

And I would urge the NRA, Mr. LaPierre, and other gun advocacy groups to work with us on this proposal. The NRA supported our 2007 legislation that improved the NICS background check system. And I hope they'll reconsider and try to do that again.

It's a simple, straightforward solution. It's one the American people support. A recent survey by the New England Journal of Medicine found 90 percent of Republicans, 74 percent of NRA members support requiring background checks for all gun sales.

SCHUMER: I understand, because we haven't introduced it, I can't ask the witnesses about it, but I want to tell you what it won't do.

It won't create any gun registry. That is already illegal and it will be repeated as illegal in our law. That's particularly for Mr. Kopel. And it will not limit your ability to borrow your Uncle Willy's hunting rifle or share a gun with your friend at a shooting range.

It will include reasonable exceptions to make sure we're only requiring background checks for bona fide sales and transfers. So specious claims about background checks are a tactic made by those who can't argue with the facts.

Now, I'd like to ask Chief Johnson a question or two about those checks. Do you agree with the logic that even -- you know, that we should prosecute people who illegally try to buy guns, but even without that, the law has done a whole lot of good because people who are felons or adjudicated mentally ill, millions have been stopped from buying guns and getting guns?

J. JOHNSON: Yes, since 1994 to 2009, the record is very clear. It is a fact that nearly 2 million prohibited purchases were stopped. God only knows what they would have done with those weapons had it not been for that particular law.

SCHUMER: And from a law enforcement point of view, wouldn't we rather -- we want to do both, but wouldn't we rather stop them from having a gun than after they shoot somebody or buy a gun illegally, then arrest them and put them in jail for that crime?

J. JOHNSON: Yes, sir. You have to address the pathology -- how you get the gun in the first place. And that is what we're trying to achieve here by a universal background check. And I'm very proud to stand before you this morning and let you know that the entire national law enforcement partnership to prevent gun violence, every member of our organization supports background checks.

SCHUMER: Right. And does it make any sense to exclude the same people who sell them in a gun shop or others, to go to a gun show, and now have any background check at all?

J. JOHNSON: It's absolutely insane. Again, it's like letting 40 percent of people just pass a TSA checkpoint at an airport. It's not an inconvenience. The record shows that nearly 92 percent of the individuals that go in to try to do a background check at a gun shop, in minute-and-a-half, they're done. I can't write a ticket, a citation in a minute-and-a-half. Even with e-ticket technology, I can't do it that fast.

It's not inconvenient. And it's fair to the gun owner and the shop owner, too. Why impose on a shop owner, a gun dealer, a federally licensed dealer, more restrictions than you do on anyone else? And if you think for a minute you can sell your gun to

your neighbor that you've known for 10 years, you don't know your neighbor. You do not know your neighbor. And the only way to make sure that you're safe in what you're doing is a comprehensive background check.

SCHUMER: One final quick question. Many police officers are avid sportsmen. They, you know, enjoy shooting, not in their official professional duties. The surveys show the overwhelming majority of gun owners are for background checks. Does your personal experience corroborate that?

J. JOHNSON: It's my understanding that 74 percent of NRA members support a background check. I am a hunter. I love to hunt. I own several guns. I love going to the range with my son who is a police officer today. It's enjoyable. I've met many great people.

SCHUMER: Thank you, Mr. Chairman.

LEAHY: Thank you.

I understand (inaudible) quite the order we'd said before, but Senator Graham has graciously said for Senator Cornyn to go. So please, Senator Cornyn?

CORNYN: Well, thank you, Mr. Chairman. And thanks to all of the witnesses for being here today and sharing your observations and testimony. I'm particularly gratified to see Congresswoman Giffords here doing so well and speaking so forcefully.

I hope this hearing serves as a starting point for us to consider a range of ideas on this topic. Anything that falls short of serious examination and discussion is just window dressing, just symbolism over substance. I have a hard time telling my constituents in Texas that Congress is looking at passing a whole raft of new laws, when the laws that we currently have on the books are so woefully unenforced.

I think we can and we should come together to address shortcomings in mental health care, both in the general response to mental illness and also in the background checks mechanisms we use to screen out prohibited gun buyers.

CORNYN: We need to ask whether years of de-institutionalization of the mental health population have left America more vulnerable. Perhaps it's time to consider our background checks laws to see if they need to be updated to screen out the growing number of people who are subjected to court-ordered outpatient mental health treatment.

It's unclear whether the tens of thousands of committed outpatients in this country are falling through the cracks, and surely, we can agree that more needs to be done to enforce existing gun laws as I said a moment ago.

Gun crime prosecutions are down across the board, including enforcement of laws against lying on background checks. And Mr. Chairman, I hope -- I hope you -- we will have a follow-on hearing where we'll ask administration witnesses to come before the panel and to testify why the Department of Justice and other law enforcement agencies of the federal government

It's worth noting that five years ago, Congress was asking the same questions we are asking right now. In 2008, there was an attempt made to strengthen the background check laws following the murders at Virginia Tech. Looking back, we have to ask ourself, did those laws work. Well, the department -- the Government Accountability Office just last July gave it mixed reviews.

The GAO reports that only a handful of states have taken seriously the responsibility to share mental health records. And I'm pleased that Texas is highlighted by the GAO as outperforming other states in this area, but we have a lot -- we have a long way to go.

So I think there are areas where Congress can come together right now, examine the nexus between gun crime, violence, and mental health care. and I'm willing to listen to serious ideas, not just window dressing, to try to come up with solutions.

Captain Kelly, I noticed in your testimony you alluded to the -- part of what I talked about, which is the fact that at the time in Arizona there were 121,000 records of disqualifying mental illness for people in Arizona that had not been subjected to background checks, because the state hadn't send that information to the federal government.

Could you expand on the significance of that?

KELLY: Yes sir. So, in the case of Jared Loughner, the person who shot my wife and murdered six of her constituents, he was clearly mentally ill. He was expelled from Pima -- Pima Community College because of that. There was nowhere for -- or his parents and the school did not send him anywhere to be adjudicated or evaluated with regards to his mental illness.

Now Mr. LaPierre earlier tried to make the point that criminals do not submit to the background checks. Well, Mr. -- Jared Loughner, the guy -- the Tucson shooter, was -- was an admitted drug user. He was rejected from the U.S. Army because of his drug use. He was clearly mentally ill. And when he purchased the gun in November, his plan was to assassinate my wife and commit mass murder at that Safeway in Tucson. He was a criminal. Because of his drug use and because of what he was planning on doing.

But he -- because of these gaps in the mental health system -- now, in this case, those 121,000 records, I admit, did not include a record on him. But it could have. And if it did, he would have failed that background check.

Now, obviously, in this case, he would have likely have gone to a gun show or a private seller and avoided a background check. But if we close the gun show loophole, if we require private sellers to complete a background check, and we get those 121,000 records and others into the systems, we will prevent gun crimes. That is an absolute truth. It would have happened in Tucson. My wife would not be sitting in this seat. She would not have been sitting here today if we had a strong background checks.

CORNYN: Mr. LaPierre, you talk about a laws already on the books and the fact that the federal government has a poor record of enforcing current laws. And I fail to see out that the Department of Justice will not in force will is gonna make America any

safer.

But let me just ask you to react briefly to these statistics. From 2007-2011, the Department of Justice charged 13 percent fewer total firearms cases. In each of the years during that span, the current administration's brought fewer firearms prosecution's than the year before.

CORNYN: In January, 2011, only 484 new firearm prosecutions were initiated by the Department of Justice, the fewest number of prosecutions in 10 years. As far as background check prosecutions 2006-2010, the number of investigations for unlawful possession decreased 26 percent. During the same period, 77 percent fewer NICS denials were referred by the Bureau of Alcohol, Tobacco and Firearms for prosecution. Federal prosecutors declined 82 percent more cases over the same period. In 2010, out of the 76,125 denied background checks, the FBI referred to the ATF, a verdict or plea was reached in just 13 cases.

Would you give us your reaction to that -- that record?

LAPIERRE: I think -- I think it's tragic, Senator.

I mean, the fact is, in the shadow of this Capitol, right under everyone's noses, in this building, right now there are drug dealers out in the street with guns, violating federal law, illegal. There's all kinds of drugs and cocaine being sold. By God, gangs are trafficking 13-year-old girls. And it goes on day, after day, after day.

What we've got to do is interdict these people. Get them off the street before they get to the next crime scene. I mean -- and get in the real world in terms of checks. I mean the fact is, the NRA has been trying for 20-some years -- Senator Schumer and I went back and forth on "Face the Nation" where I asked him if he'd help get those adjudicated mentally incompetent into the system 20 years ago. He said yes, and they're still not in the system. And my point is, even if you turn up someone on an instant check that's a mentally ill person, or a felon, as long as you let them go, you're not keeping them from getting a gun.

And you're not preventing them from getting to the next crime scene. I mean we've got to get in the real world of this discussion. The problem with gun laws is, criminals don't cooperate with them. The -- the mentally ill don't cooperate with them. So you've got to interdict, incarcerate, interdict, get in treatment, and do things that matter. And then you've got to put police officers in schools, armed security in schools. But let's do the things that work. Let's get serious about this.

I mean this discussion -- I mean I sit here and listen to it and my reaction is, how little it has to do with making the country and our kids safe. And how much it has to do with this decade long, or two decade long gun ban agenda that -- that we don't enforce the laws even when they're on the books. The attorney general of the United States -- Attorney General Eric Holder during the Richmond Program, called it a cookie-cutter approach to solving crime that, you know he really didn't have a lot of enthusiasm about.

I remember Senator Sessions held a hearing and they -- the Department of Justice testified, well a drug dealer with a gun is a guppy, and we can't really concentrate on guppies. Those guppies are what is ruining neighborhoods, destroying lives, and

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killing people. And we've got to confront their behavior, take them off the street because they don't obey by all the laws we have right now. We've got to get in the real world on what works, and what doesn't work.

My problem with back -- background checks is, you're never going to get criminals to go through universal background checks. I mean they're -- all the law abiding people, you'll create an enormous federal bureaucracy, unfunded, hitting -- all of the little people in the country will have to go through it, pay the fees, pay the taxes. We don't even prosecute anybody right now who goes through the system we have.

So, we're going to make all those law abiding people go through the system, and then we aren't going to prosecute any of the bad guys if they do catch one. And it -- none of it makes any sense in the real world. We have 80,000 police families in the NRA. We care about safety. We'll support what works.

LEAHY: I'm trying to be fair to everybody here, and certainly you're going to have a lot more chance to speak. Senator Durbin?

DURBIN: Mr. LaPierre, that's the point. The criminals won't go to purchase the guns because there will be a background check. We'll stop them from the original purchase. You miss that point completely.

LAPIERRE: Senator...

DURBIN: I think it's -- it's basic.

LAPIERRE: Senator, I think you missed...

(CROSSTALK)

LEAHY: Let there be order.

LAPIERRE: I think you're missing...

(CROSSTALK)

LEAHY: Let there be order.

(CROSSTALK)

LAPIERRE: If you don't prosecute them, you're not stopping them.

(CROSSTALK)

LEAHY: Please wait -- everybody for a moment. (CROSSTALK)

LEAHY: I said earlier, there will be order in the committee room. Senator Durbin, and then...

DURBIN: I -- I'm going to give you a chance, but let me just say at the outset, Captain Kelly thank you. Thank you for bringing that wonderful, brave wife of yours today to remind us what victims suffer from gun violence. What a heroic figure she is, and what a great pillar of strength you are, to stand by her during this entire ordeal, and her rehabilitation. We're so proud of her, and of you.

KELLY: Thank you.

DURBIN: And I say with some regret, there should have been a hearing just like this right after your wife, one of our own, a member of Congress, was shot point-blank in the face at a town meeting in Tuscon, Arizona.

I'm sorry it's taken two years for us to convene this hearing, but it took Newtown, Connecticut to finally bring us to our senses and to open this national conversation. But I hope that you will extend to her our best wishes, our love and our support for what she is doing today and what she has meant to all of us for this long period of time.

I also want to say a word about an incident. There was a young lady from Chicago, Illinois, 15 years old. She attended the University Prep School in Chicago. She was an honor student and a majorette. And she marched in the inaugural parade last week here in Chicago. It was the highlight of her young 15-year-old life.

Yesterday, in a rainstorm after school she raced to a shelter. A gunman came in and shot her dead. Just a matter of days after the happiest day of her life she's gone.

A lot has been said about the city of Chicago, and I want to say a few words too. The biggest problem in Chicago, according to Superintendent McCarthy, who came to Chicago from New York, we are awash in guns.

The confiscation of guns per capita in Chicago is six times the number of New York City. We have guns everywhere. And some believe the solution to this is more guns. I disagree.

When you take a look at where these guns come from, 25 percent plus are sold in the surrounding towns around the city of Chicago, not in the city.

And you look over the last 10 or 12 years, of the 50,000 guns confiscated in crimes, almost one out of 10 crime guns in Chicago came to that city from Mississippi -- Mississippi. Why? Because the background checks there, the gun dealers there are a lot easier than they are in other places. And they end up selling these guns in volume and they come up the interstate and kill wantonly on the way.

Here's the basics. I think we all agree -- I hope we all agree that the Supreme Court decision in Heller said we can have reasonable limitations on a Second Amendment right in terms of the type of weapon and the people who own them and the background checks on those people.

It's something we desperately need to do.

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But we know now that 40 percent of the sales are not going through the background checks. That's a huge problem. It's created this abundance of weapons that are available.

And the straw purchasers -- I salute the chairman for addressing this issue on straw purchasers. It's one of the worst situations in our state and in the city of Chicago.

I can point to one gun store -- one gun store in Riverdale, Illinois, that accounts for more than 20 percent of the crime guns in Chicago. Straw purchasers buy the guns there and they end up in the hands of criminals in the city of Chicago. We got to put an end to this.

Chairman, thank you for your bill.

And let me ask -- I'm gonna ask a question here of some of the panelists.

Mr. LaPierre, I run into some of your members in Illinois and here's what they tell me, "Senator, you don't get the Second Amendment." Your NRA members say, "You just don't get it. It's not just about hunting. It's not just about sports. It's not just about shooting targets. It's not just about defending ourselves from criminals," as Ms. Trotter testified. "We need the firepower and the ability to protect ourselves from our government" -- from our government, from the police -- "if they knock on our doors and we need to fight back."

Do you agree with that point of view?

LAPIERRE: Senator, I think without any doubt, if you look at why our founding fathers put it there, they had lived under the tyranny of King George and they wanted to make sure that these free people in this new country would never be subjugated again and have to live under tyranny.

I also think, though, that what people all over the country fear today is being abandoned by their government. If a tornado hits, if a hurricane hits, if a riot occurs that they're gonna be out there alone. And the only way they're gonna protect themselves (ph) in the cold and the dark, when they're vulnerable is with a fire arm. And I think that indicates how relevant and essential the Second Amendment is in today's society to fundamental human survival.

DURBIN: Well, Chief Johnson, you've heard it.

The belief of NRA is the Second Amendment has to give American citizens the firepower to fight back against you, against our government.

LAPIERRE: That's not (OFF-MIKE)

DURBIN: So how do you conduct your business in enforcing the law and not knowing what is behind that door?

J. JOHNSON: I find it to be scary, creepy. And it's simply just not based on logic. Certainly, law enforcement across this nation is well-prepared to deal with any natural or man-made disaster that will occur. And, frankly, I just -- I can't relate to that kind of thinking.

DURBIN: I can't either. I can't relate to the need of that man in Aurora, Colorado, to have a 100-round drum, 100 cartridges.

Professor Kopel, do you think that's necessary for hunting, sports, target practice, even self defense?

KOPEL: I -- it would be not legal for hunting in most states, where there are limits on how many rounds you can have in a magazine.

But, as I think you've recognized, the Second Amendment is not primarily about hunting. What I've been talking about is what the Supreme Court said in *District of Columbia v. Heller*, which is what is core of the Second Amendment, which is the firearms and their accessories which are commonly owned by law-abiding people for legitimate purposes.

DURBIN: But, let me tell you -- let me ask...

(CROSSTALK)

KOPEL: And -- and -- and those are not, I'm not talking about 100-round magazines. I'm talking about what police officers carry, what citizens carry, semi-automatic handguns, typically with magazines of below 19 rounds...

DURBIN: But those are police officers.

KOPEL: ... and rifles.

DURBIN: But those are police officers. Those are members of our military.

(CROSSTALK)

KOPEL: No, they're not -- they're not military men. They're not coming to attack people, They're coming to protect people. And they want to protect -- and citizens protect themselves the same way that police officers do.

DURBIN: What I'm trying to get to is this, if you can rationalize a 100-round drum that someone can strap onto an automatic -- semi-automatic weapon, as did in Aurora, Colorado, and turn it loose, killing dozens of people there, and saving lives only because it jammed, then you certainly ought to object to the laws that have been on the books for 80 years about machine guns. Why aren't they allowed under the Second Amendment?

KOPEL: Because, as the -- because, according to Heller, because they are not commonly used by law-abiding citizens for legitimate purposes.

DURBIN: But 100-round magazines are?

KOPEL: You're the one who wants to talk about 100-round magazines.

DURBIN: I sure do.

KOPEL: And thank goodness -- thank goodness he had a piece of junk like that that jammed, instead of something better made, where he could have killed more people with it.

(CROSSTALK)

DURBIN: Well, we -- that's what it's all about, then?

KOPEL: It's about saving...

DURBIN: We're playing God here?

KOPEL: It's about saving lives -- it's about saving lives with ordinary magazines. Hundred magazines are novelties that are not used by police officers or hunters or most other people.

(CROSSTALK)

KOPEL: But what you're talking about banning, Senator, is normal magazines.

DURBIN: Tell us about -- tell us about the lives that were saved in Tucson and what it had to do with magazines.

KELLY: The shooter in Tucson showed up with two 33-round magazines, one of which was in his 9 millimeter. He unloaded the contents of that magazine in 15 seconds. Very quickly. It all happened very, very fast.

The first bullet went into Gabby's head. Bullet number 13 went into a nine-year old girl named Christina Taylor Green, who was very interested in democracy and our government, and really deserved a full life committed to advancing those ideas.

If he had a 10-round magazine -- well, let me back up. When he tried to reload one 33-round magazine with another 33-round magazine, he dropped it. And a woman named Patricia Maisch grabbed it, and it gave bystanders a time to tackle him. I contend if that same thing happened when he was trying to reload one 10-round magazine with another 10-round magazine, meaning he did not have access to a high-capacity magazine, and the same thing happened, Christina Taylor Green would be alive today.

I certainly am willing to give up my right to own a high-capacity magazine to bring that young woman back, that young girl.

Now, let me -- let me -- let me continue with what happened that day. In that 15 seconds -- or, actually, with the first shot, a man ran out of Walgreen's, a good guy with a gun, with the intent to do the right thing, An armed citizen.

He came within -- he admits that he came within about a half a second of shooting the man who tackled during Jared Loughner and nearly killing him.

I mean, we almost had this horrific mass murder followed up with a horrific accident. The horrific mass murder because of the high- capacity magazine and the horrific accident because of the -- the armed person there who, with good intention, wanted to end the something that was -- that was going really bad.

DURBIN: Thank you.

Thank you, Mr. Chairman.

LEAHY: Senator Graham?

GRAHAM: Thank you, Mr. Chairman.

I think I'm speaking for a lot of people when they say we're heartbroken when a family member is taken through an act of gun violence, whether it be a child or anyone else, but particularly children. That's just a heartbreaking episode in society. And I think most people would -- would appreciate the fact that there are thousands, it not millions of Americans who saved their families from home invasions or violent assault because they had a gun to protect themselves. And most of us are glad it ended well for you.

So, those are the two bookends. And you mentioned, Captain Kelly, and I very much appreciate your being here and your service to the country, about you and your wife are reasonable Americans. I don't doubt that one bit. I'm sure you are. The question is, am I a reasonable American if I oppose this bill? Am I a reasonable American believing that the Constitution says guns commonly used by the population (inaudible) for legitimate purposes?

(inaudible) the Second Amendment, I don't want to own a gun to attack my government. That's just not what I think a legitimate purpose is.

Let's talk about a real-world incident that happened in Loganville, Georgia on January 4th, 2013. My basic premise is that one bullet in the hand of a mentally unstable person or a convicted felon is one too many. Six bullets in the hands of a mother protecting her twin 9-year-olds may not be enough. So, I've got a chart here. At the very top is a .38 revolver and on the right is a 9-millimeter pistol that holds 15 rounds.

Does everybody on the panel agree that a convicted felon should not have either one of those guns? Does everybody agree that

a mentally unstable person shouldn't have either one of those pistols? OK, common ground there.

