

**JOINT STATE
GOVERNMENT COMMISSION**
General Assembly of the Commonwealth of Pennsylvania

**VIOLENCE PREVENTION IN PENNSYLVANIA:
REPORT OF THE ADVISORY COMMITTEE ON
VIOLENCE PREVENTION
DECEMBER 2013**



JOINT STATE GOVERNMENT COMMISSION
Sewing the Pennsylvania General Assembly Since 1937

The Joint State Government Commission was created by the act of July 1, 1937 (P.L.2460, No.459), as amended, and serves as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.

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To the Members of the General Assembly of Pennsylvania:

Senate Resolution 6 of 2013 directed the Joint State Government Commission to appoint an Advisory Committee to conduct a thorough and comprehensive analysis of violent crime and mass shootings, as well as other topics related to those issues, including mental illness and treatment, firearms regulation, school security, bullying, gang-related activities, educational issues, and cultural influences, including violent video games.

The Advisory Committee recommends changes to the Mental Health Procedures Act, the Uniform Firearms Act, and statutes and practices related to violent crime. It also recommends measures to make schools safer and ways to develop awareness, education, and other strategies to reduce and prevent violent crime.

On behalf of the Joint State Government Commission, I would like to thank the members of the Advisory Committee for their hard work, deep consideration of sensitive topics, and commitment in completing this report.

Respectfully submitted,

Glenn J. Pasewicz
Executive Director

JOINT STATE GOVERNMENT COMMISSION

Created in 1937,¹ the Joint State Government Commission serves as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania. The Commission has the power to conduct investigations, study issues and gather information, as directed by resolution. In performing its duties, the Commission may call upon any department or agency of the Commonwealth of Pennsylvania for pertinent information and may designate individuals, other than members of the General Assembly, to act in advisory capacities. The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly.

The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff. Some projects involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. Certain projects have specific timelines for the publication of a report, as in the case of a discrete or timely topic; others projects, given their complex or considerable nature, are ongoing and involve the publication of periodic reports.

Most recently, the Commission has released reports concerning the following:

- Administrative Shortages in Public School Districts
- Adoption
- Assisted Reproductive Technologies
- Biomedical Research
- Cervical Cancer
- Child Protection
- Children and Youth Social Service Agency Delivery Systems
- Children of Incarcerated Parents
- Child Safety
- Clean and Green
- Common Interest Ownership Communities
- The Commonwealth Procurement Code

¹ Act of July 1, 1937 (P.L.2460, No.459), amended by the act of March 8, 1943 (P.L.13, No.4), the act of May 15, 1956 (P.L.1605, No.535), the act of December 8, 1959 (P.L.1740, No.646), and the act of November 20, 1969 (P.L.301, No.128). 46 Pa. Stat. Ann. §§ 65-69.

- Community-Based Mental Retardation Services
- Consumer Credit
 - Motor Vehicle Sales Financing
 - Goods and Services Installment Sales
- Criminal Justice
- Decedents' Estates and the Probate, Estates and Fiduciaries Code
- Developments of Regional Significance and Impact
- Domestic Relations
 - Alimony
 - Custody
 - Divorce
 - Equitable Distribution
- Driver Distractions
- Earned Income Tax Credit and Tax Forgiveness
- Emergency Medical Services
- Energy Policy
- Exotic Wildlife
- Geriatric and Seriously Ill Inmates
- Guardianships
- Health Care Decision-Making
- Human Trafficking
- Indigent Criminal Defendants
- Influenza Prevention and Control
- Information Disclosure of State-Related Universities
- Instructional Output and Faculty Salary Costs of State-Related and State-Owned Universities
- Intermediate Units
- The Kilbuck Township (Allegheny County) Landslide
- Medical Professional Liability
- Methadone Use and Abuse
- Minority Representation in the Jury Selection Process
- Part-Time Faculty at Institutions of Higher Education
- Powers of Attorney
- Primary Election Dates
- Public Health
- The Public Library Code
- School Nurses
- Statewide Retirement Systems: Funding and Benefit Structure
- Stroke Prevention and Treatment
- Student Drug and Alcohol Violations: Parental Notification and Access to Student Records
- Tobacco Settlement Funding
- The Vehicle Code
- Violent Interactive Video Games
- Waste Tire Recycling and Reuse

Current Commission projects involve the following:² administrative law, alternative dispute resolution, capital punishment, child abuse and neglect prevention, childhood obesity, constables, decedents' estates, information disclosure of state-related universities, instructional output and faculty salary costs of state-related and state-owned universities, the long-term care services and support delivery system, mental health treatment of inmates and others, public health and real property.

Each member of the General Assembly is a member of the Commission. However, a 14-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission.³ In addition, Representative Florindo J. Fabrizio and Senator John C. Rafferty, Jr., serve as the Chair and Vice-Chair of the Commission. The release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair and Vice-Chair, of all the findings, recommendations or conclusions contained in the report.

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² Not included in this list are projects for which a report has been published but subsequent action on the part of the Commission is required (*e.g.*, drafting legislation and statutory amendments, updating research, tracking legislation through the legislative process, attending hearings, and answering questions from legislators, legislative staff, interest groups and constituents).

³ The Executive Committee consists of seven members of the House of Representatives (the Speaker, Majority Leader, Minority Leader, Majority Whip, Minority Whip, Majority Caucus Chair, and Minority Caucus Chair) and seven members of the Senate (the President Pro Tempore, Majority Leader, Minority Leader, Majority Whip, Minority Whip, Majority Caucus Chair, and Minority Caucus Chair).

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INTRODUCTION

This report on the prevention of violence in Pennsylvania may be summarized with two simple sentences: Be vigilant. Be prepared. These four words can tilt the scales from tragedy to safety, from death to life. And yet as plainly conceptual as they are, these sentences belie the enormity of the problem of violence. It can happen anywhere. It does happen everywhere.

Names of places formerly unheard of--Nickel Mines, Sandy Hook Elementary, Columbine, Virginia Tech, Aurora, and Fort Hood--are now marked with indelible memories of horrific tragedy. The most mundane of places--a movie theatre, a fast food restaurant, a shopping mall, an office building, a sporting event or a military base--can suddenly become the epicenter of calamity. Thousands more acts of violence that occur when people, by the mere fact of living together in society, encounter one another in potentially confrontational ways, grip the nation's attention and trammel the people in doubt, uncertainty, and fear. Each is regarded as an significant event, a notable incident, and ultimately, as a collection of statistics and data and observations that leave everyone from brothers and sisters and parents to caregivers and law enforcement officers and policy makers wondering why more was not done, how more could have been done, and what will be done in hopes the next incident will not happen.

Refusing to accept that violence is unavoidable, resisting the callousness that threatens to inure people to violence, individuals from across the Commonwealth accepted the invitation to join each other as the Advisory Committee on Violence Prevention. Resisting the urge to adopt a paranoid, bunker mentality and live in fear of the next incident, these experts contributed their experiences, knowledge, and wisdom to find ways to prevent violence wherever possible. This report on vigilance and preparedness presents the Advisory Committee's recommendations and proposed legislation, and submits them to the General Assembly for action.

Senate Resolution 6 of 2013

Senate Resolution 6 of 2013 (SR 6) was introduced by Senator Stewart Greenleaf on January 18, 2013 and adopted by the Senate on January 29, 2013. The resolution directs the Joint State Government Commission to establish an advisory committee of "public officials and experts on the issue of violent crime, which is balanced so that it encompasses a wide range of backgrounds and viewpoints." The Commission, working with the Advisory Committee, is directed to conduct a thorough and comprehensive analysis of violent crime and mass shootings, as well as other topics related to those issues, including mental illness, mental health treatment, access to firearms by criminals and the mentally ill, school security, bullying, gang-related activities, educational issues, and culture

influences, including violent video games. The resolution directs the Commission to issue a report by December 31, 2013 containing recommendations to address the Mental Health Procedures Act, the Uniform Firearms Act, changes to implement revisions to statutes, practices, policies and procedures relating to violent crime, measures to make schools safer, and ways to develop awareness, education, and other strategies to address issues related to violent crime.

This study has been under consideration for several years. In 2006, the Senate Judiciary Committee held hearings across the Commonwealth soliciting testimony regarding violent crime. Although it took the impetus of the mass murder that occurred at Sandy Hook Elementary School in Newtown, Connecticut on December 14, 2012 to push this study to the forefront, school shootings, with the horror and tragedy associated with such sudden, dramatic incidents, are thankfully rare and exceptional events, whereas less incendiary violent crime occurs on a daily basis across this Commonwealth and this nation. While the immediate response of most rational people is to try to determine ways to prevent future occurrences, the remedies are neither easily identified nor implemented.

In a country where the Declaration of Independence proclaims that “we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness,”⁴ absolute safety and security are incompatible with unfettered personal liberty – the former leads to totalitarianism, the latter to anarchy. The challenge faced by any individual or group attempting to respond to the legitimate need of people to feel safe in their homes, schools and communities, is that the need for security must be reconciled with those personal rights guaranteed in the United States and Pennsylvania Constitutions and the Bill of Rights. Finding the balance between liberty and security that will best serve the people of the community is a task best addressed by the community itself. The Advisory Committee appointed pursuant to SR 6 is designed to represent all of the interests affected by violent crime, with the goal of reaching consensus on the best options to address these problems in the fairest manner possible.

This report does not attempt a comprehensive analysis of all violent behavior, nor does it contain proposals that will result in the prevention of all violence. Given the directive of the authorizing resolution and the time constraints of the study period, the Advisory Committee has not attempted to address the more global causes of violence. Many of the suspected causes of violence -- poverty, family disintegration and changing societal norms -- are complex issues beyond the scope of this study. To prevent or eliminate all violence would require a fundamental cultural and societal shift that would be world-changing and, while likely to be lauded globally, would meet considerable resistance in the implementation. However, the Advisory Committee has aspired to recommend realistic policy and statutory steps that can improve prevention and augment responsiveness to sudden, sensational outbursts of violence in schools and other public gathering places, ensuring safer schools and preventing those persons most likely to act out violently from doing so.

