

TESTIMONY OF
ADAM KRAUT, ESQ.
&
JOSHUA PRINCE, ESQ.

Firearms Industry Consulting Group
a division of Civil Rights Defense Firm, P.C.



PUBLIC HEARING BEFORE THE PENNSYLVANIA
HOUSE JUDICIARY COMMITTEE
ON
PENNSYLVANIA'S FIREARM LAWS
AND PUBLIC SAFETY

MAY 22, 2018

Joshua Prince, Chief Counsel

Mr. Chairman and Honorable Members of the Committee, I appreciate the opportunity to be here today and discuss these important issues along with my colleague Attorney Adam Kraut.

I am a licensed member, in good standing, of the Pennsylvania and Maryland Bars and am admitted to numerous courts, including: Pennsylvania Supreme Court, U.S. Supreme Court, U.S. Court of Appeals for the Third and Sixth Circuits, and District Courts for the Eastern, Middle and Western Districts of Pennsylvania. As my curriculum vitae is beyond the scope of my testimony today, I am attaching it as Exhibit A.¹

Due to extensive nature of the bills currently pending, the voluminous constitutional and legal issues with them, and the extremely limited amount of time that

¹ Joshua Prince, Esq. is Chief Counsel of the Firearms Industry Consulting Group, a division of Civil Rights Defense Firm, P.C. and actively litigates all forms of firearms-related issues, at the state and federal level.

FICG represents numerous individuals, gun clubs and Federal Firearms Licensees in Pennsylvania with regards to state law issues. Furthermore, in relation to federal issues, FICG represents numerous Federal Firearms Licensees across the United States in all matters relating to firearms. FICG actively works to defend, preserve, and protect constitutional and statutory rights of firearm owners, including through Article 1, Section 21 of the Pennsylvania Constitution and the 2nd Amendment of the United States Constitution.

FICG's purpose is to provide legal representation in the protection and defense of the Constitutions of Pennsylvania and the United States, especially with reference to the inalienable right of the individual citizen guaranteed by such Constitutions to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens.

we have been provided to address these issues here today, attached to my testimony as Exhibit H is a review of each bill and the constitutional and legal issues related thereto.

As there are a plethora of unconstitutional provisions, pursuant to the United States and Pennsylvania Constitutions, in the pending bills, I believe it necessary to start by reciting the oath that every member of the General Assembly is required to affirm, pursuant to Article VI, Section 3 – “I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity.” Article 6, Section 3 then goes on to declare that “[a]ny person refusing to take the oath or affirmation shall forfeit his office.”

Yet, we see numerous bills being offered with no consideration for the lack of due process, takings without just compensation, and unconstitutional delegations of authority – let alone, the right to keep and bear arms – all of which are made inviolate by Article 1, Section 25 of the Pennsylvania Constitution. Worse yet, we see Governor Wolf and Republican Members of this General Assembly discriminating against those with closely-held religious beliefs, such as the Amish, by seeking to preclude their ability to purchase firearms and ammunition through proposals such as House Bills 1400, 2249, and 2251.²

Instead of seeking to restrict the constitutional rights of law-abiding individuals, why isn't the General Assembly proposing and considering true “common sense” proposals?

Why haven't we enacted a law that further codifies the rights of school personnel to possess and use firearms, electronic incapacitation devices and non-lethal weapons in

² <https://blog.princelaw.com/2018/05/21/pa-governor-wolf-and-republican-members-of-the-general-assembly-seek-to-preclude-the-amish-from-obtaining-guns-and-ammunition>.

assuring the protection of our children, like Israel has done since its inception? ³

Professor Eric Dietz of Purdue University, whose Homeland Defense Institute examined school shootings and compiled a report, determined that armed staff and personnel are essential to mitigate the dangers of an active shooter. ⁴ While SB 383 was a decent attempt, it suffers from major flaws, which is why I have drafted an amendment to it that would address all the concerns, while ensuring the confidentiality of those school personnel who are armed. A copy is attached as Exhibit B.

Why hasn't this Committee taken action on SB 5, which has been pending in this Committee since April 26, 2017, when municipalities are flagrantly violating state preemption, ⁵ which constitutes a misdemeanor of the first degree? ⁶ How can this Committee condone these acts and not take action, especially when seven individuals were prosecuted under an unlawful ordinance of the City of Erie and as a result, incurred thousands of dollars of legal fees with no right to reimbursement? ⁷

Why haven't we enacted a law that requires notification by the Pennsylvania State Police when a person becomes prohibited from purchasing and possessing firearms and ammunition under state or federal law? If our goal is to ensure that prohibited individuals are not even attempting to obtain firearms and ammunition, I cannot fathom how, regardless of political affiliation, the members of the General Assembly cannot pass such

³ The *en banc* Superior Court has already held in *Commonwealth v. Goslin* that an individual may lawfully possess a weapon on school grounds, provided it is not possessed or utilized for an unlawful purpose. 156 A.3d 314, 317-18 (Pa. Super. Ct. 2017).

⁴ <http://fox59.com/2014/09/15/research-project-utilizes-school-resource-officer-during-active-shooter-situation>. A copy of the report is attached as Exhibit G.

⁵ 18 Pa.C.S. § 6120

⁶ 18 Pa.C.S. § 6119

⁷ <https://blog.princelaw.com/2014/02/28/preliminary-and-permanent-injunction-granted-against-the-city-of-erie>

a common sense proposal. For this reason, I have drafted a proposed bill that is attached as Exhibit C.

Why haven't we revised Section 6105(f) to come into compliance with the NICS Improvement Amendments Act ⁸ in relation to mental health commitments, where Pennsylvania would be entitled to millions of dollars in federal funds for our compliance? A draft proposal is attached as Exhibit D.

Why haven't we amended Section 6105.1 to provide for relief from disabilities for misdemeanor offenses, especially in light of the Third Circuit's *en banc* decision in *Binderup, v. AG of United States, et al.*, ⁹ where the court held that such prohibitions can violate an individual's Second Amendment rights? A draft proposal is attached as Exhibit E.

Why haven't we provided the Pennsylvania State Police with the authority to issue legal determinations under the Uniform Firearms Act, like we have in relation to the Liquor Control Board laws, ¹⁰ so that individuals can ensure their compliance with the law? A draft proposal is attached as Exhibit F.

If you want to talk about bills that actually protect the public and law abiding citizens, then these are the bills we should be discussing. More importantly, if you believe individuals who have been adjudicated incompetent, committed to a mental institution or convicted of a crime punishable by more than one year are such a threat to our society to warrant the deprivation of a constitutional right in perpetuity, why haven't you proposed a law that would likewise prohibit those same individuals from being able to vote or from becoming reporters or members of the General Assembly?

⁸ Pub. L. 110-180, 121 Stat. 2559

⁹ 836 F.3d 336 (3d Cir. 2016) (*en banc*)

¹⁰ *See*, 47 P.S. §2-211.1

We have youth that believe eating Tide Pods is an acceptable and safe after school activity¹¹ and a small number of people who knowingly break the law to commit crime; yet, we're here discussing proposals on how to further restrict law-abiding citizens' constitutional rights, rather than address the underlying issues.

In closing, an attack on the right to keep and bear arms of law-abiding citizens is an attack on our Republic and our founding constitutional agreement. As written by Thomas Jefferson –

The laws that forbid the carrying of arms are laws of such a nature. They disarm only those who are neither inclined nor committed to commit crimes. Such laws make things far worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicide for an unarmed man may be attacked with greater confidence than an armed man.

Thank you Mr. Chairman and Members of the Committee for the opportunity to testify before you today. I will now turn it over to Attorney Kraut.

¹¹ https://www.washingtonpost.com/news/to-your-health/wp/2018/01/13/teens-are-daring-each-other-to-eat-tide-pods-we-dont-need-to-tell-you-thats-a-bad-idea/?noredirect=on&utm_term=.db4c23abc0cf.

Adam Kraut, Attorney

Good Morning Mr. Chairman and Honorable Members of the Committee. When these hearings were initially announced, I was disappointed to see that the Committee only deemed it necessary to hear testimony from members of the House who were introducing bills. While I am grateful to be here, I am still frustrated to see that the Committee only felt one three-hour session was enough to collect testimony from non-House members.

I, like my colleague Mr. Prince, am a licensed member, in good standing, of the Pennsylvania Bar and am admitted to numerous courts, including: Pennsylvania Supreme Court, U.S. Court of Appeals for the Third and Sixth Circuits, and District Courts for the Eastern, Middle and Western Districts of Pennsylvania. A copy of my curriculum vitae is included in Exhibit A.

While in law school through October of last year, I also worked in a gun shop as the General Manager. During my three years behind the counter, I interacted with people from all walks of life, members of law enforcement, and individuals from ATF. My experience allowed me to see the gun debate from a variety of perspectives including that of first time gun buyers and law enforcement officials.

It seems that there is a fundamental misunderstanding that many members of the General Assembly and public have when it comes to firearms and firearms rights. The Right to Keep and Bear Arms is not granted by the Federal or State Constitution. It is a preexisting natural right. The recording of which can be traced back to 13th Century England in the Magna Carta. The purpose of the Second Amendment and Article 1, Section 21 is to ensure that Government does not infringe upon this preexisting and

inviolable right. While the Second Amendment is often quoted and debated by those who wish to believe there is no individual right to bear arms, even though the US Supreme Court has said otherwise, Article 1, Section 21 makes it explicitly clear that individuals retain that right – “The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.” Article 1, Section 25 then declares all of Article 1, inclusive of Section 21, to be “excepted out of the general powers of government and shall forever remain inviolable.”

Looking through the bills that are in front of this Committee, it would appear that a number of them violate our State Constitution. For example, SB17 seeks to deny citizens the right to “assault weapons” and “high capacity magazines”, all while violating a number of constitutional provisions, including the due process and takings clauses. In addition to constitutional concerns, SB17 would also deny people, especially those who are disabled or of limited size or skill, the ability to adequately defend themselves within their homes.

For some reason, the magic number with legislators is ten. “No one needs more than ten rounds to defend themselves,” is one of the hallmark battle cries of those seeking to tighten restrictions. Yet, there are plenty of reasons a person may need more than ten rounds. We continue to see home invasions where there are multiple intruders.¹² There are plenty of incidents reported in the news, such as the woman in Georgia who had three individuals break into her home around 4 AM. All three of them were armed.¹³ Perhaps the gentleman in Oklahoma who defended his home against three intruders during a

¹² http://www.psp.pa.gov/public-safety/Documents/PSP_Preventing_Home_Invasions_Pamphlet.pdf “Many home invaders do not work alone. Their accomplices are usually nearby.”

¹³ http://www.gwinnettdaily.com/local/cities/norcross/video-audio-from-fatal-home-invasion-released/article_8733535e-bc19-5759-a57c-7b1105579888.html

home invasion with an AR15 might be useful to examine.¹⁴ Let's not forget the heroic 15-year-old in Texas who defended his 12-year-old sister with an AR-15 from two men during a home invasion.¹⁵ Lastly, maybe someone should ask the woman who shot an intruder five times and did not fully incapacitate him.¹⁶ What if she had a gun limited to ten rounds and faced multiple attackers? Would ten rounds have been enough for her?

The practice of law has led me to see the gun debate through an even broader lens. I've had to inform countless clients that they are no longer able to own a firearm because of a non-violent offense they committed decades ago. I've also had to advise individuals that they would likely be prosecuted for making purported false statements on paperwork required to purchase a gun. All because they were never informed at any point that by pleading guilty to the offense for which they were convicted, it would result in the loss of a fundamental right enshrined in the Constitution. A number of attorneys, district attorneys, and even judges don't know what offenses result in the loss of firearms rights. Even more egregious is there is nothing in any guilty plea colloquy informing people that they are losing their right to keep and bear arms. Worse yet, their options for relief are often limited, expensive, and offer no guarantee for restoration of their rights. Being stuck in such a position limits the ability of a person to choose a firearm for self defense.

Now, I'm sure the one thing that we can all agree on is the protection of our children. If that's the case, why are we not doing things like allowing teachers and administrative staff who wish to be armed to do so? Why are we not allocating resources

¹⁴ <http://myfox8.com/2017/04/02/3-masked-teenage-burglars-dressed-in-black-shot-dead-during-botched-home-invasion/>


¹⁵ <http://www.breitbart.com/big-government/2013/01/10/15-year-old-boy-uses-ar-15-to-defend-house-against-burglars/>


¹⁶ <http://www.foxnews.com/us/2013/01/06/georgia-mom-home-alone-with-kids-shoots-ex-con-intruder.html>

to make schools hardened targets? Is it simply because we wish to live in a land where tragedies like school shootings don't exist? Is it because we don't want to admit to ourselves that the option we might not like to talk about might be the best option? Why are we not taking action to do something that would have a measurable impact on the safety of our children?

And why are we not teaching firearms education in schools like we used to? We teach our children about sex and drugs because, we as adults, understand that kids are going to have sex and do drugs, whether we want them to or not. But we choose to give them the information and skills to be able to safely engage in an activity or say no to another. Why are we not teaching kids how to properly handle firearms so that if they find themselves in a situation where one is, they have the skills and knowledge set to act appropriately and leave the situation safely?

Before this Committee stand a plethora of bills that have been drafted in an attempt to say "we did something". These come at a time when emotions are running high. However, this Committee and the General Assembly should not advance legislation based on emotions. Laws should be passed after careful debate based on logic and reasoning. I'll leave you with this thought - the laws you make are only as good as the willingness of people to follow them. Thank you.


Joshua Prince, Esq.


Adam Kraut, Esq.

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Bechtelsville, PA 19505
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Joshua@CivilRightsDefenseFirm.com
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Exhibit A

(Curriculum Vitae)

Joshua Prince, Esq.

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Bechtelsville, Pa 19505
888-202-9297 ext 81114
610-400-8439 (fax)
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BAR ADMISSIONS

State Admissions

Pennsylvania Supreme Court – October 13, 2009
Maryland Court of Appeals – June 12, 2017

Federal Admissions

U.S. Supreme Court – January 22, 2013
U.S. Court of Appeals for the 3rd Circuit – April 11, 2012
U.S. Court of Appeals for the 6th Circuit – July 17, 2017
U.S. District Court, Eastern District of Pennsylvania – March 19, 2010
U.S. District Court, Middle District of Pennsylvania – February 10, 2012
U.S. District Court, Western District of Pennsylvania – December 20, 2012
U.S. District Court, District of Colorado – June 16, 2011

EDUCATION

McGill University, Montreal, Canada

- **Double Major in Political Science and World Religions**
- **Graduated Cum Laude**

Widener University of Law, Harrisburg, PA

2006 - 2009

- **Top 10% of class**
- **Member of the Widener Law Journal**
- **Graduated Cum Laude**

EMPLOYMENT

Prince Law Offices, P.C., Bechtelsville, PA

2009 - present

- Handling legal matters, including, but not limited to:
 - Civil Rights deprivations at the state and federal level, including unlawful seizure, failure to provide procedural and substantive due process, and violations of equal rights;
 - Class Actions;

- Mental Health Commitments under Pennsylvania’s Mental Health and Procedures Act;
- Criminal Law;
- School Law, including requirements to provide students with due process and the appointment of school law enforcement officers; and,
- Estate Planning and Administration.

Civil Rights Defense Firm, P.C., Bechtelsville, PA

2016 - present

- Handling legal matters, including, but not limited to:
 - All firearms law and Second Amendment issues at the state and federal level;
 - Civil Rights deprivations at the state and federal level, including unlawful seizure, failure to provide procedural and substantive due process, and violations of equal rights; and,
 - Class Actions.

MAJOR CASES

- *Alton Franklin v. Sessions, et al.*, 291 F.Supp.3d 705 (W.D. Pa. 2017) – Establishing that a 302 evaluation under Pennsylvania’s Mental Health and Procedures Act does not trigger a federal prohibition under 18 U.S.C. § 922(g)(4), due to the lack of due process provided.
- *Commonwealth v. Goslin*, 2017 PA Super 38 (*en banc*) – Establishing that an individual is entitled to the defense found within 18 Pa.C.S. § 912(c), if he/she is in lawful possession of a weapon on school grounds, provided that it is possessed for a lawful purpose.
- *Michael Keyes, et al., v. Lynch, et al.*, 195 F.Supp.3d 702 (M.D. Pa. 2016) and 282 F.Supp.3d 858 (M.D. Pa. 2017) – Establishing a right to relief under a Second Amendment *as-applied* challenge to a single-isolated involuntary mental health commitment. The court held that 18 U.S.C. § 922(g)(4)’s prohibition, in perpetuity, was unconstitutional as applied.
- *John Doe, et al. v. Franklin County, et al.*, 1634 C.D. 2015 (May 20, 2016) – Establishing that pursuant to 18 Pa.C.S. § 6111(i) that all license to carry firearms applicant information is confidential and not subject to disclosure, including through the use of un-enveloped postcards.
- *Andrew Dissinger v. Manheim Township School District*, 72 A.3d 723 (Pa. Cmwlth. 2013) – Represented Mr. Dissinger in an action regarding violations of his due process rights, which the Commonwealth Court confirmed. Thereafter, represented Mr. Dissinger in a federal civil rights deprivation action, 5:14-cv-2741 in the Eastern District of Pennsylvania, which resulted in a settlement.