Put yourself in the shoes of the mother. The guy broke into the home. She ran upstairs. She hid in a closet. She got on the phone to the police. And she was talking to her husband in real time. The intruder broke into the home, had a crowbar, and he found them in the closet. And they were confronted -- confronted face to face. According to media report, her husband said, "shoot, shoot." She emptied the gun, a six-shot revolver. The guy was hit five of the six times. He was able still to get up and drive away. My question is: Put your family member in that situation. Would I be a reasonable American to want my family to have the 15-round magazine in a semi-automatic weapon to make sure that if there's two intruders, she doesn't run out of bullets? Am I an unreasonable person for saying that in that situation, the 15-round magazine makes sense?

Well, I'll say I don't believe I am. So I can give you an example of where a 15-round magazine could make the difference between protecting a family if there's more than one attacker.

Now, back to your point, Captain Kelly. In the situation you described, I don't want that person to have one bullet or one gun. And the point of regulating magazines is to interrupt the shooter. That's the point of all this.

And I guess what I'm saying is that we live in a world where there are 4 million high-capacity magazines out there or more. I think the best way to interrupt the shooter if they come to a schoolhouse is not to try to deny the woman in Atlanta the ability to have more than 10 rounds, but to have somebody like you, Chief Johnson, meet them when they come into the door. I think that's the best way to do it.

Now, my good friend Joe Biden, who we have very spirited conversations about a lot of things, was online recently talking to someone in California who mentioned the fact, what is there's an earthquake out here -- out here and there's a lawless situation? In 1992, you had the riots in Los Angeles. I think it was the King event. But you could find yourself in this country in a lawless environment through a natural disaster or a riot, and the story was about a place called Koreatown. There were marauding gangs going throughout the area burning stores, looting and robbing and raping. And the vice president said in response to "that's why I want my AR-15," he said, "No, you would be better off with a 12-gauge shotgun."

GRAHAM: Well, that's his opinion and I respect it. I have an AR-15 at home and I haven't hurt anybody and I don't intend to do it. But I think I would be better off protecting my business or my family if there was law-and-order breakdown in my community, people roaming around my neighborhood to have the AR-15, and I don't think that makes me and on reasonable person.

Now, Ms. Trotter when you mention that you're speaking on behalf of millions of women out there who believe an AR-15 makes them safer, there were a lot of giggles and the room, and I think that explains the dilemma we have.

The people who were giggling were saying to you, that is crazy. Nobody I know thinks that way. Which reminds me of the Harvard professor who said, "I cannot believe McGovern lost. Everyone I know voted for him." And I bet there are people on our side that can't believe Obama won, because everyone they know voted against him.

The point is that we have different perspectives on this. And the reason I'm going to oppose the legislation, Chief Johnston, is because I respect what your do as a law enforcement officer.

Has your budget been cut?

J. JOHNSON: Yes.

GRAHAM: Will it be cut in the future?

J. JOHNSON: I am optimistic that it is not.

GRAHAM: Well I hope you're right, but I can tell people, throughout this land, because of the fiscal state of affairs we have, there will be less police officers, not more, over the next decade. Response time are gonna be less, not more.

So, Captain Kelly I really do want to get guns out of the hands of the wrong people. I honest to God believe that if we arbitrarily say nobody in this country can own a 10-round magazine in the future, the people who own them are the people we're trying to combat to begin with, and they (sic) could be a situation where a mother runs out of bullets because of something we do here.

I can't prevent every bad outcome, but I do know and I do believe in the bottom of my heart I am not an unreasonable person for saying that in some circumstances the 15-round magazine makes perfect sense and in some circumstances the AR-15 makes perfect sense. And I think our efforts to solve a problem that exists in the real world out there from Washington by having more gun laws that really do not hit the mark so to speak, politically, or situationally, that we're all face, but this is why we have these hearings. And I really do appreciate the fact that we have these hearings.

Professor Kopel -- Kopel, Kopel?

KOPEL: Either one.

GRAHAM: OK.

Some people on our side say -- and I'll wrap this up, Mr. Chairman -- that it is unconstitutional to put a limit on magazine size.

Do you agree with that?

KOPEL: I think if we follow Senator Schumer's approach and say we're gonna follow what the District of Columbia v. Heller Supreme Court decision says, what that tells you is the core of the Second Amendment is the firearms and accessories that are commonly owned by law abiding people for legitimate purposes.

GRAHAM: Is it constitutional to say 10 rounds versus 15?

KOPEL: Ten is plainly unconstitutional, because, as I was trying to explain to Senator Durbin, magazines of up to 19 are common on semiautomatic handguns.

GRAHAM: (inaudible) I do not know if 10 versus 19 is common or uncommon. I do know that 10 versus 19 in the hands of the wrong person is a complete disaster. I do know that six bullets in that hands of a woman trying to defend her children may not be enough. So I don't look at it from some academic debate.

Let's agree on one thing. One bullet in the hands of the wrong person we should all try to prevent. But when you start telling me that I am unreasonable for wanting that woman to have more than six bullets, or to have an AR-15 if people roaming around my neighborhood, I reject the concept.

LEAHY: Thank you, Senator.

Senator Whitehouse? And then after Senator Whitehouse, Senator Lee.

Senator Whitehouse?

WHITEHOUSE: Thank you, Mr. Chairman.

Mr. Chairman, I've heard testimony in this hearing that the federal gun crime prosecutions number 62 per year, and that, "We don't prosecute any." And I was surprised to hear that testimony because I was a United States attorney. And in my time that I was United States attorney it became an absolute priority of the Department of Justice to prosecute firearms.

WHITEHOUSE: So I went to every police department in my state to talk up what we could do with gun criminals. We set up a special procedure where the attorney general's office, which has criminal jurisdiction in Rhode Island, and our office viewed gun crimes together to make sure they were sent to the place where they could get the most effective treatment. And I believe that, that continues, although I'm no longer a U.S. attorney. So I hold up some quick statistics, and according to the executive office at United States attorneys, in 2012 more than 11,700 defendants were charged with federal gun crimes, which is a lot more than not doing it, and a lot more than 62.

And the numbers are up at the Department of Justice since 2000 and 2001 by more than 3,000 prosecutions. So, we may have a debate about whether more should be done, and who at the witness table actually wants more to be done in the way of gun prosecutions, but I think to pretend that the number is in double digits, or the number is zero, is flagrantly wrong, and I think inconsistent with the type of testimony that Senators should rely on in a situation like this.

I'd also add that there's been repeated testimony, also mentioned by Senator Durbin that criminals won't subject themselves to a background check. And my response to that is, that's exactly the point. Criminals won't subject themselves to a background check, so they won't go into the gun shops. And if they do, they get prevented from buying a gun. So instead, they go to illegal means. They go primarily to the way we distribute guns without a gun check -- a background check, which is to the gun shows.

And so I think to the extent we can expand the background check, the very fact that the criminals won't subject themselves to a background check provides the kind of prevention that Senator Graham was talking about, to keep the guns out of the hands of criminals in the very first case. Chief Johnson, tell me a little bit about the men and women with whom you serve in law enforcement, and the type of training, and screening that is important both in gun use, in gun safety, in situational awareness, before they are put in a position where they are expected to defend the public with firearms?

Is that just something you just give somebody a gun and say, get in there, and go defend the -- the community? Or how -- how rigorous, and how cautious are you about the training required?

J. JOHNSON: The process starts well before we even offer you a badge. And it is a very robust, in depth, psychological review of whether or not we're even going to allow you to enter the force itself. All departments are universal in this issue. It includes psychological, polygraph, and other means to determine whether or not you have the fiber to have that awesome responsibility to carry a gun. The training is exhaustive. Weeks and weeks of training on how to use the weapon, and tactically how to deal with it, how to care for it, and how to safeguard that weapon.

But it doesn't stop there. Once you're out in the field, a very robust psychological services section, yearly training and other safety equipment that must be carried. This talk about teachers having guns...

WHITEHOUSE: That's actually where I was going to go. But before we get to teachers, to your knowledge, does the military have the -- similar types of concerns and programs with respect to arming men and women who serve in our armed forces?

J. JOHNSON: It is my understanding talking with my associates in the military, that public policing mirrors much of what the military does.

WHITEHOUSE: So against that background, tell me how much sense you think it makes to have our line of defense be armed teachers?

J. JOHNSON: Certainly when we have this discussion, you have to -- does a teacher have the -- the -- the inner fiber to carry that weapon? The awesome responsibility? You're a teacher in a classroom. You're an educator. You dedicated your entire life to that pursuit, but you've got a sidearm strapped to yourself? You'd better have it all the time. Because if you put it in your desk drawer, your purse, or your briefcase -- and where you gonna leave it?

J. JOHNSON: Let me tell you something, carrying this weapon on my side has been a pain all these years. I'm glad I have it if I need it, but let me tell you, it's an awesome responsibility. And what do you do in the summertime when you dress down? How are you going to safeguard that weapon from a classroom full of 16-year-old boys that want to touch it? How are you gonna do that?

And certainly -- the holsters. I'm spending \$200 a piece just for the holsters. You can't rip it from my side.

So these are all the factors that in a robust, psychological service section we all face catastrophic changes in our lives as we go

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through divorce and other things that bring us down. But you need people to step in, like we have in policing, that notice those things and deal with them. This is a major issue.

WHITEHOUSE: We've had cases, including a case in Rhode Island, in which trained police officers who were off duty responded to a situation, because they hadn't been adequately trained in how to respond off duty and because they were out of uniform, it lead to tragic blue-on-blue events.

Presumably, that would have some bearing on armed police officers responding to an event in which a lot of armed and untrained teachers are trying to defend students in a school.

J. JOHNSON: Well, it's a very important point. Two years ago in Baltimore City an on-duty officer in plain clothes was shot by uniformed on-duty personnel, and they work the same shift. It's just in the darkness of the night they couldn't tell.

And as Captain Kelly has pointed out, that's a major issue in the Tucson shooting.

WHITEHOUSE: And Ms. Trotter, a quick question. Sarah McKinley, in defending her home, used a Remington 870 Express 12-gauge shotgun that would not be banned under this statute, correct -- under the proposed statute?

TROTTER: I don't -- I don't remember what type of weapon she used.

WHITEHOUSE: Well, trust me, that's what it was. And it would not be banned under the statute.

So it doesn't -- I think it proves the point that with ordinary firearms not 100-magazine, peculiar types of artifacts people are quite capable of defending themselves. In fact, that was your example.

TROTTER: I respectfully disagree. I understand that you are also a graduate from the University of Virginia School of Law, and you were close to Monticello where Thomas Jefferson penned our Declaration of Independence and close to Montpelier where James Madison was instrumental in drafting the Bill of Rights. And I think you can understand that as a woman I think it's very important not to place undue burdens on our Second Amendment right to choose to defend ourselves.

WHITEHOUSE: Oh, I have...

(CROSSTALK)

TROTTER: I don't know what -- I don't know what weapon she used...

WHITEHOUSE: ... the point. My point is that the example you used is one that would not bear (ph) an argument against the proposal that is before us, because that Remington 870 Express is a weapon that would be perfectly allowed.

TROTTER: So would it have been unreasonable for her to use a different gun to protect her child?

WHITEHOUSE: I think that if she was using a 100 weapon -- let me put it another way. She would clearly have an adequate ability to protect her family without the need for a 100-round piece.

TROTTER: How can you say that?

You -- you are a large man, and you are not a teenage...

(CROSSTALK)

TROTTER: a tall -- tall man. You are not a young mother who has a young child with her. And I am passionate about this position. Because you cannot understand. You are not a woman stuck in her house having to defend her children, not able to leave her child, not able to seek safety, on the phone with 911. And she cannot get the police there fast enough to protect her child...

(CROSSTALK)

TROTTER: ... and she's not used to being in a firefight.

WHITEHOUSE: And my point simply is that she did it adequately and safely with lawful firearms and without the kind of firepower that was brought to bear so that the 12th, 13th, 14th shots could be fired by the man who shot...

(CROSSTALK)

LEAHY: I'm gonna have to acknowledge and (inaudible) another round.

There are a number of things that I could say as a gun owner, but I won't. Pass up on the opportunity, and go to Senator Lee.

LEE: Thank you, Mr. Chairman.

And I -- I'd like to thank each of the distinguished members of our panel today for enduring now over two hours of this hearing.

As -- as a more junior member of the committee who sometimes gets to ask questions last or second to last, I'm especially appreciative of your willingness to stay this long.

LEE: I think every one of us, both here in this room and everyone watching on television, has been horrified by the incidents that occurred in Newtown, in -- in Tucson and elsewhere. And I don't think there is one of us that wouldn't like us to find a way as a society to put an end to events like this.

It would be my preference, if we could find a way to put an end to events like this, without doing violence to the Constitution

and also without leaving law-abiding citizens more vulnerable to crime.

There are a number of statistics on this, but one statistic I've read has indicated that about 2.5 million times a year in America, a gun is used to protect its owner, its possessor, from a crime. That's -- that's quite significant and that's a fact that we need to take into account.

There's been a lot of reference today to the fact that the protections of the Constitution -- the protections of the Second Amendment right to bear arms -- are not unlimited. And I agree that they are not unlimited. There are limits. I think it's important for us from time to time to focus on what those limits are.

The Supreme Court in *District of Columbia v. Heller* held that the guns that are within the zone of protection of the Second Amendment are those that are typically possessed by law-abiding citizens for lawful purposes.

Why don't we start with you, Professor Kopel. Can you tell me, is a gun -- a semi-automatic weapon, whether a rifle or a hand gun, that holds more than 10 rounds in its ammunition magazine, one that could fairly be characterized as one that's typically possessed by law-abiding citizens for lawful purposes?

KOPEL: In hand guns, semi-automatics are 81 percent of new hand guns sold. A very large percentage of those have as standard, not as high-capacity, but as standard factory magazines -- magazines between 11 and 19 rounds. Another thing that is very common, to get back to Senator Whitehouse's issue about the Remington 870 shotgun, is Senator Feinstein's bill would outlaw that shotgun if it has a seven-round magazine on it. It comes with a five-round magazine. You can extend it buy two rounds. And the Feinstein bill would outlaw that very standard home defense shotgun if it simply has a seven-round magazine.

So, it's all fine to talk about novelty items on the fringe, like a 100-round drum, but in practice what is at threat of being outlawed, that people are actually using, is their standard capacity hand gun magazines and standard capacity magazines for rifles and shotguns.

LEE: And what are the law -- what are the law-abiding citizens doing with these? In other words, what are the lawful purposes to which law-abiding citizens are putting these guns, who own them?

KOPEL: Self-defense, target shooting -- all the purposes which is lawful to possess a firearm. And I would -- regarding what the chief was talking about about all this extra training that police officers have. Well, since I represented the two leading police training organizations in the U.S. Supreme Court, I would certainly agree that the police have more training for all kinds of reasons, including they have the power to effectuate arrests, which ordinary citizens don't.

But the training -- in the view of the police training organizations, the International Law Enforcement Educators and Trainers Association, the International Association of Law Enforcement Firearms Instructors, they believe that the training that is required in most states to obtain a permit to carry a hand gun for lawful protection of self -- only nine states currently violate that by not letting trained citizens carry -- that that is appropriate, sufficient for people to be able to protect themselves, not necessarily to go out and do arrests, but to defend themselves. And that includes defending themselves in their place of

LEE: Well, one of the arguments that I've frequently heard for making this type of weapon illegal or making any weapon illegal if you're using an ammunition magazine containing more than 10 rounds is that weapons like these are available on a widespread basis; that -- that it's relatively easy to buy them in the sense that, you know, most people may lawfully buy them and own them. And that's used as an argument in favor of restricting access to these weapons.

In your opinion, does that make it more or less constitutionally permissible to restrict their sale?

KOPEL: Well, I think you've hit exactly what District of Columbia v. Heller was all about, which, you know, you talk about how often are 100-round magazines used in crimes. Pretty rarely. How often are they used in self-defense? Pretty rarely, too.

Hand guns are used -- they're 70 percent of gun homicides are perpetrated with hand guns. And the Supreme Court said the fact that these are very frequently used in crimes does not mean that under the Constitution, you can prohibit them.

KOPEL: So the point -- the fact that you can point to any particular crime where a gun was misused and say, "Oh, that proves we have to ban this gun or this accessory," is the opposite of what the Supreme Court is saying. The Supreme Court is saying, "You don't look only at the misuse of an arm or an accessory, you look at its lawful use. Does it have common, lawful use?"

Yes, handguns have common, lawful use. Yes, handgun magazines in the standard size of 11 to 19 rounds have common, lawful use. And yes, the AR-15 rifle, the most popular, best-selling rifle in this country for years, has pervasive lawful use.

LEE: So, if we restrict access to these guns, we're -- we're limiting the ability of individual Americans, law-abiding Americans, to use them for lawful purposes?

KOPEL: Yes, and the -- and the teaching of Heller is the fact that Criminals may misuse something, but that does not constitute sufficient reason to prohibit law-abiding citizens from using a commonly used firearm.

LEE: Ms. Trotter, do most of the gun-owning women that you know have an inclination to abide by the law in connection with a gun ownership?

TROTTER: Yes, definitely.

LEE: If we were to ban all weapons that contained an ammunition magazine capable of accommodating more than 10 rounds, would most female gun owners abide by that law?

TROTTER: Of course.

LEE: What about criminals, those who use weapons like these in connection with crimes? Do you think they are as likely to abide by that law?

TROTTER: By definition, criminal are not abiding by the law. 472

LEE: Where does that then put women like those that you described -- women like those that you represent, what kind of position does this put them in relative to their -- their current position, as their ability to defend themselves?

TROTTER: It disarms the women, it puts them at a severe disadvantage and it not only affects them, but it affects anybody they are responsible for, their children, elderly relatives, incapacitated family members.

LEE: Mr. Chairman, I see my time's expired. I have one question for Mr. Johnson, if I could have -- Mr. Johnson, according to FBI statistics, about 72 percent of the gun homicides that are committed each year in America are committed with handguns, 4 percent with rifles, 4 percent with shotguns, 1 percent with other types of -- of firearms, and then 18 percent that fit into the category of unknown, but 72 percent classified as -- as handguns.

If 72 percent of gun homicides are being committed with handguns, would that suggest that you prefer banning handguns as well?

J. JOHNSON: Our partnership -- and frankly I've been party to no discussion of banning handguns or restricting handguns from women or any other group.

I don't want to give up my hand guns. We are here today to talk about a universal background check that would help make our nation safer and limit high-capacity magazines. They are used in crimes and violence across America.

LEE: Even though far more people die each year from handgun- inflicted injury is an assault weapon-inflicted injuries.

J. JOHNSON: We believe the limit on high-capacity magazines, even in handguns is necessary. No more than 10.

LEE: Thank you.

LEAHY: Senator Klobuchar.

KLOBUCHAR: Thank you very much, Mr. Chairman.

Thank you, I first wanted to just acknowledge all of the family out here who have lost loved ones in shootings. And I especially wanted to acknowledge Maya Ramin (ph) who's here from Minnesota, who lost their dad, (inaudible), in a horrible shooting at the company that he built and loved, a small business in which he was killed along with four other employees and a UPS guy who just happened to be there by a coworker who was mentally unstable. And this just happened this fall.

So thank you.

I also was listening to all the statistics here, which are very important. I am a former prosecutor, I believe in evidence. But the

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statistic that I will never forget is the one from Newtown, Connecticut, shared with me by a relative of one of the young victims in that tragedy.

And that is that little Charlotte Bacon loved her Girl Scout troop. And her Girl Scout troop once had 10 girls, and now there are only five left.

We have to remember what this is all about as we look at solutions.

KLOBUCHAR: For me, as a former prosecutor, I've always believed in enforcing the laws on the books. And, Mr. LaPierre, I made it a major, major focus of our office to prosecute the (inaudible) and possession of guns. I think that is clearly part of the solution. You cannot lessen the importance of that as we go forward.

But there are other things as well, including the recommendations that have been made by Vice President Biden and that task force. And I think it's very important that we explore those in addition to enforcing the laws on the books.

I have heard from my sheriffs -- Republican sheriffs from all over my state, that there are major issues with background checks.

And so, I think I would turn to that first, Chief Johnson. We have had -- we had a guy in Minnesota that just came our paper, the Minneapolis paper, who had killed his parents as a juvenile. Got out. Somehow got a permit, and was able to obtain guns.

In fact, when they found him, he had 13 guns in his house. And he had a note that he had written to the gunman in Newtown. And he also said in the note, "I am so homicide, I think about killing all the time."