⁴ The Declaration of Independence para. 2 (U.S. 1776).

The Advisory Committee Process

The Advisory Committee on Violence Prevention convened in person nine times: March 21, April 24, May 30, June 27, July 25, August 29, September 26, October 21, and November 25, 2013. Additionally, teleconference calls were conducted on October 10, November 14, December 9 and December 19, 2013.

After reaching consensus⁵ on proposed recommendations and legislation, the Advisory Committee approved the publication of this report containing the recommendations, legislation and any comments to the legislation, developed by the Joint State Government Commission and the Advisory Committee.⁶

Public Input

One of the directives of SR 6 was for the Joint State Government Commission to provide an opportunity for members of the general public to submit suggestions and recommendations for the study. Although the Commission received several telephone calls, the predominant form of communication was via electronic mail. The vast majority of the writers offered opinions and suggestions regarding gun control. Public input included suggestions to prohibit gun registries, and arguments for and against universal background checks, an assault weapons ban, limits on ammunition and gun purchases and strengthening penalties for failure to report a lost or stolen firearm. With regard to school safety, recommendations included installing bulletproof doors, other door jamb blocks, automatic door locks and armed professionals placed in each school. With regard to mental health, suggestions were made to change the standard for ineligibility to own firearms, to reopen some state mental health institutions to provide supervised shelter for mentally ill homeless persons, and to evaluate the misuse of, and degree of supervision required for, prescription of psychotropic drugs. Other suggestions included more global cultural fixes, such as providing additional middle-class employment opportunities and regulating media violence (both programming and reporting). Most of these concerns are addressed in some form throughout this report. The Commission and the Advisory Committee are grateful for the thoughtful input of the individuals who contributed their ideas and suggestions.

⁵ Consensus does not necessarily reflect unanimity among the Advisory Committee members on each individual legislative recommendation. However, it does reflect the views of a substantial majority of the Advisory Committee, gained after lengthy review and discussion. In addition, although an Advisory Committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in this report.

⁶ Notes and Comments may follow statutory provisions. Such comments become the official comments to the legislation, which may be used in determining the intent of the General Assembly. 1 Pa.C.S. § 1939 (“The comments or report of the commission . . . which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly”).

SUMMARY OF RECOMMENDATIONS

The Advisory Committee on Violence Prevention has made numerous recommendations, which are summarized below and discussed in detail in the substantive chapters of this report addressing each issue. Included below are cross-references to the page of the report containing the background and rationale for the recommendations.

Media Recommendations

Recommendation #1: To the extent possible, it is important to deny notoriety and celebrity status to perpetrators of violence. (p. 63)

Recommendation #2: Consistent with the foregoing recommendation, news media should exercise discretion in their reporting of violent incidents to ensure that public safety is maintained and police investigations are not jeopardized during coverage of an ongoing incident. (p. 64)

Recommendation #3: Parents and guardians should take a more active role in screening and limiting children's exposure to media violence. (p. 65)

Recommendation # 4: While a direct causal link between violent video games and violent behavior has not been established to date, the question of a potential correlation between simulated violence and aggressive behavior remains unresolved. Further evidence-based research on the possible effects of exposure to media violence should be encouraged. (p. 66)

Mental Health Recommendations

Recommendation #5: The Mental Health Procedures Act (MHPA) should be thoroughly reviewed to determine whether to amend involuntary commitment standards to assure greater access to treatment or to add alternatives to treatment, such as assisted outpatient treatment. (p. 70)

Recommendation #6: Additional education and training, which promotes mental health awareness and early intervention should be provided to individuals (such as laypersons, first responders and law enforcement personnel) who come in contact with individuals who are mentally ill, developmentally disabled, or otherwise impaired, and should be made part of continuing education curricula. (p. 70)

Recommendation #7: Additional funding for community mental health services is desperately needed. Insurance coverage parity for mental disorders should continue and Medicaid expansion funds available under federal law should be provided for more community mental health services. (p. 71)

Recommendation #8: People should be encouraged to prepare mental health advance directives and/or mental health powers of attorney so that they may exercise control over the course of their treatment when they are in crisis and otherwise incapable of making rational choices. Further, hospitals and members of the medical community should inquire as to the existence of these documents with the same regularity with which inquiries into the existence of living wills occur. (p. 72)

Recommendation #9: Pennsylvania should codify its existing duty to warn, currently found in case law, into a statutory requirement delineating the need and limits of a duty to protect. (p. 73)

Responsible Gun Ownership Recommendations

Recommendation #10: Pennsylvania's Uniform Firearms Act contained in Chapter 61 of Title 18 is difficult to read and contains overlapping and confusing provisions. It should be repealed and re-written in a clear, concise manner that allows a layperson to more easily find and understand current law. (p. 92)

Recommendation #11: Pennsylvania already requires background checks for all transfers of handguns except those between family members and requires background checks for the retail transfer of long-guns. The background checks required under Pennsylvania law prior to the purchase of a firearm suffice and need not be expanded further. (p. 93)

Recommendation #12: Weapons at local government meetings should not be banned, because it would impinge on an individual's constitutional right to bear arms without producing any measureable safety benefit. (p. 95)

Recommendation #13: Inchoate crimes (criminal attempt, solicitation and conspiracy) are added to the list of crimes that disqualify a person from gun ownership, as new § 6211(b)(39). (p. 96)

Recommendation #14: The term "adjudicated incompetent" should be replaced with a reference to "adjudicated incapacitated under to 20 Pa.C.S., Chapter 55," as new §§ 6211(c)(4), 6226 and 6235(5). (p. 97)

Recommendation #15: Add adjudication as a juvenile delinquent for possession with intent to deliver a narcotic to the list of disqualifying crimes. This disqualification should apply for 15 years or until the individual turns 30 years old. (p. 97)

Recommendation #16: Reduce from 60 days to 72 hours the time for persons disqualified from gun ownership to dispose of their firearms. (p. 97)

Recommendation #17: Add provisions to clarify that when a person is disqualified from gun ownership, all weapons in the household should be removed. (p. 97)

Recommendation #18: Similar to those used for enforcement of protection from abuse disqualifications, add provisions to allow sheriffs to enforce other disqualifications with or without warrant. (p. 97)

Recommendation #19: The General Assembly should consider whether all involuntary commitments under Section 302 of the Mental Health Procedures Act should result in firearms disqualifications. To the extent they do result in disqualification, there should be a simplified path to restoration of firearms rights in certain circumstances. (p. 98)

Recommendation #20: Add a new provision to the Uniform Firearms Act to require prompt reporting of lost or stolen firearms. (p. 98)

Recommendation # 21: Add a provision to the Uniform Firearms Act to require individuals to take reasonable safety precautions when firearms are in a home where children are present. (p. 104)

Recommendation #22: Include a check-off box on applications to purchase handguns for the buyer to acknowledge receipt of a firearms safety brochure. (p. 104)

Recommendation #23: Define “physician” to ensure that the same level of qualifications of persons authorizing involuntary commitments are required for those who can attest to the individual’s relief for firearms disqualification. (p. 105)

Recommendation #24: The form in new § 6232(c) should be modified to account for the fact that there may be individuals who were previously disqualified from possessing or acquiring a firearm but who may do so now, but they would not be able to truthfully complete an application under § 6109(c), which only addresses individuals who have *never* been so disqualified. In other words, the application does not adequately address all potential circumstances, such as where an applicant’s conviction was

overturned, or the applicant was pardoned for the crime, or the applicant's mental health issues have been resolved and the disability to possess or acquire a firearm has been removed.(p. 105)

Recommendation #25: The time frame for notifications of disqualifications to law enforcement authorities should be statutorily shortened from 7 days to 5 days for internal consistency. (p. 105)

School Safety Recommendations

Recommendation #26: All school entities enrolling children from pre-kindergarten to 12th grade in Pennsylvania should undergo a safety audit. Additionally, safety audits should recur on an annual basis. (p. 107)

Recommendation #27: School annual safety plans should be complete and updated regularly. All schools of any type in the Commonwealth should provide blueprints of every school building to local law enforcement. School safety audits should be a required element of each school's annual safety plan. School safety mandates should be fully funded and should provide for accountability. Failure to comply with school safety mandates should have adverse financial repercussions for the school district or other sponsoring entity. (p. 109)

Recommendation #28: School safety plans should address multi-layered communications, both within the school and with law enforcement and emergency responders, such as computer/phone "hotlines," silent alarms and panic buttons, plans for alternative responses based on the nature of the threat encountered (e.g., lockdowns versus shelter-in-place, etc.) and should also include detailed recommendations from the school safety audit. (p. 109)

Recommendation #29: Priority status for grants for school resource officers should be given to those school buildings that are the most distant in response time from local law enforcement. (p. 111)

Recommendation #30: While the Advisory Committee supports schools that choose to hire police officers or school resource officers, the Advisory Committee strongly opposes arming school administrators, teachers or other non-law enforcement personnel. (p. 113)

Recommendation #31: All schools should have Threat Assessment and Crisis Response Teams in place. (p. 114)

Recommendation #32: Schools should provide for safety drills that address various risks, including active threats, terrorism, explosives and other scenarios that will allow students, staff and administrators to be better prepared to respond appropriately to a variety of threats as they evolve. (p. 115)

Recommendation #33: Student assistance programs should be fully funded and adequately staffed in every school district. (p. 115)

Recommendation #34: Student assistance programs, school counselors, and administrators should be sharing pertinent information with each other on a timely basis during a preliminary risk analysis. (p. 115)