- *Justin Dillon v. City of Erie*, 1038 C.D. 2013 (Pa. Cmwlth. 2013) – Establishing that state preemption precludes the City of Erie’s ordinance criminalizing the possession of firearms in city parks.
- *John Doe, et al. v. City of Philadelphia, et al.*, Docket No. 121203785, (Philadelphia County Court of Common Pleas, 2012)– Class action lawsuit against the City of Philadelphia and several other defendants relating to their publication of statutorily confidential information, which resulted in a \$1.425 million dollar settlement.
- *Barbara Hensch, et al., v. Perry County Sheriff Carl Nace*, Docket No. 2014-454 (Perry County Court of Common Pleas, 2014) – Successfully represented Sheriff Nace, *pro-bono*, in an action by the Perry County Auditors to force him to disclose statutorily confidential information.
- *Caba v. Weaknecht*, 64 A.3d 39 (Pa. Cmwlth. 2012) – Before the Commonwealth Court, successfully established both a liberty and property interest, for procedural due process purposes, in an issued license.

PUBLICATIONS

Law Journal Publications

- Joshua G. Prince and Allen Thompson, *The Inalienable Right to Stand Your Ground*, St. Thomas Law Journal, 27 St. Thomas. L. Rev. 32 (2015)
- Joshua G. Prince, *Fee Disputes in Workers' Compensation Cases: The Hendricks/Weidner Headache*, Widener Law Journal, Vol. 18, No. 2 (2009)
- Joshua G. Prince, *Violating Due Process: Convictions Based on the National Firearms Registration and Transfer Record when its "Files are Missing"*, Article awaiting publication in a Law Journal, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2752028

Legal Publications

- Joshua G. Prince, *Weapons on School Grounds: The En Banc Goslin Decision* (PA BAR ASSOC. AT ISSUE, Spring 2017) *available at* <http://www.pabar.org/public/yld/pubs/atissue/At%20Issue%20Spring2017.pdf>.

- Joshua G. Prince, *Grandpop's Machine Gun in the Chest: Part II of II* (PA BAR ASSOC. AT ISSUE, Spring 2013) available at <http://www.pabar.org/public/yld/pubs/atissue/AtIssueSpring13.pdf>.
- Joshua G. Prince, *Grandpop's Machine Gun in the Chest: Part I of II* (PA BAR ASSOC. AT ISSUE, Fall 2012) available at <http://www.pabar.org/public/yld/pubs/atissue/AtIssue%20Fall%202012.pdf>.
- Joshua G. Prince, *Firearms Law 101: Knowing When Your Client Loses His/Her Second Amendment Rights*, (PA BAR ASSOC. AT ISSUE, Spring 2012) available at <http://www.pabar.org/public/yld/pubs/atissue/AISpring2012.pdf>.
- Joshua G. Prince, *I Bequeath My Machine Gun to...* (PA BAR ASSOC. NEWSLETTER, REAL PROPERTY, PROBATE AND TRUST LAW, Issue No. 64), Fall 2007 at 18-19.

LEGAL SEMINARS TAUGHT

- **The 4473 and You** – Penn State Law School – April 5, 2018
- **Understanding the Second Amendment, Mental Health Prohibitors and Federal Firearms Right Restoration** – USSCA Expo – April 8, 2017.
- **Gun Law: Advanced Issues** – National Business Institute (NBI) – January 31, 2017
- **My Estate Has Firearms, Now What?** – 15th Annual Estate & Elder Law Symposium, PBI – Feb 12, 2014 and Feb. 20, 2014 and 20th Annual Estate Law Conference, PBI – November 14, 2013
- **Firearms and Real Estate in Estates** – Estate Planning Council of Lehigh Valley – February 13, 2013
- **2012 Firearms Law & The Second Amendment Symposium** – View from the Street: Firearms Law in Pennsylvania and New Jersey – NRA – October 13, 2012
- **Firearms Law for Every Practitioner** – Berks Bar Assc. – July 11, 2012
- **When the Primer Ignites No More** – 18th Annual Estate Law Conference, PBI – November 18, 2011
- **Pennsylvania Gun Crimes and Sentencing** – Montgomery Bar Assc. – Sept. 9, 2011
- **Firearms & Estates** – PBI – Apr. 7, 2011

- **Firearms Law 101 – What Every Practitioner Need to Know about Firearms Law** – Berks Bar Assc. – Aug. 18, 2011
- **Firearms in Estates and Trusts** – Berks, Cumberland, and Dauphin Bar Assc. 2008-2009.

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BAR ADMISSIONS

State Admissions

Pennsylvania Supreme Court – October 29, 2014

Federal Admissions

U.S. District Court, Eastern District of Pennsylvania – June 4, 2015
U.S. District Court, Western District of Pennsylvania – July 15, 2015
U.S. District Court, Middle District of Pennsylvania – June 15, 2016
U.S. Court of Appeals for the 6th Circuit – July 19, 2017
U.S. Court of Appeals for the 3rd Circuit – December 14, 2017

EDUCATION

SUNY Binghamton, Binghamton, New York

- **Major in Political Science w/ Concentration in Politics and Law**

Widener University of Law, Wilmington, DE

2010 - 2014

EMPLOYMENT

Prince Law Offices, P.C., Bechtelsville, PA

2014 - present

- Responsible for legal matters, including, but not limited to:
 - Firearms law matters (federal and state);
 - Drafting comments to Federal Notices of Proposed Rulemaking;
 - Hunting and Game Law within the Commonwealth of Pennsylvania;

Civil Rights Defense Firm, P.C., Bechtelsville, PA

2016 - present

- Responsible for legal matters, including, but not limited to:
 - Firearms law matters (federal and state);
 - Drafting comments to Federal Notices of Proposed Rulemaking;
 - Hunting and Game Law within the Commonwealth of Pennsylvania;

King Shooters Supply, King of Prussia, PA

2013 – 2017

- General Manager, responsible for, including, but not limited to:
 - NFA Paperwork for Customers;

- Regulatory Compliance;
- Marketing;

PUBLICATIONS

Legal Publications

- Adam Kraut, *Can I Still Own a Gun? The Making of a Prohibited Person Through Ineffective/Incompetent Legal Advice* (CHESTER COUNTY BAR ASSOC. NEW MATTER, Spring 2016) available at http://issuu.com/nhgi/docs/newmatter_spr16_lr/1.

Non-Legal Publications

- Adam Kraut, *Redesign or Redefine, ATF's Perplexing Interpretation of Stabilizing Braces* (RECOIL CONCEALMENT, ISSUE 6)
- Adam Kraut, *National Reciprocity, A Forgotten Cause?* (RECOIL CONCEALMENT, ISSUE 7)

LEGAL SEMINARS TAUGHT

- **Gun Law: Advanced Issues** – National Business Institute – January 2017
- **Is My Client Able to Own and/or Possess Firearms and Ammunition?** – Criminal Defense Section of the Chester County Bar Association – June 2016

Expert Witness Testimony

- **Zoning Variance Hearing** – East Goshen Township
 - Testified as an expert witness on Second Amendment, Gun Control Act and Regulations pertaining to FFLs

Exhibit B

(Amendment to SB 383)

Armed School Personnel Bill (previously SB 383)

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, is amended by adding a section to read:

SECTION 510.3. PROTECTION AND DEFENSE OF PUPILS.-

(a) Notwithstanding any law or regulation to the contrary, school personnel shall have the right to possess and utilize firearms, ammunition and electronic incapacitation devices in the buildings and on the grounds of a school in compliance with this Section.

(b) School personnel desiring to possess and utilize firearms, ammunition and electronic incapacitation devices in the buildings and on the grounds of a school must maintain a current and valid certification in the use and handling of a firearm issued under:

- (1) 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training);
- (2) the act of October 10, 1974 (P.L.705, No.235), known as the “Lethal Weapons Training Act”;
- (3) the act of February 9, 1984 (P.L.3, No.2), known as the “Sheriff and Deputy Sheriff Education and Training Act”;
- (4) the act of December 13, 2005 (P.L.432, No.79), known as the “Retired Law Enforcement Identification Act”; or
- (5) any other firearms program that has been determined by the Commissioner of Pennsylvania State Police to be of sufficient scope and duration as to provide the participant with basic training in the use and handling of firearms.

(c) EXEMPTIONS –

- (1) Notwithstanding this Section, 18 Pa.C.S. § 912 and any law or regulation to the contrary, a court of competent jurisdiction may authorize school personnel to possess and use weapons other than firearms, ammunition and electronic incapacitation devices, where it is shown that that the possession or use of the weapon would assist in the safety or protection of the school, the school personnel, students or those having business at the school. Where a court of competent jurisdiction issues an order permitting possession and use of weapons other than firearms, ammunition and electronic incapacitation devices under this subsection, the court shall determine whether compliance with subsection (b) is necessary given the type of weapon being authorized, and if so, the period of time for the school personnel to come into compliance

with subsection (b). Where school personnel is precluded from complying with any court imposed requirement under subsection (b) due to the scheduling of the certification classes or duration of the classes, nothing shall preclude a court of competent jurisdiction from issuing a new order and further extending the right of school personnel to possess and utilize an authorized weapon in the buildings and on the grounds of a school in the absence of compliance with subsection (b).

(2) Notwithstanding subsection (b), school personnel have a right to possess and utilize firearms, ammunition and electronic incapacitation devices in the buildings and on the grounds of a school where:

a. a court of competent jurisdiction has:

- i. issued any form of order, pursuant to 23 Pa.C.S. § 6101, *et seq.*, in the favor of the school personnel;
- ii. found that the school personnel has received a legitimate threat; or
- iii. where the interest of justice, including the right to self-protection, demands.

b. Where, pursuant to this subsection, a court has authorized school personnel to possess and utilize firearms, ammunition and electronic incapacitation devices in the buildings and on the grounds of a school, the school personnel must obtain certification pursuant to subsection (b) within 6 months, unless the school personnel is precluded due to the scheduling of the certification classes or duration of the classes; whereby, the time shall be extended for no more than 12 months. Nothing in this subsection shall preclude a court of competent jurisdiction from issuing a new order pursuant to subsection (b) and further extending the right of school personnel to possess and utilize firearms, ammunition and electronic incapacitation devices in the buildings and on the grounds of a school in the absence of compliance with subsection (b).

(d) **COURT PROCEEDINGS:** Any court proceeding related to this section shall be closed to the public and all pleadings, filings, and discovery shall be sealed, unless requested to be open and unsealed by the school personnel.

(e) **CONFIDENTIALITY:** In no event shall school personnel be required to disclose if they are possessing and utilizing firearms, ammunition and electronic incapacitation devices in the buildings and on the ground of a school.

- (1) Where any individual, state or local government agency or department, school district or entity of any form becomes aware or comes into possession of information that school personnel are possessing firearms, ammunition and electronic incapacitation devices in the buildings and on the grounds of a school, it shall be kept confidential and not subject to disclosure. Any individual, state or local government agency or department, school district or entity of any form that violates this subsection shall be liable in civil damages in the amount of \$10,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.
- (2) When hiring new personnel, and on an annual basis thereafter, training shall be provided to all school personnel on the confidentiality of all information relating to school personnel possessing and utilizing firearms, ammunition and electronic incapacitation devices in the buildings and on the ground of a school. Logs shall be maintained, in perpetuity, of the date and time of the training being provided as required by this subsection and those school personnel who received the training.

(f) DEFINITIONS:

- (1) Court of competent jurisdiction: The court of common pleas in which either the school or school personnel resides.
- (2) Electronic incapacitation device – shall mean a portable device which is designed or intended by the manufacturer to be used, offensively or defensively, to temporarily immobilize or incapacitate persons by means of electric pulse or current, including devices operating by means of carbon dioxide propellant. The term does not include cattle prods, electric fences or other electric devices when used in agricultural, animal husbandry or food production activities.
- (3) School personnel – shall mean any person employed by the school or who is otherwise providing a benefit, of any form, to the school.

Section 2. This act shall take effect immediately.

Amendments to 18 Pa.C.S. § 912

(c) ~~Defense~~ IMMUNITY. — ~~It shall be a defense that~~ A PERSON SHALL BE IMMUNE FROM PROSECUTION WHERE the weapon is:

- (1) possessed and used in conjunction with a lawful supervised school activity or course, INCLUDING, BUT NOT LIMITED TO, PURSUANT TO SECTION 510.3 OF THE PUBLIC SCHOOL CODE OF 1949; or
- (2) possessed for other lawful purpose.

Exhibit C

(Proposed bill for notification by the Pennsylvania State Police to individuals who become prohibited from possessing and purchasing firearms and ammunition under state or federal law)

Notification of Prohibition Bill

Amendment to 18 Pa.C.S. 6105 to the Uniform Firearms Act, 18 Pa.C.S. § 6101, *et seq.*

Section 6105:

(k) **Notification of Prohibition by the State Police:** The Pennsylvania State Police shall notify an individual of his firearm disability upon the individual becoming prohibited from purchasing or possessing firearms or ammunition under the Uniform Firearms Act, 18 Pa.C.S. § 6101, *et seq.*, or the Gun Control Act, 18 U.S.C. § 921, *et seq.* The notification shall be in writing and sent through verifiable means to ensure that the prohibited individual receives the notification. If an individual contends that he was not informed of his firearms disability, unless the Commonwealth can prove, beyond a reasonable doubt, that the individual was informed of his firearm disability, the individual shall be immune from prosecution in relation to the making of false statements on any state or federal form to purchase or transfer a firearm or otherwise obtain a license to carry firearms.

Exhibit D

(Proposed bill for coming into compliance with the NICS
Improvement Amendments Act)

NICS Improvement Amendments Act Bill

Amending 18 Pa.C.S. 6105 of the Uniform Firearms Act, 18 Pa.C.S. § 6101, *et seq.*

Section 6105:

(c) Other persons.--In addition to any person who has been convicted of any offense listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a): --

(4) A person who has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section ~~302~~, 303 or 304 of the provisions of the act of July 9, 1976 (P.L. 817, No. 143),² known as the Mental Health Procedures Act. This paragraph shall not apply to any proceeding under section 302 of the Mental Health Procedures Act ~~unless the examining physician has issued a certification that inpatient care was necessary or that the person was committable.~~

(f) Other exemptions and proceedings.--

- 1) Upon application to the court of common pleas under this subsection by an applicant subject to the prohibitions under subsection (c)(4) OR ~~CONTENTION THAT THE APPLICANT IS PRECLUDED PURSUANT TO 18 U.S.C. § 922(g)(4), the court may~~ SHALL grant relief ~~as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person.~~ THAT APPLICANT'S RECORD AND REPUTATION ARE SUCH THAT THE PERSON WILL NOT BE LIKELY TO ACT IN A MANNER DANGEROUS TO PUBLIC SAFETY. IN ITS CONSIDERATION OF THE APPLICANT'S RECORD AND REPUTATION, THE COURT SHALL REVIEW THE APPLICANT'S MENTAL HEALTH AND CRIMINAL HISTORY RECORDS; CONSIDER EVIDENCE OF THE APPLICANT'S CHARACTER; AND, THE ORIGINAL CIRCUMSTANCES THAT RESULTED IN THE APPLICANT'S FIREARM DISABILITY.
- (i) WHERE A COURT GRANTS RELIEF PURSUANT TO THIS SECTION, THE PENNSYLVANIA STATE POLICE SHALL UPDATE ALL STATE AND FEDERAL GOVERNMENT DATABASES TO REFLECT THAT THE INDIVIDUAL IS NO LONGER PROHIBITED AND NOTIFY THE UNITED STATES ATTORNEY GENERAL THAT THE INDIVIDUAL IS NO LONGER PROHIBITED AS A RESULT OF THE UNDERLYING MENTAL HEALTH COMMITMENT.

(ii) WHERE A COURT DENIES RELIEF PURSUANT TO THIS SECTION, THE INDIVIDUAL MAY APPEAL THE DECISION TO THE COMMONWEALTH COURT, PURSUANT TO 42 PA.C.S. § 762.