He was able to get a permit and get those guns. This just came out in our local paper.

And I wondered what you see as some of the biggest loopholes. We've talked about gun shows, Internet, private sales, and -- and how you think that could help?

And then I want to get to the thing you talked about, about how you can get those background checks done quickly, because I come from a hunting state. The last thing I want to do is hurt my Uncle Dick in his deer stand. And I want to make sure that what we do works.

And so, if you could address that.

J. JOHNSON: There's been great improvement in the nation. Some statistics show nearly 800 percent increase in data entered into the National Instant Criminal Background Check System. That's good, but it's not good enough. And we're really failing miserably, nationally, entering that data.

Statistics I've read indicate that nearly 18 states across the nation submit less than 100 records to the NICS system on a -- on a

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KLOBUCHAR: And is it true that about 40 percent of gun sales take place at the gun shows?

J. JOHNSON: Statistics reveal that 40 percent of gun sales take place at gun shows and other non-licensed dealer sales arrangements. Nearly 6.6 million guns through that process a year.

KLOBUCHAR: And are more and more people now using the Internet to buy guns, as we see in other areas?

J. JOHNSON: I sat with my detectives in the gun squad for weeks before I had a chance to come -- the honor to come here today. And they regularly used Internet, PennySaver classified ads. They'll go outside the state in many cases. A variety of methods, including straw purchasers.

KLOBUCHAR: And you talked a little bit earlier about how quickly these background checks can get done. You compared it to issuing a ticket. If you could answer that.

J. JOHNSON: The analysis that we've conducted, the information I have, I believe it's 92 percent of NICS background checks come back in less than a minute and half when you go to a licensed federal dealer.

And, certainly, that's much quicker than I can write a citation. And I think that should be universal. That's what we're calling for. That's what's gonna make our nation safer.

KLOBUCHAR: Mr. LaPierre, do you want to respond about the -- the timing on the checks?

LAPIERRE: Sure, I'll respond to -- yes, Senator, a couple points. One, the chief's talking about using the Internet to do interstate sales. That is a federal crime and should be prosecuted. The only way you can do a sale, it would have to go through a dealer and it would have to be cleared through a check.

The senator from Rhode Island talked about the prosecution data. I get all that from the Syracuse University track data, which is who tracks the initial -- the prosecution of the federal gun laws where that's the initial charge.

And why Project Exile worked in Richmond, Virginia, is what they started to is they caught a drug dealer with a gun. They put signs up all over the city saying if you have an illegal gun in Richmond under federal law, you're going to be prosecuted 100 percent of the time. Drug dealers, gangs and felons stopped carrying guns.

So those -- the '62 (ph), Senator, statistic, was for Chicago alone, not for the entire country.

KLOBUCHAR: Mr. LaPierre, if you could...

LAPIERRE: Yeah. KLOBUCHAR: ... and I know you want to discuss this with Senator Whitehouse, but I have question about

the timing. Could -- do you agree with the chief here that we could do this quickly? And all we're trying to do here is close some of these loophole so we expand some of the background checks, but that it still could be done in a way that won't interfere with law-abiding gun owners.

LAPIERRE: Well, gun shows, right now are -- according to all the surveys, are not a source of crime guns, anyway. It's 1.7 percent. Where criminals are guns, they're -- the black market. They're stealing them, They're not getting them through gun shows.

But if you're talking about expanding a system that is already overloaded, where they're not doing any prosecutions, basically. Even if they catch somebody, they're saying -- it's like Bonnie and Clyde. They catch Clyde, and he goes home and says, "Bonnie, they didn't do anything to me, so let's go commit our crime and get a gun."

LAPIERRE: I mean, if -- if you're talking about expanding that system to every hunter, to every family member, every relative all over the United States, when the system already can't handle what it has, you're creating an enormous federal bureaucracy. It's only going to hit the law-abiding people, not criminals.

Honest people are going to be entrapped into committing crimes they had no intention to commit and it's going to -- it's an unworkable universal federal nightmare bureaucracy being imposed under the federal government.

I just don't think that law-abiding people want every gun sale in the country to be under the thumb of the federal government.

KLOBUCHAR: But it's my understanding that when people buy guns, they do undergo a background check. We know that and we're just simply trying to close some of these loopholes.

Chief? Do you want to respond to this?

J. JOHNSON: Well, certainly when a weapon is purchased through a licensed federal dealer, they undergo a background check. But, as we've said many times here today 40 percent of these guns are being sold outside that process. This is not unreasonable. And certainly I don't consider it a restriction. If I buy a gun next year, you know through a private seller, I'll go to a licensed dealer to do it. This is not unreasonable.

KLOBUCHAR: And Captain Kelly, I think you really said it best at the very beginning of this lengthy hearing when you talked about your belief in the Second Amendment, and in those rights. But with those rights comes responsibility. And you talked about the responsibility to make sure that these guns do not get into the hands of criminals and terrorists, and those with mental illness. And do you see this, the background check, as a way to get at this problem?

KELLY: Gabby and I are both responsible gun owners. I bought a hunting rifle from Walmart a few months ago, and I went through a background check. It didn't take very long. And they -- you know they were able to very clearly determine that, you know I was a responsible person. You know in -- in Tuscon, and in many of these cases there are people that either would have failed a background check if the right data was in the system, like in the case of Jared Loughner, and certainly in that case he

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would have the option to go to a gun show, or a private seller, and I imagine he would have gotten a weapon. You know he was a pretty marginalized person. I would imagine, and -- and quite mentally ill and didn't have much of a community around him. I imagine in that case, if he would have not been able to get -- not pass a background check, and -- if there was a universal background check, I actually don't see him going on the black market to get a gun. And maybe if he did, maybe it would have taken him a long time to do that. To find the right place to go.

And maybe in that period of time, just maybe his parents would have gotten him some treatment, got him on medication. And if they did, from what his attorney and the prosecutors have told me, on medication he would have never done what he did on that day. I mean, so you might not be able to prevent every single criminal from getting a weapon, but a universal background check is a common-sense thing to do.

I mean if we do them for federal licensed dealers, why can't we just do it at the gun show, and for a private sale?

KLOBUCHAR: Thank you very much. And I was thinking as I listened to you, about all the people in this room that have thought those maybes too. Maybe if this had been in place, maybe if that had been in place. And I think your acknowledgment that it's not one solution for every person, for every case. That we have to enforce the laws, but we have to do better with background checks and the number of the proposals that recommended out there by Vice President Biden's commission that we can do better. Thank you.

LEAHY: Thank you.

I want to welcome one of our three new members to the committee, Senator Cruz of Texas. And Senator Cruz, you have the floor. I apologize that the allergies cause my voice to be so bad.

CRUZ: I thank you Mr. Chairman and it is a pleasure to serve with you, and all the members of this committee. I want to begin by thanking each of the distinguished witnesses who have come here today. Thank you for taking your time. In particular, I want to thank you Captain Kelly for your service to this country, and for your wife's extraordinary journey, for her coming here.

CRUZ: Congresswoman Giffords has been lifted up in prayer by millions of Americans, and her heroic recovery is inspirational. And please know that you, and your family will continue in our prayers in the years to come.

My wife and I have two little girls. They are 4 and 2. I think no parent, and in particular no parent of young children could -- could watch what happened in Newtown without being utterly horrified -- utterly horrified at the depravity of a deranged criminal who -- who -- who would senselessly murder 20 young children at an elementary school.

Unfortunately in Washington, emotion often leads to bad policies. When a tragedy occurs, often this body rushes to act. And at times it seems the considerations of this body operate in a fact-free zone. I will suggest a philosophy that I think should guide this body in assessing gun violence, and then I would like to highlight and ask a few questions on a couple of points that I think are particularly salient to addressing this issue.

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The philosophy I would suggest makes sense is that we should be vigorous and unrelenting in working to prevent, to deter and to punish violent criminals. I have spent a substantial portion of my professional life working in law enforcement. And the tragedies that are inflicted on innocent Americans every day by criminals are heartbreaking, and we need to do more to prevent them.

At the same time, I think we should remain vigilant in protecting the constitutional rights of law-abiding citizens. And I think far too often, the approaches that have been suggested by this Congress to the issue of gun violence restricts the liberties of law-abiding citizens rather than targeting the violent criminals that we should be targeting.

And I would point out that I hope some of the passion we have seen from members of this committee with respect to the need to prevent violent crime will be reflected equally should we find ourselves in a judicial confirmation hearing with a judicial nominee who has a record of abusing the exclusionary rule to exclude evidence that results in a violent criminal walking free and being able to commit yet another crime. I hope we see exactly the same passion devoted to assessing whether judicial nominees will enforce our criminal laws and not frustrate the administration of justice.

Three points I think are particularly salient. The first is, in my judgment, the proposed assault weapons ban is a singularly ineffective piece of legislation.

I was having a conversation recently with a loved one in my family who asked a very reasonable question. She said, why do regular people need machine guns? And, you know, one of the things that happens in this debate is the phrase “assault weapons ban” gets a lot of people really concerned, and they assume, much like the phrase “military-style weapons” that we’re talking about ordinary citizens walking around with M-16s and Uzis that are fully automatic.

Fully automatic machine guns are already functionally illegal. Ordinary citizens cannot own them, absent very, very heavy regulation. This entire discussion does not concern machine guns, and yet I would venture to say, a large percentage of Americans do not understand that.

I want to begin by talking about the assault weapons ban as it was enforced before. And I would ask for slide number 1.

The assault weapons ban that used to be in effect, according to the Department of Justice, quote, “failed to reduce the average number of victims per gun murder incident or multiple gunshot wound victims.” Now, that is the assessment of the United States Department of Justice, and that is in 1994. That was the Janet Reno Department of Justice under President Clinton that said the assault weapons ban was singularly ineffective.

If we can move to the second slide.

The Department of Justice, likewise, concluded that the assault weapons ban, quote, “under it there has been no discernible reduction in the lethality and injuriousness of gun violence.”

So the reaction to this tragedy in Newtown is for a lot of elected officials in Washington to rush to re-enact a law that according

to the Department of Justice did absolutely nothing to reduce gun violence.

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Now, why is that? That's not accidental. Because the assault weapons ban, if it doesn't ban machine guns, what does it ban? And what it bans, I would suggest to you, are scary-looking guns.

If we can move to slide 3.

This is a photograph of a Remington 750. It is one of the most popular hunting rifles in America. This rifle would be entirely legal under this so-called assault weapons ban.

CRUZ: Now, I have a question for you, Mr. LaPierre. Functionally, in terms of the operation of this firearm -- this is a semi-automatic firearm. You pull the trigger once, one bullet comes out. Is the operational firing mechanism in this firearm materially different from the so-called assault weapons ban that this -- this bill is targeted at?

LAPIERRE: No, it's not.

CRUZ: Now, what the assault weapons ban instead targets are cosmetic features. So, for example, I am holding in my hand a pistol grip. Under this proposed legislation, if this piece of plastic, this pistol grip were attached to this rifle, it would suddenly become a banned assault weapon.

Now, I would ask you, Mr. LaPierre, are you aware of any evidence to suggest that attaching a piece of plastic to this rifle would make it in any way whatsoever even slightly more dangerous?

LAPIERRE: No, that -- that -- the problem with the whole bill that Senator Feinstein introduced is it's based on falsehoods to people that do not understand firearms, to convince them that the performance characteristics of guns that they are trying to ban through that bill are different than the performance characteristics that they're not trying to ban.

They make bigger holes. They're rapid-fire. They spray bullets. They're more powerful. They're heavy armor. All of that is simply not true. I mean, the -- the AR-15 that people -- uses a .223s, and then I hear in the media all the time and people say, "Well, no deer hunter would use something that powerful." I mean, .243s, .270s, 25.06, 30.06, .308s -- dozens of other calibers used in hunting are more powerful.

I mean...

CRUZ: So let me make sure I understand that right. This deer rifle which is entirely legal and is used by millions of Americans, is the -- is sold in the identical caliber as the so-called assault weapons ban, although those look scarier because they have a piece of plastic attached to them.

LAPIERRE: And the Ruger Mini-14, which Senator Feinstein exempts in her bill, uses .223. The AR-15, which has the handle on the bottom, which she prohibits, also uses the exact same. CRUZ: I'm -- I'm out of time. I want to make one final point if I

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may, which is there has been much attention drawn to gun shows. And indeed, the statistic of 40 percent has been bandied about. Now, that statistic is unfortunately based on a study that occurred before the background check went into effect. And so it is a highly dubious figure.

But I do want to point to what the Department of Justice has said, which is in slide five. The Department of Justice has said that firearms used in crimes, 1.9 percent of those firearms come from gun shows. So again, in response to this crime, this body does not act to enact anti-crime legislation to prevent violent crimes. Instead, it targets 1.9 percent of the guns, and a substantial portion of those guns were sold by licensed firearms dealers who already conducted a background check. So even that 1.9 percent, a substantial portion area already subject to a background check.

I would ask, Mr. Chairman, if we have a second round, I would like to additionally get into the effectiveness or lack thereof of gun controls.

LEAHY: I'm -- I'm going to leave the record open for questions. I think, because of the Senate's schedule this afternoon we probably will not have a second round. So, we will leave the record open so the senator -- and I have further questions. I won't have time either, so I can submit my questions.

Senator Franken?

FRANKEN: Thank you, Mr. Chairman.

Thank you to all the witnesses, especially you, Captain Kelly, and thanks to your beautiful wife -- and beautiful in every, every way.

My wife Frannie and I were heartbroken for the families in Sandy Hook. We're heartbroken for the families in Tucson. For those of you who are listening or watching this hearing in Newtown, I want you to know that Minnesotans have you in our -- our thoughts and our prayers, and that we shared in your grief. We shared it when we lost lives at a sign factory -- Maya (ph) is here, lost her father. This was in Minneapolis in September.

FRANKEN: We share it every time we hear gun shots and ambulance sirens interrupting an otherwise quiet school night. We share it every time we bury one of our sons or daughters. I know that a group of students from Redlake Reservation in Minnesota, students who lost their classmates to gun violence, made 1,500-mile trip -- drive to Newtown just a few days before Christmas just to let the people in Newtown know that they are not alone, we're all in this together.

Over the past month or so, I've been talking to my constituents about their ideas on how to make our communities safer. I traveled safely with hunters and school officials, with law enforcement officers, with mental health experts. I have convened round table discussions and I have had many, many conversations. And what I've learned is that there is a balance to be struck here. We can honor the Second Amendment, and we can honor the Minnesota's culture of responsible gun ownership while taking basic measures that will make our kids and our communities safer.

So I have co-sponsored a bill to limit the number of rounds in a magazine. I have co-sponsored a bill to require background checks at gun shows. I have co-sponsored Senator Feinstein's bill to ban assault weapons. I am reviewing legislation to address gun trafficking. I have supported funding for law enforcement programs and I work every day to carry out the work Paul Wellstone -- his unfinished work to improve our nation's mental health system.

Tomorrow I will introduce the Mental Health In School Act which will improve access to mental health care for kids, because catching these issues at an early age is really important. And I want to be careful here that we don't stigmatize mental illness.

The vast majority of people with mental illness are no more violent than the rest of the population. In fact, they are more likely to be the victims of violence. But these recent events have caused us as a nation to scrutinize our failed mental health and system, and I'm glad we're talking about this and a serious way.

Police Chief Johnson, I -- I met with some mothers from the Mountain's View school district in Minnesota whose children's lives and their own lives were changed for the better, because their kids got access to mental health care that they needed at an early age. They got treatment. Their lives are improving, and their moms lives were improved.

As a community leader and law enforcement official, do you think it will benefit our communities if we are able to use schools to improve access to mental health care?

J. JOHNSON: I applaud your -- your initiatives and your work Senator. And the answer is, absolutely. As a father with a child that has mental health issues I think this is absolutely essential. And if my child has access to medical care that she needs, but the record shows and reflect that nearly half the children and adults in this nation who are diagnosed with mental health issues do not have access to the care they need, and it gets even worse after the aged 18.

And we're seeing this in crimes of violence, and we're seeing this in crimes across our nation and in my jurisdiction. It's a major problem and I do recognize that most people with mental health issues do not go on to commit violent crimes. However, we have seen over and over again, it seems to be a common thread or theme or issue that we must deal with.

FRANKEN: Again, Police Chief Johnson, I've heard from some gun owners who are worried that Congress is gonna outlaw features that they really like in guns, things like pistol grips and barrel shrouds and threaded barrels. Some say that these features are merely cosmetic, but it seems to me that a lot of these features are not just cosmetic, they are functional.

Can you explain why a pistol grip in the right place makes a functional difference, why it isn't just a piece of plastic? Why collapsible stocks present a danger; bullet buttons and some of the other features are dangerous?

I think this is a crucial point.

J. JOHNSON: I -- I agree completely. It's not just about the capacity of the weapon to handle numerous rounds, which obviously is absolutely critical in this discussion. And, again, we believe no more than 10.

We use that weapon in (ph) police because of its technical capability, it's ability to cool down and handle round after round after round; it's ability -- it's rugged, it's ruggedized, it's meant for a combat or environment that one would be placed in facing adversaries, human beings, people. That weapon can be retrofitted with other devices to enhance your offensive capability.

The weapon itself has features to adjust it; optics sights, for example, that can cost hundreds of dollars -- and I've shot this weapon many times -- that would enhance our capability in various tactical maneuvers, whether it's from the shoulder or the hip or whether you choose to spray fire that weapon or individually shoot from the shoulder. The optic sights are amazing, the technology advances that weapon has.

That weapon is the weapon of our time. It's the place that we find ourselves in today. And, certainly, I believe it's meant for the battlefield and in a public safety environment only.

FRANKEN: Thank you.

Mr. Chairman, before I yield my time, I just would like to submit testimony of Miya Rahamim (ph) who is here today. She lost her father in a shooting in September in Minneapolis. And I'd just like unanimous consent to submit her testimony for the record.

LEAHY: It will be. As Senator Grassley and I indicated earlier, each -- there will be other statements for the record, as there will be. The record kept open for questions.

As I indicated also earlier, Senator Hatch, a very senior member of this committee, had to be at two different committees. And I yield now to his time, and then we'll go to the next Republican. After we go back (inaudible) Senator Flake.

Senator Hatch?

HATCH: Well, thank you so much, Mr. Chairman.

And I thank all of you for being here today.

Captain Kelly, I appreciate you and your wife and your testimony and your feelings very much. And I appreciated much of your testimony. And I'm grateful that you would take the time to be with us, and that was wonderful to see your wife again.

Let me go to you, Mr. LaPierre. President Obama's issued 23 executive actions on gun violence. Can you please discuss the commonalities between your organization, the NRA, and the Obama administration when it comes to finding ways to reduce gun violence?

LAPIERRE: Well, I mean, what we think works -- and we support what works, is what NRA's done historically. I've talked about our Ready Eagle child safety program, which we put more money into than anybody in the country; that's cut accident to the lowest level ever.

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We support enforcing the federal gun laws on the books 100 percent of the time against drug dealers with the guns, gangs with guns, felons with guns. That -- that works.

We've supported prison building. You've got states like California where they (inaudible) more than any other state in the country they send more inmates back to the street and have to put more back in jail for new crimes committed against their citizens than any other country in the nation. New York state is too. I mean, the collapse of the fiscal situation in those states has also collapsed the criminal justice system in those states.

It -- I mean, NRA has always supported what works. We have 11,000 police instructors. And we represent honest people all over this country.

There are 25,000 violent crimes a week in this country. The innocent are being preyed upon. The statistics are numbing. Those 911 calls are horrible.

LAPIERRE: But at the scene of the crime, it's the criminal and the victim. And victims all over the country want to be able to protect themselves.

I mean, you know, this whole debate almost puts it into two different categories. If you're in the elite, you get bodyguards, you get right here and you get high-cap mags with semi-automatics protecting this whole Capitol. The -- the titans of industry get the bodyguards whenever they want. Criminals don't obey the law at any -- anyway, they get what they want. And in the middle is the hardworking, law abiding, taxpaying American that we're going to make the least capable of defending themselves.

We're going to say, you can have a bolt action rifle, but boy you can't have an AR-15. Or you can -- you can have a six shot revolver, but you can't have a semi-automatic handgun. You can have a four, or five, or six rounds in your magazine, but if three intruders are breaking down your door, you can't have 15 rounds because somebody thinks that's reasonable in their opinion. I mean...

HATCH: Understood.

LAPIERRE: People want to be able to protect themselves, that's why people support the Second Amendment, and that's why these bills are so troubling. They hit the -- they don't hit the elites. They don't hit the criminal, they hit the average, hardworking, taxpaying American that gets stuck with all the laws and regulations.