Recommendation #35: In addition to security and risk assessment measures, all schools should focus on primary prevention, by creating and maintaining a safe school climate. (p. 116)

Recommendation #36: The Pennsylvania Department of Education should add training for students at the beginning of each school year on what is dangerous behavior, how to report it and to whom to report it. (p. 116)

Recommendation #37: Department of Education curricula should include positive behavioral support, social and emotional development and learning and instill good behaviors through positive reinforcements. (p. 116)

Recommendation #38: The Department of Education should adopt the Standards for Student Interpersonal Skills that it created for all schools. These standards could be useful in helping create a safe school climate. (p. 116)

Recommendation #39: Schools should be receptive to receiving advice and training on creating safe school environments. School teachers and administrators should not be solely responsible for investigations and assessments. (p. 117)

Recommendation #40: All schools should have access to mental health services for their students and early intervention programs to detect and prevent potentially violent behavior. This includes school counselors, social workers, school nurses, deans, guidance counselors, psychiatrists and psychologists, as well as other mental health professionals and staff dedicated to maintaining the social and mental health of the student body. Schools, police and mental health services should coordinate activities on the local level. Additionally, the Pennsylvania Departments of Education, Public Welfare and Health should coordinate at the state level to ensure a continuum of services for children needing support from any of the departmental programs. (p. 117)

Recommendation #41: The Pennsylvania Department of Education should amend its definition of “dangerous school” in order to not penalize those schools where incidents are safely and positively resolved. (p. 118)

Recommendation #42: The Department of Education definition of a reportable crime under its regulations should be amended to be consistent with the definitions used by law enforcement for Uniform Crime Reporting purposes. (p. 119)

Recommendation #43: The Department of Education should review all educational settings receiving state educational money, including traditional public school districts, charter schools, cyber schools and other alternative settings to ensure that they are meeting the same performance standards and financial accountability as school districts. If programs are not meeting standards, then funding should be terminated. (p. 119)

Recommendation #44: The staff complement at the Department of Education’s Office of Safe Schools should be expanded to include auditors who can verify grant recipients are efficiently using grant dollars. (p. 120)

VIOLENT CRIME STATISTICS

Statistics regarding violent crime are maintained at both the federal and state level. Annual crime reports of the Federal Bureau of Investigation (FBI) and the Pennsylvania State Police reveal a decrease in violent crime both nationally and in Pennsylvania over the past five years. The FBI's Uniform Crime Reporting Program defines violent crimes as those offenses involving force or threat of force and include four categories: murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault.⁷ This definition is also used in the Pennsylvania crime reporting program.⁸

National Violent Crime Statistics

Despite the seemingly endless stream of violent behavior reported on the evening news, the social media and the print media, violent crime in the United States has been steadily decreasing over the past 20 years. In 1992, the rate of violent crime per 100,000 inhabitants in the United States was 757.7. By 2011, the last full year for which statistics are currently available, the rate had dropped to 386.2.⁹ Preliminary data for 2012 (January-June) show a continuing decrease in the rates of murder and forcible rape, with a slight increase for robbery and aggravated assault; the overall violent crime rate increased by 1.9.¹⁰ The FBI's Uniform Crime Reporting Program presents data in a number of formats, including by community type. There are three types of communities identified:

- **Metropolitan Statistical Areas (MSAs)**—Each MSA contains a principal city or urbanized area with a population of at least 50,000 inhabitants. MSAs include the principal city; the county in which the city is located; and other adjacent counties that have, as defined by the Federal Office of Management and Budget (OMB), a high degree of economic and social integration with the principal city and county as measured through commuting to place of employment. In the Uniform Crime Reporting Program, counties within an MSA are considered

⁷ "Crime in the United States, 2011," United States Department of Justice, Federal Bureau of Investigation, September 2012, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/index-page>.

⁸ Pennsylvania State Police, Bureau of Research and Development, Uniform Crime Reporting Unit, Uniform Crime Reporting System, <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualFrames.asp?year=2011>. Under the Uniform Crime Reporting Act, act of November 29, 2004 (P.L.1383, No.180), participation in the UCR Program is mandatory for all state, county, and local law enforcement agencies within the Commonwealth.

⁹ *Supra* note 7, at Table 1.

¹⁰ "Crime in the United States, 2012," United States Department of Justice, Federal Bureau of Investigation, January 2013, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2012/preliminary-semiannual-uniform-crime-report-january-june-2012>.

metropolitan. In addition, MSAs may cross state boundaries. In 2011, approximately 83.5 percent of the nation's population lived in MSAs.

- **Cities Outside MSAs**—Ordinarily, cities outside MSAs are incorporated areas. In 2011, cities outside MSAs comprised 6.6 percent of the nation's population.
- **Nonmetropolitan Counties Outside MSAs**—Most nonmetropolitan counties are composed of unincorporated areas. In 2011, 9.9 percent of the nation's population resided in nonmetropolitan counties.¹¹

In 2011, violent crime rates varied across community types. The MSAs had the highest average rate at 410.3. Cities outside MSAs saw a rate of 382.1, and nonmetropolitan counties outside MSAs averaged 186.1.¹² Violent crime rates in the 347 MSAs range widely across the country as well. The MSA designated Logan, Utah/Idaho with the lowest rate, at 47.7 violent crimes per 100,000 inhabitants, compared to the MSA identified as Memphis, Tennessee/Mississippi/Arkansas, which had the highest rate at 980.4 violent crimes per 100,000 inhabitants.¹³ Pennsylvania has 14 MSAs, with rates ranging from 110.7 in State College to 586.7 in Philadelphia, although most of the areas fall in the range of 200-300 violent crimes per 100,000 individuals. (See Table 2)

On a state-to-state comparison, Pennsylvania, with an overall state rate of violent crime of 355.0, ranks 30th overall, at a slightly lower rate than the national average of 386.3. Rates range among the states from a low in Maine of 123.2 to a high in Tennessee of 608.2. The District of Columbia, a clear outlier, has the highest overall rate in the federal crime reporting statistics: 1,202.1 violent crimes per 100,000 inhabitants. (See Table 1)

¹¹ *Supra* note 7.

¹² *Ibid.*, at Table 2.

¹³ *Ibid.*, at Table 6.

Table 1
Rates of Violent Crime per 100,000 Inhabitants
United States, 50 States, the District of Columbia and Puerto Rico
2011

State	Overall Rate	State	Overall Rate
Maine	123.2	Indiana	331.8
Vermont	135.2	North Carolina	349.8
New Hampshire	188.0	Kansas	353.9
Utah	195.0	Pennsylvania	355.0
Virginia	196.7	Georgia	373.2
Idaho	200.9	New York	398.1
Wyoming	219.3	Arizona	405.9
Minnesota	221.2	Texas	408.5
Wisconsin	236.9	California	411.1
Kentucky	238.2	Alabama	420.1
North Dakota	247.0	Massachusetts	428.4
Rhode Island	247.5	Illinois	429.3
Oregon	247.6	Michigan	445.3
Nebraska	253.2	Missouri	447.4
South Dakota	254.1	Oklahoma	454.8
Iowa	255.6	Arkansas	480.9
Montana	267.5	Maryland	494.1
Mississippi	269.8	Florida	515.3
Connecticut	272.8	Louisiana	555.3
Puerto Rico	284.4	Delaware	559.5
Hawaii	287.2	Nevada	562.1
Washington	294.6	New Mexico	567.5
Ohio	307.4	South Carolina	571.9
New Jersey	308.4	Alaska	606.5
West Virginia	315.9	Tennessee	608.2
Colorado	320.2	District of Columbia	1,202.1
		United States Rate	386.3

Source: Data compiled by Joint State Government Commission from U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Uniform Crime Reports, "Crime in the United States, 2011," Table 5 – Crime in the United States, by State, 2011, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-5>

Table 2
Rates of Violent Crime per 100,000 Inhabitants
Pennsylvania Metropolitan Statistical Areas
2011

Metropolitan Statistical Area	Violent Crime Rate
State College	110.7
Williamsport	177.1
Lebanon	179.1
Lancaster	181.5
Allentown-Bethlehem-Easton PA-NJ	214.2
Erie	245.9
Altoona	255.7
Johnstown	262.9
Scranton-Wilkes-Barre	269.4
Pittsburgh	299.7
York-Hanover	303.4
Harrisburg-Carlisle	306.8
Reading	308.2
Philadelphia	586.7
Pennsylvania Rate	355.0

Source: Data compiled by Joint State Government Commission from U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Uniform Crime Reports, “Crime in the United States, 2011,” Table 6 – Crime in the United States, by Metropolitan Statistical Area, 2011, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-6>.

Pennsylvania Violent Crime Statistics

Using the same definitions and criteria for violent crime as are used by the FBI, the Pennsylvania State Police gather and maintain data regarding crimes committed in Pennsylvania.¹⁴ In light of the incident at Sandy Hook, the Joint State Government Commission examined Pennsylvania violent crime statistics to determine the number of multiple homicides occurring in the Commonwealth, and the role of firearms in the commission of violent crime. As Table 3 indicates, from 2008-2012, of all homicides committed in the Commonwealth, 2.84 percent involved multiple victims of one offender. Another 1.36 percent of homicides involving multiple victims were committed by multiple or unknown offenders. In the aggregate, 4.2 percent of all homicides committed during the past five years were the result of mass murder.

¹⁴ Uniform Crime Reporting Act, act of November 29, 2004 (P.L.1383, No.180); 18 Pa. Stat. Ann. § 20.501 *et seq.*

Table 3
Percentage of Multiple Victim Homicides Involving Firearms
Pennsylvania
2008 - 2012

Characteristics of Crime	2008	2009	2010	2011	2012	5-year average
Percentage of all homicides						
One offender	3.9	1.8	2.9	2.5	3.1	2.84
Multiple or unknown offenders	1.4	1.6	1.3	1.2	1.3	1.36

Source: Data compiled by Joint State Government Commission from Pennsylvania State Police, Bureau of Research and Development, Uniform Crime Reporting Unit, Uniform Crime Reporting System, Online Annual Crime Reports, 2007-2011, <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualSumArrestUI.asp>.