Exhibit E

(Proposed bill for providing for relief from disabilities)

Relief from Disabilities Bill

Amendment to 18 Pa.C.S. 6105.1 to the Uniform Firearms Act, 18 Pa.C.S. § 6101, *et seq.*

Section 6105.1

(a) Restoration.--A person convicted of a disabling offense may make application to the court of common pleas in the county where the principal residence of the applicant is situated for restoration of firearms rights. The court shall grant restoration of firearms rights after a hearing in open court to determine whether the requirements of this section have been met unless:

(1) the applicant has been convicted of any other offense specified in section 6105(a) or (b) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) or the applicant's conduct meets the criteria in section 6105(c)(1), ~~(2)~~, (3), (4), (5), (6) or ~~(7)~~;

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Disabling offense.” A conviction for any offense which:

(1) resulted in a Federal firearms disability and is substantially similar to either an offense currently graded as a crime punishable by a term of imprisonment for not more than ~~two~~ FIVE years or conduct which no longer constitutes a violation of law; and ~~(2)~~ was a violation of either of the following: (i) the former act of May 1, 1929 (P.L.905, No.403), known as The Vehicle Code, or the former act of April 29, 1959 (P.L. 58, No. 32), known as The Vehicle Code; or (ii) the former act of June 24, 1939 (P.L.872, No.375), known as the Penal Code;

(2) WAS A NON-VIOLENT MISDEMEANOR; OR,

(3) OCCURRED AT LEAST 15 YEARS PRIOR AND RESULTED IN A STATE OR FEDERAL FIREARMS DISABILITY.

~~The definition shall not include any offense which, if committed under contemporary standards, would constitute a misdemeanor of the second degree or greater under section 2701 (relating to simple assault) and was committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian or by a person similarly situated to a spouse, parent or guardian of the victim.~~

Exhibit F

(Proposed bill for the Pennsylvania State Police to issue legal determinations)

Legal Determinations Bill

Addition of 18 Pa.C.S. 6128 to the Uniform Firearms Act, 18 Pa.C.S. § 6101, *et seq.*

Definition to be added to 18 Pa.C.S. 103

“Other lawful purpose.” – shall include, but not be limited to, carrying a concealed firearm, pursuant to a validly issued license to carry firearms, as provided for in Section 6109, and the lawful open carrying of a firearm.

Definition to be added to 18 Pa.C.S. 6102:

“Person.” – shall be construed to mean and include an individual, association, company, corporation, partnership, trust, or estate.

Section 6128:

- (a) **Legal Determinations.** – Upon written request by any person, as defined in Section 6102, the Pennsylvania State Police or its counsel shall, within 30 days of receipt of the request, issue a legal determination, regarding any subject matter relating, in any manner, to this Act or any regulation promulgated thereunder, including whether any specific conduct constitutes an other lawful purpose, as defined in 18 Pa.C.S. § 103. In the event that the legal determination requests information that can only be disclosed to the requester, the Pennsylvania State Police shall ensure the identity of the requester and only disclose the response to the requester or requester’s attorney.
- (b) **Effect of Determination.** – Any legal determination issued pursuant to this Section shall be binding on the Pennsylvania State Police. Any person who relies on a legal determination issued pursuant to this Section shall be immune from prosecution, unless the Commonwealth can prove, beyond a reasonable doubt, that the person was informed, after issuance of the legal determination, that the legal determination was no longer binding.
- (c) **Aggrieved Person.** – Any person aggrieved by any legal determination issued pursuant to this Section, shall have the right, within 30 days, to *de novo* appeal in the Commonwealth Court.
- (d) **Reasonable Expenses.** – A court shall award reasonable expenses, including, but not limited to, attorney fees, expert witness fees and costs, to an aggrieved person affected in an action under subsection (c) where a final determination by the court is granted in favor of the aggrieved person.
- (e) **Database of Legal Determinations.** – The Pennsylvania State Police shall maintain, in perpetuity, all legal determinations issued pursuant to this Section. Any person may request, pursuant to the Right to Know Law, copies of any legal

determination issued, and the Pennsylvania State Police shall provide copies, provided that the legal determination does not contain confidential information that can only be disclosed to the original requester. Legal determinations containing confidential information relating to the original requester shall only be disclosed pursuant to court order, after notice to the original requester and opportunity of the original requester to be heard on any objections and/or confidentiality that may exist in relation to the legal determination.

- (f) **Reporting.** – The Pennsylvania State Police shall report to the General Assembly, on an annual basis, the number of legal determination requests received and responded to for that year.

Exhibit G

(Report – Mitigating active shooter impact: Analysis for policy options based on agent/computer-based modeling)

Mitigating active shooter impact: Analysis for policy options based on agent/computer-based modeling

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ABSTRACT

Active shooting violence at confined settings, such as educational institutions, poses serious security concerns to public safety. In studying the effects of active shooter scenarios, the common denominator associated with all events, regardless of reason/intent for shooter motives, or type of weapons used, was the location chosen and time expended between the beginning of the event and its culmination. This in turn directly correlates to number of casualties incurred in any given event. The longer the event protracts, the more casualties are incurred until law enforcement or another barrier can react and culminate the situation.

Objective: *Using AnyLogic technology, devise modeling scenarios to test multiple hypotheses against free-agent modeling simulation to determine the best method to reduce casualties associated with active shooter scenarios.*

Design, setting, subjects: *Test four possible scenarios of responding to active shooter in a public school setting using agent-based computer modeling techniques—scenario 1: basic scenario where no access control or any type of security is used within the school; scenario 2, scenario assumes that concealed carry individual(s) (5-10 percent of the work force) are present in the school; scenario 3, scenario assumes that the school has assigned resource officer; scenario 4, scenario assumes that the school has assigned resource officer and concealed carry individual(s) (5-10 percent) present in the school.*

Main outcomes measured: *Statistical data from modeling scenarios indicating which tested hypothesis*

resulted in fewer casualties and quicker culmination of event.

Results: *The use of AnyLogic proved the initial hypothesis that a decrease on response time to an active shooter scenario directly reduced victim casualties.*

Conclusions: *Modeling tests show statistically significant fewer casualties in scenarios where on-scene armed responders such as resource officers and concealed carry personnel were present.*

Key words: *active shooter, agent-based modeling, mitigation*

PROJECT DESCRIPTION

Active shooting violence at educational institutions is a phenomenon that poses serious security concerns about public safety due to the horrifying outcome and potentially large number of casualties and injured individuals stemming from such an event. US Department of Homeland Security has described the active shooter as an

“...Individual actively engaged in killing or attempting to kill people in a confined and populated area; in most cases, active shooters use firearms(s) and there is no pattern or method to their selection of victims.”¹

In relation to school settings, active shooter incidents typically take place in densely populated areas within the school perimeter, such as a classroom, administration offices, or common areas like cafeterias,

gymnasiums, and libraries. These incidents are unpredictable, evolve quickly, and have a main goal of mass murdering, rather than other criminal conduct, such as robbery. In many cases, the perpetrator is equipped with multiple weapons and tries to accomplish his goal in the minimum amount of time. The shooter also typically does not have an escape plan, so he commits suicide, surrenders, or is engaged by law enforcement

or other responding individual.¹ As real life evidence to active shooting phenomena, Table 1 summarizes five incidents of active shootings at educational institutions that took place in the last 5 years.²⁻⁶

In studying the effects of active shooter scenarios, the baseline for establishing a hypothesis is the analysis of empirical data from previous active shooter incidents. The common denominator associated with

Table 1. Active shooting incidents at educational institutions that took place in the last 5 years

Active shooter incidents					
Location	Virginia Tech ²	Northern Illinois University ³	Chardon High School ⁴	Oikos University ⁵	Sandy Hook Elementary School ⁶
Date	7:15 AM-9:51 AM, April 16, 2007	3:05 PM-3:11 PM, February 14, 2008	Approximately 7:30 AM, February 27, 2012	Approximately 10:30 AM, April 2, 2012	9:35 AM-9:49 AM, December 14, 2012
Target	Students and faculty	Students and faculty	School students	Staff and random students	Students and staff
Shooter profile	23-Year-old Seung-Hui Cho, a South Korean citizen—diagnosed with a severe anxiety disorder	Steven Phillip Kazmierczak—mental illness	Thomas M. Lane III—arrested short time later in a location outside the school	One L. Goh—angry at the administration after being expelled from the university; surrendered after siege	Adam Lanza—diagnosed with Asperger syndrome
Number of casualties	33 (including the perpetrator)	6 (including the perpetrator)	3	7	27 (including perpetrator)
Number of injured	23 (17 by gunfire)	21 (17 from gunfire)	3	3	2
Type of weapons	Glock 19, Walther P22	12 gauge Remington Sportsman 48 shotgun; 9 mm; Glock 19 semiautomatic pistol; 9 mm Kurz Sig Sauer P232 semiautomatic pistol; .380 Hi-Point CF380 semiautomatic pistol	Ruger MK III .22 caliber semiautomatic handgun	.45-caliber handgun with 10-round magazines	223-caliber Bushmaster XM15-E2S rifle, a 10 mm Glock handgun and a 9 mm SIG Sauer P226 handgun
First responder actions	Police arrived within 3 min of receiving an emergency call but took about 5 min to enter the barricaded building	Campus police on scene within 2 min of shooting, neutralized threat within 5 min	The police arrived quickly and arrested the shooter outside the school (teacher was chasing the perpetrator)	n/a	Police arrive 6 min after shooting began
Disclaimer: Described work and the respective results given in this project report do not refer to any particular incident or specific school location.					

all events, regardless of reason or intent for shooter motives, or type of weapons used, was the location chosen and time expended between the beginning of the event and its culmination.²⁻⁶ This in turn includes and directly correlates to the number of casualties incurred in any given event. The longer the event protracts, the more casualties are incurred until law enforcement or another barrier can react and culminate the situation.

Given the fact that active shooting incidents can have severe consequences to public safety and can result in significant casualties and injured individuals,²⁻⁶ this research project employed the use of computer-based modeling to model and analyze four possible scenarios to address an active shooter in a public school setting to determine which scenario reduces the most casualties:

- Scenario 1: This is a basic scenario where no access control or any type of security is used within the school.
- Scenario 2: This scenario assumes that concealed carry individual(s) (5-10 percent of the work force) are present in the school.
- Scenario 3: This scenario assumes that the school has an assigned resource officer.
- Scenario 4: This scenario assumes that the school has an assigned resource officer and that there are concealed carry individual(s) (5-10 percent of work force) present in the school.

The research methodology uses four varying scenarios that evaluate implemented barriers, observing their effectiveness on an active shooter event reaching a culminating point. These barriers, therefore, are directly correlated to the time (span of time) for which an event is allowed to exist before being diffused. The intervening time therefore correlates to the number of casualties expected to be inflicted during the time of the event. Using four different examples, the model

allows the injection of varying modes of blocks or barriers which can ultimately result in an event either ending sooner or lasting longer until final resolution is accomplished. This process then answers the hypothesis: "Does a relationship exist between the number and types barriers injected into an active shooter scenario and numbers of casualties incurred?"

As a main analysis method, agent-based simulation models are developed to assess the effectiveness of the used security measures expressed with the number of casualties and injured individuals, and response time of the first responders (time to arrive on scene and time to engage with the shooter). These measurements of effectiveness were chosen since the historical data (including Table 1) indicate that time is the most compelling factor in determining casualty rates for active shooter events. Agent-based modeling is chosen because it is the most suitable approach for accurate representation and tracking the actions of the entities involved in the active shooting incident, primarily the shooter, concealed carry individual(s), or the resource officers.

Further analysis of the proximity of the local police station to the modeled school, assumptions about the weapons used by an active shooter, and the movement pattern of the shooter within the school allowed for identifying the possible security measures that could be used to minimize the number of casualties during an active shooting incident. Another purpose of this analysis is to evaluate the model's ability to differentiate impacts between shelter-in-place and building evacuation during this type of incident.

BACKGROUND

The specific nature of the active shooting incident requires reconsideration of security and school safety measures and policies. In this direction, there are several good practices^{1,7} that can be used for coping with an active shooter situation. Department of Homeland Security recommendations relative to the active shooter response¹ include guidelines on how to respond when an active shooter is in the school perimeter (identifying evacuation, hiding, or active engagement actions with the shooter), training and preparing school staff for an active shooter situation

(Emergency Action Plan and training exercises), recognizing potential workplace violence and managing the consequences of an active shooter situation. These recommendations are further impressed by metropolitan statistical area (MSA) Security, an industry leader in security consulting and management, who suggests school representatives modernize existing engineering controls and coordinates with local authorities to allow them to become familiar with the school characteristics before an event occurs.⁷

However, the outlined practices described by the Department of Homeland Security and MSA Security Consultants are developed to serve more to the potential victims of the active shooter incident and do not provide any recommendations about how responders shall enhance their methods for coping with such a situation. To provide practical guidelines for responders proactively engaging in active shootings at public schools, two necessary actions are required. First, the responders must have an overview of these incidents and the involved subjects and be able to assess threats based on historical and analytical data. The outcome of Dardsdale's 2010 report⁸ greatly contributes toward the overall active shooter threat assessment and can serve as a guideline in developing responders' readiness. Second, responders must be able to identify the effectiveness of a particular active shooter engagement situation. Here, the analytical results from the modeling presented within this report can contribute to identifying and improving responders' methods and actions which are necessary for minimizing the casualties of active shooting and maximizing school safety. Therefore, of each of the applied four scenarios, it is the scenarios involving the employment of armed resource officers, faculty, or combinations thereof, who are immediately available to react to an active shooter, that have been studied least and makes these scenarios exceedingly viable. Further discussion and review of literature set forth below examines these two particular categories in depth and provides validation for their use as scenario conditions.

One of the given scenarios uses a limited number of concealed carry instructors (faculty or employees) for a given location. The justification for using this as a rational option is set forth below. This option of

introducing armed faculty is taken into consideration with both pro- and anti-gun points of view, including objections to this option from organizations such as the Brady Campaign to prevent gun violence,⁹ which disavow arming teachers and faculty. However, from an analysis of the literature and practical point of view, the option of arming teachers and faculty remains credible with the researchers and therefore exists as a realistic option in the methodology. Empirical data validating why the introduction of firearms into the modeling scenarios is a viable option are set forth below.

In 2012, there were an estimated 1,214,462 violent crimes nationwide. This includes all violent crime, including those in which firearms were used. This represents a decrease of more than 12.9 percent from the 2008 level, a 15.4 percent decrease from the 2011 to 2007 level, and a 15.5 percent decrease from the 2011 to 2002 level.¹⁰ At the same time, firearms ownership increased sharply, by more than 61 percent, or more than 118 million between 2004 and 2012.¹¹ Additionally, during the timeframe of 1999-2000, a full 58 percent of firearm-related deaths were labeled as suicide, 38 percent as homicides, and 3 percent ruled unintentional death by firearm.¹²

The Department of Justice commissioned a study in 1997 titled, *Guns in America: National Survey on Private Ownership and Use of Firearms*. This study found the number of guns used in self-defense annually at more than 1.5 million.¹³ This number exceeded the number of crimes in which a gun was used to commit an act of violence. Additionally, since the tragic events at Sandy Hook School in 2012, a handful of states have sought to restrict firearms, but 21 states have concretely expanded their firearms laws, including many whose laws expanded opportunities for concealed carry holders to legally carry firearms in previously restricted locations, including seven states now in which teachers or faculty in some schools are armed.¹⁴ Additionally, more than 1,300 pieces of legislation introduced nationwide since 2012 have pertained to gun laws, with the majority of which seek to strengthen pro-gun laws and gun rights.¹⁴ These statistics indicate that a growing segment of educators, law enforcement personnel, and citizens are in favor

of either introduction armed security into schools or arming teachers themselves.

The evidence of growing firearm popularity and growing strength in both numbers, statistics relating to crime and usage, and laws allowing their use create an undeniable dataset that suggests that increased firearms ownership and access does not contribute to increased crime, anecdotally, it statistically results in a reduction.¹⁰ As such, it remained as a valid option for analysis in the constructing of scenarios for this study. Additionally, "According to the National Center for Education Statistics, 57% of public schools in the United States had no security staff present at any time during the week in 2009-2010, the most recent year data were available. Even more — nearly 70% — had no police officer in the school every week."¹⁵ These data further compel the researchers to explore if incorporating this option as a variable in the study could impact active shooter casualties.