HATCH: I understand that one of the bills will ban well over 2,000 guns? I mean talking about individual guns?

LAPIERRE: Senator Feinstein's bill ban -- bans all kinds of guns, but the -- that are used for target shooting, hunting, personal protection. And yet on the other hand, she exempts guns that have the exact same performance characteristics as the guns she doesn't ban. I mean -- and -- and gun owners know the truth, I mean that's why gun owners in this country, the 100 million gun owners get upset about this stuff.

They may be the victim of these lies. About taking the term, assault, and applying it to the civilian firearms, that military term, assault. But they know the truth inherently. They look at their hands, and they shake their head, and they go, none of this makes any sense.

HATCH: Well, I appreciate that. Ms. Trotter, let me just ask you this, in your testimony you state that all women in jurisdictions that have conceal-carry laws reap the benefits of increased safety, even if they choose not to carry a weapon themselves. Can you -- can you please explain why?

TROTTER: Yes. Mr. LaPierre mentioned that gun owners are very concerned about all these burdens that could be possibly put on law abiding citizens. And I will tell you that non-gun owners are concerned about this too. Because you don't have to choose to carry to be the beneficiary of laws that allow people to carry. And for women, you reap the benefit of fewer murders, fewer rapes, fewer possibilities of being a victim of violence if your -- if the state that you live in does not ban anybody, particularly women from carrying weapons.

So it's a matter of choice. We're not saying that all women should, or need to carry weapons. But we need to protect the Second Amendment right to choose to defend yourself.

HATCH: Well, thank you, Mr. Kopel? Professor, you wrote an article that appears in the Wall Street Journal in December -- appeared in the Wall Street Journal on December 18, 2012. In the article, you point out that -- that firearms are the most heavily regulated consumer product in the United States. Gun control laws are more prevalent now than in the mid 1960's, when you could walk into any store and buy a semi-automatic weapon with no questions asked.

Now in your opinion, the lack of firearms regulations is not a contributing factor to the recent rise in the random mass shootings? So what factors have contributed to the rise in these random shootings? You may have answered this already but I -- I would like to hear it again if you haven't?

KOPEL: No.

HATCH: OK.

(OFF-MIKE)

KOPEL: For one thing there's a copycat effect.

HATCH: Could you put your mike on?

KOPEL: Certainly. There's a copycat effect, and lots of studies of the scholars of these -- of all kinds of criminals, but especially of these people seeking notoriety, show strong copycat effect. And that is something that makes me think we need immediate protection for schools because of the -- the copycat danger right now. In addition, there's been a -- there was a mass de-institutionalization of the mentally ill starting in the 1960s and going through the 1980s.

KOPEL: Some of that was because of budgetary issues, and a lot of the times the promise was, well we'll put these people in halfway houses so they can be partially in the community, which is a great idea. But then there was never the funding for the halfway houses, and people walk away. Nothing -- nothing is done to follow up. The Jared Loughner, Adam Lanza, so many -- James Holmes -- so many of these perpetrators absolutely would have been civilly committed under the system we had 50 years ago.

We need a -- we need to move back toward greater possibility for civil commitment for the dangerously violently mentally ill. It's certainly right, as Ms. -- I think both senators from Minnesota were saying that mentally ill people, per se, are not any more dangerous or violent than -- than anyone else. In fact, sometimes less so.

But there is a subset of them that are dangerously violently mentally ill. and we -- we need to have them off the streets before so that -- before they -- so that they can't endanger themselves or others.

HATCH: Well, thank you so much.

Mr. Chairman, I would like to have a statement put into the record at the -- following yours and Senator...

LEAHY: Without objection.

HATCH: Thank you so much.

I want to thank all of you for being here. I think it's been an enlightened hearing.

And this isn't a simple thing. And I've got to say there are some freedoms among the mentally ill that have to be considered, too. And this is -- this is complex. It's not -- not easy.

But I can say this that -- that I think this has been a particularly good panel, and I just appreciate all of you for testifying.

LEAHY: I thank -- I thank you for that, Senator Hatch.

And I yield now to Senator Coons.

COONS: Thank you, Chairman Leahy. And thank you for convening this important hearing. To the panel, thank you for your testimony.

And to Captain Kelly and to your wonderful wife, Congresswoman Giffords, thank you for everything you're doing to bring I think an important message.

We, as a committee, are wrestling here today and we as a country are wrestling with how to respond appropriately and effectively to a whole string of horrific shootings, whether in Newtown or in Tucson, whether in a Sikh temple or at a state

And I'm grateful for all my colleagues who've engaged in this thorough discussion today about how do we balance things.

One of the most important things, I think, is for us to get our facts right. A number of my colleagues have made a great deal of the number of cases of federal gun prosecutions going down.

But my staff's pulled the most recent report from the Executive Office of the United States Attorneys, and it turns out that the number of defendants charged with federal gun violations is actually steady.

In fact, in 2011, it was 46 percent higher than in 2000.

So I just encourage all who are paying attention to scoring at home the numbers, what matters is the number of defendants actually prosecuted with federal gun violations.

I've got lots of things I'd like to touch on. And I did want to say at the outset, I'm grateful that our vice-president, Joe Biden, has led, I think, a very broad and searching conversation, where he's listened. as I have, to folks across the country and, in my masse, across my state of Delaware.

And I've heard from parents whose children suffer from mental illness and who are really struggling to provide the care that they deserve and need. Law-enforcement officials, educators, community leaders, gun owners, sportsmen, people who are really concerned about how we strike the right balance and how we make our country safer.

If I could, to Captain Kelly, first, thank you for leading Americans for Responsible Solution.

One of the main ideas you and your wife have advanced is expanded background checks. Could you just explain for me, again, how it is today that convicted felons are able to get their hands on weapons despite our current background check laws and how we might fix that?

KELLY: Well, currently, certainly Senator Cruz mentioned earlier the statistic of, I think he said 1.9 percent of criminals that committed a crime with a gun...

(CROSSTALK)

KELLY: Of prisoners. Well, I want to just look at that for a second.

There's also a statistic that says 80 percent -- on a survey done of criminals, 80 percent of criminals got their guns from a private sale or a transfer.

So by closing that part of the existing loophole, which is the fact that with a private sale or transfer, there is no requirement to

get a background check, you could effectively reduce the number of guns in the hands of criminals.

And we know from what happened in Tucson that if there was an effective background check, which includes having the mental health data and the person's drug use, in the case of the Tucson shooter, into the system, and if, in fact, there was no gun show loophole, I would contend that he would have had a very difficult time getting a gun.

KELLY: So the first thing that needs to be done is we certainly need to have a universal background check. If background checks are good enough for somebody who's a federal firearms licensed dealer, like Wal-Mart, for instance, where I just purchased a gun a couple months ago, a hunting rifle, and I had to go through a background check, why isn't that good for other sales, sales from a private individual, or sales from somebody who is really kind of in business at a gun show?

COONS: Captain Kelly, as a gun owner yourself, how do you feel that a thorough universe a background checks of the types that you describe either for purchase of weapons or large capacity magazines, how would that affect or infringe your Second Amendment rights?

KELLY: I don't think it would infringe my Second Amendment rights at all. You know, I am -- I think I'm as -- a strong a supporter of the Second Amendment as anybody on this panel. You know, I've flown 38 combat missions over Iraq and Kuwait defending what I believe is our -- defending our Constitution.

You know, I've flown in combat -- I've been shot at dozens of times. You know, I find it interesting that often, we talk about putting a security guard to school. That's been brought up a lot. And, I -- I actually think, you know, that's better than no security guard in the school, but from my experience of being shot at and what that actually feels like and how chaotic it is, and with the exception of -- of Chief Johnson, I would suspect that not many members of this panel, or even in this room, for that matter, have been in any kind of a fire fight.

It is -- it is chaos. I think there are really some very effective things we can do. And one is, Senator, the background check. Let's make it difficult for the criminals, the terrorists, and the mentally ill to get a gun.

COONS: I agree with you, and I have agreed to co-sponsor legislation to this affect.

But let me ask Mr. LaPierre. I, just at the outset, want to say I', grateful for the work the NRA in providing training and safe gun ownership to millions of Americans. And I hope you'll take into account the data I have offered gone prosecutions.

But I -- I disagree with a point you made your testimony. You said -- and I think I quote, that, "Background checks will never be universal, because criminals will never submit to them. " And while that may be true, I think the point that Captain Kelly makes is telling. And if we in combination put in place tougher restrictions on straw purchases and tougher enforcement on those who buy guns legally, but then sell them to those who shouldn't have them, and we put in place universal background checks and impose some responsibility on responsible gun owners to report lost or stolen weapons in combination, wouldn't all of these things effectively move us towards a country where the number of those who should not have weapons cannot get access?

LAPIERRE: I think you will end up with a huge bureaucracy with a honestly a huge waste of police resources and money that could go into doing things in the police criminal justice area that would actually save lives.

You know, that study that you were talking about actually says where criminals get their guns, 39.5 percent from friends and family, 37 percent from street or black market, 11 percent from licensed dealers, 10 percent by theft, 1.7 percent at gun shows. I just think that you're gonna -- if you try to do this universal background check which sounds -- sounds -- whatever, it ends up being a universal federal nightmare imposed upon law-abiding people all over this country.

Criminals will ignore it. We -- the federal government won't -- we already won't prosecute. The senator -- the -- the vice president told at the meeting with our people said they didn't have time to prosecute those types of cases. So what's the point of the whole thing?

COONS: Mr. -- Mr. LaPierre, I'm almost out of time, forgive me for the brief cycle.

Just to take at face value, the -- the data you just suggested is not just closing the gun show loophole. It is also thoroughly enforcing those who transfer weapons bought legally to those who shouldn't have them. And -- and awful lot of the folks you cited are getting their hands on weapons inappropriately through your so called straw purchases, or through illegal transfers.

I just want to ask a question of Chief Johnson, if I might, because I see Mr. Chairman, my time is almost up.

I think it's valuable to have the input of law enforcement professionals. In your view, with this sort of a universal background check combined with aggressive enforcement of the transfers to those who shouldn't have them, would that be a waste of police resources, or might it make a difference on the street for those of you who put your lives on the line for us every day?

J. JOHNSON: I have to respectfully disagree with Wayne on this issue. Public safety, police we -- we are ready. We are unified on this issue that a universal background check will make our society a safer place, will make my police officer is safer. It's absolutely essential.

COONS: Well, thank you, Chief. Thank you to the panel. I'll submit some more questions for the record. I see I'm out of time.

LEAHY: Thank you.

And again, another new member of this committee, Senator Flake of Arizona. I appreciate you being here, and your patience in waiting. If it's any consolation, I had that seat years ago.

(LAUGHTER)

FLAKE: It's good to know.

Thank you, Chairman, for convening this. And thank you to the panel for being here offering such excellent testimony and for

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staying so long. I'll try not to take my full seven minutes. But I especially want to thank Mark for being here. I know that Gabby is watching the proceedings in a room in the back. I just visited here a while ago. And I -- I just want you to know, Mark, and I want Gabby to know how much we miss her here.

I was on a call this morning with a few dozen ranchers -- border ranchers in Arizona, and was reminded that this is a practice that she began years ago, to talk about immigration issues and to keep them up to speed and to seek their input. And I've continued that -- that practice. And I can tell you, she offered wonderful representation to the people of southern Arizona and she is missed. And I am so grateful to you and to her for the public service that you've offered in the last year under difficult circumstances, and for taking up this new cause.

So, thank you.

With regard to the Tucson shooting, you mentioned that Jared Loughner had had drug use in the past that might have triggered some kind of entry into a system that -- that he may have been checked, but also the mental health aspect. And that seems to be the -- the difficult problem to solve here, listening to the testimony, is the nexus between mental illness and some kind of entry into a background system.

In Maryland, I believe it is, there have only been like 56 mental health records provided to the NICS system. Arizona has 120,000 entries, but not interfaced with the system here. What are the major problems there? And I'll take anybody who can comment on this. Perhaps Chief Johnson, you know? Or Mark, if you have any ideas? Is it solely privacy issues? Many of those have a federal nexus, and that's something that we can deal with here. So I'm interested in -- in why it is that it's so difficult to have some of the mental health records entered into the system?

Chief, first? Do you want to take this?

J. JOHNSON: Well, Governor O'Malley in the state of Maryland last week introduced his plans to increase significantly data into the national instant criminal background check system. Senator, you are right. Maryland could do much better in this area, no question about it.

FLAKE: Is -- is this an issue with Maryland or any other state? And I'm not trying to pick on Maryland at all. I -- I assume it's similar with every state out there. I just had the figures for Maryland. But is that an issue of just resources? Or are there privacy concerns that prevent them from offering this information?

J. JOHNSON: I think there's confusion. Data that I've seen indicates some 18 states submit less than 100 records to -- to the system. I think there's confusion amongst -- amongst the medical community and even fear. Well, how does HIPPA affect the release of this information and this data system? And I do believe, as the president's plan has called for, incentive -- incentivize states to participate would drastically help this -- this problem.

FLAKE: Mark, do you want to comment on that?

KELLY: Yes, Senator. Thank you for your kind words. Gabby misses being here as well.

Of those 121,800 records that Arizona has not submitted to the background check system, I -- I don't know why. I imagine it could be something. It might be a matter of resources. You know, maybe the funding isn't there to have the manpower to do that. Possibly -- maybe there isn't the will. Maybe for some reason in the state of Arizona, maybe they don't have a desire to share that information.

I don't know, but I can guarantee you after this hearing I'm going to try to find out.

FLAKE: All right.

KELLY: I'll get back to you.

FLAKE: And so will I. I think that that's an area from the testimony today and what we know of this situation where we can have I think a real impact here. And so I thank you all for your testimony, especially Mark and Gabby for being here.

KELLY: Thank you.

LEAHY: Thank you, Senator Flake.

And Senator Blumenthal, I'll recognize you next. And I would just note, as everybody probably assumes, you and I have had a number of discussions since the tragedy in Connecticut, including one phone call I recall when you were just about to meet with some of the families.

And I have relied a great deal on your -- both your expertise, your law enforcement background but also the fact that you are from Connecticut.

Senator Blumenthal?

BLUMENTHAL: Thank you. Thank you, Mr. Chairman.

I want to express my appreciation to you for your sensitivity and your condolences, and so many of my colleagues for theirs as well and the expressions that we've had this morning and also, obviously, for convening this hearing, which is a beginning -- hardly an end -- just a first step in what I hope will be a call to action that Newtown has begun and action that is really bipartisan.

Whatever the impressions that may be left by this morning's proceedings, I think there is a real potential for bipartisan common ground on this issue, because we certainly have more in common than we have in conflict on this issue.

And I speak as a former prosecutor, having served as attorney general in the state of Connecticut for 20 years, but also as a

And I want to thank all of the members of the panel for your patience and your staying power today. It has been a very informative and worthwhile hearing.

But I want to say a particular thanks, as others have, to Captain Kelly and to Gabby Giffords for your courage and strength in being here today; and to all of the victims and their families -- Steve Barton, who is here from Connecticut, who was a victim in Aurora; many of the Sandy Hook families who are not here today, I know who are here in spirit.

Mark and Jackie Barden, who lost their wonderful son Daniel at Sandy Hook, wrote a profoundly moving and inspiring piece in today's Washington Post.

And Mr. Chairman, if there's no objection, I'd like to submit it for the record. It's entitled, "Make the Debate Over Guns Worthy of Our Son."

LEAHY: Without objection.

BLUMENTHAL: To Chief Johnson, you are here not only in a personal capacity but, in my view, as representing and reflecting the courage and heroism of the tens of thousands of law enforcement community, police and firefighters and first responders across the country who every day brave the threat of gunfire and are often outmanned or outgunned by criminals.

And I want to thank you for your service to our nation, as I do Captain Kelly for his in our military.

And just to say, you know, I was in Sandy Hook within hours of the shooting at the fire house where parents went to find out whether their children were alive. And I will never forget the sights and sounds of that day when the grief and pain was expressed in the voices and faces of those parents.

As much evil as there was on that day in Newtown, there was also a tremendous heroism and goodness: The heroism and goodness of the educators who perished literally trying to save those children by putting themselves between the bullets and their children. And the heroism of those first responders and police who ran into that building to stop the shooter not knowing that he was dead when they did. And their being there in fact stopped the tragedy.

So I want to thank also the community of Sandy Hook. I've spent countless hours there, the better part of three weeks after the shooting and most recently this past weekend, the dedication of a memorial and then time with one of the families.

And their strength and courage, I think, has been an inspiration to the country and very, very important to advancing an agenda of making our nation safer.

And one way they've done it -- one way, not the exclusive or only way, has been through a pledge called the Sandy Hook Promise. This promise I would like to read. Have it on a chart here.

BLUMENTHAL: It is, "I promise to honor the 26 lives lost at Sandy Hook Elementary School. I promise to do everything I can to encourage and support common-sense solutions that make my community and our country safer from similar acts of violence.

I promise this time there will be change. I'm proud to say Steve Barton, Gabby Giffords and Mark Kelly have made the Sandy Hook promise. Tens of thousands of Americans in Connecticut and across the country have made that promise, as have I.

So I want to ask Mr. LaPierre, will you make the Sandy Hook promise?

LAPIERRE: Senator, our Sandy Hook promise is -- is always to make this country safer, which is why we've advocated immediately putting police, armed security in schools, fixing the mental health system, computerizing the records of those mentally adjudicated. I would hope we could convince some of these companies that are just -- I'm not talking about First Amendment, I know they have a right to do it, to stop putting out such incredibly violent video games that desensitize.

And -- and finally we need to enforce the reasonable gun laws on the books and NRA support that -- that we do not do.

(CROSSTALK)

BLUMENTHAL: I'll take that as a yes?

(CROSSTALK)

LAPIERRE: That will make the country safer.

BLUMENTHAL: Can I take that as a yes?

LAPIERRE: Yes. That's a yes.

BLUMENTHAL: Thank you.

LAPIERRE: We're -- we have 11,000 police...

(CROSSTALK)

BLUMENTHAL: And can I -- can I invite and urge you to advocate that your members, responsible gun owners, and I thank them for being responsible gun owners, also join in the Sandy Hook promise? LAPIERRE: Senator there is not a -- a law-abiding firearms owner across this United States that wasn't torn to pieces by what happened in Sandy Hook. They just don't believe that their constitutional right to own a firearm, and the fact that they can protect their family with a firearm is -- is -- resulted in the problem.

BLUMENTHAL: Let me ask you this, Mr. LaPierre. You and I agree there ought to be more prosecutions of illegal gun possession, and illegal gun ownership.

LAPIERRE: You know the problem, Senator is I've been up here on this Hill for 20-some years agreeing to that, and nobody does it. And that's the problem. Every time we say we're going to do it -- I -- I make you this bet right now, when President Obama leaves office four years from now, his prosecutions will not be much different than they are now. If each U.S. attorney did ten a month, they'd have 12,000. If they did 20 a month, they'd have 24,000. Let's see if we get there.

BLUMENTHAL: Chief Johnson, you've -- you've testified very persuasively on the need for better background checks. Do you believe those background checks ought to be applied to ammunition purchases, as well as firearms purchases?

J. JOHNSON: Our organization supports background checks on ammunition sales.

BLUMENTHAL: Thank you. And Captain Kelly, I am just about out of time, but I -- I would like to ask you if you may, you supported better background checks, as a -- an advocate of the Second Amendment, and I join you in believing that Americans have a strong and robust right to possess firearms, it's the law of the land. Do you also believe that better background checks on firearms purchases would help make both Arizona, and our nation safer?

KELLY: Absolutely, Senator. While we were having this hearing, and we certainly don't know the details, but in Phoenix, Arizona there is another, what seems to be possibly a -- a shooting with multiple victims. And it doesn't seem like anybody has been killed, but the initial reports are three people injured in Phoenix, Arizona with multiple shots fired. There's 50 or so police cars on the scene. And I certainly agree with you, Sir that, you know a universal background check that's effective, that has the mental health records in it, that has the criminal records in it, will go a long way to saving and -- saving people's lives.

BLUMENTHAL: And improving the quality of information in the...

KELLY: Absolutely.

BLUMENTHAL: ... checks would make a difference. Let me just again thank the panel. My hope is that Newtown will be remembered, not just as a place, but as a promise. And that we use this tragedy as a means of transforming the debate, the discussion, the action that we need to make America safer. Thank you, Mr. Chairman.

LEAHY: Thank you.

Just so everybody understands, we are coming to a close. I'll make an exception to the normal rules. Senator Cruz said he had one more question, let him do that then we will -- then I'll yield to Senator Hirono, the newest member of this committee, and she will have the final word. Senator Cruz?