The role of firearms varies depending upon the type of crime committed. Statistics were not available regarding weapons used in the commission of forcible rape, but the other three categories of violent crime are represented in Table 4. Some kind of firearm was used in 73.6 percent of all homicides. By far, the weapon of choice was a handgun (58.18 percent). Robberies involved firearms in 41.72 percent of the cases, and in aggravated assaults, firearms were present 19.42 percent of the time.

Table 4
Percentage of Selected Violent Crimes Involving Firearms
by Type of Firearm
Pennsylvania
2008-2012

Type of Crime	2008	2009	2010	2011	2012	5-year average
Percentage of all homicides						
Handgun	57.0	57.3	56.5	59.6	60.5	58.18
Other gun	.9	.8	.6	.8	1.0	.82
Rifle	2.1	1.9	1.4	1.3	1.1	1.56
Shotgun	2.1	1.7	1.7	3.0	1.7	2.04
Undesignated	12.2	10.2	11.4	9.2	12.0	11.00
Total	74.3	71.9	71.6	73.9	76.3	73.60
Percentage of all robberies	41.7	42.2	40.7	42.2	41.8	41.72
Percentage of all aggravated assaults	19.5	19.0	19.5	19.3	19.8	19.42

Source: Data compiled by Joint State Government Commission staff from Pennsylvania State Police, Bureau of Research and Development, Uniform Crime Reporting Unit, Uniform Crime Reporting System, Online Annual Crime Reports, 2007-2012, <http://www.paucrs.pa.gov/UCR/Reporting/Annual/AnnualSumArrestUI.asp>.

CHARACTERISTICS OF MASS SHOOTINGS

While most violent crime occurs in the context of one offender versus one victim, it is the much rarer multiple victim homicide that garners the most attention. Poverty, substance abuse, family disintegration, and a cultural tolerance for aggressive behavior in day-to-day living can all be blamed for the daily occurrence of violence in our society. This section analyzes mass shootings, also known as rampage or spree killings, to identify some common characteristics of shooters in the hope that this knowledge can help direct prevention efforts. Specifically, this report addresses school shootings, public shootings, workplace violence, and campus violence. The Advisory Committee recognizes that domestic violence frequently results in the deaths of multiple family members and is an issue that merits study, but its unique nature is beyond the scope of SR 6.¹⁵ Similarly, although acts of terrorism, like the bombing at the Boston Marathon, frequently result in massive losses of life and property, a review of terrorism prevention is also beyond the scope of this study.

Any analysis of mass shootings must first begin with a definition of the term. According to the FBI, a mass murder is defined as four or more murders occurring during the same incident, with no distinctive time period between the murders.¹⁶ Additionally, most analysts only include those incidents occurring in a public place, which also tends to eliminate many domestic violence cases. Even using those parameters, it is difficult to ascertain an exact figure for the number of mass shootings that have occurred in the United States. In a recent report, the Congressional Research Service (CRS) defined the term public mass shootings as “incidents occurring in relatively public places, featuring four or more deaths – not including the shooter – and gunmen who somewhat indiscriminately select victims. The violence in these cases is not a means to an end.”¹⁷ The CRS identified 78 shootings resulting in 547 deaths during the time period 1983-2012.¹⁸

¹⁵ According to U.S. Department of Justice statistics, 30% of all homicides of women and 5% of men are committed by intimate partners. United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, retrieved August 6, 2013 from <http://www.bjs.gov/content/intimate/victims.cfm>.

¹⁶ “Serial Murder: Multi-Disciplinary Perspectives for Investigators,” United States Department of Justice, Federal Bureau of Investigation, Behavioral Analysis Unit, National Center for the Analysis of Violent Crime, July, 2008, <http://www.fbi.gov/stats-services/publications/serial-murder/Serial1.jpg/view>.

¹⁷ Jerome P. Bjelopera, Erin Bagalman, Sarah W. Caldwell, Kristin M. Finklea and Gail McCallion, “*Public Mass Shootings in the United States: Selected Implications for Federal Public Health and Safety Policy*,” Congressional Research Office Report (March 18, 2013). Figure 2, p. 9.

¹⁸ *Ibid.*, Figure 1, p 8.

Figures from other sources vary wildly. In an article published earlier this year, *USA Today* claimed that 934 people had been killed in 146 mass shootings in the past seven years. The article stated that over half the deaths involved a family member or intimate partner.¹⁹ Reporting by *Mother Jones* identified 62 mass shootings involving 514 persons over the 30 year time period 1982-2012. Mass shootings were identified of four or more persons murdered by a lone shooter in a public place. Weapons used in these shootings included 71 semi-automatic handguns, 23 revolvers, 21 shotguns and 28 rifles.²⁰

The Violence Policy Center, a non-profit organization advocating for stricter gun laws and based in Washington, D.C., analyzed mass shootings involving high-capacity ammunition magazines (defined as magazines capable of holding more than 10 rounds of ammunition). The Center identified 34 incidents occurring over the 28-year time period of 1984-2012 involving 334 deaths.²¹

According to another researcher, Glenn Kessler, 156 mass public shootings occurred in the United States in the last 100 years. These mass shootings are defined as those incidents in which there are four or more victims killed publicly with guns within a 24 hour time period. The author claims that there have been 32 mass shootings since 2005.²²

Whether it is a true “copycat” phenomenon, as has been identified in teen suicides, or is the result of vulnerable individuals selecting options not previously recognized by them, mass violence seems to occur in clusters. While not all threats of violence cumulate in actual violence, an element of imitation has been identified. Following the April 1999 incident at Columbine High School, 354 threats of school violence were reported in Pennsylvania in the 50 days following the shootings, compared to an average one to two threats annually before 1999.²³ During the 1980s and 1990s, workplace violence, especially mass shootings at United States Post Office facilities, seemed to become so common that the term “going postal” joined the vernacular.²⁴

¹⁹ Fredeka Schouten, Meghan Hoyer, and Paul Overberg, “Mass shootings toll exceeds 900 in past seven years,” *USA Today*, February 22, 2013, <http://www.usatoday.com/story/news/nation/2013/02/21/mass-shootings-domestic-violence-nra/1937041/>.

²⁰ Mark Follman, Gavin Aronsen, and Deanna Pan, “A Guide to Mass Shootings in America,” *Mother Jones* February 27, 2013, <http://www.motherjones.com/politics/2012/07/mass-shootings-map>.

²¹ “*Mass Shootings in the United States Involving High-Capacity Ammunition Magazines*,” Violence Policy Center, retrieved August 8, 2013, http://www.vpc.org/fact_sht/VPCshootinglist.pdf.

²² Glenn Kessler, “The history of mass shootings in the U.S.,” *HeraldNet* January 12, 2013 www.heraldnet.com/article/20130112/NEWS02/701129949.

²³ Spencer Kostinsky, M.D., Edward O. Bixler, Ph.D., and Paul A. Kettl, M.D., “Threats of School Violence in Pennsylvania After Media Coverage of the Columbine High School Massacre,” *JAMA Pediatrics*, Vol. 155, No. 9 (September 2001), <http://archpedi.jamanetwork.com/article.aspx?articleid=190989> December 10, 2013. See also, Nina Lindberg, Eila Sailas, and Riittakerttu Kaltiala-Heino, “The copycat phenomenon after two Finnish school shootings: an adolescent psychiatric perspective,” *BMC Psychiatry* 2012, 12:91. Available at <http://www.biomedcentral.com/1471-244X/12/91>.

²⁴ For an alternative analysis of workplace violence and school shootings, see Mark Ames, *Going Postal: Rage, Murder and Rebellion, From Reagan’s Workplaces to Clinton’s Columbine and Beyond*, Soft Skull Press (November 16, 2005).

The Joint State Government Commission reviewed news media reports identifying mass or public shootings across the United States in 2012-2013. While some reporters claim upwards of 30 or more “mass shootings” during this time period, not every incident that garnered publicity contained each element of the formal definition of a mass shooting. Consistent with the Advisory Committee’s recommendation to minimize the notoriety and potential “instructions” to persons contemplating public violence, this report will not contain details of these events. The following list simply reports the date and location of some of these incidents, in acknowledgment of the ongoing nature of these attacks.²⁵ The incidents were selected on the notion of random violence against multiple victims, and generally do not include cases involving domestic violence, drug or gang violence.

- February 22, 2012, Norcross, Georgia.
- February 27, 2012, Chardon High School, Ohio.
- March 8, 2012, Western Psychiatric Institute and Clinic, Pittsburgh, Pennsylvania.
- April 2, 2012, Oikos University, Oakland California.
- May 30, 2012, Seattle, Washington.
- July 20, 2012, Century 16 Movie Theatre, Aurora, Colorado.
- August 5, 2012, Sikh Temple of Wisconsin, Oak Creek, Wisconsin.
- August 14, 2012, Texas A&M University.
- August 31, 2012, Pathmark Super Mart, Old Bridge, New Jersey.
- September 27, 2012, Accent Signage Systems, Minneapolis, Minnesota.
- October 21, 2012, Azana Day Spa, Brookfield, Wisconsin.
- December 11, 2012, Clackamas, Oregon.
- December 14, 2012, Sandy Hook Elementary School, Newtown, Connecticut.
- January 19, 2013, Albuquerque, New Mexico.

²⁵ More detailed information on these incidents is available for research purposes at the Joint State Government Commission.