Existing data on mass shooting events show overlying consistent themes such as location chosen and time available.^{2-6,16,17} Most of the mass shooting events have occurred in locations such as schools, shopping malls, or other locations where people converge in masses.^{2-6,16,17} Although primary data for this research sought recent (past 5-year period) data, additional data covering the most significant school shooting since 1966 were analyzed.^{16,17} Analysis on these past events regarding casualties, location, and time of response is consistent with the interpretation derived from the in-depth analysis of the five most recent; that being duration of event, location, and ability for responders to act was critical in determining overall casualties. Almost all of these shootings occurred in locations that are typically outside the scope of where licensed concealed carry holders are permitted to carry weapons based on current laws.¹⁸ A concealed carry law authorizes a citizen to lawfully possess a firearm on or near their person in a concealed manner, or manner in which the weapon is not readily visible from another. Examples are firearms kept in purses, in pockets, desk drawers, or vehicles.

Observing the mass shootings in schools, the environment can be compartmented to a "closed system" in which, despite the environment around it, the use,

possession, or option of carrying a concealed weapon is prohibited. This can be compared to, with justification for using this methodology for a scenario, larger environments, such as cities or even states. When looking specifically at "crime spillover," it becomes apparent how areas that allow for the carrying of concealed weapons have decreased rates of crime compared to those which do not.¹⁸ Additionally, the data support the conclusion that areas adjacent to those with concealed carry permits, and in turn do not authorize concealed carry themselves, have higher rates of crime as criminals migrate to areas without concealed carry to perform criminal acts. This can be used in a microcosm view of schools or other likely targeted locations for mass shootings. If schools are off limits to the carrying of concealed weapons, then they therefore present themselves are a more lucrative target for mass shootings, just as cities who do not possess concealed carry laws see larger amounts of crime if adjacent cities do permit the carrying of concealed weapons.

Bronars and Lott's study¹⁸ elaborates this phenomenon and uses the term, "geographic spillover." The authors study rates of crime over the timeframe of 1977-1992 across the demographic spectrum of age, race, sex, income, welfare, and population density. The dependent variables used are FBI uniform crime reports¹⁰ for the categories of violent crime, murder, rape, robbery, aggravated assault, overall property crime, burglaries, auto thefts, and larceny as reported per 100,000 population per county. These factors were observed against the independent variable of concealed carry laws and arrest rates. The stated objective was determining if shall-issue concealed weapons laws in one location alters crime in neighboring adjacent areas. The authors posit that, taken as a whole, concealed carry laws (particularly concealed handguns) do in fact deter criminals and that the greatest effect is seen when neighboring counties adopt concealed carry policies. Their study concludes that locations on both the county and state level are representative of the results noted. The authors further speculate that greatest overall crime reduction can be achieved if concealed carry laws are permitted universally.

For the study, a neighboring county was defined as another geographic location with a center within 50 miles of the studied county. To account for variations in arrests, the study controls for violent or property crime arrests depending on whether the crime rates studied are related to violence or property crime. This mitigates the noncausal relationship between crime and arrest rates, as arrest rates are functions of crime. The study states that the effects of “spillover” on a county without a concealed carry law when a neighboring county enacts a concealed carry law are substantial: an increase of 7.45 percent in rapes, 4.2 percent in robbery, and 4.5 percent in murder. These effects are insignificant if a neighboring county already has a concealed carry law in place. When comparing crime rates of the county itself when implementing carry laws, the rates of crime are reduced by an aggregate 34.16 percent. In all categories of crime except larceny, the rates of crime are reduced over a 7-year period by the adoption of concealed carry laws. In studies where neighboring counties adopt concealed carry laws, and the host county already has concealed carry laws, the only perceived effects are positive, or a decrease in all crime, except larceny.¹⁸ This therefore results in a significant increase in crime to areas without concealed carry laws when an adjacent county implements such laws and no perceived increase in crime if the host country already possesses such laws when neighboring counties, in turn, enact such legislation.

The article concludes through multiple examples of crime rate statistics that criminals tend to migrate across areas with greater frequency when concealed carry laws are implemented. This migration has a greater effect as related to concealed carry than just increased arrest rates, meaning increased law enforcement techniques which lead to more arrests are still less effective at reducing crime than the deterrent effect of having concealed carry laws. This spillover effect of crime is noted as immediate and increased over time, with counties that implement such laws continually seeing a decrease in crime and counties that do not have concealed carry continually seeing a growth in crime. Taken as a whole, the projection is that aggregate crime reduction can be better

achieved through the adoption of concealed carry laws in all states throughout the country.¹⁸

Again, the examples shown demonstrate not only what the effects of concealed carry are on reducing crime in cities and states, but how adjacent cities and states who do not allow for concealed carry see increased rates of crime. This translates, for this study, to schools or other locations susceptible for mass shootings as these locations are comparative of “closed systems” in which crime is more likely to migrate to as there is no immediate deterrent.

As outlined before, one of the effectiveness measures within the analysis is the response time of the first responders. Regardless of the situation, the final determining factor in addressing mass shootings is bringing in police and medical support in a timely manner. As illustrated by the example,¹⁰ the “flash to bang” factor, or ability for police to arrive in comparison to the start of a shooting event, directly relates to the number of casualties inflicted. The study¹⁹ is based on data spanning a 5-year period and covers 24 school shootings in 18 states and 41 workplace shootings in 12 states. The average time in shooting events ranged from 3 to 4 minutes with an average victim being shot every 15 seconds. The fastest police response time noted in these events was 5-6 minutes, with most taking much longer. Here, the authors propose an armed responder, such as a resource officer or nearby law enforcement agent, as a best option for reducing the severe outcomes of an active shooter incident.

In an example at Red Lake High School,²⁰ in Minneapolis, where a student killed five other students, a security guard, and a teacher, the response of law enforcement was critical. Within 2 minutes of receiving the call, armed officers responded, headed toward the shooter, and hit him twice with gunfire. This caused the shooter to retreat from his position and commit suicide, preventing further casualties. Overall the shooter's attack lasted for more than 10 minutes, but the quick response by law enforcement ended the situation before further personnel were hurt.

Contrast this with situations such as the Virginia Tech School shooting in which the University's Police Department numbered more than 35 officers, but the shooting events spanned a timeframe of more

than 2 hours. When the shooter initially killed two personnel, improper procedures allowed for the campus to remain unaware and the shooter was able to move undetected to another section of the campus and begin shooting again. Even though police were present in mass numbers, they were fixated on the initial shooting site and were unable to influence the second shooting site timely enough to prevent further casualties.²¹

Multiple examples of active shooter incidents and the response time for law enforcement can conclusively deduce that the longer an event transpires, the more casualties will be incurred. Additionally, soft targets such as schools or other mass gatherings of people otherwise unable to defend themselves make a more enticing target.²² Additionally, the ability for first responders to arrive, organize, and begin addressing the issue almost always results in reacting to the damage already done.

The increased likelihood of active shooter events has proven that even in areas with robust police and military presence, the ability for active shooters to inflict mass damage quickly is not preventable with external law enforcement or responders who must be called to the scene.²² This implies that readily available deterrents and responders, in the form of concealed carry personnel on scene, have a greater ability to end an active shooter situation sooner than waiting for law enforcement to arrive. Much of this discussion focuses on select singular events. The situation becomes much more complicated when law enforcement officers are forced to deal with multiple shooters or multiple locations. As Frazzano stated, "Though smaller jurisdictions might have special tactics law enforcement squads, those squads will not likely be able to deal with active shooter scenarios that include multiple shooters in multiple locations with their own-source resources. How, then, are these jurisdictions to protect their citizens when local capabilities and capacities are overwhelmed?"^{23(p2)}

In a recent study, the National School Shield Task Force²⁴ conducted an in-depth review of the National Status of School Security. The study examined the history of school violence and offered varying recommendations for decreasing violence in schools. The

central point of the study referenced the efficacy of having an armed first responder, such as a school resource officer (SRO) present. In the study, the commission examined the effectiveness of a previous program sponsored in 1996 which provided federal funding for school districts to conduct security evaluations and receive SRO participation.

The program, sponsored by the US Department of Justice was called COPS, Community Oriented Policing Services, and included a 60 million dollar, 3-year grant to provide increased security in the nation's school systems. Although expired, the program provided valuable benefits and statistically attributed to less crime during the timeframe in which it was implemented.

The study provided recommendations that included increasing the physical security of schools and mental/behavioral health counseling to prevent and detect problem areas; increasing security through either RSO or armed security of some form to include possible teacher/faculty arming. The overriding consensus is that decreasing response time to threats and increasing ability for armed opposition to engage an active shooter is the most important and effective method for reducing casualties.²⁴

PROCESS FLOW CHART

The process flow chart for scenario 1 is given in Figure 1. As this a basic scenario, the model will

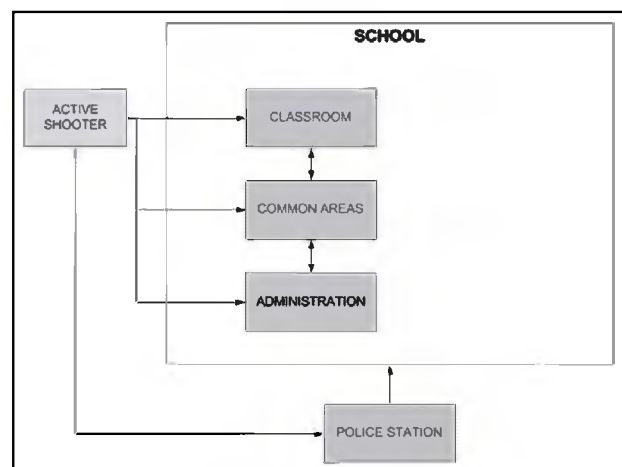


Figure 1. Basic scenario of active shooting incident in a school.

assume that no access control or any type of security is used within the school. The active shooter is assumed to be well armed and able to enter the school and randomly chooses the victims in three potential areas: classrooms, common areas (cafeteria, library, gymnasium, etc), or administration offices. He can further randomly choose to change location and continue shooting in other areas until he encounters a barrier (engaged by the law enforcement officers or commits suicide). Here, the response time and the number of casualties and injured individuals will depend on the timeframe in which the incident is reported and the response time of the law enforcement officers.

The process flow chart for scenario 2 is given in Figure 2. Here, it is assumed that there is an armed SRO present. The active shooter is assumed to be well armed and able to enter the school and randomly chooses the victims in three potential areas: classrooms, common areas (cafeteria, library, gymnasium, etc), or administration offices. He can further randomly choose to change location and continue shooting in other areas. This scenario assumes that once the shooter begins his assault, the resource officer will act to mitigate the threat. Here, the response time and the number of casualties and injured individuals will depend on the timeframe in which the incident is reported and the response time of a barrier (the armed resource officer) can diffuse the situation, or confine it, until law enforcement arrives.

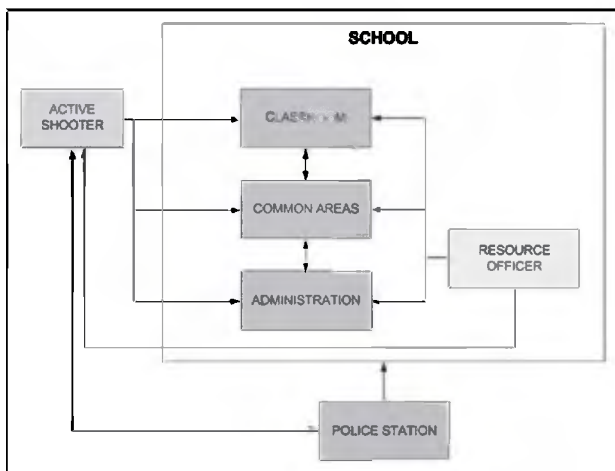


Figure 2. Active shooting incident in a school with resource officer.

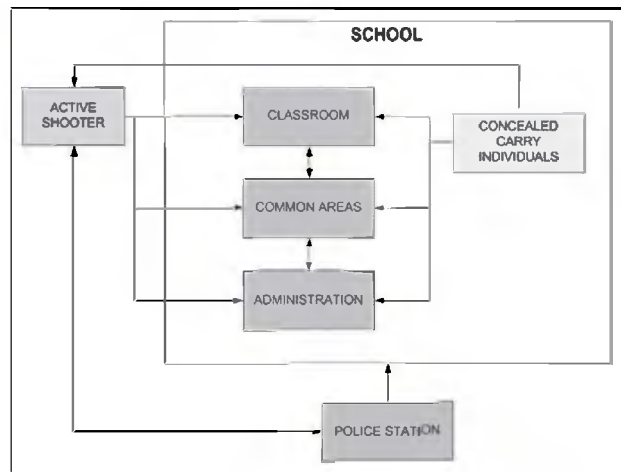


Figure 3. Active shooting incident in a school with 5-10 percent concealed carry individuals.

The process flow chart for scenario 3 is given in Figure 3. Here, it is assumed that there are 5-10 percent of employees (faculty and/or staff) exercising concealed carry. The active shooter is assumed to be well armed and able to enter the school and randomly chooses the victims in three potential areas: classrooms, common areas (cafeteria, library, gymnasium, etc), or administration offices. He can further randomly choose to change location and continue shooting in other areas. This scenario assumes that staff and faculty with concealed carry will remain static in their respective locations and only respond in a defensive posture to the threat, that is, teachers with concealed carry would stay in their classrooms and protect their students. Therefore, their response is likely to be quantified through the data as less effective than a resource officer who maneuvers to the threat. Here, the response time and the number of casualties and injured individuals will depend on the timeframe in which the incident is reported and the response time of a barrier (those individuals with concealed carry) can diffuse the situation, or confine it, until law enforcement arrives.

The process flow chart for scenario 4 is given in Figure 4. Here, it is assumed that there is an armed SRO present in addition to 5-10 percent of employees (faculty and/or staff) exercising concealed carry. The active shooter is assumed to be well armed and able

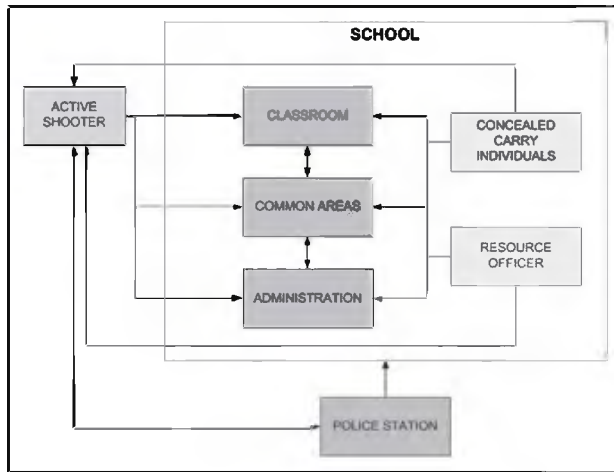


Figure 4. Active shooting incident in a school with 5-10 percent concealed carry and armed resource officer.

to enter the school and randomly chooses the victims in three potential areas: classrooms, common areas (cafeteria, library, gymnasium, etc), or administration offices. He can further randomly choose to change location and continue shooting in other areas. This scenario assumes that once the shooter begins his assault, the resource officer will act to mitigate the threat by maneuvering to it, and those with concealed carry will safeguard and defend from their current locations, thereby resulting in quicker incident culmination and reduced casualties. Here, the response time and the number of casualties and injured individuals will depend on the timeframe in which the incident is reported and the response time of a barrier (the armed resource officer/concealed carry personnel) can diffuse the situation, or confine it, until law enforcement arrives.

ANYLOGIC MODEL

Agent-based modeling is defined as “a system is modeled as a collection of autonomous decision-making entities called agents. Agents may execute various behaviors appropriate for the system they represent.”²⁵ It is a form of computer simulation modeling that is becoming increasingly popular. Borshev, Karpov, and Kharitonov are experts in modeling software called AnyLogic²⁶ and claim that AnyLogic is one of the best pieces of agent-based modeling software in

the world. It is widely used in industry and academia. AnyLogic not only provides agent-based modeling capabilities but also allows users to create discrete event and system dynamics models or even combinations of all three types.

Agent-based modeling was used to create the active shooter model in this research and has many benefits. It “captures emergent phenomena,” “provides a natural description of a system,” and “is flexible.”²⁵ The agent-based modeling approach was chosen because it is the best technique for modeling human systems. It allows the user to create complex interactions between humans, deal with people in a limited amount of space, allows the population to be heterogeneous, allows the interactions to be complex, and allows agents to execute complex behavior.²⁵ All five of these attributes are required in the active shooter model.

Accurately creating a human agent-based model requires collecting the correct real-world data. However, a limitation to this stems from the model only allowing a person to perform the predefined actions that the user creates, and understanding that in reality humans possess free will.²⁷ This ultimately results in model scenarios that replicate reality when provided with correct real-world data to great efficacy, but never with total accuracy as the variable of free will remains undefined.