CRUZ: Thank you, Mr. Chairman, I very much appreciate your -- your allowing me to ask an additional question.

I wanted to ask a question of Chief Johnson. Your -- your testimony today was in -- in some tension with what I have heard from -- from police officer serving on the ground in the state of Texas, namely that your testimony, as I understand it, was, that in your judgment, stricter gun control laws would -- would prove effective in -- in limiting crime. And the data I have seen suggests that -- that the evidence doesn't support it.

If one looks in the District of Columbia which had district is gun-control laws in this country and banned firearms, we saw that when the ban was implemented in 1976, there were fewer than 200 and homicides that rose to over 350 in 1988, and two over 450 in 1993. That pattern is reflected across major urban centers. Those urban centers that have the strictest gun bans, for example, the city of Chicago unfortunately, suffers from according to the latest statistics 15.9 murders per hundred thousand citizens.

Your city, the city of Baltimore, has 31.3 murders per 100,000 citizens. That contrasts with other major urban areas such as my home town of Houston which does not have strict gun-control laws like the -- the jurisdictions I was talking about, that has a murder rate of 9.2 percent per 100,000, 1/3 of Baltimore's. And in fact, the city of Austin, our capital, has a murder rate of 3.5 per 100,000, 1/10 that of Baltimore.

So, my question to you is, in light of the evidence, what -- what empirical data supports your contention that -- that restricting the rights of law-abiding citizens to possess firearms would -- would decrease crime rather than making people more vulnerable to violent criminals, which is what I would suggest the data indicates has happened when it's been done?

J. JOHNSON: We know that nearly 2 million prohibited purchases were stopped from obtaining their firearms since 1994-2009. Senator, I would tell that your homicide statistics would be much greater and often missed from this conversation is the medical intervention and takes place to day at the EMT in the field to the shock trauma facilities that are very robust in our nation today, these -- this data would be much higher.

I'm here today representing nine major police executive leadership organizations. For the sake of time, I'm not gonna read all of those. I think they're a matter of record.

The problem in areas like Baltimore, and New York, and Chicago with some of the toughest gun regulations and laws in the nation is outside weapons coming in. It's about the background check problem. It is about acquisition of these firearms outside of the normal firearms licensed dealer process. And that's what we have to fix.

In addition, high-capacity magazines or a problem, and certainly we are seeing assault weapons used each and every day in crimes and police are seizing these weapons each and every day. And the -- holistically with the plan that the president's laid out and, frankly (ph), some of the bills that have been put forth, we can make our nation and much safer place.

LEAHY: Thank you.

We've been fortunate to have three new members of this committee, Senator Cruz, Senator Flake and Senator Hirono. And you, Senator, have the last word.

HIRONO: Are you saving the best for last, is that it?

LEAHY: Well, I was just saying you get the last word.

You're gonna have to prove whether it's the best, but I -- I would note that both you and Senator Flake -- I occupied the bad seed so you are very patient in waiting. So I thank Senator Blumenthal for bringing the -- representing so well the feelings of the people in Connecticut.

Senator Hirono?

HIRONO: Thank you so much, Mr. Chairman.

I would like to thank the panel for this very lively discussion on what is a highly emotional subject.

HIRONO: And, Captain Kelly, I would like to thank you for being here because Gabby and I were elected to the House of Representatives in the same year and her courage continues to inspire us. And I certainly take to heart her testimony today asking us to do something now to reduce gun violence in our country.

And, Chief Johnson, you are, literally, in the trenches. You're on the firing line and I -- and I certainly give much credence to your testimony.

We have a lot of hunters in Hawaii, so I certainly understand their perspective. And this -- to me, this issue is not about abrogating Second Amendment rights. It is about reasonable limits on those rights.

And one of those areas that has already been deemed reasonable is the requirement for background checks.

And so, what many of us are saying is what has already been deemed reasonable should be a reasonable requirement when guns are sold regardless of how or where they are sold.

So I -- I hope that we can reach bipartisan agreement on the reasonable limit of requiring background checks when guns are sold.

And, Captain Kelly, I do appreciate your starting your testimony today by saying that there is no perfect solution. I know there are all kinds of antecedent environmental issues and -- and community issues that lead to gun violence, but I believe we should do that which is reasonable. so nothing is perfect.

I believe that one of the areas of focus for your organization, Americans for Responsible Solutions, is the mental health part of

Do you have some key suggestions that Congress can take to help address the mental illness problem?

KELLY: Well, thank you, Senator.

Well, you know, first of all, compelling states to share with the federal government the records, the appropriate records, of adjudicated mental illness and criminal records as well, also within the federal government.

I had a conversation with the vice president, who talked specifically about, you know, intergovernment agencies and why -- that there has also been, you know, some issues in certain federal government agencies at times getting the records into the background check system.

So if we could improve the system, close the gun-show loophole, require background checks for private sellers, I think we will go a long way to preventing many of these murders and mass shootings in this country.

We're not going to stop all of them, but there is certainly a reason that we have 20 times the murder rate -- 20 times the murder rate -- of other developed countries. And I think that's unacceptable.

But like -- you know, like you said, we -- you know, as an organization, I certainly think Congress can come together on this issue. We realize there's a problem, and it certainly can be solved.

HIRONO: Captain Kelly, it's one thing when someone has already been deemed to show signs of mental illness, and certainly if there's been any kind of an adjudication, that -- that identification is much easier and therefore that information should get into our system.

It becomes a lot harder when you're trying to determine whether someone is suffering from mental illness and needs help. And often these kinds of signs manifest themselves certainly in the home, but in the schools. And we don't have a lot of psychologists, therapists in our schools.

Would you also support more of those kinds of personnel in our schools so we can help these individuals?

KELLY: You know, absolutely. In the case of Jared Loughner in Tucson, Pima Community College was well aware of -- you know, that he had some form of mental illness. They expelled him over it. Multiple cases of very erratic and disruptive behavior in the classroom and outside the classroom.

But, for some reason, he was not referred, as far as I know, to an appropriate mental health authority for an evaluation. And I know often those need to be voluntary, but his parents, as well.

KELLY: I mean, there seems, in this case, that there was a lack of education within the community to get him some effective

treatment. And it's really -- it's actually really sad. Because in his case, as I know in many other cases, often you'll see a man who is paranoid schizophrenic that commits some of these horrific crimes.

But with treatment, they would never have done these things. So, absolutely. I mean, we are going to work -- at Americans For Responsible Solutions, we're going to work to help fix the mental health aspect of this, too.

It is a big part of it. I agree with Mr. LaPierre on that matter. I mean, that is a major issue, but so is a comprehensive, universal, a good background check without a loophole, without holes in it, and getting the data into the system. Those are critical things that can make our communities much safer.

HIRONO: Thank you.

I -- I do have one question for Chief Johnson. This is an area that has not been raised today so far. It has to do with an environment that allows bullying to occur in our schools. And sometimes bullying can lead to violent situations. I'm sure it's happened in Baltimore and just recently in Hawaii, we had a situation in our -- in our schools where bullying led to fights and the school had to be closed.

So, I think that one of the ways that we prevent escalation of violent behavior is to put in place programs that will address the issue of bullying, which takes place in just about -- in every state. Would you -- do you have any thoughts on -- on that?

J. JOHNSON: Yes. The president's plan calls for not only funding and an announcement for additional police officers. And I believe Congress should support these plans. They also call for funding to support additional counselors and psychological service providers as well in the schools.

Certainly, in my particular case and in many jurisdictions across America, we have police officers in all the high schools, and frankly, the middle schools, costing my jurisdiction nearly \$8 million a year. And they have a place, but certainly we believe that more needs to be done in this area. In my two school shootings, in both shootings, bullying was alleged to be a factor.

HIRONO: Thank you. Thank you, Mr. Chairman.

LEAHY: Thank you very much.

I want to thank all the witnesses who came here. This was a lengthy hearing. It's the first of others we will have. I think what we're trying to do, and I hope people realize, on this committee we're trying to write laws to protect the public. And I cherish and exercise my Second Amendment rights as I do all my rights under the Constitution.

But I don't think individual rights include weapons of war like landmines or tanks or machine guns or rocket-propelled grenades. And where do we go as we step back from those levels? I came here to have a discussion, hope to build consensus. Obviously, there's more work that needs to be done.

I think there is one consensus. We all want to do what we can to prevent future tragedies and put an end to the violence that breaks all our hearts. You know, I live an hour's drive from another country, Canada. I don't see the same kind of problem there. I want to find out how we can stop what is happening. I believe there should be some areas of agreement, and I hope the committee can get together to mark up legislation next month -- this month is virtually over -- and then take it to the floor.

We will respect the diversity of viewpoints represented today. We will have hearings that have other viewpoints. We have to listen to one another. If we start with a basic thing that we abhor the kind of violence we see and the violence I saw years ago as a prosecutor, then let's find which steps (inaudible) for it.

So thank you all -- all five of you -- very, very much.

We stand in recess.

END

Exhibit 103

ER2341

Brady Center



To Prevent Gun Violence

Testimony of Brian J. Siebel
Senior Attorney
Brady Center to Prevent Gun Violence
Before the Council of the District of Columbia
October 1, 2008

Thank you, Chairman Mendelson and other members of the Council, for inviting the Brady Center to Prevent Gun Violence to speak at this important committee hearing.

The Brady Center to Prevent Gun Violence and the Brady Campaign to Prevent Gun Violence are the nation's largest organizations working for sensible gun policies. The Legal Action Project of the Brady Center represents victims of gun violence and defends gun laws in the courts.

In addition to the other measures being suggested here today, which we support, the Brady Center and Brady Campaign strongly urge the Council to pass an assault weapons ban, a ban on .50 caliber sniper rifles, and retain its recently-passed ban on high-capacity ammunition magazines, as part of its process of strengthening the District's gun laws in light of the *Heller* decision.

The Need for An Assault Weapons Ban

Assault weapons had been banned for more than 30 years under the broader D.C. ban on all semiautomatic weapons. However, now that that ban has been repealed, an assault weapon ban is needed to protect the people of the District, visitors, and law enforcement from these particularly dangerous weapons. An assault weapons ban would continue to allow law-abiding citizens to have common pistols in their homes for self-defense, and would remain in compliance with the *Heller* decision. We believe it is imperative for the Council, now that it has legalized common semiautomatic pistols, to restore a ban on military-style assault weapons.

Assault Weapons Are "Mass Produced Mayhem"

Assault weapons are semiautomatic versions of fully automatic guns designed for military use. Even semiautomatic assault weapons unleash extraordinary firepower. When San Jose, California, police test-fired an UZI, a 30-round magazine was emptied in slightly less than two seconds on full automatic, while the same magazine was emptied in just five seconds on semiautomatic.

The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") has described assault weapons in stark terms.

Assault weapons were designed for rapid fire, close quarter shooting at human beings. That is why they were put together the way they were. You will not find these guns in a duck blind or at the Olympics. They are mass produced mayhem.¹

Assault weapons have distinct features that separate them from sporting firearms.² While hunting rifles are designed to be fired from the shoulder and depend upon the accuracy of a precisely aimed projectile, the military features of semiautomatic assault weapons are designed to enhance their capacity to shoot multiple human targets very rapidly. Assault weapons are generally equipped with large-capacity ammunition magazines that allow the shooter to fire 20, 50, or even more than 100 rounds without having to reload. Pistol grips on assault rifles and shotguns help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position. Barrel shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession. Far from being simply "cosmetic," these features all contribute to the unique function of any assault weapon to deliver extraordinary firepower. They are uniquely military features, with no sporting purpose whatsoever.

Accordingly, ATF has concluded that assault weapons "are not generally recognized as particularly suitable for or readily adaptable to sporting purposes" and instead "are attractive to certain criminals."³ ATF's analysis of guns traced to crime showed that assault weapons "are preferred by criminals over law abiding citizens eight to one.... Access to them shifts the balance of power to the lawless."⁴

It is no accident that when a madman, Gian Luigi Ferri, decided to assault the law offices at 101 California Street in San Francisco, he armed himself with two TEC-9 assault weapons with 50 round magazines, which enabled him to kill eight people and wound six others.⁵ Or that the Columbine high school shooters who killed 12 students and a teacher included a TEC-9 assault weapon in their arsenal. Or that James Huberty used an UZI assault pistol and a shotgun to kill 21 people and wound 19 others at a McDonald's in San Ysidro, California.⁶ Or that Patrick Purdy used an AK-47 assault rifle to kill five children and wound 29 others and a teacher at an elementary School in Stockton, California. Equipped with a 75-round "drum" magazine, Purdy was able to shoot 106 rounds in less than two minutes.⁷ The list goes on.

¹ ATF, *Assault Weapons Profile* 19 (1994) (emphasis added).

² *Id.* at 20.

³ DEP'T OF TREASURY, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles* 38 (1998).

⁴ ATF, *Assault Weapons Profile*, *supra* note 1, at 19-20.

⁵ *Ferri Used Guns That California Ban Does Not Forbid*, SAN FRANCISCO EXAMINER, July 4, 1993.

⁶ *Satellite College Campus Helps to Heal the Scars at San Ysidro Massacre*, LOS ANGELES TIMES, Mar. 30, 1989; *A 77-Minute Moment in History That Will Never Be Forgotten*, LOS ANGELES TIMES, July 16, 1989.

⁷ *The Kinds of Guns School Killer Used*, SAN FRANCISCO CHRONICLE, Jan. 19, 1989; Michael Taylor & Leslie Guevarra, *Myterious Scrawlings and Slogans, School Killer's Last Days, Toy Army in his Room*, SAN FRANCISCO CHRONICLE, Jan. 19, 1989.

Assault Weapons Threaten Law Enforcement

Law enforcement officers are at particular risk from these weapons because of their high firepower, which often leaves them outgunned by criminals. A researcher for the Department of Justice found that

assault weapons account for a larger share of guns used in mass murders and murders of police, crimes for which weapons with greater firepower would seem particularly useful.⁸

Assault weapons have even been used in a brazen attack at D.C. Police Headquarters. On November 22, 1994, a man armed with a MAC-11 assault pistol walked into Metropolitan Police headquarters and shot and killed Sergeant Henry Daly and FBI Agents Mike Miller and Martha Martinez. The shooter seriously wounded FBI Agent John Kuchta and shot at couches, walls, computers, and desks before shooting and killing himself with Agent Martinez's gun.⁹

In addition, numerous law enforcement officers have been killed with high-firepower assault weapons. Here are a few recent examples:

- **Philadelphia, PA. May 3, 2008.** Officer Stephen Liczbinski was shot and killed by an assault rifle as he was responding to a robbery at a Bank of America branch. Three men robbed the bank and were fleeing when Officer Liczbinski stopped their car and exited his patrol car. At that time, one of the bank robbers opened fire with an SKS assault rifle, striking Liczbinski numerous times. One suspect was eventually shot and killed by police and the other two suspects were arrested and charged with murder.¹⁰
- **Miami, Florida. September 13, 2007.** Police spotted a vehicle driving erratically and followed it until it stopped in a residential complex. The suspect got out and hopped a fence to the rear of the home; the officers exited their patrol car and went to the front of the home and were granted permission to search by a female resident. The suspect grabbed a high-powered, military-grade rifle and fired at the police officers through a window, killing Officer Jose Somohano. The suspect then exited the house and shot three other officers as he escaped. The shooter was caught later that day but would not relinquish his assault rifle so he was shot and killed by police officers.¹¹

⁸ Christopher S. Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, U. Penn. Jerry Lee Center of Criminology 87 (June 2004).

⁹ Brian Reilly, *Cop killers' guns similar; handgun converted to fiercer weapon*, THE WASHINGTON TIMES, May 1, 1995.

¹⁰ Joseph A. Gambardello, *Liczbinski suspect's girlfriend to stand trial*, PHILADELPHIA INQUIRER, July 17, 2008; *Officer shot, killed after bank robbery*, NBC 10.COM, May 3, 2008; Sergeant Stephen Liczbinski, www.odmp.org, available at: <http://www.odmp.org/officer/19359-sergeant-stephen-liczbinski> (last visited Sept. 30, 2008).

¹¹ David Ovalle et. al., *The murder and the manhunt started in a South Miami-Dade townhouse; zigzagged...*, MIAMI HERALD, Sept. 15, 2007.

- **Chantilly, Virginia. May 8, 2006.** A teenager with an AK-47 and 5 handguns engaged in a firefight at a police station in suburban Virginia, killing Detective Vicky Armel immediately and wounding two other officers, one of whom, Officer Michael Garbarino, died nine days later from his injuries.¹²

The threat posed to law enforcement is one reason why major law enforcement organizations are united in supporting bans on assault weapons.

Assault Weapons Threaten Civilians

Assault weapons have also been used to massacre and terrorize civilians. Who can forget the nightmare we lived through in the District of Columbia and surrounding communities during the attacks committed by the D.C. snipers. Their weapon of choice? A Bushmaster XM-15 assault rifle.

There have been hundreds of other shootings committed with semiautomatic assault weapons. Here, we list just a few recent examples:

- **Arvada & Colorado Springs, Colorado. December 9, 2007.** One man with an assault rifle attacked a missionary training center in Arvada and a church in Colorado Springs. He killed two people and injured two others in Arvada, and killed two and injured three others, including two teenage sisters, in Colorado Springs. He died after being shot by a security guard and then shooting himself.¹³
- **Omaha, Nebraska. December 5, 2007.** Nine people were shot to death and five others were injured after a 20-year-old shooter, armed with a military-style assault rifle, attacked shoppers in a department store in a Nebraska mall.¹⁴
- **Indianapolis, Indiana. June 2, 2006.** Seven family members, four adults and three children, were shot and killed in their home by a robber armed with an assault rifle. Nearly 30 shell casings were found.¹⁵
- **Tyler, Texas. February 25, 2005.** A gunman with a history of domestic violence and a felony conviction, who was reportedly fighting with his ex-wife over child support for their two youngest children, shot over 50 rounds from an SKS assault rifle on the steps of his local courthouse when his ex-wife exited the building. His ex-wife was killed along with a bystander who tried to shoot the gunman. The shooter's 23-year-old son and three law enforcement officers were wounded during the shooting, including a 28-year-old deputy who

¹² Ian Urbina, *Fatal police station attack shocks tranquil community*, NEW YORK TIMES, May 10, 2006; *Officer Killed*, BOSTON GLOBE, May 18, 2006.

¹³ Erin Emery, *Report details church shooting, the document chronicles the days leading up to the Dec. 9 deaths of four young people*, DENVER POST, Mar. 13, 2008.

¹⁴ *The American Way*, REGISTER-GUARD, Dec. 17, 2007.

¹⁵ Ashley M. Heher, *Suspect in slaying of 7 family members surrenders / Indianapolis police say he had nowhere else to go*, HOUSTON CHRONICLE, June 4, 2006.

was in grave condition. The gunman fled the scene but was pursued and shot by police when he exited his car and shot toward officers.¹⁶

- **Akron, Ohio. February 24, 2005.** A man shot and killed his girlfriend and her seven-year old son using an AR-15 assault weapon, then fired more than one hundred rounds at a dozen law enforcement officers as he fled the murder scene. The gunman was arrested the next morning inside the apartment of a Kent State University student, who he also murdered with the AR-15 assault weapon. Police subsequently seized 21 weapons kept by the suspect, including an Uzi and an AK-47.¹⁷

Assault Weapons Threaten Homeland Security

These weapons pose particular and severe risks for homeland security here in the Nation's Capital. The extraordinary firepower of these weapons could wreak havoc at any number of high-profile sites or events that occur in Washington, or victimize any number of high-profile targets, from government officials to foreign dignitaries.

And make no mistake: these weapons have great appeal for terrorists. The oft-seen file footage of Osama Bin Laden, aiming his AK-47 at an unknown target, is now a familiar reminder of the incontrovertible connection between terrorism and assault weapons.

The *Chicago Tribune* has reported that, found among the mounds of rubble at a training facility in Kabul for a radical Pakistan-based Islamic terrorist organization, was a manual entitled "How Can I Train Myself for Jihad" containing an entire section on "Firearms Training."¹⁸ Tellingly, the manual singles out the United States for its easy availability of firearms and stipulates that al-Qaeda members living in the United States "obtain an assault weapon legally, preferably AK-47 or variations."

Terrorists have used assault weapons in numerous attacks. I am going to mention just one that is close to home.