- March 13, 2013, Herkimer County, New York.
- April 24, 2013, Manchester, Illinois.
- May 10, 2013, Fernley, Nevada.
- June 7, 2013, Santa Monica, California.
- July 26, 2013, Hialeah, Florida.
- August 6, 2013, Ross Township, Municipal Building, Monroe County, Pennsylvania.
- September, 16, 2013, Washington Navy Yard, Washington, D.C.
- October 21, 2013, Sparks Middle School, Sparks, Nevada.²⁶

Following the school shooting in 1999 at Columbine High School in Colorado, the United States Secret Service and the United States Department of Education collaboratively started *The Safe School Initiative* to determine whether school attacks can be anticipated and prevented. They reviewed 37 incidents that occurred between 1974 and June 2000. Hoping to construct a profile that would allow school officials and law enforcement personnel to identify potential school attackers in advance, they found “no accurate or useful ‘profile’ of students who engaged in targeted school violence.”²⁷

However, the study produced 10 key findings about school attackers:

- Incidents of targeted violence at school were rarely sudden, impulsive acts.
- Prior to most incidents, other people knew about the attacker’s idea and/or plan to attack.
- Most attackers did not threaten their targets directly prior to launching the attack.
- There is no accurate or useful “profile” of students who engaged in targeted violence.
- Most attackers engaged in some behavior prior to the incident that caused others concern or indicated a need for help.

²⁶ Stories compiled by Joint State Government Commission staff from various news sources.

²⁷ United States Secret Service and United States Department of Education, “The Final Report and Findings of The Safe School Initiative: Implications for the Prevention of School Attacks in the United States,” (Washington, D.C., May 2002), 19.

- Most attackers had difficulty coping with significant losses or personal failures. Many had considered or attempted suicide.
- Few of the attackers had a history of a mental health evaluation, diagnosis with a mental disorder or involvement with substance abuse.
- Many attackers felt bullied, persecuted, or injured by others prior to the attack.
- Most attackers had access to and used weapons prior to the attack.
- In many cases, other students were involved in some capacity.
- Despite prompt law enforcement responses, most shooting incidents were stopped by means other than law enforcement intervention.

While all the attackers in the study were males, they varied in age, race, ethnic background, family circumstances and economic status. Their academic performances ranged from excellent to failing. Some were socially isolated, while others were popular. Some had a history of disciplinary problems, while others were model students. Over half of the attackers demonstrated some interest in violence, through movies, video games, books or other media, but no one common type of interest was indicated. Most attackers had no history of prior violent or criminal behavior.

These findings lead to several key implications for prevention. Because most attacks are planned, information can be uncovered in advance. Other students may know what is planned, and they should be strongly encouraged to report that information to a responsible adult. Instead of personal characteristics, the focus should be on behaviors and communications of students. These studies further indicate that preventive measures necessarily involve open communication between students, parents and educators, and that teachers and staff must be attuned to behaviors that may foretell potential problems.

Dr. Peter Langman, a member of the Advisory Committee and author of *Why Kids Kill: Inside The Minds of School Shooters*,²⁸ presented some of his findings at the September 26, 2013 Advisory Committee meeting. He reviewed three different angles of analysis of school shooters: psychological type, attack type, and populations of perpetrators. Of the 46 shooters he reviewed (all but 4 male), approximately one-third were psychopathic and were most likely bullies themselves. Approximately one-half were psychotic. Both the psychopathic and psychotic types were usually from intact families. The third type, the traumatize person, accounted for about one-fourth of the cases.²⁹ Attack

²⁸ Published by Palgrave Macmillan, January 2009.

²⁹ Traumatized persons include youth who were bullied or otherwise subjected to ongoing victimization, including physical and sexual abuse, and were living in poverty or squalor, had parents with substance abuse issues and/or criminal histories, frequent relocations and changing caregivers.

types can be random, targeted or mixed. Females are most likely to be targeted shooters, but the shooting is rarely retaliatory; the target is rarely the person who bullied or rejected the shooter. As to the populations of perpetrators, secondary school shooters are most frequently psychologically traumatized and many are undiagnosed or not being treated. College shooters almost always target faculty and are rarely traumatized students. Aberrant adult shooters who randomly attack schools are mostly psychotic types.

With respect to access to firearms, students take weapons from the homes of their parents or grandparents; older shooters tend to acquire guns legally. Dr. Langman's research also indicated that older shooters tend to have been persons rejected for military duty or who were discharged soon after enlisting and some have weapons training.

RECENT VIOLENCE PREVENTION PROPOSALS

A number of recurring recommendations are found in recent studies that contain proposals and plans to reduce violence, particularly gun violence. These include implementing background checks for persons seeking to purchase a firearm, imposing a ban on military-style assault weapons and/or limiting the capacity of the weapons magazine, regulating straw purchases and unregistered sales, improving school safety by increasing security measures and providing appropriate training for school personnel in emergency response situations, and improving the access to and quality of mental health services.

Now-Is-the-Time: The President's plan to protect our children and our communities by reducing gun violence

Following the school shooting at Sandy Hook Elementary School in Newtown, Connecticut on December 14, 2012, President Obama charged Vice President Biden with heading a task force to prepare recommendations to curtail gun violence in the United States. The Biden task force presented its recommendations to the President on January 14, 2013, and on January 16, 2013, the President released his plan to address gun violence. President Obama's plan includes the following recommendations:

- Require universal background checks for all firearm sales.
- Direct the U.S. Attorney General to review categories of individuals prohibited from owning guns and make recommendations to ensure such persons do not obtain access to guns.
- Remove barriers that prevent states from reporting information on people prohibited from gun ownership for mental health reasons.
- Direct the United States Centers for Disease Control and Prevention (CDC) and other agencies to research gun violence.
- Provide funding to the CDC for research on the relationship between violent video games, media images and violence.
- Launch a national campaign to promote safe and responsible gun ownership.
- Trace guns seized in criminal investigations and review information on treatment of lost and stolen guns.

- Review and enhance safety standards for gun locks and gun safes.
- Encourage development of gun safety technologies.
- Incentivize police departments to hire school resource officers.
- Provide funding to school districts and law enforcement agencies to permit hiring additional school resource officers, psychologists, social workers and counselors.
- Provide funding to help school districts develop emergency management plans.
- Provide additional funding for schools to train teachers and staff to create safer and more nurturing environments.
- Share best practices on school discipline.
- Provide funding to ensure that treatment for mental health issues is available to students.
- Provide funding to assist state-based strategies to support young adults with mental health or substance abuse issues.
- Provide funding to offer students mental health services for trauma or anxiety.
- Provide funding for additional training for mental health professionals serving children and young adults.
- Launch a national dialogue about mental illness.
- Clarify that federal health care law does not preclude doctors from asking patients about guns in the home.
- Clarify that no federal law prohibits health care providers from reporting threats of violence to law enforcement.
- Finalize requirements for private health insurance plans to cover mental health services and ensure parity between health benefits for “traditional” illnesses and mental health.
- Ensure that Medicaid recipients get quality mental health coverage.

Report of the National School Shield Task Force

Following the mass shooting at Sandy Hook Elementary School, the National Rifle Association (NRA) organized a task force on school safety, recruiting experts from a variety of security backgrounds to offer recommendations to reduce school violence. A number of schools (public, private, rural, suburban and urban) underwent comprehensive security assessments. The April 2013 task force report includes the following findings:

- Insufficient attention is paid to school security needs.
- Many schools do not have a formal, written security plan.
- Properly trained school resource officers have proven to be an important layer of security.
- Local school authorities are in the best position to make a final decision on school safety procedures.
- Many public and non-public schools are unable to afford armed security personnel as part of a school security plan and have resorted to school staff carrying firearms.
- Individual states have not made school security an element of adequacy in school standards.
- School officials are not generally trained in security assessments or the development of comprehensive safety and security plans.
- Federal funding for school resource officers has proven unreliable as a long-term solution to school safety.
- Numerous federal agencies and programs provide valuable school safety resources but there is a lack of coordination between federal agencies resulting in gaps, duplication and inefficiencies.
- There are pre-incident indicators of a student or outside person who exhibits threatening behavior and poses a risk to the school.

The NRA task force recommended the following:

- Professional training for armed personnel in the school environment should be provided.
- A Model Law for armed school personnel should be adopted.

- Each school that employs a school resource officer should have a memorandum of understanding between the school district and the appropriate law enforcement agency.
- Schools should use the National School Shield Internet-based self-assessment tool to comprehensively evaluate and assess security gaps and vulnerabilities at each school.
- States should make development of a school security plan a state education adequacy requirement.
- A lead agency should be designated to coordinate federal programs and funding of local school safety efforts. The report recommends that the U.S. Department of Homeland Security serve as lead, supported by the U.S. Departments of Education and Justice.
- The National School Shield should serve as a national umbrella organization to advocate and support school safety.
- Each school should develop a threat assessment team to coordinate with mental health professionals to create a positive school environment that encourages sharing information on early warning signs, reduction of incidents of bullying or other anti-social behavior.³⁰

Gun Violence: Prediction, Prevention and Policy

In February 2013, a panel of experts commissioned by the American Psychological Association began a year-long review of research-based conclusions and recommendations on how to reduce the incidence of gun violence nationwide. Their conclusions included the following:

- There is no one single profile to reliably predict who will become violent. Instead, a combination of individual, family, school, peer, community sociocultural risk factors contribute.
- Access to mental health services should be a national priority.
- Behavioral threat assessment is a useful tool for preventing violence.
- Community-based collaborative problem-solving models can be used to address violence prevention.

³⁰“Report of the National School Shield Task Force,” National Rifle Association, The National School Shield, April 2, 2013, www.nraschoolshield.com.