When the model is launched, the user is prompted with the model setup screen, shown in Figure 5. This screen allows the user to run the model with predefined inputs. The parameters to be determined are the probability that teachers may have concealed carry weapons in their respective classrooms and whether or not the school has an on-duty resource officer at the time of the incident. The time for law enforcement to arrive and casualty rate are based on the literature events previously mentioned in the project description portion of this study. Once the parameters are set according to the user's preference, the user can click the button labeled “Run the model and switch to Main view.” This will take the user to the Main view of the model and start the simulation.

Once the button is pressed, the Main view shows the floor plan of the school. The Main view is shown

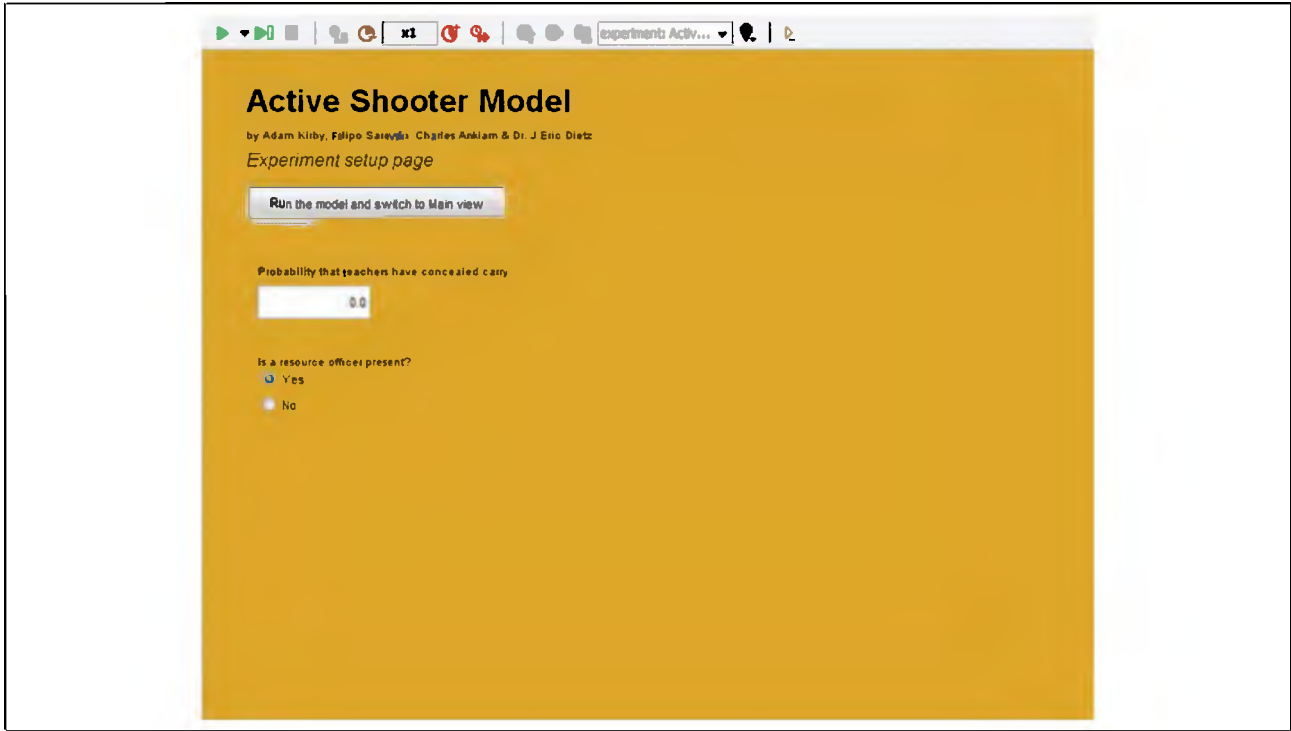


Figure 5. Model setup screen.

in Figure 6. The walls have been traced with polylines using AnyLogic's presentation pallet. This serves as the environment for the agents to exist within.

The active shooter appears at the front entrance of the school. If a resource officer is present, he appears outside the doors of the gymnasium. The location of the active shooter and resource officer start points can be changed using AnyLogic. The model runs in real time. Once it is completed, the results are shown at the top. The results include how long responders took to engage and stop the shooter, how many people were shot, and who the shooter was engaged by. An example of a result using the default model settings is shown in Figure 7.

The model works in three parts of logic. The first part is the active shooter and concealed weapons carry logic, which is shown in Figure 8. The shooter enters through the front door of the school. He then decides, at random, between one of five locations to start shooting. The five choices are class 1, class 2, class 3, office, and cafeteria. The shooter, based on reviewed literature, stays in the location and shoots

victims in 20-second intervals for 2-5 minutes before leaving and choosing another destination. This will continue until the shooter is engaged and stopped. Only one stopping mechanic is located within the active shooter logic. That is the chance that a teacher or a staff member has a concealed weapon in the room which the shooter enters. If there is a person in the room with a concealed weapon, the shooter is considered engaged, and the model is terminated.

The second part of logic is the resource officer logic, which is shown in Figure 9. The resource officer spawns at the predefined resource officer start point, which is currently the gymnasium door. He then moves to a ready position in the hallway. Next, he is dispatched with the location of the shooter inside the school. He moves to the location where the shooter was, unless the shooter has left the room. If the shooter is still present, the resource officer engages the shooter and stops him. If the shooter has already left, the resource officer stops and waits for the next location of the shooter. He then repeats the process until he is able to engage the shooter.

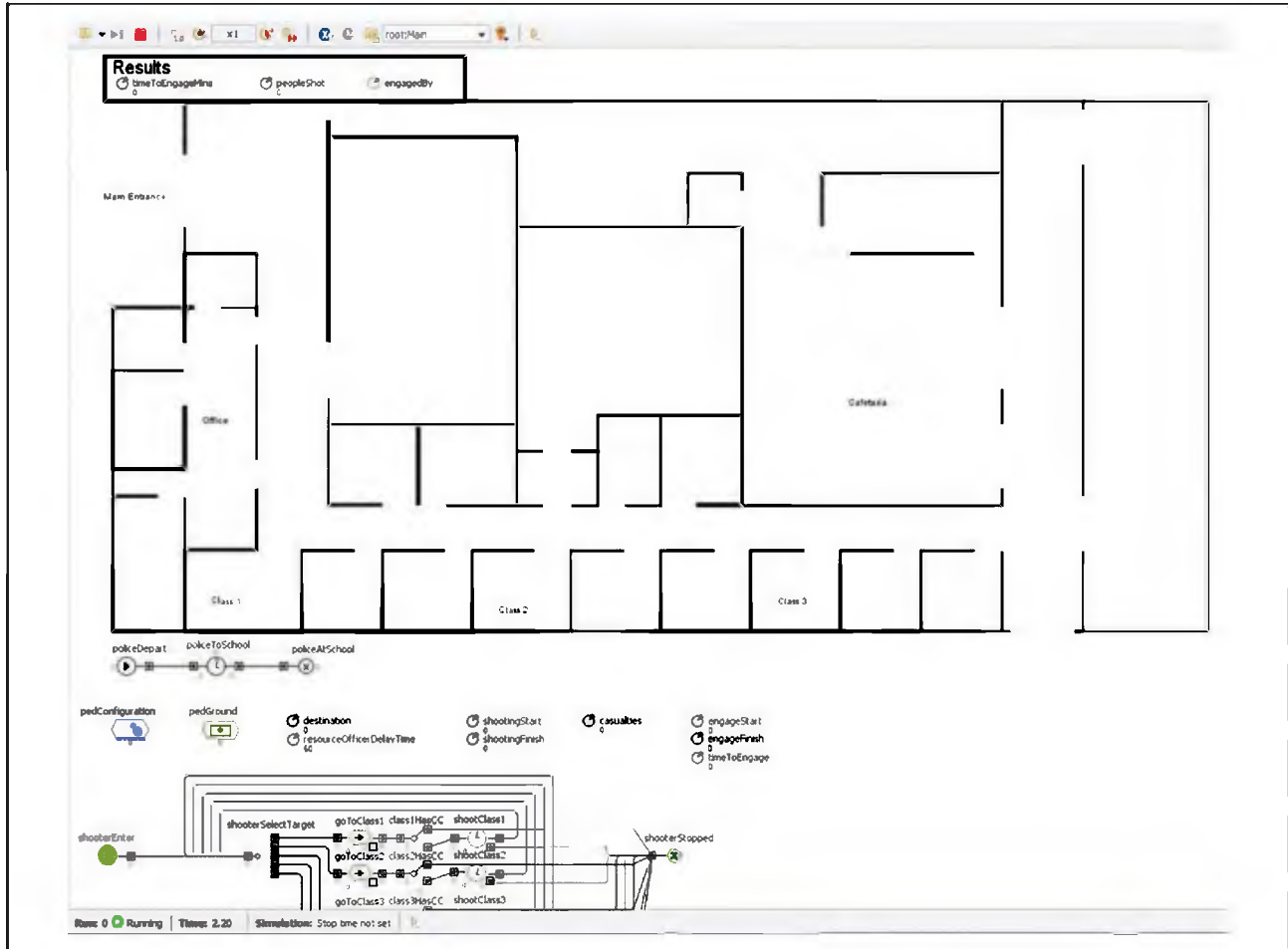


Figure 6. Main view.

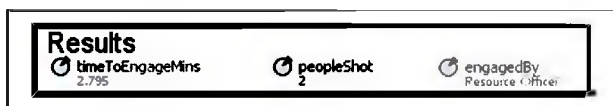


Figure 7. Results displayed.

The third and final part of the model logic is the police logic, which is shown in Figure 10. It works exactly like the resource officer logic with three exceptions. First, it passes multiple agents through the logic (10 as of the time of this study). Second, the police enter through the front door of the school. Third, police arrive several minutes after the shooting has already begun (5-20 minutes later as of the time of this study). This is controlled using the discrete event framework shown in Figure 11. The police officers

start at the police station, or wherever they happen to be located at the time of the incident, and travel to the school. Once at the school, they enter through the front doors and engage the shooter exactly as the resource officer would.

RESULTS

Figures 12-17 show the results of all 50 runs for each of the proposed scenarios. Each graph shows the number of casualties that occurred and the amount of time that passed between the shooter entering the school and the time the shooter was stopped. A trend line is also present on each graph showing a correlation between the number of casualties and the time to engage the shooter.

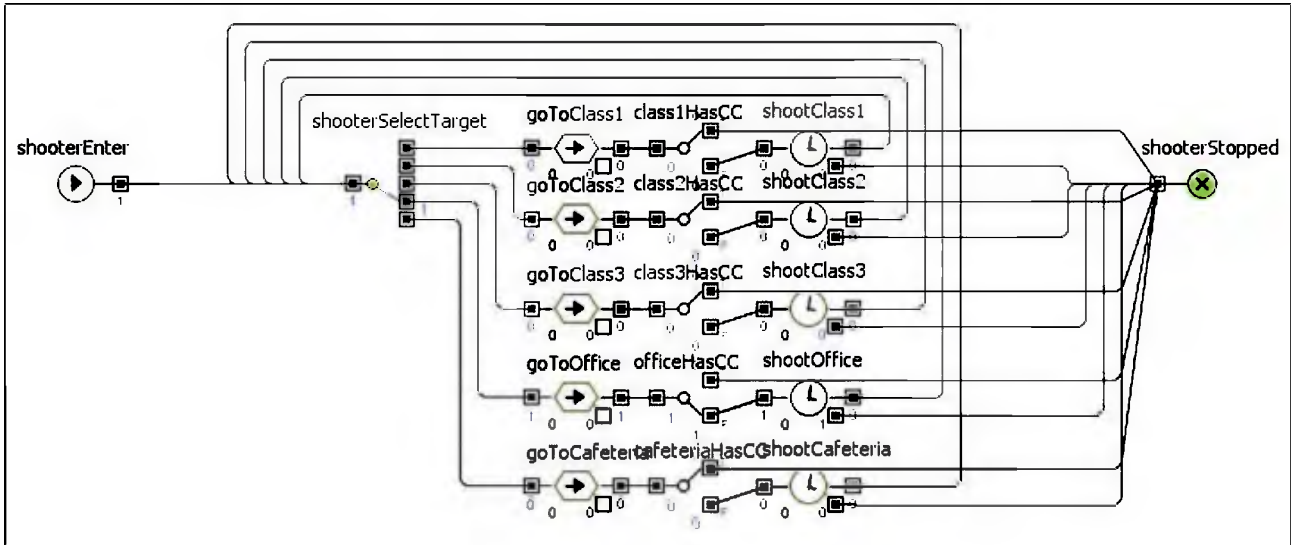


Figure 8. Shooter and concealed weapons carry logic.

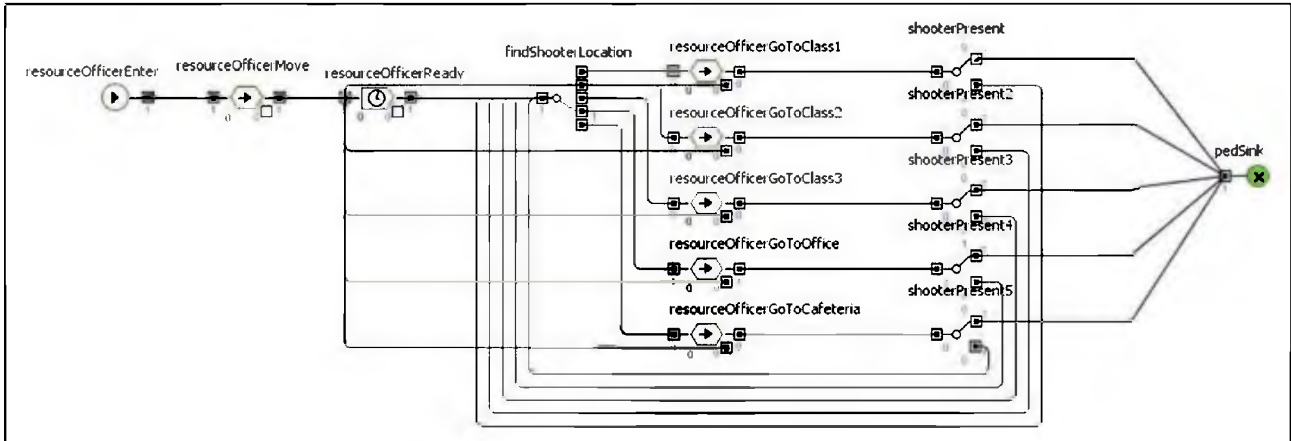


Figure 9. Resource officer logic.

DISCUSSION

A compiled set of results is shown in Figure 18. These results include the average time to engage and the average number of casualties calculated by the model in 50 runs of each scenario. As each model run is random and independent, the scenario was run 50 times to ensure adequate sample size would result in credible results. Scenarios 3 and 4 were split into two subcategories, one with 5 percent concealed carry and one with 10 percent concealed carry, respectively.

As seen in Figure 18, the number of casualties in all other scenarios is less than that of the

basic scenario. The comparison between having a resource officer and having teachers and staff with concealed weapons shows that a resource officer is able to decrease casualties and response time more effectively due to the resource officer being able to maneuver toward the threat while the teachers and staff remain static. The effectiveness is most improved, however, when both a resource officer and concealed carry personnel are present. Not surprisingly, increasing the percentage of concealed carry personnel improved the response time and decreased the number of casualties.

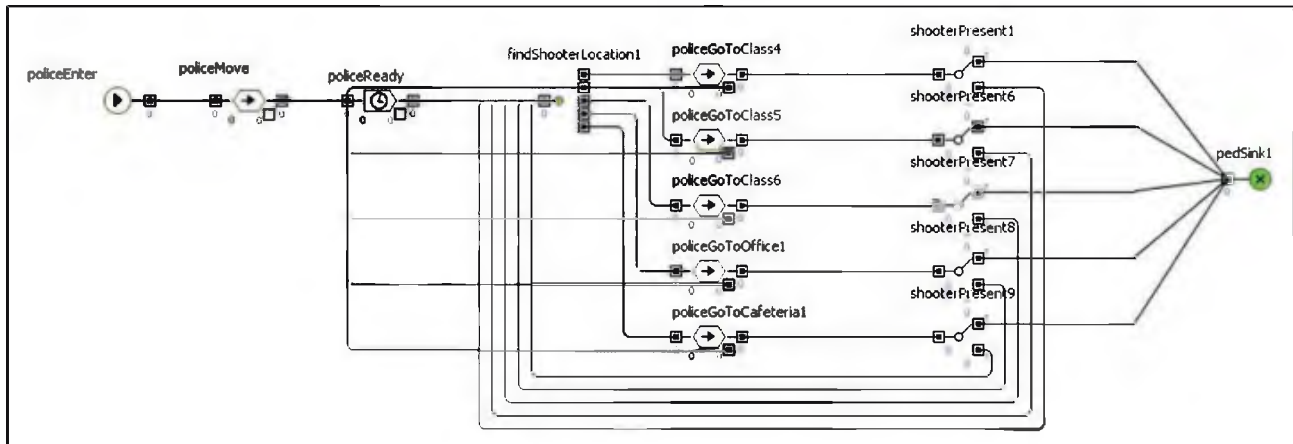


Figure 10. Police logic.