- **Langley, Virginia, January 25, 1993.** Pakistani national Mir Aimal Kasi killed two CIA employees and wounded three others outside the entrance to CIA headquarters in Langley, Virginia. Kasi used a Chinese-made semiautomatic AK-47 assault rifle equipped with a 30-round magazine purchased from a Northern Virginia gun store.¹⁹ After fleeing the country, he was arrested in Pakistan in 1997.²⁰

¹⁶ Bill Hanna & Jack Douglas Jr., *Rampage in Tyler leaves three dead, four wounded*, FORT WORTH STAR-TELEGRAM, Feb. 25, 2005; Jack Douglas Jr. & Bill Hanna, *Police order emergency trace on weapon used in shootings*, FORT WORTH STAR-TELEGRAM, FEB. 26, 2005.

¹⁷ Ed Meyer, *Police eye semiautomatic rifles, Brimfield officials want to be prepared after recent shooting rampage that killed 3 people*, AKRON BEACON JOURNAL, Feb. 24, 2005.

¹⁸ Paul Salopek, *A Chilling Look into Terror's Lair*, CHICAGO TRIBUNE, Nov. 18, 2001.

¹⁹ *CIA Killings Prompt Scrutiny on 2 Fronts; Fairfax Loophole Expedited Gun Purchase*, WASHINGTON POST, Feb. 11, 1993.

²⁰ Robert O'Harrow, Jr., *Kansi's Shadowy Stay in U.S. Leaves a Hazy Portrait*, WASHINGTON POST, Mar. 3, 1993.

.50 Caliber Sniper Rifles Pose Serious Dangers

Fifty caliber sniper rifles also pose an extraordinary risk in the District. In 1987, Barrett Firearms Manufacturing Inc., patented its self-described “armor-penetrating” .50 caliber BMG sniper rifle.²¹ Capable of destroying armored personnel carriers, aircraft and bulk fuel and ammunition sites, the .50 caliber sniper rifle is now proliferating in the civilian market.²² Accurate at up to 2,000 yards, it can inflict effective damage to targets over four miles away.²³ With more power on impact than any other semi-automatic rifle legally available on the civilian market,²⁴ the .50 caliber represents a serious threat to local law enforcement and national security. A 2004 report on airport security at Los Angeles International Airport warned that terrorists could use .50-caliber sniper rifles to target parked and taxiing airplanes “firing over 50 shots in five minutes.”²⁵ The Council should take action to prohibit the possession of these weapons in civilian hands.

High-Capacity Magazines Increase Firepower

The threat posed by military-style assault weapons is increased significantly if they can be equipped with high-capacity ammunition magazines, defined as those accepting more than ten rounds. The 1994-2004 federal ban on assault weapons also banned these magazines. By permitting a shooter to fire more than ten rounds without reloading, they greatly increase the firepower of mass shooters. For example, the shooter at Virginia Tech equipped himself with numerous high-capacity magazines of up to 30 rounds, which enabled him to get off nearly 200 rounds in his attack. In self-defense situations, too much firepower is a hazard, because the tendency is for defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders.

Assault Weapons Bans Already In Place

Six states currently ban assault weapons. Those include California, which passed the nation’s first statewide ban in May 1989, as well as New Jersey (1990), Hawaii (1991), Connecticut (1993), Maryland (1994), Massachusetts (1998), and New York (2000). California expanded its ban in 2000 to include all semiautomatic rifles or pistols that have the ability to accept a detachable magazine and contain any one of a series of military-style features. We strongly support that legislation as a model for the District of Columbia.

²¹ Carolyn Marshall, *California Bans Large Caliber Guns, and the Battle is on*, NEW YORK TIMES, Jan. 4, 2005.

²² See, Government Accounting Office for U.S. House of Representatives, Committee on Government Reform, *Long Range 50 Caliber Sniper Weapons* 4 (May 3, 1999).

²³ *Id.*

²⁴ *Id.* at 3.

²⁵ Donald Stevens, *Near Term Options for Improving Security at Los Angeles International Airport*, RAND (2004).

In addition, from 1994-2004, there was a federal ban on assault weapons. Plus, as mentioned above, ATF currently bans assault weapons from being imported into this country because they are not weapons suitable for sporting purposes.

Banning Assault Weapons and Sniper Rifles Is Consistent with *Heller*

A ban on assault weapons and .50 caliber sniper rifles would be constitutional and consistent with the Supreme Court's decision in *District of Columbia v. Heller*. In *D.C. v. Heller*, the Supreme Court narrowly defined the Second Amendment as protecting the right of law-abiding citizens to keep and use guns in the home for self-defense. At the same time, the Court indicated that the right to keep and bear arms is limited in a number of ways. The Court made clear that the Second Amendment does not entitle citizens to any and all guns. Certainly, military-style assault weapons and .50 caliber sniper rifles are not a part of this right. The Court held that not all "arms" are protected.

We also recognize another important limitation on the right to keep and carry arms. [*U.S. v. Miller* said, as we have explained, that the sorts of weapons protected were those "in common use at the time." We think that limitation is fairly supported by the historical tradition of prohibiting carrying of "dangerous and unusual weapons."²⁶

Assault weapons and .50 caliber sniper rifles are certainly "dangerous and unusual weapons" according to any reasonable analysis of that phrase. They are military-style offensive weapons designed to slaughter human beings. This differentiates them from all hunting rifles and shotguns, as well as common handguns, which are often used in crime but have also been used in self-defense.

Moreover, assault weapons and .50 caliber sniper rifles are not "in common use." As semiautomatic versions of machine guns developed for use during the World Wars of the 20th Century, assault weapons are a relatively recent invention. Plus, ATF has twice concluded, after thorough analyses in 1989 and 1998, that assault weapons have no sporting purpose. And the Barrett .50 caliber sniper rifles was patented a mere twenty-one years ago, and was made for military, not civilian use.

Finally, assault weapon bans have been challenged in court, but have never been struck down as unconstitutional under the Second Amendment or under right to bear arms provisions in state constitutions.²⁷

Conclusion

Outside of the military or law enforcement, assault weapons and .50 caliber sniper rifles have no place in civilized society. We would urge the D.C. Council to adopt a ban on these weapons. Thank you.

²⁶ *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008).

²⁷ See, e.g., *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995); *Robertson v. Denver*, 874 P.2d 325 (Colo. 1994); *Arnold v. City of Cleveland*, 616 N.E.2d (Ohio 1993).

Exhibit 107

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUNE SHEW, et al. : No. 3:13-CV-0739 (AVC)
Plaintiffs, :
:
v. :
:
DANNEL P. MALLOY, et al. :
Defendants. : SEPTEMBER 30, 2013

AFFIDAVIT OF CHRISTOPHER S. KOPER

1. My name is Christopher S. Koper. I am over eighteen years of age and I believe in the obligations of an oath.
2. I have read the Plaintiffs' First Amended Complaint in the above captioned matter, and am familiar with the claims set forth therein.
3. I am an Associate Professor for the Department of Criminology, Law and Society at George Mason University, in Fairfax, Virginia, and a senior fellow at George Mason's Center for Evidence-Based Crime Policy. A copy of my curriculum vitae is attached to the Defendants' motion as Exhibit 27.
4. I have been studying firearms issues since 1994. My primary areas of focus are firearms policy and policing issues.
5. In 1997, my colleague Jeffrey Roth and I conducted a study on the impact of Title XI, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994 (hereinafter the "federal assault weapons ban" or the "federal ban"), for the United States Department of Justice and the United States Congress.¹ I updated our original 1997 study in 2004,² and briefly revisited the issue again by re-examining my 2004 report in 2013.³ My 2004

¹ Jeffrey A. Roth & Christopher S. Koper, *Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994: Final Report* (1997), attached to Defendants' motion as Exhibit 28 (hereinafter, "*Koper 1997*").

² Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (2004), attached to Defendants' motion as Exhibit 29 (hereinafter, "*Koper 2004*").

³ Christopher S. Koper, *America's Experience with the Federal Assault Weapons Ban, 1994-2004: Key Findings and Implications*, ch. 12, pp. 157-71 in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* (Daniel S. Webster & Jon S. Vernick eds. 2013), attached to Defendants' motion as Exhibit 30 (hereinafter "*Koper 2013*").

and 2013 reports are the best resources for understanding my analysis of the impact of the federal ban. My 1997 report was based on limited data, especially with regard to the criminal use of large capacity magazines. As a result, my conclusions on the impact of the federal ban are most accurately and completely set forth in my 2004 and 2013 reports.

6. To my knowledge, the reports I authored are the only published academic studies to have examined the impacts of the federal bans on assault weapons and ammunition feeding devices holding more than ten rounds of ammunition (hereinafter referred to as “large-capacity magazines” or “LCMs”).⁴

SUMMARY OF FINDINGS

7. Based on my research, I found, among other things, that assault pistols are used disproportionately in crime in general, and that assault weapons more broadly were disproportionately used in murder and other serious crimes in some jurisdictions for which there was data. I also found that assault weapons and other firearms with large capacity magazines are used in a higher share of mass public shootings and killings of law enforcement officers.
8. The evidence also suggests that gun attacks with semiautomatics—especially assault weapons and other guns equipped with large capacity magazines—tend to result in more shots fired, more persons wounded, and more wounds per victim, than do gun attacks with other firearms. There is evidence that victims who receive more than one gunshot wound are substantially more likely to die than victims who receive only one wound. Thus, it appears that crimes committed with these weapons are likely to result in more injuries, and more lethal injuries, than crimes committed with other firearms.
9. In addition, there is some evidence to suggest that assault weapons are more attractive to criminals, due to the weapons’ military-style features and particularly large magazines.
10. Based on these and other findings in my studies discussed below, it is my considered opinion that Connecticut’s recently strengthened ban on assault weapons and newly enacted ban on large capacity magazines,⁵ and in particular its ban on LCMs which is in some ways stronger than the federal ban that I studied, is likely to advance Connecticut’s

⁴ As discussed below, there have been some additional studies about the impact and efficacy of the federal assault weapons ban conducted by non-academic institutions. In 2011, for example, the *Washington Post* published the results of its own investigation into the federal ban’s impact on the criminal use of LCMs in Virginia. See ¶¶57, 74, 81, *infra*. I also am aware of gun tracing analyses conducted by the federal Bureau of Alcohol Tobacco and Firearms (2003 Congressional Q&A memo provided to the author) and the Brady Center to Prevent Gun Violence (2004). These analyses are consistent with the findings of my studies regarding the decline in assault weapons as a percentage of crime gun traces between the pre-ban and post-ban periods.

⁵ See generally Public Act 13-3, An Act Concerning Gun Violence Prevention And Children’s Safety (hereinafter, “the Act”).

interest in protecting public safety. Specifically, it has the potential to: (1) reduce the number of crimes committed with assault weapons and other firearms with large capacity magazines; (2) reduce the number of shots fired in gun crimes; (3) reduce the number of gunshot victims in such crimes; (4) reduce the number of wounds per gunshot victim; (5) reduce the lethality of gunshot injuries when they do occur; and (6) reduce the substantial societal costs that flow from shootings.

I. Criminal Uses and Dangers of Assault Weapons and LCMs

11. The precise definition of “assault weapon” varies among the different federal, state, and local jurisdictions that have adopted bans on such weapons, although there is substantial overlap. Assault weapons are usually defined as a subset of semiautomatic weapons,⁶ and generally include semiautomatic pistols, rifles, and shotguns with military features that are conducive to military and potential criminal applications, but that are unnecessary in shooting sports or for self-defense.
12. The ability to accept a detachable magazine, including large capacity magazines, is a common feature in most assault weapon definitions, including Connecticut’s. However, LCMs can be and frequently are used with guns that fall outside of the definition of assault weapon.
13. One of the core rationales for banning or otherwise limiting the availability of both assault weapons and LCMs is that they are particularly dangerous, insofar as they are capable of and facilitate the wounding and killing of larger numbers of people because of their capacity for rapid firing of high numbers of rounds in a short period of time. The evidence supports this rationale. As discussed more fully below, attacks with semiautomatics—especially assault weapons and other guns with LCMs—generally result in more shots fired, persons wounded, and wounds per victim than do other gun attacks. *See Koper 2004*, p. 97. The rapid fire capability of these weapons thus increases the number and lethality of injuries from gun violence in which they are used.
14. Likely due to these characteristics, assault weapons and LCMs have been frequently and disproportionately used in mass public shootings and murders of law enforcement officers, crimes for which firearms with greater firepower would seem to be particularly desirable and effective. *See Koper 2004*, pp. 14-19, 87.
15. During the 1980s and early 1990s, for example, assault weapons and other semiautomatic firearms equipped with LCMs were involved in a number of highly publicized mass

⁶ A semiautomatic weapon is a gun that fires one bullet for each pull of the trigger and, after each round of ammunition is fired, automatically loads the next round and cocks itself for the next shot. This semiautomatic firing action permits a faster rate of fire relative to non-semiautomatic firearms. Semiautomatics, however, are not to be confused with fully automatic weapons (*i.e.*, machine guns), which fire continuously so long as the trigger is depressed. Fully automatic weapons have been illegal to own in the United States without a federal permit since 1934. *See Koper 2004*, p. 4 n.1.

shootings. These incidents heightened public concern about the accessibility of high powered, military-style weaponry, and other guns capable of discharging high numbers of rounds in a short period of time. Such incidents include:

- On July 18, 1984, James Huberty killed 21 persons and wounded nineteen others in a San Ysidro, California McDonald's restaurant, using an Uzi carbine, a shotgun, and another semiautomatic handgun equipped with a 25-round LCM;
- On January 17, 1989, Patrick Purdy used a civilian version of the AK-47 military rifle and a 75-round LCM to open fire in a schoolyard in Stockton, California, killing five children and wounding twenty nine other persons;
- On September 14, 1989, Joseph Wesbecker, armed with an AK-47 rifle, two MAC-11 handguns, a number of other firearms, and multiple 30-round magazines, killed seven and wounded fifteen people at his former workplace in Louisville, Kentucky;
- On October 16, 1991, George Hennard, armed with two semiautomatic handguns with LCMs (and reportedly a supply of extra LCMs), killed twenty two people and wounded another twenty three in Killgren, Texas; and
- On December 7, 1993, Colin Ferguson, armed with a handgun and multiple LCMs, opened fire on commuters on a Long Island Rail Road train, killing six and wounding nineteen.

See Koper 2004, p. 14.⁷

16. More recently, in the years since the expiration of the federal ban in 2004, there have been numerous other mass shooting incidents involving previously banned assault weapons and/or LCMs. Since 2007, for example, there have been at least fifteen incidents in which offenders using assault-type weapons or other semiautomatics with LCMs have wounded and/or killed eight or more people.⁸ Some of the more notorious of these incidents, both nationally and in Connecticut, include:

⁷ Additional details regarding these incidents were obtained from: Violence Policy Center, *Mass Shootings in the United States Involving High-Capacity Ammunition Magazines* (Washington, D.C. 2012) (hereinafter, "Violence Policy Center 2012"); Mark Follman, Gavin Aronsen & Deanna Pan, *US Mass Shootings, 1982-2012: Data from Mother Jones' Investigation* (updated Feb. 27, 2013), available at <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data> (hereinafter, "Follman, Aronsen & Pan 2013"); and Mark Follman, Gavin Aronsen & Jaeah Lee, *More Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines* (Feb. 27, 2013), available at <http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazines-mass-shootings-feinstein> (hereinafter, "Follman, Aronsen & Lee 2013").

⁸ See Violence Policy Center 2012; Follman, Aronsen & Pan 2013; Follman, Aronsen & Lee 2013. The reference above to 15 cases is based on a tabulation from these sources.

- Blacksburg, Virginia, April 16, 2007: Student Seung-Hui Cho killed thirty three (including himself) and wounded seventeen on the campus of Virginia Tech., armed with a handgun and multiple LCMs;
- Binghamton, New York, April 3, 2009: Jiverly Wong killed fourteen (including himself) and wounded four at the American Civic Association immigration center, armed with two handguns and a 30-round LCM;
- Tucson, Arizona, January 8, 2011: Jared Loughner, armed with a handgun and multiple LCMs, killed six and wounded thirteen, including Congresswoman Gabrielle Giffords and a federal judge;
- Aurora, Colorado, July 20, 2012: James Holmes killed twelve and wounded fifty eight in a movie theater, armed with a Smith & Wesson M&P15 assault rifle, 100-round LCMs, and other firearms; and
- Newtown, Connecticut, December 14, 2012: Adam Lanza killed twenty six (twenty of whom were young children) and wounded two at Sandy Hook Elementary School, armed with a Bushmaster AR-15-style assault rifle, two handguns, and multiple LCMs.⁹

See Koper 2013, p. 157-58.

A. Assault Weapons

17. Though estimates are imprecise, assault weapons represented only a small percentage of the gun stock in this country when the federal ban was enacted, accounting for less than 1% of the gun stock around 1990 and about 2.5% of guns produced domestically between 1989 and 1993. This suggests that they likely accounted for 1% or less of the civilian gun stock at the time of the ban. Numerous studies suggest, however, that assault weapons accounted for up to 8% of guns used in crime overall before the federal ban, with most studies suggesting they accounted for about 2%. Further, evidence from studies of gun buyers suggests that assault pistols are at higher risk of being used in crime than other types of handguns.
18. In addition, there is some evidence that assault weapons are used more disproportionately in certain kinds of serious crime—in particular mass public shootings and killing of law enforcement officers—relative to their market presence.
19. Several local and national police data sources that my colleagues and I analyzed indicate that, before the ban went into effect, the most common assault weapons prohibited by the federal ban accounted for up to 6% of murders, up to 9% of murders of law enforcement officers, up to 13% of all mass shootings in which four or more people died (figures discussed below show that assault weapons are more heavily represented in mass public shootings and mass shootings involving particularly high numbers of victims), and up to 4% of other serious crimes. *See Koper 2004*, p. 15.

⁹ Additional details regarding these incidents were obtained from: Violence Policy Center 2012; Follman, Aronsen & Pan 2013; and Follman, Aronsen & Lee 2013.

20. While the evidence suggests that assault weapons are used in a small share of gun crimes overall, these weapons pose particular dangers in connection with two very visible and destructive aspects of crime and violence: mass shootings and murders of police. *See Koper 2004*, pp. 14-19, 87.
21. For example, evidence from before the federal ban indicates that assault weapons and other semiautomatics with LCMs were involved in 40% of mass shooting incidents that occurred between 1984 and 1993 in which six or more persons were killed or a total of 12 or more were wounded. *See Koper 2004*, p. 14.¹⁰
22. More recently, a media investigation by *Mother Jones* magazine analyzed and compiled data on sixty two public mass shooting incidents that involved the death of four or more people between 1982 and 2012.¹¹ That study indicates that 42% of the incidents involved an assault weapon, and more than half of the perpetrators possessed assault weapons, LCMs, or both.
23. Working under my direction, a graduate student at George Mason University recently analyzed the *Mother Jones* data for his Master's thesis, and compared the number of deaths and fatalities across cases that involved assault weapons and large capacity magazines, and those that did not. With regard to assault weapons, although he found no difference in the average number of fatalities, he did find an increase in gunshot victimization. Specifically, he found that an average of 11.04 people were shot in public mass shootings involving assault weapons, compared to 5.75 people shot in non-assault weapon cases. This is a statistically significant finding, meaning that it was not likely due to chance. As a result, the total average number of people killed and injured in assault weapon cases was 19.27, compared to 14.06 in non-assault weapon cases.¹²
24. Assault weapons also appear to be used in a disproportionately high number of shootings of law enforcement officers. Specifically, although prior to the federal ban they represented less than 5% of crime guns in most data sources my colleagues and I analyzed, they were involved in 7% to 9% of gun murders of police from 1992 to 1994, and as many as 16% of gun murders of police in 1994 (the same year that the ban went into effect). *See Koper 2004*, p. 15 & n.12; *Koper 1997*, pp. 98-100.
25. This disproportionate use of assault weapons in these crimes is consistent with other data suggesting that the military features and large ammunition capacity of assault weapons

¹⁰ These figures are based on tabulations that I and my research team did using data reported in Gary Kleck, *Targeting Guns: Firearms and Their Control* (1997), pp. 124-26, 144.

¹¹ This investigation and compilation of data on mass shootings was done by reporters at *Mother Jones* magazine. *See* Follman, Aronsen & Pan 2013; Follman Aronsen & Lee 2013; Mark Follman, Gavin Aronsen & Deanna Pan, *A Guide to Mass Shootings in America* (updated Feb. 27, 2013), available at <http://www.motherjones.com/politics/2012/07/mass-shootings-map>.