- Safe gun storage is vital to gun violence prevention efforts.
- Firearms prohibitions for high risk groups, such as domestic violence offenders, persons convicted of violent misdemeanor crimes and individuals with mental illness who have been adjudicated a threat to themselves or others have been shown to reduce violence.³¹

Pennsylvania State Police School Safety Report

In December 2013, the Pennsylvania State Police Risk and Vulnerability Assessment Team (RVAT) issued a report on school safety. Based on its evaluations of 300 schools and 20 colleges and universities, the RVAT made the following findings and recommendations:

- Use of the incident command system, a standardized concept for on-scene management used by emergency responders, allows for clear, prompt and flexible response to any type of incident occurring in a school. The school principal normally serves as the incident commander. He or she is assisted by a public information officer, safety officer and liaison officer (who interacts with other agencies). Other teams that should be planned for, even if not used in all incidents, are an evacuation team, medical team, facilities management team, and family reunification team. Other system positions may also be needed and should be identified.
- All school districts should have some form of a security force. Security officers may be responsible to safeguard school property and equipment, maintain building access control, traffic duty and enforcement of school policies. The individual school district decides if these persons should be armed or unarmed. School resource officers also provide a uniformed and armed presence in schools.
- Modern access control systems should be in place in all school buildings. Key lock systems present a security concern in many schools and a strict written key-control policy is essential.
- Schools should be equipped with a comprehensive digital closed-circuit television system that monitors and records all entrance doors, common areas, hallways, stairways, parking areas, delivery and loading docks, and building perimeters.
- All schools should have written comprehensive lockdown procedures.

³¹ *Gun Violence: Prediction, Prevention and Policy*, APA Panel of Experts, American Psychological Association (Washington, D.C. December 2013), <http://www.apa.org/pubs/info/reports/gun-violence-prevention.aspx> .

- Evacuation drills should include blocked primary and alternate evacuation routes to train faculty and staff to alter actions when faced with an unpredictable situation.
- Separate gathering areas should be identified for family reunification and media response.
- Communication and notification systems should be in place for students, school personnel, family members and the public. Systems available include text-messaging, electronic mail, alert siren/alarm systems, public address message systems and emergency call box systems.³²

Ongoing Studies in Pennsylvania

Pennsylvania House Resolution No. 53 (2013) established the House Select Committee on School Safety, chaired by Representative Gary Day, with Representative Cherelle L. Parker serving as vice-chair. The committee held hearings across the Commonwealth on school safety issues. Their report is expected to be issued in the near future.

Additionally, Senator Lisa Baker, chair of the Senate Veterans' Affairs and Emergency Preparedness Committee and Senator Mike Folmer, chair of the Senate Education Committee, held joint public hearings in February and March of 2013 on school safety issues.

The House Human Services Committee, under the chairmanship of Representative Gene DiGirolamo, has been holding public hearings on mental health services and issues since the spring of 2013.

Several members of the staff of the Joint State Government Commission have attended these public hearings and were able to garner much valuable information and research as a result of these ongoing efforts.

Pennsylvania Commission to Address Gun Violence

Governor Edward G. Rendell issued Executive Order 2005-02 on March 31, 2005, which established the Commission to Address Gun Violence. The Governor's Commission published its report on May 17, 2005. It contains recommendations regarding law enforcement cooperation, education, prevention and awareness, and legislative reforms

³² Pennsylvania State Police, Domestic Security Division, Risk and Vulnerability Assessment Team *School Safety Report* (Harrisburg, PA, December 10, 2013), http://www.portal.state.pa.us/portal/server.pt/community/psp/4451/public_safety/760900.

to address gun violence. The Governor's Commission's recommendations are listed below.

Policy Recommendations

- Focus interventions in crime- and violence-prone communities by local police and prosecutors, federal Alcohol, Tobacco and Firearms agents and federal prosecutors.
- Implement comprehensive gun tracing.
- Develop alternative (state versus federal) prosecution for crimes committed with firearms.
- Create felon warning lists to educate felons regarding restrictions on gun ownership.
- Support public awareness campaigns, including education focused on warning signs and risk factors in children.
- Develop and implement a real-time hospital based injury surveillance and intervention system connected to social services.
- Study of the need for statewide witness relocation programs and statewide forensic firearm laboratory needs.

Legislative Recommendations

- Address safe storage of firearms away from children.
- Add offenses to the list of disqualifications from firearms possession.
- Prohibit serious drug traffickers and repeat violent offenders from possessing firearms.
- Provide mandatory minimum sentences for the selling firearms to persons disqualified from possessing one.
- Increase the penalty for theft of a firearm and for receiving a stolen firearm.
- Disqualify juveniles adjudicated delinquent of certain crimes from possession of firearms.
- Improve information sharing about delinquent behavior.

- Improve law enforcement sharing of intelligence information among criminal justice agencies.
- Impose citizenship restrictions on licenses to carry concealed firearms.
- Encourage greater collection of statistical data by law enforcement.
- Expand the *Blueprint for a Safer Philadelphia* for use throughout Pennsylvania.
- Disqualify identified terrorists from possession of firearms.
- Require the reporting of lost or stolen firearms.

Topics considered but not endorsed by the Governor's Commission

- Allow municipalities to pass their own firearms-related measures by referendum.
- Limit handgun purchases to one per month.
- Expand state law enforcement powers to federal agents and sheriffs.
- Disqualify persons with voluntary mental health commitments from purchasing or possessing a firearm.
- Require firearms training before being issued a license to carry.

Pennsylvania Senate Judiciary Committee Hearings on Urban Violence

During the summer of 2006, the Senate Judiciary Committee held a series of public hearings across the Commonwealth on urban violence. Hearings were held in Philadelphia, Pittsburgh, and Altoona. Various pieces of legislation designed to reduce violence were under consideration, and witnesses advocated the following actions to address the issue:

- Limit handgun purchases to one per month.
- Support smaller class sizes for middle schools and high schools in high risk communities.
- Employ additional school counselors, social workers, and mentors.
- Provide additional after-school and community programming.

- Develop incentives for businesses to hire and train youth.
- Institute youth curfews.
- Permit random searches for illegal guns and increased use of “stop and frisk” powers by law enforcement officials.
- Increase access to drug rehabilitation and mental health services.
- Increase community watch programs.
- Implement saturation police patrols in areas of known high gang activity.
- Criminalize street gang activity.
- Facilitate cooperation among local, state and federal law enforcement agencies.
- Eliminate plea bargaining for violations of gun laws.
- Develop a drug dealer registry similar to Megan’s Law.
- Install security cameras in public areas.
- Support treatment of those in community corrections to reduce their likelihood of committing crimes.
- Enact stricter enforcement of existing gun laws, including greater penalties for straw purchasers.
- Increase capacity of correctional facilities and size of staffs.
- Increase police forces.
- Implement gun safety programs in schools.
- Set mandatory minimum sentences for possession of firearms by persons with prior violent crime or drug trafficking convictions.
- Prohibit the use of Teflon-coated or armor-piercing bullets.
- Clarify exemptions for carrying a firearm without a license.

***Summary on Gun Violence and Crime Prevention in Pennsylvania
(Youngblood Report)***

In June 2007, legislation addressing gun violence did not advance beyond the House Judiciary Committee. In a move based on frustration over the legislative inactivity regarding these bills, despite a high level of violent crime in Philadelphia, several members of the Legislative Black Caucus threatened to stall action on any budget bills unless the gun violence bills were considered.³³ In the aftermath of that legislative battle, Representative Rosita C. Youngblood directed her staff to prepare a Summary on Gun Violence and Crime Prevention in Pennsylvania (Youngblood Report).³⁴

The Youngblood Report recommends the following actions to address the three major issues identified in the materials reviewed: gun violence, straw purchasing of firearms, and systemic issues affecting education, family structure, access to behavioral health services, health care, and employment:

- Support collaboration among legislative committees to identify funding to sustain anti-violence programs.
- Establish criteria to determine which agency is best suited to deliver preventative services.
- Establish goals and evaluation criteria to determine effectiveness of programs and services.
- Support cooperation between local government and the General Assembly.

³³ Amy Worden, "Pa. black caucus: No gun laws, no budget," *Philly.com*, June 28, 2007, http://articles.philly.com/2007-06-28/news/24994462_1_gun-control-bills-gun-laws-gun-violence.

³⁴ State Representative Rosita C. Youngblood and Legislative Staff, 198th Legislative District, "Summary on Gun Violence and Crime Prevention in Pennsylvania," Submitted for House review December 10, 2007.

VIOLENCE PREVENTION PROGRAMS

Violence is a multi-faceted phenomenon caused by a variety of factors. Consequently, any success in reducing or preventing it must be achieved by multi-faceted effort. As “The World Report on Violence and Health” reminds its readers, “it is important to address not only individual cognitive, social and behavioral factors, but also the social systems that shape these factors.”³⁵

Prevention and Intervention Strategies

Specific prevention and intervention strategies usually involve one group of factors:

- *Individual approaches* strive to increase the level of protective factors associated with individual skills, attitudes and beliefs. Individual approaches use programs such as preschool enrichment or social development programs to reduce antisocial and aggressive behavior in children and violence among adolescents by means of improving competency and social skills.
- *Relationship approaches* seek to influence the type of relationships that people have with others with whom they regularly interact. Relationship approaches address such problems as the lack of emotional connection between parents and children and parents’ inability to control their child’s behavior. Programs like home visitation by nurses or social workers, parent training, mentoring programs and family therapy are used to resolve these issues.
- *Community-based approaches* attempt to modify specific environments where violence tends to occur. Community-based approaches may include a variety of measures, from improving street lighting in crime-prone areas to hot-spot policing, from reducing alcohol availability to suppressing gang violence.
- *Societal approaches* involve efforts to reduce economic or social barriers to development, to address issues of poverty or access to guns. Societal approaches involve broader changes and bigger investments in creating job programs, reforming and strengthening the criminal system,

³⁵ The World Health Organization. *World Report on Violence and Health*, ed. by Etienne G. Krug, Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi, and Rafael Lozano, (Geneva, Switzerland: World Health Organization, 2002), http://www.who.int/violence_injury_prevention/violence/world_report/chapters/en/.

enforcing existing laws that regulate gun transfers or finding new strategies to reduce unauthorized access to guns, and transforming the cultural norms and values that stimulate violence.³⁶

This chapter will discuss best practices in violence prevention, review numerous existing models and programs that been assessed as successful, and briefly acknowledge those efforts that have been proven unsuccessful.