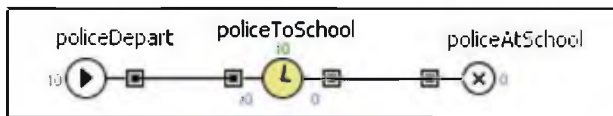


Figure 11. Police travel logic.

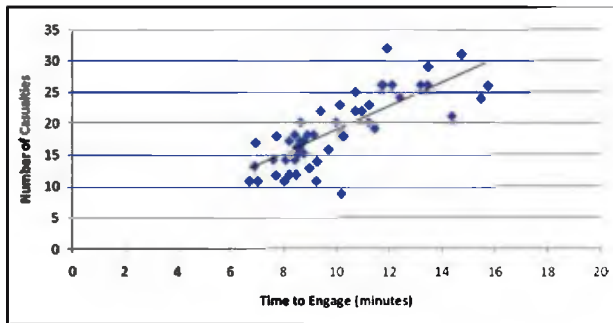


Figure 12. Basic scenario.

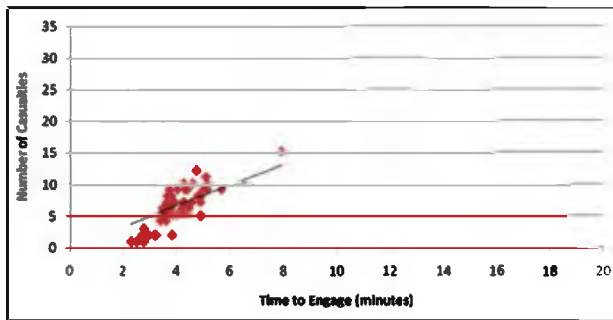


Figure 13. Resource officer.

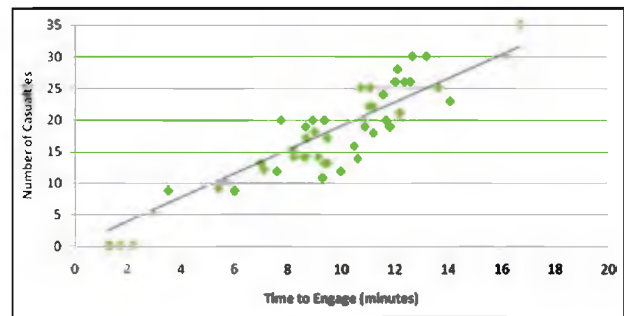


Figure 14. 5 percent CCW.

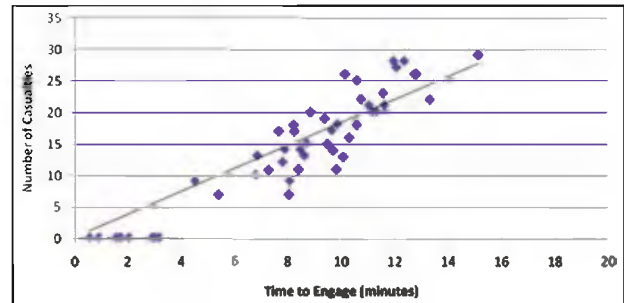


Figure 15. 10 percent CCW.

Since the basic scenario showed the highest number of casualties, the other scenarios should all be considered successful in minimizing the negative effect of active shooter phenomena. Having a resource officer on duty reduced casualties by 66.4 percent and response time by 59.5 percent. Having 5 percent of personnel carry a concealed weapon reduced casualties by 6.8 percent and response time by 5.4 percent.

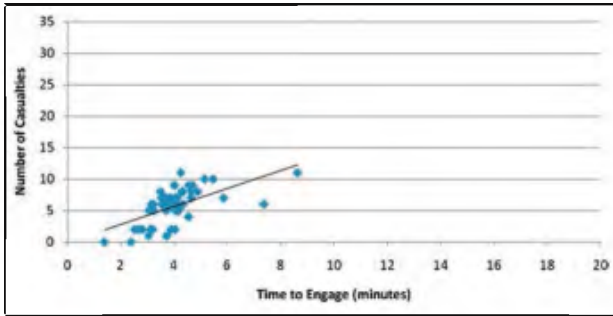


Figure 16. 5 percent CCW + resource officer.

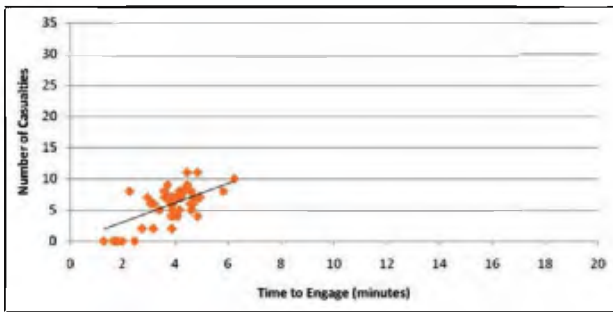


Figure 17. 10 percent CCW + resource officer.

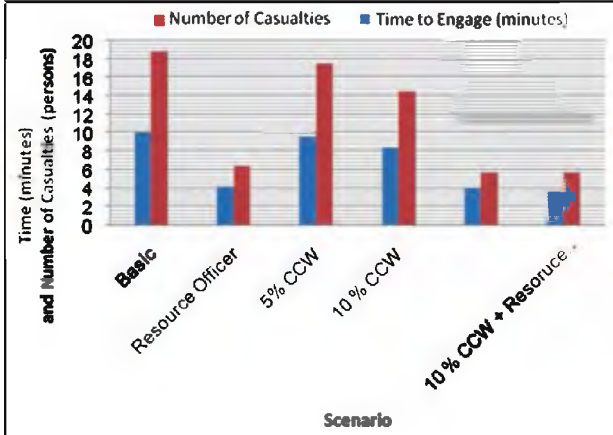


Figure 18. Compiled results.

Increasing the percentage of personnel with concealed carry to 10 percent reduced casualties by a total of 23.2 percent and response time by 16.8 percent. Combining 5 percent concealed carry personnel with a resource officer reduced casualties by 69.9 percent and response time by 59.7 percent. The final and most successful scenario of 10 percent concealed carry per-

sonnel with a resource officer reduced casualties by 70.2 percent and response time by 62.7 percent.

The relationship between time to engage and number of casualties for each scenario is shown in Figures 12-17. The trend lines confirm that, for each scenario, a longer response time has a positive correlation with number of casualties.

CONCLUSION

The results of the study show that to decrease the number of casualties, the response time must be reduced. The model data show that the most efficient way to reduce response time is to have armed personnel present at the school who can engage the active shooter before the police arrive. The effectiveness of this method can be optimized by having both armed resource officers and armed teachers or staff members with concealed weapons with which they can engage the shooter if he enters their room. The results of these data can therefore be interpreted as when teachers and faculty serve as a static deterrent or by not maneuvering on a shooter but rather just responding defensively, then the greater the number of teachers or faculty armed, therefore result in a greater number of reduced casualties.

Teachers and staff who choose to carry concealed weapons would need to be fully trained and would likely be required to pass examinations to ensure that they are well suited to carry concealed weapons on school property. These examinations would likely be required multiple times throughout their career. Very strict rules on where the weapons would have to be located would be needed. School administrators would need to be willing to accept the liability of having weapons present in their schools.

Controversy exists over whether nonlaw enforcement personnel should be able to react to an active shooter situation. Additional training of both law enforcement and concealed carry personnel would be required to determine at what point self-defense measures transition to law enforcement roles. Through additional training concealed carry personnel could maneuver toward active threats instead of just sheltering in place. This, in conjunction with resource officers, would likely result in even fewer casualties.

However, considerations of friendly fire and liability issues preclude modeling this scenario at this time as it assumes policy decisions. The results of the study show an improvement to both response time and decreased number of casualties when responders are able to maneuver toward the threat. Further research on the cost/benefit ratio of this topic should be done to determine whether the reduction of casualties can be, or is, of value based on the training, casualties to students, and concealed carry. Another area of future research would be to expand the model to recreate and analyze a historical event to determine how concealed carry personnel and resource officers or law enforcement could have mitigated the threat.

Last, it is the intent of the authors that rational discourse on the aforementioned topic will be sought and reasonable alternatives to safeguard innocents from violence will be considered in the making of policy decisions. A product of the research of active shootings in schools, and violence in general, is the discussion of violence among youths. Fowler et al. conducted a study revealing that 50-96 percent of youth in urban environments are exposed to episodes of violence ranging from being a victim, to witnessing or knowing first hand someone has been exposed to violent episodes. Over time, youth exposed to violence increases the likelihood they will become victims of psychological disorders, such as posttraumatic stress disorder or insecurity. Fowler states these combined factors contribute to rising violence, especially among young persons who are desensitized to violence and are therefore more prone to reacting with violence themselves.²⁸

Kerlikowske, a staunch anti-gun advocate, concedes that addressing the issue of violence in society by singling out guns alone will have little value. He reveals that startling levels of violence are being identified in children, particularly those from fractured families or large urban settings.²⁹ As these studies illustrate, there seems to be the distinct possibility of drawing a correlation to the rising violence rate among youth, urbanization, and moral decay. This might also be substantiated as we look at the historical context of the situation; firearms have been an intimate and substantial element of American

lifestyle since prior to the inception of the constitution, but it is only within the relative recent past that we associate increased violence with access to guns. Therefore, this might suggest respective of firearms being present, that changing culture, specifically that associated with urban development and changing demographics, are more likely causal factors and indicators of violence, than firearms themselves. Even in studies that control for social and economic factors, the results indicate that gun control does not reduce violence or crime.³⁰ This suggests that despite best intentions and alternative efforts, the need to arm school teachers or faculty for the defense of their students should not be dismissed on face value simply because of the initial contemporary cultural aversion to firearms.

These data should compel us to look closely at the changing societal norms that seemingly produce more young people with contempt for authority and less regard for life as a causal factor for many of the incidents discussed in this report.

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Exhibit H

(Testimony on Pending Bills)

Testimony on SB 17 – Assault Weapons and Large Capacity Magazines

Senate Bill 17 would ban the possession, manufacture, import, sale, or transfer of assault weapons and high capacity magazines. S.B. 17 also provides a mechanism for affected parties to obtain a Certificate of Possession (“Certificate”) in order to “possess, use, manufacture, or otherwise control” their newly regulated firearms. The Pennsylvania State Police *may issue* a Certificate following an extensive application and thorough investigation.

S.B. 17 suffers numerous crucial flaws that violate the U.S. and Pennsylvania Constitutions, including:

1. Due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution and Article 1, Sections 1,9, and 11¹ of the Pennsylvania Constitution;
2. Takings clauses of the Fifth Amendment to the U.S. Constitution and Article 1, Section 10 of the Pennsylvania Constitution;
3. Second Amendment to the U.S. Constitution and Article 1, Sections 21 and 25 of the Pennsylvania Constitution; and,
4. Article 2, Section 1 of the Pennsylvania Constitution, which precludes delegation of authority by the General Assembly.²

¹ See, *Stone & Edwards Ins. Agency v. Dep't of Ins.*, 636 A.2d 293, 297 (Pa. Cmwlth. Ct. 1994).

² See, *W. Phila. Achievement Charter Elem. Sch. v. Sch. Dist. of Phila.*, 132 A.3d 957 (Pa. 2016); *Mary Ann Protz v. W.C.A.B. (Derry Area School District)*, 639 Pa. 645 (2017).

Analysis

Due Process. Law-abiding citizens of the Commonwealth who will be affected by this ban have a clear property interest in their firearms and magazines, some of which can cost thousands of dollars each. The protections offered by the due process clause require that these affected individuals be provided a hearing prior to, or shortly after, the deprivation of their property. Under the current provisions within the law, when an individual submits an application for a Certificate,³ *they are not provided relief from the effects of the law.* This means that even though an application must be submitted within 120 days of the effective date, *it will still be a criminal offense to possess an assault weapon.* Owners of firearms covered under the legislation will have no choice but to divest themselves of their property or risk violation of the new regulatory scheme. In the absence of any grandfather clause or permitting structure, they will also be required to immediately divest themselves of any and all large capacity magazines.

The Pennsylvania State Police must articulate a “specific reason” for revocation of a Certificate but are not bound by the same requirement for denial of an initial or renewal application. S.B. 17, Session of 2018, § 6105.2(f)(2) (2018). The United States Supreme Court has unquestionably held that before an individual is finally denied a property interest, he must be provided a meaningful hearing.⁴ In cases of denial and revocation, affected parties must be afforded a meaningful hearing. As S.B. 17 does not provide for a *pre-* or *post-*deprivation hearing, it is unconstitutional. In relation to

³ As discussed *infra*, the requirement for a certificate is in violation of the U.S. Supreme Court’s holding in *Murdock v. Pennsylvania*, 319 U.S. 105, 112 (1943), where the Court held that a “state may not impose a charge for the enjoyment of a right granted by the federal constitution.”

⁴ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

revocation of a Certificate, the United States Supreme Court has found that a “license may not be revoked or suspended at the discretion of the . . . authorities,” where there exists a liberty or property interest.⁵ In order to comply with this decision the criteria for revocation must be clarified beyond “good cause”.⁶ S.B. 17, Session of 2018, § 6105.2(f)(1) (2018).

Taking Without Just Compensation. The Fifth Amendment to the U.S. Constitution and Article 1, Section 10 of the Pennsylvania Constitution require that just compensation be paid when the Government takes private property. In this matter, Pennsylvania residents have spent what could amount to thousands of dollars per what is defined as an “assault weapon”. These residents will be compelled to pay a recurring fee⁷ to retain possession of their property and could be subject to a surrender order if their permit is denied or revoked. The forcible surrender of this property without just compensation is a clear violation of the Fifth Amendment and Article 1, Section 10.

Similarly, Pennsylvania residents will have no choice but to dispose of their large capacity magazines prior to the effective date of the bill because there is no grandfather clause for those that are currently owned. There is also no permitting structure or provisions to include the magazines into the permitting of newly regulated firearms. This has the potential to impose substantial costs not only on individuals, but also on gun dealers and commercial shooting ranges that rent firearms to guests, as they frequently

⁵ *Barry v. Barchi*, 443 U.S. 55, 64 n.11 (1979).

⁶ As discussed *infra*, this is an unlawful delegation of authority, pursuant to Article 2, Section 1 of the Pennsylvania Constitution.

⁷ Which has been held to be unconstitutional by the U.S. Supreme Court in the U.S. *Murdock v. Pennsylvania*, 319 U.S. 105, 112 (1943).

inventory a substantial numbers of magazines for sale and/or rental. Thus, an economic impact analysis must be performed before any further consideration of this bill occurs.

Right to Keep and Bear Arms. S.B. 17 has several provisions that violate the 2nd Amendment to the U.S. Constitution and Article 1, Sections 21 and 25 of the Pennsylvania Constitution. The first is that there is no guarantee that any Certificates of Possession will ever be issued. Section 6105(b)(1), states that “a certificate of possession *may* be issued”. Even if all of the statutory criteria are met, the State Police hold the discretionary authority⁸ to refuse to issue any Certificates. The second, Section 6105(c)(2)(ii), compels the State Police to investigate an individual’s “character and reputation”⁹ to determine if that individual is worthy of exercising the rights guaranteed to them by both the federal and state constitutions. No criteria are established in the proposed legislation from which to determine what type of information such an investigation might yield since Section 6195(c)(2)(i) requires a criminal background check. It is unclear what character and reputational information will be used to deny the exercise of constitutional rights to law-abiding citizens. Third, S.B. 17 targets weapons that are aesthetically and mechanically similar, although functionally distinct, from some weapons in military service. The U.S. Supreme Court has found that the Second Amendment guarantees the right to keep and bear arms which are capable of contributing to the common defense, especially arms that are in use by the military.¹⁰ Finally, applications for a Certificate must be submitted *within 120 days of the effective date* of the bill. This means that after 120 days, no new applications can be submitted, *effectively*

⁸ As discussed *infra*, this violates Article 2, Section 1 of the Pennsylvania Constitution.