¹² *See* Dillon, Luke. (2013). *Mass Shootings in the United States: An Exploratory Study of the Trends from 1982 to 2012*. Master's thesis. Fairfax, VA: Department of Criminology, Law and Society, George Mason University.

make them more attractive to criminals overall, and in particular to offenders with serious criminal histories, than to non-criminal gun owners. Perhaps the best evidence of this comes from a study of young adult handgun buyers in California that found buyers with minor criminal histories (*i.e.*, arrests or misdemeanor convictions that did not disqualify them from purchasing firearms) were more than twice as likely to purchase assault pistols than were buyers with no criminal history (4.6% to 2%, respectively). Those with more serious criminal histories were even more likely to purchase assault pistols: 6.6% of those who had been charged with a gun offense bought assault pistols, as did 10% of those who had been charged with two or more serious violent offenses. The study also found that assault pistol purchasers were more likely to be arrested subsequent to their purchases than were other gun purchasers. Among handgun purchasers with prior histories of violence, those who purchased assault-type pistols were three times as likely as other handgun purchasers to be subsequently charged with a new offense involving guns or violence. *See Koper 2004*, pp. 17-18.

26. Although less reliable, some survey studies have indicated even higher ownership of assault weapons among criminals and other high-risk individuals, particularly urban gang members. *See Koper 2004*, p. 16.

B. LCMs

27. LCMs appear to present even greater dangers to crime and violence than assault weapons alone, in part because they are more prevalent and can be and are used as ammunition feeding devices in both assault weapons and non-assault weapons.
28. Prior to the federal assault weapon and LCM bans, for example, guns with LCMs were used in roughly 13-26% of gun crimes. *See Koper 2004*, pp. 15, 18-19; *Koper 2013*, pp. 161-62.
29. And, in New York City, the New York State Division of Criminal Justice Services reported that, in 1993, at least 16%, and as many as 25%, of guns recovered in murder investigations were equipped with LCMs. *See Koper 2004*, p. 18.¹³
30. Like assault weapons, it also appears that firearms (assault and non-assault) with LCMs have been used disproportionately in killings of law enforcement officers. The available data indicates that LCMs were used in somewhere between 31% and 41% of gun murders of police before enactment of the federal ban. *See Koper 2004*, p. 18; *Koper 2013*, p. 162.
31. The evidence of public safety threat posed by LCMs is even stronger in the context of public mass shootings. Prior to the federal ban semiautomatics with LCMs (including assault weapons) were involved in 40% of the mass shooting incidents that occurred

¹³ The minimum estimate is based on cases in which discharged firearms were recovered, while the maximum estimate is based on cases in which recovered firearms were positively linked to the case with ballistics evidence. *See Koper 2004*, p. 18 n.15.

between 1984 and 1993 in which six or more persons were killed or a total of 12 or more were wounded. See *Koper 2004*, p. 14; *Koper 2013*, p. 161. And the recent *Mother Jones* investigative report shows that, since 1982, half of all public mass shooters who killed four or more persons possessed LCMs when carrying out their attacks.¹⁴

32. Firearms with LCMs, both assault-type and non-assault-type, also are more destructive and cause more death and injury in gun crime.
33. As discussed above, for example, a graduate student at George Mason University, working at my direction, recently analyzed the *Mother Jones* data as part of his Master's thesis. He compared cases where an LCM was known to have been used (or at least possessed by the shooter) against cases where either an LCM was not used or known to have been used. He found that the LCM cases (which included assault weapons) had significantly higher numbers of fatalities and casualties; an average of 10.19 fatalities in LCM cases compared to 6.35 fatalities in non-LCM/unknown cases. He found an average of 12.39 people were shot but not killed in public mass shooting involving LCMs, compared to just 3.55 people shot in the non-LCM/unknown LCM shootings. These findings reflect a total victim differential of 22.58 killed or wounded in the LCM cases compared to 9.9 in the non-LCM/unknown LCM cases.¹⁵ All of these differences were statistically significant and not a result of mere chance.
34. In my own studies, I similarly found that from 1984 through 1993, offenders who clearly possessed assault weapons or other semiautomatics with LCMs on average wounded or killed more than twice as many victims compared to offenders who used other kinds of weapons (an average of twenty nine victims compared to thirteen) in mass shooting incidents that resulted in at least six deaths or at least twelve total gunshot victims. See *Koper 2004*, pp. 85-86; *Koper 2013*, p. 167.
35. Localized studies of gunshot victimizations also corroborate this conclusion. Between 1992 and 1995, gun homicide victims in Milwaukee who were killed by guns with LCMs had 55% more wounds than those victims killed by non-LCM firearms. See *Koper 2004*, p. 86.
36. In Jersey City in the 1990s, criminals who used semiautomatic pistols fired roughly 23% to 61% more shots and wounded 15% more people than did those who used revolvers. Although only 2.5% of those attackers fired more than ten shots, those incidents had a 100% injury rate and accounted for nearly 5% of all gunshot victims. *Koper 2004*, p. 84-85, 90-91; *Koper 2013*, p. 167.

¹⁴ See Follman, Aronsen & Lee 2013.

¹⁵ See Dillon, Luke. (2013). *Mass Shootings in the United States: An Exploratory Study of the Trends from 1982 to 2012*. Master's thesis. Fairfax, VA: Department of Criminology, Law and Society, George Mason University. The patterns were also very similar when comparing the LCM cases against just those cases in which it was clear that an LCM was not used (though this was a very small number).

37. The trend in more lethal and injurious outcomes of crimes committed with LCMs repeated itself in Baltimore. In an analysis I conducted of guns recovered by police in that city, I found, among other things, that guns used in incidents where a victim was shot were 17% to 26% more likely to have LCMs than guns used in gunfire cases with no wounded victims. Similarly, guns linked to murders were 8% to 17% more likely to have LCMs than guns linked to non-fatal gunshot victimizations. *See Koper 2004*, p. 87.
38. In short, while tentative, the available evidence suggests that, more often than not, attacks with semiautomatics—particularly those equipped with LCMs—result in more shots fired, more victims, and more wounds per victim. Increased numbers of shots fired in a gunfire incident is significant because it increases the number of gunshot victims, and because gunshot victims who are shot more than once are 63% more likely to die than victims who receive only one wound. *See Koper 2004*, p. 87.

II. The 1994 Federal Assault Weapons Ban

A. Provisions of the Federal Assault Weapons Ban

39. The federal assault weapons ban, which was enacted on September 13, 1994, prohibited and restricted the manufacture, transfer, and possession of certain semiautomatic firearms designated as assault weapons and certain LCMs. Pub. L. No. 103-322, tit. XI, subtit. A, 108 Stat. 1796, 1996-2010 (1994).
40. The federal assault weapons ban expired on September 13, 2004 by operation of the statute, and was not renewed by Congress. *Id.* § 1101 05(2).

Banned assault weapons and features

41. The federal ban was not a prohibition on all semiautomatic firearms; rather, it was directed against those semiautomatics firearms having features that are useful in military and criminal applications, but that are unnecessary or unsuitable in shooting sports or for self-defense.
42. Banned firearms were identified under the federal law in two ways. First, the federal ban specifically prohibited eighteen models and variations of semiautomatic weapons by name (*e.g.*, the Intratec TEC-9 pistol and the Colt AR-15 rifle), as well as revolving cylinder shotguns. The list also included a number of foreign rifles that the federal government had banned from importation into the country beginning in 1989 (*e.g.*, the Avtomat Kalashnikov models). Several of the weapons banned by name were civilian copies of military weapons that accepted ammunition magazines made for those military weapons.¹⁶

¹⁶ A list of the weapons banned by name in the 1994 law is set forth in Table 2-1 of *Koper 2004*, p. 5.

43. Second, the federal ban contained a “features test” provision that generally prohibited other semiautomatic weapons having two or more military-style features. Examples of such features include pistol grips on rifles, flash suppressors, folding rifle stocks, threaded barrels for attaching silencers, and the ability to accept detachable magazines.¹⁷

Banned LCMs

44. The federal ban also prohibited most ammunition feeding devices that could hold more than ten rounds of ammunition, which I have referred to herein as “large capacity magazines” or “LCMs.” The federal ban extended to LCMs or similar devices that had the capacity to accept more than ten rounds of ammunition, or that could be “readily restored or converted or to accept” more than ten rounds of ammunition.¹⁸

Exemptions and limitations to the federal ban

45. The federal ban contained several broad exemptions that delayed its impact. *See Koper 2004*, pp. 10-11. First, assault weapons and LCMs manufactured before the effective date of the ban were “grandfathered” in, and thus remained legal to not only own but also to transfer. Estimates suggest that there may have been upward of 1.5 million assault weapons and 25 to 50 million LCMs exempted from the federal ban. The statute also allowed the importation of an additional 4.8 million pre-ban LCMs into the country from 1994 through 2000, and an additional 42 million pre-ban LCMs from 2000-2004. *See Koper 2004*, p. 10; *Koper 2013*, pp. 160-61.
46. Furthermore, although the federal ban prohibited “copies or duplicates” of the assault weapons enumerated in the act, federal authorities applied this prohibition only to exact copies in enforcing this provision. The federal ban also did not apply to a semiautomatic weapon possessing only one military-style feature.¹⁹ Thus, many civilian rifles patterned after military weapons were legal under the ban with only slight modifications. *See Koper 2004*, pp. 10-11.²⁰

¹⁷ The “features test” of the federal assault weapon ban is described more fully in Table 2-2 of *Koper 2004*, p. 6, and in Table 12-1 of *Koper 2013*, p. 160.

¹⁸ The federal ban exempted attached tubular devices capable of operating only with .22 caliber rimfire ammunition.

¹⁹ Notwithstanding these “grandfathering” exemptions, any firearms imported into the country still must meet the “sporting purposes test” established under the federal Gun Control Act of 1968. In 1989, ATF determined that foreign semiautomatic rifles having any one of a number of named military features (including those listed in the features test of the federal ban) fail the sporting purposes test and cannot be imported into the country. In 1998, ATF added the ability to accept a LCM made for a military rifle to the list of disqualifying features. Consequently, it was possible for foreign rifles to pass the features test of the federal assault weapons ban but not meet the sporting purposes test for imports. *See Koper 2004*, p. 10 n.7.

²⁰ Examples of some of these modified, legal versions of banned guns are listed in Table 2-1 of *Koper 2004*, p. 5.

B. Impact of the Federal Assault Weapons Ban

Assault weapons

47. Prior to the federal ban, the best estimates suggest that there were approximately 1.5 million privately owned assault weapons in the United States as of 1993, and they likely accounted for 1% or less of the total civilian gun stock. *See Koper 2013*, pp. 160-61; *Koper 2004*, p. 10.
48. Manufacturers increased production and sale of assault weapons during the Congressional debate about the federal ban that was ultimately enacted in 1994. This surge in demand helped drive up the prices for many assault weapons (notably assault pistols) and appeared to make them less accessible and affordable to criminal users. *See Koper 2013*, pp. 162-63; *Koper 2004*, pp. 25-38.
49. After the federal assault weapons ban was enacted in 1994, crimes with assault weapons declined. In particular, across six major cities (Baltimore, Miami, Milwaukee, Boston, St. Louis, and Anchorage), the share of gun crimes involving assault weapons declined by 17% to 72%, based on data covering all or portions of the 1995-2003 post-ban period. *See Koper 2004*, pp. 2, 46-60; *Koper 2013*, p. 163.
50. The pattern from these six major cities is consistent with that found in the national data on guns recovered by law enforcement and reported to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) for investigative gun tracing.²¹ Specifically, although the interpretation is complicated by changes in tracing practices that occurred during this time, the national gun tracing data suggests that use of assault weapons in crime declined after 1994 because the percentage of gun trace requests submitted to ATF involving assault weapons fell 70% between 1992/93 and 2001/02 (from 5.4% to 1.6%). And, notably, this downward trend did not begin until 1994, the year the federal ban became effective. *See Koper 2004*, pp. 2, 39-46, 51-52; *Koper 2013*, p. 163.²²
51. In short, my research and analysis indicates that the criminal use of assault weapons declined after the federal assault weapons ban was implemented in 1994, independently of trends in gun crime. *See Koper 2004*, pp. 51-52; *Koper 2013*, p. 163.
52. The reduction in the use of assault pistols in crime was the biggest factor in criminal use of assault weapons. Assessment of trends in the use of assault rifles was complicated by

²¹ A gun trace is an investigation that typically tracks a gun from its manufacture to its first point of sale by a licensed dealer. It is undertaken by the ATF, upon request by a law enforcement agency. The trace is generally initiated when the requesting law enforcement agency provides ATF with a trace request including identifying information about the firearm, such as make, model and serial number. For the full discussion of the use of ATF gun tracing data, *see* section 6.2 of *Koper 2004*, pp. 40-46.

²² These findings are consistent with other tracing analyses conducted by ATF and the Brady Center to Prevent Gun Violence. *See Koper 2004*, p. 44 n.43.

the rarity of crimes with such rifles and by the substitution in some cases of post-ban rifles that were very similar to the banned models, but remained legal with slight modification. See ¶46, *supra*. The decline in assault weapon use was not completely offset by use of substitution assault weapon-type models. Even counting these substitute models, the share of crime guns that were assault weapons fell 24% to 60% across most of the local jurisdictions studied. Patterns in the local data sources also suggested that crimes with assault weapons were becoming increasingly rare as the years passed. See *Koper 2004*, pp. 46-52; *Koper 2013*, pp. 163-64.

53. Arriving at a nationwide estimate of the number of assault weapons crimes prevented due to the federal ban is made more complicated by the range of estimates of assault weapon use and changes therein derived from different data sources. Notwithstanding these complexities, it is my opinion based on my review of multiple data sources that the federal ban prevented a few thousand crimes with assault weapons annually. For example, using 2% as the best estimate of the percentage of gun crimes involving assault weapons prior to the ban, and 40% as a reasonable estimate of the post-ban drop in this figure, implies that almost 2,900 murders, robberies, and assaults with assault weapons were prevented in 2002 as a result of the federal ban. See *Koper 2004*, p. 52 n.61.²³

LCMs

54. Assessing trends in LCM use is much more difficult because there was, and is, no national data source on crimes with LCMs, and few local jurisdictions maintain this sort of information. Also LCMs, unlike firearms, do not have serial numbers and therefore are not always uniquely identifiable.
55. It was nevertheless possible to examine trends in the use of guns with LCMs in four jurisdictions: Baltimore, Milwaukee, Anchorage, and Louisville. In all four jurisdictions, the overall share of crime guns equipped with LCMs rose or remained steady through at least the late 1990s. This failure to reduce overall LCM use for at least several years after the federal ban was likely attributable to the immense stock of exempted pre-ban LCMs, which, as noted, was enhanced by post-ban imports. See *Koper 2004*, pp. 68-79; *Koper 2013*, p. 164.
56. Notwithstanding that initial increase, the criminal use of LCMs may have been starting to drop by the early 2000s. See *Koper 2013*, p. 164; *Koper 2004*, pp. 68-79. Although the data in the four cities I investigated were too limited and inconsistent to draw any clear overall conclusions in this regard, such a deferred decline in LCM use would make sense because of the grandfathering provision in the federal law, which delayed the

²³ It is likely that many of these crimes still were committed with other guns that the perpetrator substituted for the banned assault weapon. Even if that is the case, however, for the reasons discussed it is likely that the number of victims per shooting incident, and the number of wounds inflicted per victim, was diminished in some of those instances in which an assault weapon or LCM was no longer available to the assailant.

effectiveness of the ban by requiring more time for grandfathered LCMs to be taken out of circulation.

57. A later investigative study by the *Washington Post* in January 2011 provides some additional evidence that the ban may have reduced crimes with LCMs by the time it expired in 2004. In its study, the *Washington Post* analyzed data maintained by the Virginia State Police about guns recovered in crimes by local law enforcement officers across the state. Those data indicated that between 1994 and 2004, the period the federal ban was in effect, the share of crime guns with LCMs declined by roughly 31% to 44%, and then rebounded after the ban was allowed to expire. Specifically, although the percentage of recovered crime guns with LCMs generally ranged between 13% and 16% from 1994 through 2000, by the time the ban had a chance to run its full course through 2004 that percentage fell to 9% of crime guns recovered. Following expiration of the federal ban in 2004, the share of Virginia crime guns with an LCM rose again to 20% of recovered crime guns by 2010. See *Koper 2013*, p. 165.²⁴
58. Although it is difficult to extrapolate the Virginia data to the nation as a whole, these data do suggest that the federal ban may have been reducing the use of LCMs in gun crime by the time it expired in 2004, and that it could have had an even stronger impact had it remained in effect.

Results of the Federal Assault Weapons Ban

59. The federal ban's exemption of millions of pre-ban assault weapons and LCMs meant that the effects of the law would occur only gradually, and that those effects were growing when the ban expired in 2004. Nevertheless, while the ban did not appear to have a measurable effect on overall gun crime in terms of crimes committed (due to criminals' ability to substitute other guns in their crimes), the evidence does suggest a significant impact on the number of gun crimes involving assault weapons. Had it remained in effect over the long-term, moreover, it could have had a potentially significant impact on the number of crimes involving LCMs.

²⁴ The results of the *Washington Post*'s original investigation (which are conveyed in *Koper 2013*, p. 165) are reported in David S. Fallis & James V. Grimaldi, *Va. Data Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post, Jan. 23, 2011, available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html>. Earlier this year, the *Post* updated this analysis and slightly revised the figures it reported by identifying and excluding from its counts more than one thousand .22-caliber rifles with large-capacity tubular magazines, which were not subject to the federal ban (and which are similarly not subject to Connecticut's ban). See David S. Fallis, *Data Indicate Drop in High-Capacity Magazines During Federal Gun Ban*, Wash. Post, Jan. 10, 2013, available at http://www.washingtonpost.com/investigations/data-point-to-drop-in-highcapacity-magazines-during-federal-gun-ban/2013/01/10/d56d3bb6-4b91-11e2-a6a6-aabac85e8036_story.html. This updated data, is reported above.

60. These implications are important. By reducing the number of crimes in which assault weapons and LCMs are used and forcing criminals to use less lethal weapons and magazines, the federal ban could have potentially prevented hundreds of gunshot victimizations annually. It also could have reduced the lethality and injuriousness of those gunshot victimizations that do occur by reducing the number of wounds per victim. *See Koper 2004*, p. 87.
61. Using the Jersey City data as a tentative guide, it is possible that the federal ban eventually could have reduced gunshot victimizations by up to 5% if it had remained in effect long enough to meaningfully reduce the number of LCMs in circulation. *See Koper 2013*, p. 167. Although that may be a small percentage, based on 2010 statistics from the Center for Disease Control and Prevention it would correlate to 3,241 fewer people being wounded or killed as a result of gun crime on an annual basis. *See id.* Even if the federal ban's effect would not have been that substantial, however, a smaller reduction in the number and lethality of gunshot victimizations could still have yielded significant societal benefits.
62. In addition to the inherent benefits of such reductions, the federal ban also potentially could have produced millions of dollars of cost savings per year in medical care alone. Some studies have shown, for example, that the lifetime medical costs for gunshot injuries are about \$28,894 (adjusted for inflation). Even if the federal ban would have been able to reduce gunshot victimizations by only 1%, that would result in roughly \$18,781,100 in lifetime medical cost savings from the shootings prevented each year.²⁵ *See Koper 2013*, pp. 166-67; *see also Koper 2004*, p. 100 n.118.
63. The cost savings potentially could have been substantially higher if one looks beyond just medical costs. For example, some estimates suggest that the full societal costs of gun violence—including medical, criminal justice, and other government and private costs (both tangible and intangible)—could be as high as \$1 million per shooting. Based on those estimates, even a 1% decrease in shootings could result in roughly \$650 million in cost savings to society from shootings prevented each year. *See Koper 2013*, pp. 166-67.

III. The Act Concerning Gun Violence Prevention And Children's Safety

64. As noted above, the State of Connecticut recently enacted the Act Concerning Gun Violence Prevention And Children's Safety ("the Act"). Among other things, the Act strengthened Connecticut's existing ban on assault weapons, which was similar to the standards set forth in the 1994 federal assault weapons ban. It also imposed a new ban on LCMs. I examine these prohibitions and restrictions on assault weapons and large-capacity magazines, and opine as to their potential impact and likely efficacy, below.²⁶

²⁵ These savings calculations are based on a report by the federal Centers for Disease Control and Prevention which indicated that there were 64,816 gun homicides and other non-fatal assault-related shootings in the United States in 2010. *See Koper 2013*, pp. 166-67.