Violence as a Public Health Concern

An important recent development in violence prevention is the designation of violence as a public health concern. The public health approach focuses on prevention rather than consequences. Applying to violence traditional public health concepts of prevention and intervention and combining them with the insights of diverse disciplines, it seeks prevention of violence in a way similar to prevention of disease or injury. “Primary prevention identifies behavioral, environmental and biological risk factors associated with violence and takes steps to educate individuals and communities and protect them from these risks.”³⁷ Proponents of this approach contend that “just as the application of public health principles and strategies has reduced the number of traffic fatalities and death attributed to tobacco use, ... the public health approach can help reduce the number of injuries and deaths caused by violence.”³⁸ Rather than treat an individual patient, the public health approach attempts to identify problems and develop solutions for entire population groups. To achieve this purpose, it does the following:

- Defines the problem, using surveillance processes designed to gather data that establish the nature of the problem and the trends in its incidence and prevalence.
- Identifies potential causes through epidemiological analyses that identify risk and protective factors associated with the problem.
- Designs, develops, and evaluates the effectiveness and generalizability of interventions.
- Disseminates successful models as part of a coordinated effort to educate and reach out to the public.³⁹

³⁶ *Ibid.*

³⁷ Office of the Surgeon General, (US), *Youth Violence: A Report of the Surgeon General*, (Rockville, MD: 2001), <http://www.ncbi.nlm.nih.gov/books/NBK44294>.

³⁸ *Ibid.*

³⁹ *Ibid.*

The leading American medical associations actively promote the public health approach and have become increasingly involved in gun safety and violence prevention campaigns.⁴⁰

The American Academy of Pediatrics

The American Academy of Pediatrics (AAP) describes its guidelines for violence prevention assessment and counseling as “anticipatory guidance” and recommends that they begin before birth and continue through adolescence. The guidelines are very specific in outlining factors that might indicate increased risk, such as:

- History of mental illness.
- Previous domestic violence.
- Substance use.
- Exposure to violence in the home, school, or community.
- Degree of exposure to media violence.
- Gang-involvement or gang exposure.⁴¹

If pediatricians identify any of the above risk factors, they can offer parental advice and provide referrals to appropriate intervention and follow-up services, such as child welfare agencies, mental health services, or domestic violence counseling. The AAP developed special counseling kits about the hazards of firearms. They include information on gun violence, a counseling tip sheet, audio and video materials containing scenarios of counseling sessions, patient education brochures and office posters.

The American College of Physicians

The American College of Physicians (ACP) declared its belief that “gun violence and the prevention of firearms injuries and deaths is a public health issue of major and growing concern”⁴² and in 1995 issued a position paper “Preventing Firearm Violence: A Public Health Imperative.” The ACP advocates for legislative and regulatory measures to

⁴⁰ J.H. Price, S.A. Everett, A.W. Bedell, *et al.* “Reduction of Firearm-Related Violence through Firearm Safety Counseling. The Role of Family Physicians.” *Archives of Family Medicine*. 1997. Issue 6 (Jan./Feb.) 79-83. American Academy of Pediatrics. “The Role of the Pediatrician in Youth Violence Prevention in Clinical Practice and at the Community Level.” *Pediatrics*. 1999. Issue 103 173-81, <http://www.aap.org.policy/re9832.html>.

⁴¹ American Academy of Pediatrics. “The Role of the Pediatrician in Youth Violence Prevention in Clinical Practice and at the Community Level.” *Pediatrics*. 1999. Issue 103 173-81, <http://www.aap.org.policy/re9832.html>.

⁴² American College of Physicians. *Firearm Injury Prevention*. 1996, http://www.acponline.org/acp_policy_policies/firearm_injury_prevention_unabridged_executive_summary_1996.pdf.

limit the availability of firearms, with particular emphasis on reducing handgun accessibility. The ACP supports tougher gun control laws through a comparison of firearm-related homicide and suicide rates in two adjacent and similar cities (Seattle, Washington and Vancouver, British Columbia). In addition to gun control measures, its position statement includes a variety of preventive recommendations, from internists informing patients about the dangers of keeping firearms (especially handguns) in the home and advising them on ways to reduce the risk of gun-related injury, to improving and modifying firearms to make them as safe as possible by incorporating built-in safety devices such as trigger locks.⁴³ The ACP encourages internists to be involved in firearm injury prevention both within the medical field and as part of the larger community. It provides its members with free AAP counseling kits about the hazards of firearms.

The American Association of Emergency Physicians

The American Association of Emergency Physicians in its new policy statement “Firearm Safety and Injury Prevention” also characterizes the current level of intentional and accidental firearm injuries as a threat to the health and safety of the public and expresses its support of several legislative, regulatory, and public health preventive efforts, including:

- Increased funding for firearm safety and injury prevention research.
- Creation of a confidential national firearm injury research registry while encouraging states to establish a uniform approach to tracking and recording firearm-related injuries.
- Better access to effective, affordable, and sustainable mental health services.
- Healthcare provider discussions with patients on firearm safety.
- Universal background checks for firearm transactions.
- Enforcement of existing laws and the introduction of new legislation that prevents high-risk and prohibited individuals from obtaining firearms by any means.⁴⁴

The widening acceptance of the public health approach, with its emphasis on prevention, can be expected to augment violence prevention efforts.

⁴³ *Ibid.*

⁴⁴ American Association of Emergency Physicians. *Firearm Safety and Injury Prevention*. 2013, <http://www.acep.org/Clinical---Practice-Management/Firearm-Safety-and-Injury-Prevention/>.

Best Practices: The Evaluators and Their Criteria

Identifying best practices that address the issue of violent crime is a challenging task. Hundreds of programs have been used nationwide, and various approaches have been applied; many questions remain. Nonetheless, thorough and objective analysis of the theoretical foundations combined with the review of results after several years of utilizing certain programs has allowed researchers to arrive at supported conclusions. Comparative analysis of a broad spectrum of preventive programs has been performed by several federal and state agencies, including the U.S. Department of Justice, the Office of the U.S. Surgeon General,⁴⁵ the Centers for Disease Control and Prevention (CDC), the Center for the Study and Prevention of Violence (CSPV),⁴⁶ the Johns Hopkins Center for the Prevention of Youth Violence, and the Evidence-Based Prevention and Intervention Support (EPIS) Center at the Pennsylvania State University, Washington State Institute for Public Policy (WSIPP),⁴⁷ and the United Nations World Health Organization (WHO).⁴⁸

Accurate and reliable data on violent injuries and deaths would be an important step in developing proper prevention and intervention. The report “Firearms and Violence: A Critical Review,” prepared by the National Research Council of the National Academies and sponsored by the National Institute of Justice, CDC, and other organizations, calls for the development of a National Violent Death Reporting System and a National Incident-Based Reporting System.⁴⁹

U.S. Justice Department, National Institute of Justice (Sherman Report)

“Preventing Crime: What Works, What Doesn’t, What’s Promising” is a report to the United States Congress, prepared for the National Institute of Justice by Lawrence W. Sherman and his colleagues from the University of Maryland Department of Criminology and Criminal Justice.⁵⁰ The report is a Congressionally-mandated evaluation of state and local crime prevention programs funded by the U.S. Department of Justice, with special emphasis on juvenile crime and youth violence. The purpose of the study was to determine what works to prevent crime, especially youth violence, which of the numerous strategies have been successful and to what degree, and what the scientific evidence suggest about the effectiveness of federally funded crime prevention. The authors emphasized that crime prevention is defined “not by its intentions, but by its results;” accordingly, they defined “crime prevention” broadly as “any practice shown to result in less crime than would occur

⁴⁵ *Supra* note 37.

⁴⁶ Center for the Study and Prevention of Violence. *Blueprints for Violence Prevention*, <http://www.colorado.edu/cpv/blueprints/>.

⁴⁷ S. Lee *et al.* *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes*. Olympia, Washington: Washington State Institute for Public Policy, April 2012, <http://www.wsipp.wa.gov/rptfiles/12-4-1201.pdf>.

⁴⁸ *Supra* note 35.

⁴⁹ Charles F. Wellford, John V. Pepper, and Carol V. Petrie, editors. *Firearms and Violence: A Critical Review*. Washington, D.C.: National Academies Press, 2004, http://www.nap.edu/openbook.php?record_id=10881&page=R1.

⁵⁰ Lawrence W. Sherman, Denise C. Gottfredson, Doris L. McKenzie, John Eck, Peter Reuter, and Shawn Bushway. *Preventing Crime: What Works, What Doesn’t, What’s Promising*. Washington, D.C.: U.S. Department of Justice, 1998, <https://www.ncjrs.gov/works/>.

without the practice.”⁵¹ Employing rigorous and scientifically recognized standards and methodologies, the review examined a wide variety of programs that claim to prevent crime or drug violence, especially youth violence, and examined the effects of programs on risk and protective factors for youth violence and drug use.

The National Institute of Justice’s crime prevention funding is available for different types of programs. The research team based its classification of the programs on local institutional settings in which these programs operated: in communities, in families, in schools, in labor markets, in places such as businesses, hotels and other locations, and also by police and criminal justice agencies after arrest.