⁹ *Id.*

¹⁰ *U.S. v. Miller*, 307 U.S. 174, 177 (1939).

banning all of the weapons, accessories, and combinations thereof enumerated in Subsection j. This reflects a clear disregard for the protections of the Second Amendment to the U.S. Constitution and Article 1, Sections 21 and 25 of the Pennsylvania Constitution.

Impermissible Delegation. Another critical flaw of S.B. 17 is in the way it empowers the State Police to determine the “character and reputation” criteria for an individual to be granted a Certificate, in the absence of any standards or methodologies to ensure equal application of the law. The Pennsylvania Constitution, in Article 2, Section 1, prevents the General Assembly from delegating power in a manner susceptible to abuse. The Supreme Court of Pennsylvania has held that the legislature must provide “adequately-defined standards and methodologies”, but S.B. 17 fails to provide any framework for what constitutes necessary or prohibiting “character and reputation.”¹¹ Rather, the Pennsylvania State Police are merely directed to investigate an individual’s character and reputation in the absence of any standards or methodologies. Thus, the State Police are unconstitutionally delegated unchecked and unrestrained authority.¹² In choosing to delegate such discretion, the Legislature would violate Article 2, Section 1.

Additional Policy Issues. S.B. 17 suffers from three final issues of policy implementation and enforcement. The first of these is the fee structure. The Supreme Court has held that any tax on a constitutional right is unconstitutional and invalid.¹³ S.B. 17 would create a fee structure in which compliant residents would be forced to pay a fee of \$15 in order to undergo a repetitive background check to obtain their Certificate in

¹¹ *W. Phila. Achievement Charter Elem. Sch. v. Sch. Dist. of Phila.*, 132 A.3d 957, 964 (2016).

¹² *Mary Ann Protz v. W.C.A.B. (Derry Area School District)*, 639 Pa. 645, 663 (2017).

¹³ *Murdock v. Pennsylvania*, 319 U.S. 105, 112 (1943).

addition to the background check necessary to purchase their firearm. They will then be forced to pay this fee again each time their Certificate is renewed. The fee for a new background check at time of renewal is unnecessary and a blatant effort to raise the cost of possession. The State Police would already have a comprehensive database of Certificate holders and their possessed weapons to assist with confiscation efforts if an individual becomes a prohibited possessor at any time after the Certificate is granted. Additionally, the statute only prohibits the State Police from assessing additional fees related to the background check, but not for the character and reputation investigation.

Second, the bill requires that application for a Certificate include “Identification marks or unique characteristics of the assault weapon.” S.B. 17, § 6105.2(c)(1)(iii). This requirement demonstrates a clear lack of knowledge on the subject of the legislation. The appeal of the types of weapons this bill seeks to regulate is in their vast modularity and as such there are very few, if any, unique marks or characteristic that cannot be duplicated in another weapon or removed entirely. This section will serve only to confuse the public on what they can and cannot do once they receive their Certificate and complicate any interactions with law enforcement if a prominent visual characteristic has been altered or removed after issuance. Subsection (c)(1)(2) requires the manufacturer’s name, model number, and serial number and these details cannot be changed. Where the public is unable to understand what conduct is prohibited and the legislature has failed to establish minimum guidelines for law enforcement to follow, the law must be void-for-vagueness.

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Third, this bill would require under Section 6105.2(b)(3)(iii) that a Certificate

¹⁴ *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

include a photograph of the certificate holder. This requirement is incompatible with established religious exemptions to state law regarding the purchase of firearms. *See* 18 Pa.C.S.A. § 6111(b)(2). A member of a duly recognized religious group, such as the Amish, must be permitted to obtain a valid-without-photo version of the Certificate.

Testimony on SB 18 and HB 2109 – Extreme Risk Protection Orders and Firearms

Restraining Orders

Senate Bill 18 and House Bill 2109 propose creation of new court orders called Extreme Risk Protection Orders or Firearms Restraining Orders (“Order”) and also outline the procedures to be followed and paperwork to be created and completed in order to obtain binding court orders. Several portions of these bills are constitutionally invalid or create policy implications reaching far beyond their purpose, with considerable latitude for abuse by law enforcement, family members or even social or healthcare workers. As such, S.B. 18 nor H.B. 2109 are unconstitutional and neither can be permitted to become law.

Analysis

Due Process. The bills create provisions that allow for an order to be issued following an *ex parte* hearing involving only the petitioner.¹⁵ After an order is issued, then, a hearing including the defendant is to be scheduled within 14 days. The order and notice of hearing will then be personally served by a law enforcement officer who, at the time of service, under S.B. 18, will demand the surrender of all firearms and firearms licenses in the possession of the respondent, under penalty of criminal charges, in the absence of the respondent being offered an opportunity to be heard before the deprivation of his/her constitutional rights. That officer is also then authorized to conduct “any search authorized by law”. In allowing such a scheme, this bill violates the Fifth and Fourteenth

¹⁵ As a result of the constitutional due process mandate, 18 U.S.C. § 922(g)(8) only permits an individual to be stripped of his/her right to keep and bear arms if, *inter alia*, a restraining order “was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate.”

Amendments to the U.S. Constitution and Article 1, Sections 1, 9, and 11¹⁶ of the Pennsylvania Constitution. This deprivation of property on application of another and without a prior hearing, while temporary, is nonetheless a violation of due process protections.¹⁷ Under H.B. 2109, fees, costs, and a surcharge would be assessed against the defendant when an order is granted. At the discretion of the court, a defendant could even be forced to relinquish a Federal Firearms License, potentially resulting in the permanent closure of his or her business. H.B. 2109 § 6109.5(a.1)(4). Such a closure, in addition to the costs imposed following an *ex parte* hearing, would violate the takings and due process clauses of the Fifth Amendment and Article 1, Section 10 of the Pennsylvania Constitution.

Further, Section 62B04(c)(2) of S.B. 18 distinguishes between an *ex parte* order and a 1-year order, but this is the only location in the statute that indicates there is any distinction between them. Under Section 62B04(e), “[a]n *ex parte* extreme risk protection order... shall expire upon the date of the entry of an extreme risk protection order.” This is the only provision contained in the statute relating to the expiration of an *ex parte* order and it is *dependent* on the entry of an order that is issued following a proper hearing. There is no mention that the *ex parte* order is vacated or rendered null and void in situations that a petition for an order is denied following a hearing with both parties. Similarly, a firearms restraining order under § 6190.6(c)(2) of H.B. 2109 will remain in effect until modified or vacated by the court. This means that once due process is finally provided not only is it too late to stop confiscation of the property, but the respondent

¹⁶ See, *Stone & Edwards Ins. Agency v. Dep't of Ins.*, 636 A.2d 293, 297 (Pa. Cmwlth. Ct. 1994).

¹⁷ *Fuentes v. Shevin*, 407 U.S. 67, 68 (1972) (striking down replevin provisions from Pennsylvania and Florida).

must now petition to regain it and quash the *ex parte* order, likely with the added cost of legal counsel.

Additional Policy Issues. These bills also suffer from a number of deficiencies in privacy protections, abuse prevention measures, evidentiary standards, and political neutrality.

First, while S.B. 18 contains provisions to protect the address of the petitioner, there are no provisions protecting the privacy of the respondent. The proposed petition would require the petitioner to “identify the number, types, and locations” of the respondent’s firearms. Anyone viewing court records can use this information to determine the monetary value, location, and risk and difficulty of stealing the firearms.¹⁸ Unfortunately, respondents could not protect themselves against such a disclosure because it could be several days before they are notified of a decision. S.B. 18 would also require law enforcement officers, when acting as the petitioner, to notify family or household members and any known third parties who may be at risk of violence. Such an open-ended notice directive could result in untold damage to several aspects of a respondent’s life including social relationships, present and future employment, and obtaining and maintaining housing. In a substantially similar bill being considered in

¹⁸ See, *Journal News Gun Map Might Have Been Used in a Burglary*, by [Margaret Hartmann](#), declaring that an individual’s home was burglarized and the burglars attempted to steal his firearms after the publication of his information online that he was licensed to have firearms, *available at* <http://nymag.com/daily/intelligencer/2013/01/journal-news-gun-map-might-have-caused-burglary.html>. See also, *Ex-Burglars Say Newspaper’s Gun Map Would’ve Made the Job Easier, Safer*, by Jana Winter, available at <http://www.foxnews.com/us/2013/01/04/ex-burglars-say-newspapers-gun-map-wouldve-made-job-easier-safer.html>

Rhode Island, the ACLU of Rhode Island warned, “[o]ver-notification is inevitable, especially when tied to the broad standard for petitioning”.¹⁹

While H.B. 2109 does not compel these same disclosures, it too breaches the privacy of the respondent. If a respondent is ordered to relinquish firearms under this bill, he or she may choose to relinquish them to another party for consignment sale or safekeeping. If the respondent elects this option, law enforcement is compelled to notify the petitioner of the identity of the individual to whom the firearms have been relinquished. As the petitioner lacks any legitimate interest beyond the knowledge that the respondent no longer possesses any firearms, there is no reason to disclose the identity of the third-party safekeeper or the location of the firearms, especially when the third-party safekeeper would have a background check performed on him/her to ensure their ability to hold the firearms.

Second, both bills allow a generous list of what parties constitute “family or household members” or otherwise may petition the court. The list includes current and former spouses, current and former sexual or intimate partners, *any* relatives by blood or marriage, healthcare practitioners, licensed social workers, licensed therapists, and even licensed marriage counselors. This wide range could encompass dozens of people, some of whom may be far removed from any actual conduct by the respondent. Additionally, by indiscriminately encompassing *former* spouses and partners, a possibility of vindictive use is created. In direct contradiction to Section 62B10(1) of S.B. 18 prohibiting certain conduct by a petitioner, Section 62B12 provides criminal and civil immunity for any acts

¹⁹ ACLU of Rhode Island, An Analysis of 18-H 7688 and 18-S 2492, Relating to Extreme Risk Protective Orders, March 2018, <http://www.riaclu.org/news/post/aclu-of-rhode-island-raises-red-flags-over-red-flag-gun-legislation>.

or omissions relating to an order that a petitioner or law enforcement officer might or might not make. This immunity opens the door to frivolous and fraudulent filings by a wide range of persons, including law enforcement officers seeking to circumvent Fourth Amendment protections, without any form of recourse.²⁰ Further, Section 62B14(f) requires that law enforcement officers enforce an order from any jurisdiction, when provided a copy by any source, *even if the validity of that order cannot be determined*.

Third, the lack evidentiary standards set in § 62B03(e) (S.B. 18) and Section 6190.6(c)(3) constitute a non-inclusive list of potential grounds for an order, with no criteria being specifically required, which is in violation of Article 2, Section 1 of the Pennsylvania Constitution.²¹ What is even more troubling is that many subsections describe conduct which is lawful, non-threatening, and includes no element of violence, and the burden of proof is set as low as preponderance of the evidence by HB 2109. For example, the following conduct can be submitted as evidence in support of an order: subsection (e)(3), a “dangerous mental health issue” with the interpretation of what constitutes such an issue left to the judge; subsection (e)(8), ownership, access to, or intent to possess firearms; subsection (e)(12) and (13), evidence of recent acquisition of a firearm; and subsection (ii)(E)(II), the killing of animals, otherwise known as hunting. A respondent could be deprived of rights and property for completely lawful conduct interpreted by two people, a petitioner and a judge, as posing a significant risk.

Finally, S.B. 18 directs the Office of the Attorney General to consult with interested persons in the creation of instructions, brochures, forms, and a handbook.

²⁰ *Id.*

²¹ *See, W. Phila. Achievement Charter Elem. Sch. v. Sch. Dist. of Phila.*, 132 A.3d 957 (Pa. 2016); *Mary Ann Protz v. W.C.A.B. (Derry Area School District)*, 639 Pa. 645 (2017).

Thereafter, Section 62B13(2) continues on to list judges, law enforcement personnel, and *gun violence prevention groups*. The statute does not define “gun violence prevention groups” and no examples are provided, but even a casual observer would recognize that it aligns with the way in which many organizations representing only one side of an ongoing national policy debate have begun to brand themselves. This partisanship has no place in codified law and certainly no place in the creation of official documents relating to a new court order.

Testimony on HB 870 and SB 383 – Armed School Personnel

House Bill 870 and Senate Bill 383 seek to provide a structure under which school districts boards of directors can establish policies permitting certain qualified school personnel access to firearms on school grounds. Both of these bills lack protections for the privacy of school personnel who could qualify. They also create a scheme in which the school and personnel would be forced to violate existing law in order to achieve compliance. Additionally, S.B. 383 also violates Article II, Section 1 of the Constitution of Pennsylvania and fails to address numerous issues.²² Therefore, in their current form, they cannot be allowed to pass into law.

Analysis

Impermissible Delegation. A flaw unique to S.B. 383 is the requirement under Section 510.3(2)(b)(3) that school personnel permitted access to firearms must complete a psychological evaluation. A professional opinion would need to be rendered that the evaluated personnel are “psychologically capable of exercising appropriate judgment and restraint” as someone with authorized access to firearms in schools. The Supreme Court of Pennsylvania has held that the legislature must provide “adequately-defined standards and methodologies”, but S.B. 383 fails to provide any framework.²³ In choosing to delegate the decision of fitness to a psychologist without providing any criteria, the legislature violates Article 2, Section 1, which specifically vests that authority in the

²² See, <https://blog.princelaw.com/2017/06/26/absent-additional-amendments-oppose-senate-bill-383-permitting-teachers-to-carry-firearms-in-pennsylvania>.

²³ See, *W. Phila. Achievement Charter Elem. Sch. v. Sch. Dist. of Phila.*, 132 A.3d 957 (Pa. 2016); *Mary Ann Protz v. W.C.A.B. (Derry Area School District)*, 639 Pa. 645 (2017).

General Assembly. Moreover, requiring school personnel to disclose this report would be a violation of HIPAA and the doctor/psychotherapist-patient privilege.²⁴

Under both bills, qualified personnel would be granted “access to firearms” on school grounds or in school buildings; however, neither bill defines that access. It is unclear what kind of access the legislature is attempting to grant and some school policies may still run afoul of that intention. For example: if the legislature intends to permit qualified personnel to *carry* firearms, it should make that clear. Likewise, if the legislature seeks only to permit qualified personnel to *access* firearms otherwise secured in a designated location, that should be made clear.

Liability and Privacy. H.B. 870 and S.B. 383 both require that any school personnel wishing to have access to a firearm must have a license to carry a concealed firearm (LTCF). H.B. 870 § 510.3(b)(1), S.B. 383 § 510.3(2)(III)(b)(1).²⁵ This is

²⁴ 42 Pa.C.S. §§ 5929, 5944; *Kalenevitch v. Finger*, 595 A.2d 1224, 1226-28 (Pa. Super. Ct. 1991).

²⁵ This requirement raises a number of questions, such as: how is a school official to prove compliance with the provision requiring a license to carry? Will he/she be required to provide a copy of his/her LTCF? If so, to whom? Who will have access to that photocopy? Clearly, not all school personnel should have access to this and in fact, those who should have access should be an extremely small group. Will there be logs maintained of who accesses the information? What training about the confidentiality of this information is to be provided to those who are authorized to have access? What logs will be maintained of the training provided to them and certifications by the school official that he/she received the training and that he/she shall keep the information confidential, pursuant to 18 Pa.C.S. 6111(g)(3.1) and (i)? Who will have access to those logs and certifications? What is to happen where a school official discloses information in violation of 18 Pa.C.S. 6111(g)(3.1) and (i)? Shouldn't that person be immediately removed from having access to that information?

A number of additional, tangential questions arise: what about revocation of the school employee's privilege to carry, if some issue arises with the employee? Obviously, any such action must comport with due process protections. What about where the school employee's license to carry is revoked or renewal denied or it just expires? How frequently will checks be done to see if the school official is still in compliance with the requirements of the bill?

problematic because current law prohibits disclosure or dissemination of information regarding an LTCF applicant, including the applicant's name or identity. 18 Pa.C.S. §§ 6111(g)(3.1), (i). Section 6111(g)(3.1) provides that the intentional dissemination of that information to any person other than the subject of the information is a felony of the third degree. Section 6111(i) creates an additional substantial civil liability based on the same conduct requiring the confidentiality of the information.

This requirement of confidentiality is further breached by S.B. 383, which requires the school to disclose the implementation of the newly create policy to local hospitals, in addition to parents and guardians of students at the schools. While not compelled to disclose which school personnel are taking part, there are no protections against such a disclosure when made outside of a public meeting. Any disclosure that there are school personnel member(s) participating in the new program violates the heart of the confidentiality provisions by identifying the presence of one or more firearm(s) licenses within a narrow group of people. H.B. 870 does not compel any disclosures but it similarly does not prevent against them.