²⁶ The Act is a comprehensive law that contains many other provisions, including new regulations on long guns, ammunition, firearm storage, mental health, and school safety. It also

A. Connecticut's Assault Weapons Ban

65. In the Act, Connecticut strengthened its existing assault weapons ban by updating the list of enumerated weapons and the military features test to make it more stringent, and more consistent with modern assault weapon features. Like the 1994 federal ban, Connecticut's previous ban consisted of both a list of specifically prohibited firearms, and a "features test" that generally prohibited semiautomatic weapons having two or more military-style features and, for rifles, that also had a detachable magazine.
66. The Act broadens the assault weapon ban by including a number of additional specifically identified semiautomatic centerfire rifles, semiautomatic pistols, and semiautomatic shotguns. It also prohibits any semiautomatic centerfire rifle or semiautomatic pistol that has a fixed magazine with the ability to accept more than ten rounds of ammunition, and any semiautomatic shotgun that has the ability to accept a detachable magazine or a revolving cylinder. P.A. 13-3, § 25(1)(B)-(D); *id.*, § 25(1)(E)(ii), (v), (vii), (viii).
67. It also provides that any semiautomatic centerfire rifle or semiautomatic pistol that has an ability to accept a detachable magazine need only have one of the listed enumerated military-style features to qualify as an assault weapon (instead of the two feature requirement that existed previously). It also amended the number and type of those prohibited features. *Id.*, § 25(1)(E)(i), (iv).
68. The Act does not ban any weapons that were lawfully possessed prior to its effective date. Thus, those who lawfully possessed assault weapons at that time may continue to do so as long as they obtain a certificate of possession for it and possess it in compliance with all applicable state laws and regulations. *Id.*, § 28(a), (f)

B. Connecticut's LCM Ban

69. The Act also imposed a ban on LCMs which, as noted, largely mirrors the 1994 federal ban. P.A. 13-3, § 23. As with assault weapons, the Act does not ban any LCMs that were lawfully possessed prior to its effective date. Those who lawfully possessed an LCM at that time may continue to do so as long as they declare it to the Department of Emergency Services and Public Protection, and possess it in compliance with all applicable state laws and regulations. *Id.*, § 23(e)(3), § 24(a), (f).
70. One important difference between the Connecticut and federal LCM ban is that, unlike the federal ban, the Act prohibits any individual who possesses a grandfathered LCM from selling or transferring it to another individual. Importantly, moreover, LCMs

establishes a deadly weapon offender registry, and increases the penalties for certain gun-related offenses. I limit my analysis here to Connecticut's bans on assault weapons and large-capacity magazines.

generally may not be imported into the state after the Act's effective date, including those produced before the effective date of the Act. *Id.*, § 23(b), (d), (f).

C. The Potential Impact and Efficacy of Connecticut's Bans

71. The Act was only recently passed and not all of its provisions have gone into effect, and I have not undertaken any study or analysis of its effects. Nevertheless, it is my considered opinion that, based on the similarities of the Act to the federal ban, the impacts of the federal ban and the ways in which the Act address some of the weaknesses of the federal ban, the Act is likely to advance Connecticut's interest in protecting public safety.
72. First, the Act strengthens the assault weapons ban by moving it to a "one-feature" test rather than the "two-feature" test that existed under the federal ban and Connecticut's original ban. This change is likely to substantially limit—if not eliminate—the ability of gun manufacturers to quickly adopt minor cosmetic changes to their firearms that make them technically legal but that circumvent the purpose and effect of the law to remove military style assault weapons from civilian use. In doing so, the Act is likely to meaningfully limit the number of weapons with military-style characteristics considered conducive to criminal applications in Connecticut, and to further reduce the use of such weapons in crime.
73. Second, Connecticut's LCM ban is more robust than the expired federal ban, and may be more effective more quickly. Unlike the grandfather provision in the federal ban, the grandfathered LCMs in Connecticut may not be sold or transferred after the effective date of the Act. Unlike the experience under the federal ban, moreover, banned LCMs in Connecticut may not be imported into the state after the Act's effective date. Although these changes will not eliminate the lag in effectiveness created by the grandfather provision, they likely will minimize it and thereby reduce the time it otherwise would take for the benefits of the LCM ban to take hold.
74. Even with the grandfather provision, it is my opinion that Connecticut's LCM ban is likely to have a meaningful impact on gun crime if allowed to operate over the long-run. As discussed, the analogous grandfather provision in the federal ban and the immense stock of pre-ban LCMs that existed in this country delayed any impact that the federal LCM ban could have had on the use of such weapons in crime. The *Washington Post* study found, however, that the number of recovered crime guns with LCMs in Virginia nevertheless was beginning to substantially decline just as the ban expired. This suggests that, had the federal ban been renewed by Congress in 2004 and not allowed to expire, it could have had a meaningful impact on the use of such weapons in crime. That impact likely would have increased the longer the ban remained in effect. Thus, although Connecticut's LCM ban contains an analogous grandfather provision, it is reasonable to assume that it likewise would have a meaningful impact on the use of LCMs in crime if allowed to operate over the long-term.
75. If that is the case, it is likely that the Act could have a meaningful impact on public safety. As discussed above, *see* ¶¶8, 32-38, *supra*, the available evidence suggests that

attacks with semiautomatics, particularly assault weapons and other semiautomatics equipped with LCMs, result in more shots being fired, leading to both more injuries and injuries of greater severity. If the Act is allowed to operate over the long-term, it should reduce the number of LCMs in circulation and thereby reduce the number and lethality of gunshot victimizations. The potential benefits to victims and their families is obvious, and may well reduce the associated medical costs and overall costs to society. *See Koper 2004*, pp. 83-91, 100 n.118.

76. While the Act's provisions prohibiting and restricting assault weapons and large-capacity magazines certainly will not be a panacea for the gun violence epidemic in Connecticut or the United States more broadly, they appear to be reasonable and well-constructed measures that, like federal restrictions on fully automatic weapons and armor-piercing ammunition, will help prevent the spread of particularly dangerous weaponry.
77. In sum, therefore, it is my considered opinion, based on my nineteen years as a criminologist studying firearms generally and my detailed study of the federal assault weapon ban in particular, that Connecticut's bans on assault weapons and large-capacity magazines, and particularly its ban on LCMs, have the potential to prevent and limit shootings in the state over the long-run. In doing so, the Act is likely to advance Connecticut's interest in reducing the harms caused by gun violence.

IV. Plaintiffs' and Amici's Reliance On My Reports

78. I have read the Plaintiffs' brief in support of their motion for preliminary injunction (Document No. 15), their brief submitted in support of their motion for summary judgment (Document No. 62), and their Local Rule 56(a)(1) statement (Document No. 61). I also have read the briefs submitted by the *amici* in support of the Plaintiffs' motion (Document Nos. 33, 34, and 36). I hereby respond to those parties' reliance on, and characterizations of, the findings and conclusions in my reports.
79. As a general matter, the Plaintiffs and *amici* frequently cherry pick isolated statements from my studies and take them out of context. While the majority of their references to my works accurately quote from my reports, in most instances they do not reflect the totality of my discussion or the conclusions that I actually reached. The Plaintiffs and *amici* also rely heavily on my 1997 report which, as discussed above, was for the most part superseded by the more complete and up to date evidence contained in my 2004 and 2013 reports. I respond to some specific representations made by the Plaintiffs and *amici* below.
80. First, in the *amicus* brief filed by Pink Pistols, that group states that my reports support the conclusion that "this kind of legislation has no discernible impact on firearms violence." (Doc. 36 at 27). Specifically, they quote a variety of statements in my 1997 and 2004 reports to the effect that there is little evidence that such bans will have an impact on the lethality and injuriousness of gun violence based on indicators such as the number of victims per gun homicide incident, the number of gunshot wounds per victim,

or the proportion of gunshot victims with multiple wounds. (*Id.* at 27-28 and n.71). In doing so, Pink Pistols does not fully convey the conclusions in my reports.

81. My research revealed that gun crimes involving assault weapons and other guns with LCMs do result in more shots fired, more victims shot, more gunshots per victim, and more lethal injuries. Although it is true that my research team and I cannot clearly credit the federal ban with decreasing gunshot victimizations during the time it was in effect, as explained in my report, that is due in large part to the delay in the ban's effectiveness caused by its grandfather provision and the large stock of pre-ban LCMs that remained in circulation.²⁷ In other words, had the federal ban remained in effect long enough to reduce the stock of those pre-ban LCMs—which the *Washington Post* study suggests it may have begun to do just as it expired in 2004—it is more likely that we would have seen a corresponding drop in the gun violence lethality indicators discussed above.²⁸
82. Pink Pistols also quotes my 2004 report for the proposition that, “[s]hould it be renewed, the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement”, that “the evidence is not strong enough for us to conclude that there was any meaningful effect [on gun violence] (i.e., that the effect was different from zero)”, and that “there is not a clear rationale for expecting the ban to reduce assaults and

²⁷ Pink Pistols cites my 1997 report for the proposition that “in fact, both ‘victims per incident’ and ‘the average number of gunshot wounds per victim’ *actually increased* under the Ban—although not by a statistically significant margin.” (Document 36 at 28 n.71, citing *Koper 1997* at 85-86, 88, 91). Notably, the increase to which I referred in my 1997 report occurred during a period in which we also saw an increase in the use of LCMs in gun crime due to the federal ban’s grandfathering provision and the large numbers of LCMs being imported into the country. See ¶¶55-58, *supra*. If anything, therefore, that finding corroborates the link between LCMs and increased lethality of gunshot victimizations.

²⁸ Pink Pistols contends that I concluded in my 2013 report that the *Washington Post* study nevertheless “showed no discernible reduction in the lethality or injuriousness of gun violence during the post-ban years.” (Doc. 36 at 29 n.75, quoting *Koper 2013*, p. 165). That is incorrect. My research team and I did not examine the *Washington Post* data to determine whether the drop in LCM use in Virginia during the last years of the federal ban correlated to a drop in the lethality or injuriousness of gun crime in that jurisdiction. Rather, our examination of the lethality of gun crime in the 2004 report was based on national data and data from a selected number of localities outside of Virginia. Further, the analyses in the 2004 report were limited to the first several years of the federal ban (they covered different portions of the 1995-2002 period, and most extended only through the late 1990s or through 2001), during which time we had not yet observed a reduction in the use of LCMs in crime. The *Washington Post* data suggests that LCM use may have declined more appreciably by 2004, but this was beyond the period I had studied for the 2004 report to the U.S. Department of Justice. Consequently, my conclusion that there was “no discernible reduction in the lethality or injuriousness of gun violence” during earlier portions of the ban when we had not seen a drop in LCM use in gun crime has no bearing on whether there would be such a reduction once the number of LCMs used in crime began to drop.

robberies with guns.” (Doc. 36 at 27-29). While those are accurate quotes, they do not fully reflect the conclusions in my report on the efficacy of this kind of legislation.

83. Because criminals and mass shooters will be able to substitute legal firearms for the banned assault weapons and LCMs, it is true that this kind of legislation is unlikely to substantially reduce overall gun violence in terms of the number or rate of crimes committed. One should not conclude from that, however, that such bans will have no effect on public safety. As discussed above, if allowed to operate over the long-run, such bans can potentially reduce the number and lethality of gunshot victimizations by forcing criminals to substitute assault weapons and other weapons with LCMs with less destructive firearms. The effects on gun deaths and injuries overall would likely be small in percentage terms (and thus they could be difficult to measure reliably), but, as discussed above, even small reductions in gunshot victimizations could produce significant societal benefits.
84. Pink Pistols similarly cites my 2004 report for the proposition that “[s]tudies of state-law bans on AWs and LCMs likewise found that such bans ‘have not reduced crime.’” (Document 36 at 28 and n.73, quoting *Koper 2004*, p. 81 n.95). That, again, does not accurately reflect my conclusions in the 2004 report. In discussing the effect of state assault weapons bans, I noted that there are a few studies that have suggested that such bans have not reduced crime. I specifically noted, however, that it is hard to draw definitive conclusions from these studies for the following reasons: (1) there is little evidence on how state assault weapon bans affect the availability and use of assault weapons; (2) studies have not always examined the effects of these laws on gun homicides and shootings, the crimes that are arguably most likely to be affected by assault weapon bans; and (3) the state assault weapon bans that were passed prior to the federal ban (those in California, New Jersey, Hawaii, Connecticut, and Maryland) were in effect for only three months to five years (two years or less in most cases) before the imposition of the federal ban, after which they became largely redundant with the federal legislation and their effects more difficult to predict and estimate. Perhaps more importantly, most of these state laws either lacked LCM bans or had LCM bans that were less restrictive than that of the federal ban or Connecticut’s ban. Pink Pistols ignores these important qualifications that undermine the usefulness of the cited studies.
85. Second, both the National Rifle Association (“NRA”) and the Law Enforcement Legal Defense Fund (“LELDF”) argue that banning large capacity magazines will not advance public safety. In support of that conclusion they cite the findings in my reports that assailants fire an average of less than four shots in gun crimes, and rarely fire more than ten shots. (Doc. 33 at 19; Doc. 34 at 9-10). While those references to my studies are correct, they also do not fully reflect my conclusions.
86. Based on my study with Darin Reedy of handgun attacks in Jersey City, NJ, I found that assailants fired more than ten shots in 2.5% to 3% of gunfire incidents. As discussed above, however, my report specifically explains that those incidents had a 100% injury rate, and were responsible for 4.7% of the gunshot victimizations in our sample. The *amici* ignore this crucial piece of data, which was the whole point of that aspect of my

discussion in the report. It shows that, while rare, incidents in which more than ten shots are fired are especially lethal and injurious. They produce a disproportionate share of gunshot victimizations and are more likely to result in gunshot injuries or deaths. *See Koper 2004*, pp. 3, 90-91.

87. In addition to taking that data out of context, the *amici* completely ignore one of my central conclusions: gun crimes involving assault weapons and other weapons with LCMs tend to result in more victims wounded, more wounds per victim, and more lethal injuries than do gun crimes committed with other weapons. They likewise ignore the evidence that both assault weapons and other guns with LCMs are used disproportionately in mass killings and murders of law enforcement officers.
88. Third, the *amici* argue that assault weapons bans are not likely to reduce overall gun violence based on the finding in my reports that such weapons are only used in between 2% and 8% of gun crimes. (Doc. 33 at 14; Doc. 34 at 9; Doc. 36 at 27 and n. 69, 70). While these selective references to my studies technically are correct, they are again misleading. It ignores the fact that assault weapons were used more frequently and disproportionately in mass murders and killings of law enforcement officers. It also ignores the fact that gun crimes involving semiautomatics—including assault weapons and other firearms with LCMs—generally result in more shots fired, more victims, and more wounds per victim. Thus, although reducing the number of such weapons may not reduce the overall number of gun crimes due to the weapon substitution effect, it could reduce the number and lethality of gunshot victimizations in crimes in which such weapons otherwise would have been used. Any such reduction in gun crime or gun crime lethality—even if difficult to measure precisely relative to the overall level of gun violence in the nation—would have a meaningful impact for the victims of such crimes, and for society more broadly.

The foregoing is true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Christopher S. Koper
Christopher S. Koper

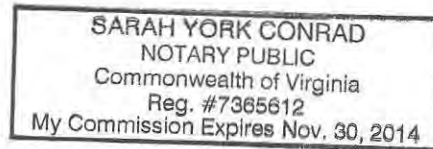
STATE OF VIRGINIA

COUNTY OF Loudoun

)
) ss: Brambleton, Virginia
)

Subscribed and sworn to before me, this 30 day of September, 2013.

Sarah York Conrad
Notary Public
Commissioner of the Superior Court



CERTIFICATION

I hereby certify that on this 11th day of October, 2013, a copy of the foregoing Affidavit of Christopher S. Koper was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Maura Murphy Osborne
Assistant Attorney General

Exhibit 108

ER2372

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DENNIS J. HERRERA, CITY ATTORNEY

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Herrera secures court order to make California communities safer; gun suppliers must halt sale of high-capacity ammo ‘repair kits’ into state

May 16, 2017

Settlement agreement includes a 10-year injunction with additional restrictions

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SAN FRANCISCO
(May 16, 2017) —
City Attorney
Dennis Herrera
today announced
that five online
gun equipment
suppliers have
agreed to a
stringent 10-year,
court-imposed
injunction
prohibiting them
from selling or
advertising large-
capacity firearm
magazines or
magazine repair kits to customers in California. The
agreement is part of a settlement where the defendants
will also face a number of other court-ordered restrictions
on their business practices to help ensure that their
products do not enter the state.



“Californians have spoken clearly. We don’t want these weapons in our communities,” said City Attorney Dennis Herrera on securing a court order prohibiting five online gun equipment suppliers from selling high-capacity ammo ‘repair kits’ into state.

Herrera sued the suppliers on Feb. 9, 2017 for violating California’s prohibition on the sale and advertisement of large-capacity magazines — military-style ammunition holders that can allow shooters to fire dozens of bullets without reloading. Some magazines hold more than 100 rounds of ammunition. According to the lawsuit, the suppliers had been flouting both state and San Francisco law by selling complete but disassembled large-capacity magazines as “repair” or “rebuild” kits to customers in California and San Francisco. The lawsuit was brought on

Large-capacity magazines make guns significantly more lethal and have been used in high-profile mass shootings across the country, including the 2016 Orlando nightclub massacre, which killed 49 people, and the 2015 San Bernardino attack, which killed 14. California has prohibited their sale, manufacture or import since Jan. 1, 2000 to limit the danger they pose to public safety. State law defines large-capacity magazines as those holding more than 10 rounds of ammunition.

“Californians have spoken clearly. We don’t want these weapons in our communities,” Herrera said. “I have zero tolerance for gun sellers who try to skirt the law, and we will bring statewide enforcement action when needed. I’m glad we were able to get a tough, enforceable court order against these companies that were flouting the law.”

The settlement agreements were finalized earlier this month, and the court is expected to endorse them in a final judgment today. The defendants have agreed to submit to a stringent, statewide, 10-year injunction that requires them to stop violating the law and to notify California residents that large-capacity magazines may not legally be sold into California. Among other things, defendants have agreed to:

- cease selling large-capacity magazines or repair kits into California;
- notify customers on their websites that these products may not be purchased in California;
- remove California as a billing or shipping option for these items on their websites;
- permanently delete from their sites any suggestion that

these magazines or kits may legally be shipped to California; and

- produce affidavits to the San Francisco City Attorney's Office annually certifying that they have complied with the injunction, and with San Francisco and California law.

The defendants will also collectively pay \$22,500 to cover the City Attorney's investigative costs.

"I would like to thank the San Francisco Police Department for their support and cooperation on this case, particularly Officer Joseph Emanuel, who provided compelling expert testimony regarding large-capacity firearms," Herrera said.

The settlement was reached with all of the online retailers that Herrera had sued in February: Badger Mountain Supply, located in Washington; 7.62 Precision in Alaska; Shooters Plus, located in Mississippi; LAK Supply of Wyoming; and Buymilsurp.com, located in Florida.

The companies had falsely represented that California and San Francisco consumers may lawfully purchase disassembled large-capacity magazines as "repair kits." 7.62 Precision, for example, marketed a disassembled magazine as a "California Magazine Rebuild Kit," saying "these parts kits are intended for California customers only." Badger Mountain Supply falsely represented to customers on its website that shipping disassembled magazines in two separate packages was permissible under California law. Shooters Plus' website referenced "ban States such as California" and instructed consumers to "simply click on the magazine/s you need, then click on the checkbox under each magazine that reads 'Convert to Rebuild Kit,' which





enabled a customer to purchase a 30-round magazine and convert it to a rebuild kit for \$2, for example.

After California's 2000 statewide ban, a number of companies tried to skirt the law by selling these so-called magazine repair kits to California residents. In 2013, Herrera sued four companies over the practice, and the state Legislature strengthened the existing law to specifically outlaw the sale or purchase of such "kits." San Francisco took further action in 2014, enacting a ban on possessing large-capacity magazines, not just buying or selling them. Similarly, state voters in November overwhelmingly approved Prop. 63, which, among other safety steps, will outlaw the possession of large-capacity magazines statewide starting July 1, 2017, with very narrow exceptions.

The case is: *The People of the State of California v. Badger Mountain Supply, Inc., et al*, San Francisco Superior Court, Case No. CGC 17-557010, filed Feb. 9, 2017. Complete documentation on the case is available on the City Attorney's website at www.sfcityattorney.org

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 GUN SAFETY, NEWS

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CERTIFICATE OF SERVICE

Case Name: **Duncan, Virginia et al v.
Xavier Becerra**

No. **17-56081**

I hereby certify that on October 12, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLANT'S EXCERPTS OF RECORD, VOLUME X, ER 2131-2378

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 12, 2017, at San Francisco, California.

N. Newlin
Declarant

s/ N. Newlin
Signature