Proposed Amendment

Attached as Exhibit 3 is a proposed amendment to HB 870 and 383 that I drafted and which resolves the issues identified.

Testimony on HB 671 and SB 5 – Further Providing for Limitation on Firearms and Ammunition Regulation

House Bill 671 and Senate Bill 5 are an important step to securing the rights of Pennsylvania citizens. Under the current state of 18 Pa.C.S.A, § 6120, local legislative bodies hold a superior position of financial capability. Currently, residents who have been affected by statutes that exist in violation of Section 6120 must undertake legal action at their own expense with no clear path to recovering their costs. In fact, seven individuals were prosecuted under an unlawful ordinance of the City of Erie and as a result, incurred thousands of dollars of legal fees with no right to reimbursement, even though the Commonwealth Court ruled that the ordinance was unlawful.²⁶ H.B. 671 and S.B. 5 will create a mechanism for parties affected by these illegal ordinances²⁷ to gain relief if they are forced to bring legal action. However, H.B. 671 improperly requires that an individual provide 60 days notice to the municipality before instituting a court action. In what other context do we require notice, when some entity is violating the law, before being permitted to institute a court action? S.B. 5, which has been pending before the House Judiciary Committee since April 27, 2017 without action, properly permits someone to immediately challenge an unlawful ordinance and hold the municipality accountable for its unlawful actions. It is for this reason that S.B. 5 must be moved out of this Committee and to the House floor for a full vote.

²⁶ See, <https://blog.princelaw.com/2014/02/28/preliminary-and-permanent-injunction-granted-against-the-city-of-erie>.

²⁷ Pursuant to 18 Pa.C.S. § 6119, a violation of Section 6120 is a misdemeanor of the first degree; yet, no District Attorney has prosecuted a municipality for violating state preemption, even after the unsuccessful prosecution of an individual pursuant to an illegal ordinance, such as occurred in Erie.

**Testimony on H.B. 1872 and H.B. 2216 – Accelerated Trigger Activators,
Machineguns, and Large Capacity Magazines**

House Bills 1872 and 2216 are substantially similar in that they both seek to ban any parts or components of devices that are able to increase the rate of fire of semi-automatic firearms. H.B. 2216 seeks further to ban the possession of large capacity magazines. Both bills violate various provisions of the United States and Pennsylvania Constitutions and as such, cannot become law.

Due Process. The first offense these bills commit is against the due process clauses of Fifth and Fourteenth Amendments to the U.S. Constitution and Article 1, Sections 1, 9 and 11²⁸ of the Pennsylvania Constitution. Pennsylvania citizens and businesses have a property interest in their firearm accessories and magazines. The protections offered by the due process clause require that these affected individuals and businesses be provided a hearing prior to, or shortly after the deprivation of their property. While H.B. 1872 includes a grandfather clause so accelerated trigger activators already owned can be legally retained, H.B. 2216 includes no comparable provision for the newly defined “machineguns” or large capacity magazines. Owners of these accessories will have no choice but to dispose of their property.

Taking Without Just Compensation. This disposal of property will be uncompensated and compelled under force of criminal prosecution in direct violation of the takings clauses of the Fifth Amendment to the U.S. Constitution and Article 1, Section 10 of the Pennsylvania Constitution. These require that just compensation be paid

²⁸ See, *Stone & Edwards Ins. Agency v. Dep't of Ins.*, 636 A.2d 293, 297 (Pa. Cmwlth. Ct. 1994).

when the Government takes private property. In this matter, Pennsylvania residents, gun dealers and firearm ranges that rent firearms will be compelled to dispose of their accessories.²⁹ The penalty for disobedience is a misdemeanor of the first degree and is sufficient to constitute a federally prohibiting factor under 18 U.S.C. § 921(g)(1). This means that retaining lawfully purchased property for more than 60 days beyond the passage of H.B. 2216 would deprive someone of their Second Amendment rights for the remainder of their life. This treatment is a clear violation of the Fifth Amendment and Article 1, Section 10.

Right to Keep and Bear Arms. In suggesting that certain components or accelerated trigger activators actually accelerate the rate of fire of a semi-automatic weapon to simulate the rate of fire of a machine gun, both bills demonstrate a lack of knowledge about their target. Assuming *arguendo* that these activators and other components simulate the rate of fire of a machine gun, a distinctly military trait, then they are expressly deserving of protection under *U.S. v. Miller*, 307 U.S. 174, 177 (1939). This decision from the U.S. Supreme Court held that weapons which could contribute to the common defense or are any part of the ordinary military equipment are specifically protected by the Second Amendment.

No Evidence That A Bumpstock Has Ever Been Utilized In A Crime.

Although many contend that a bumpstock was utilized in the horrendous terrorist attack on October 1, 2017 in Las Vegas, the Las Vegas Metropolitan Preliminary Investigative Report, while acknowledging that there were bumpstocks recovered at the scene, makes

²⁹ Thus, an economic impact analysis must be performed before any further consideration of this bill occurs.

no mention of any bumpstock being utilized in the attack.³⁰ Furthermore, even if, *arguendo*, a bumpstock was utilized in the attack, a single, isolated illegal use of an item³¹ does not authorize the Government to restrict law-abiding citizens' rights. Otherwise, it is hard to fathom what items we would be able to possess, as everything from pencils,³² to vehicles,³³ to bank accounts³⁴ have been utilized for illegal purposes.

Additional Issue. Finally, the bills both suggest that accelerated trigger activators or other components accelerate the rate of fire of a semi-automatic firearm to simulate automatic fire, but this assertion is patently false and displays a clear lack of knowledge about how firearms work.³⁵ First, the cyclic rate of fire is how fast the action of a firearm is capable of cycling and a firearm cannot fire faster than the cyclic rate of that firearm. In that vein, the cyclic rate is faster than any accelerated trigger activator or similar component can achieve when applied to a semi-automatic weapon. Further, skilled marksmen can achieve similar rates, still below the cyclic rate, and with greater accuracy,

³⁰ A copy of the report is available at - https://www.lvmpd.com/en-us/Documents/1_October_FIT_Report_01-18-2018_Footnoted.pdf.

³¹ At the time of this heinous attack, it was unlawful in Las Vegas, Nevada to murder someone and even the potential death sentence did not dissuade Stephen Paddock from carrying out the terrorist attack. See, <https://www.leg.state.nv.us/NRS/NRS-200.html#NRS200Sec010>. This emphasizes the point that proposals such as H.B. 1872 and 2216 only restrict law-abiding citizens' rights and do nothing to prevent criminals and terrorists from committing heinous acts.

³² https://www.wpxi.com/news/top-stories/pennsylvania-court-pencil-used-to-stab-student-not-a-weapon_/518561968.

³³ http://www.lehighvalleylive.com/easton/index.ssf/2017/03/woman_surrenders_after_running.html.

³⁴ <https://www.justice.gov/usao-edpa/pr/us-attorney-announces-36-million-settlement-bank-accused-consumer-fraud>; <https://dauphin.crimewatchpa.com/lowerpaxtonpd/3730/arrests/smith-kiano-l-2-counts-criminal-conspiracy-theft-deception-f3-1-count-dealing-proceeds>.

³⁵ See former Senior Analyst Richard Vasquez of the Bureau of Alcohol, Tobacco, Firearms and Explosives, Firearms Technology Branch explain the operation of a firearm, including with a bumpstock, and showing how to bumpfire a firearm, absent a bumpstock - <https://www.youtube.com/watch?v=kryIJrD5eQ>.

without the aid of accelerated trigger activators or similar parts.³⁶ This would seem to indicate that H.B. 1872 and 2216 could be used to regulate any firearm accessories that allow a shooter to increase his/her personal rate of fire. Moreover, bump firing is a technique, which can be performed with³⁷ or without a device.³⁸

³⁶ Iraqveteran8888, *Worlds Fastest Shooter vs Bump Fire! – Guns Reviews*, YouTube (Oct. 13, 2014), <https://www.youtube.com/watch?v=JTb6hsSkV1w>.

³⁷ How to bumpfire with a belt - <https://www.youtube.com/watch?v=wZCO-06qRgY>; how to bumpfire with a rubber band or belt - <http://www.thetruthaboutguns.com/2017/10/daniel-zimmerman/jerry-miculek-vs-bumpfire-stock/>.

³⁸ How to bumpfire without a bumpfire stock - <https://www.youtube.com/watch?v=7RdAhTxyP64>.

Testimony on H.B. 1400, H.B. 2249 and H.B. 2251 – Regulating Private Party Sales of Firearms and Ammunition and Precluding Those with Closely-Held Religious Beliefs (e.g. the Amish) from Obtaining Firearms and Ammunition

House Bills 1400 and 2249 are substantially similar and seek to preclude private party sales and reference them, erroneously, as a “gun show loophole.” Additionally, H.B. 2251 seeks to preclude the sale of ammunition, except for in-person sales at a federal firearm licensee. Although no one has shown that a privately sold firearm has ever been used in a crime and former Director of CeaseFire PA, Shira Goodman, acknowledged that she could not point to one occasion where a privately purchased firearm was utilized in a crime, these bills seek to preclude the ability of law-abiding citizen to privately sell rifles, shotguns and ammunition, while precluding those with closely-held religious beliefs that preclude their pictures from being taken, such as the Amish, from purchasing or otherwise obtaining any form of firearm or ammunition.

Due to Pennsylvania having the second largest Amish population in the nation,³⁹ the General Assembly, acutely aware of the federal requirement that an individual produce photo identification when purchasing a firearm from a federal firearms licensee, not only provided an exemption for private party sales of rifles and shotguns in 18 Pa.C.S. § 6111,⁴⁰ but also, exempts those members with closely-held religious beliefs from the photo ID requirement under state law and even provides for photo-less driver

³⁹ See, <https://www.livescience.com/21916-amish-population-booms-in-us.html>.

⁴⁰ It is questionable, given the U.S. Supreme Court’s holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008), whether Pennsylvania’s requirement for photo identification in relation to the purchase and transfer of a handgun is unconstitutional in relation to those with closely-held religious beliefs, since the Court found that the ability to purchase and possess a handgun in one’s home is at the core of the Second Amendment. As the Amish are precluded from obtaining a handgun under the law, it would seem that the preclusion is unconstitutional.

licenses and licenses to carry firearms.⁴¹ Unfortunately, federal law – U.S.C. § 922(t)(1)(C) – precludes a federal firearms licensee from selling or transferring a firearm to an individual that lacks photo identification. Thus, if enacted, H.B. 1400, H.B. 2249, and H.B. 2251 would discriminate against those with closely-held religious beliefs in violation of the Religious Freedom Restoration Act,⁴² the Second Amendment to the U.S. Constitution and Article 1, Section 21 of the Pennsylvania Constitution.

As there is absolutely no evidence that a firearm purchased through a private party sale has ever been utilized in a crime, these bills only seek to restrict the rights of law-abiding citizens.

⁴¹ 18 Pa.C.S. § 6111(b)(2), 67 Pa.Code § 73.3(d)(4), and 37 Pa.Code 33.102

⁴² 42 U.S.C. § 2000bb-1, *et seq.*

**Testimony on S.B. 1162 and H.B. 832 – Criminalizing the Failure to Report a Theft
of a Firearm**

House Bill 832 and Senate Bill 1162 are substantially similar and seek to re-victimize those who have had a firearm stolen, by criminalizing their failure to report, within 72 hours, their victimization. In what other context would anyone ever consider criminalizing the failure of a victim to report that crime? There is simply nothing more that needs to be stated regarding these re-victimization proposals.

Testimony on H.B. 2060, H.B. 2097 and S.B. 501 – Domestic Violence Prohibitions

House Bill 2097 seeks to prohibit anyone who is *merely arrested for or charged with* a putative domestic violence offense from possessing and purchasing firearms.

Although an individual who is subject to a Protection From Abuse order or is convicted of a domestic violence offense is already prohibited under state and federal law,⁴³ this proposal seeks to strip an individual's rights, in the absence of due process⁴⁴ and the right of being innocent until proven guilty.⁴⁵ Worse yet, this proposal provides that any such prohibition would result, for example, in a situation where one criminally trespasses on the property of or steals money or other object from an intimate partner.

House Bill 2060 and Senate Bill 501 are substantially similar and seek to require individuals, who become prohibited due to a domestic violence conviction or Protection From Abuse order, to turn in their firearms and ammunition, even though 18 U.S.C. §§ 922(g)(8), (9) already preclude those subject to a Protection From Abuse order or domestic violence conviction from possessing firearms and ammunition.

Moreover, the requirement to turn over one's firearms would be restricted to either a law enforcement department or a dealer, even though the current law additionally provides for third-party safekeeping permits and CeaseFire PA has been unable to show a single occasion where an individual gained access to firearms from a third-party safekeeper. It is telling that organizations like CeaseFire PA also fail to mention that if an individual who holds a safekeeping permit permits access to the firearms by the

⁴³ See, 18 Pa.C.S. §§ 6105(a.1)(2), (c)(6), (c)(9); 18 U.S.C. §§ 922(g)(8), (9).

⁴⁴ The Fifth and Fourteenth Amendments to the U.S. Constitution and Article 1, Sections 1, 9, and 11 of the Pennsylvania Constitution.

⁴⁵ The right of innocence until proven guilty is a universal right, as acknowledged by the United Nations in enacting Article 11 of the Universal Declaration of Human Rights. See, <http://www.un.org/en/universal-declaration-human-rights>.

prohibited person, it is already a misdemeanor of the first degree, pursuant to 18 Pa.C.S. § 6105(a.1)(5); whereby, pursuant 18 U.S.C. § 921(g)(1), the individual, if convicted, would be barred, in perpetuity, from possessing and purchasing firearms and ammunition. Regardless, the inability to provide the firearms and ammunition to a third-party for safekeeping can cause a significant financial obligation on the respondent/defendant, as law enforcement agencies and federal firearm licensees charge collection and storage fees. In fact, in Cambria County, an individual was initially required to pay the Cambria County Sheriff over \$1200.00, in relation to its taking of his firearms, pursuant to an *ex parte* emergency Protection From Abuse order, which was later vacated, when it was determined that there was no basis for the emergency order and that it was sought for vindictive purposes.⁴⁶

More disconcerting, these bills also provides that any firearm turned into the police would be considered “abandoned” after a year and, in violation of due process and the takings provisions of the U.S. and Pennsylvania Constitutions,⁴⁷ provides that the entity that has possession of the firearm(s) may sell them and retain the proceeds.

⁴⁶ <https://blog.princelaw.com/2015/05/25/cambria-county-to-return-306-guns-to-resident-at-no-cost-after-final-pfa-dismissed-and-temporary-pfa-vacated>.

⁴⁷ The Fifth and Fourteenth Amendments to the U.S. Constitution and Article 1, Sections 1, 9, 10 and 11 of the Pennsylvania Constitution.

**Testimony on H.B. 1233 and H.B. 2252 – Revisions to the Mental Health and
Procedures Act and Prohibiting Those Who are Subject to Involuntary Outpatient
Treatment**

House Bill 2252 seeks to prohibit anyone who is ordered to undergo involuntary outpatient mental health treatment, while House Bill 1233 provides new additional provisions for involuntary outpatient treatment.

First and foremost, pursuant to 18 U.S.C. § 922(g)(4) and 27 C.F.R. § 478.11, an individual, who is involuntarily committed, whether for in- or outpatient treatment, is already prohibited from purchasing and possessing firearms and ammunition. Thus, H.B. 2252 is a solution in search of a problem.

In relation to H.B. 1233, it seeks to dissuade individuals with mental health conditions from seeking treatment for fear of being involuntarily committed and losing their right to keep and bear arms, while lowering the standard for those who constitute “qualified professionals.” Pursuant to the proposed amendments to the definition of “qualified professional,” instead of the individual needing to be properly accredited and licensed by the Commonwealth, with a substantial background in mental health treatment, the individual would only require a graduate degree or “mental health clinical experience,” which would seemingly qualify a high school or college student, who interns with a mental health clinic.

That which appears lost on Representative Murt and the co-sponsors is that a Section 303 commitment already provides for involuntary outpatient treatment, which is even acknowledged by the 303 Petition – MH 784 – which is promulgated by the

Department of Health Services.⁴⁸ Thus, H.B. 1233 is also a solution that already exists in search of a problem.

⁴⁸ *See*, http://www.dhs.pa.gov/publications/findaform/mentalhealthproviderforms/P_012164, which in Section IV provides for either “outpatient”, “partial hospitalization”, or “inpatient treatment.”