The value of a broad framework for analyzing crime prevention policies is that it allows the reader to perceive the relative value of all prevention programs competing for funding, which is important for policymakers. As Sherman explains,

While scientific evidence may show that two different programs both “work” to prevent crime, one of the programs may be far more cost-effective than another. One may have a stronger **effect**, cutting criminal events by 50% while the other cuts crimes by only 20%. Or one may have a longer **duration**, reducing crimes among younger people whose average remaining lifetime is 50 years, compared to a program treating older people with an average remaining life of twenty years. A fully informed debate about crime prevention policy choices requires performance measures combining duration and strength of program effect.⁵²

While scientific evaluations have certain limitations, they also have a major strength: they provide an objective and consistent way to draw conclusions about cause and effect. What makes the Maryland team report especially valuable for legislators deciding which programs to support is that the authors focused on “impact” versus “process” in assessing what effect the program had on crime rather than describing what was done.⁵³ Their focal point was outcome measures of crime or crime risk factors.

The authors of the report were convinced that it is just as important to know which approaches do not work as to know which do. Based on the scientific strength and substantive findings of the evaluations available to them and using their scale, they classified all programs as those that work, those that do not work, those that show promise and those that are still unknown.

Center for the Study and Prevention of Violence

The highly regarded Center for the Study and Prevention of Violence (CSPV) at the University of Colorado issues the Blueprints for Violence Prevention. The mission of this project is “to identify truly outstanding violence and drug prevention programs that

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

meet a high scientific standard of effectiveness.”⁵⁴ Based on rigorous studies, the Blueprints have become a reliable resource for governments, foundations and other organizations in their attempts to make informed judgments about their investments in prevention.

In addition to regularly updating its Blueprints for Violence Prevention, the CSPV issued a program planning guide for youth violence prevention based on a risk-focused approach.⁵⁵ The guide offers practical advice to communities on selecting, planning and implementing effective programs appropriate for that particular community. The authors of the guide remind their readers that “violence is a complex problem with many underlying causes.”⁵⁶ Therefore, there is no magic bullet, no single solution.

Rather, it is necessary for communities to build youth violence prevention **strategies** that incorporate a number of **promising programs**. In turn, these programs should be comprised of specific **activities** that have been shown to be effective and that relate to specific “risk factors” for youth violence. These programs may be provided for all youth in a given population to foster **youth development**, to at-risk youth through **targeted violence prevention**, or for youth who are already involved in violent behavior through **anti-violence interventions**.⁵⁷

For local communities in search of a solution to their specific problems, the guide is a helpful reminder of the need for a comprehensive approach and the importance of choosing strategies and programs that could address their particular concerns.

Washington State Institute for Public Policy

Alongside the Colorado Blueprints for Violence Prevention, another helpful resource for selecting well-researched policies that can, with a high degree of probability, lead to better statewide results and a more efficient use of taxpayer money comes from the Washington State Institute for Public Policy. In the mid-1990s, the Institute was directed by the Washington State legislature to identify evidence-based policies that have been shown to improve outcomes in several areas. The Institute developed a scientifically-sound method to assess the program’s outcomes, an economic model to assess benefits and costs of the program’s implementation, and a risk analysis to test conclusions.

⁵⁴ *Supra* note 46.

⁵⁵ Nancy G. Guerra and Kirk R. Williams. *A Program Planning Guide for Youth Violence Prevention: A Risk-Focused Approach*. Boulder, CO, University of Colorado, 1996, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.186.2092&rep=rep1&type=pdf>.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

Successful and Model Violence Prevention Programs

According to the Sherman Report, “what works” are programs that are “reasonably certain prevent crime or reduce risk factors for crime in the kinds of social contexts in which they have been evaluated and for which the findings can be generalized to similar settings in other places and times.” The CSPV found successful programs are aimed at long-term effects by changing children’s and youth’s behavioral and thinking patterns, which would decrease chances of getting involved in violence. These programs have been used for a long time and have shown consistently positive results in different socioeconomic and cultural groups.

- Nurse-Family Partnership (NFP).⁵⁸
- Functional Family Therapy (FFT).⁵⁹
- Life Skills Training (LST).⁶⁰
- Big Brothers Big Sisters (BBBS).⁶¹
- Multisystemic Therapy (MST).⁶²
- Multidimensional Treatment Foster Care (MFTC).⁶³
- Olweus Bullying Prevention Program (BPP).⁶⁴
- Promoting Alternative Thinking Strategies (PATHS).⁶⁵
- The Incredible Years: Parent, Teacher and Child Training Series (IYS).⁶⁶
- Triple P-Positive Parenting Program.⁶⁷
- Good Behavior Game.⁶⁸

⁵⁸ Sherman Report, CSPV, WSIPP.

⁵⁹ Sherman Report, CSPV, WSIPP.

⁶⁰ CSPV.

⁶¹ CSPV; the Sherman Report finds this to be promising.

⁶² CSPV, MSIPP.

⁶³ CSPV.

⁶⁴ CSPV.

⁶⁵ CSPV.

⁶⁶ CSPV.

⁶⁷ WSIPP; CSPV finds this to be promising.

⁶⁸ WSIPP; CSPV finds this to be promising.

- Aggression Replacement Training (both in institutional and probation settings).⁶⁹
- Offender Re-entry Community Safety Program (for dangerously mentally ill offenders).⁷⁰
- Parent-Child Interactive Therapy (PCIT) for families in the child welfare system.⁷¹
- Youth mentoring program.⁷²
- Cognitive behavioral therapy for child trauma, anxiety and depression in children and adults.⁷³
- Classes for preschoolers with weekly home visits by preschool teachers.⁷⁴
- Organizational development for innovation; communication and reinforcement of clear, consistent norms; teaching of social competency skills; and coaching of high-risk youth in “thinking skills” in schools.⁷⁵
- Vocational training for older male ex-offenders.⁷⁶
- Extra police patrols for high-crime spots.⁷⁷
- Monitoring by specialized police units or incarceration for high-risk repeat offenders.⁷⁸
- On scene arrest for domestic abusers who are employed.⁷⁹
- Rehabilitation programs with risk-focused treatments for convicted offenders.⁸⁰

⁶⁹ WSIPP.

⁷⁰ WSIPP.

⁷¹ WSIPP.

⁷² WSIPP.

⁷³ WSIPP.

⁷⁴ Sherman Report.

⁷⁵ Sherman Report.

⁷⁶ Sherman Report.

⁷⁷ Sherman Report.

⁷⁸ Sherman Report.

⁷⁹ Sherman Report.

⁸⁰ Sherman Report.

Promising Violence Prevention Programs

The category “what’s promising” was used in the Sherman Report to define programs “for which the level of certainty from available evidence is too low to support generalizable conclusions, but for which there is some empirical basis for predicting that further research could support such conclusions.” The CSPV Blueprint list of promising programs, which is twice as long as the model programs list, is based on the review of over 900 violence prevention programs. Behavior modification to achieve increased social competency in children and better parenting skills in adults is the focus of many promising programs as well as model programs. Among promising programs are:

- Higher numbers of police officers in cities.
- Proactive arrests for carrying conceal weapons.
- Gang monitoring by community workers and probation and parole officers.
- Metal detectors.⁸¹
- Behavioral Monitoring and Reinforcement Program, Brief Strategic Family Therapy (BFST).
- Strengthening Families Program for Parents and Youth 10-14.
- Strong African American Families (SAAF) Program.
- Communities That Care (CTC).⁸²

Successful and Promising Programs: The Pennsylvania Experience

Functional Family Therapy, Multisystemic Therapy, Promoting Alternative Thinking Strategies, Olweus Bullying Prevention Program, Nurse-Family Partnership and mentoring programs such as Big Brothers Big Sisters have demonstrated positive results in Pennsylvania.⁸³ Skill- and competency-building programs targeting both young people

⁸¹ Sherman Report.

⁸² WSIPP.

⁸³ S. M. Chilenski, B. Bumbarger, S. Kyler, and Mark T. Greenberg. *Reducing Youth Violence and Delinquency in Pennsylvania: PCCD's Research-Based Program Initiative*. Prevention Research Center, the Pennsylvania State University. October 2007, http://prevention.psu.edu/pubs/docs/PCCD_ReducingYouthViolence.pdf. Liz Campbell and Brian K. Bumbarger. *Evidence-based Intervention Programs: FY 2011/2012 Outcomes Summary*. Prepared for the Pennsylvania Commission on Crime and Delinquency. EPISCenter. Prevention Research Center. Pennsylvania State University. September 2012, <http://www.episcenter.psu.edu/sites/default/files/resources/FY%202011-2012%20EBI%20Outcomes%20Summary%20FINAL.pdf>.

and their parents have also been proven successful. Examples of such programs, widely used in Pennsylvania, are PATHS and Triple P.

Nurse-Family Partnership

High-risk children benefit most from family-based strategies and programs, including parent training and home visitation. “Home visitation, with or without early childhood education programs, has shown significant long-term effects on violence, delinquency, and related risk factors in a number of studies.”⁸⁴ The best-known and the only one among these programs unanimously recognized as a model prevention program is Parental and Infancy Home Visitation by Nurses, or Nurse-Family Partnership (NFP). It is designed for low-income, at-risk pregnant women bearing their first child. It begins early (before the child’s birth) and lasts for a long period of time (to age 2). NFP has a variety of long-term, positive outcomes for both the mother and the child, including reduced rates of youth violence, arrests, and alcohol use as well as improved pregnancy outcomes, school achievement, parental employment, and family stability.⁸⁵ NFP has a strong, sustained presence in the Commonwealth; today it helps vulnerable families in 40 Pennsylvania counties.⁸⁶ It has met the most rigorous evidentiary, replication and cost-effectiveness criteria applied by the leading national research organizations.

Functional Family Therapy

Functional Family Therapy (FFT) targets adolescents at risk of delinquency, violence, substance abuse, and conduct disorder, as well as those adolescents already exhibiting such behaviors. FFT provides services to both youth and their families; services can be delivered in multiple settings.

Multisystemic Therapy

Multisystemic Therapy (MST) is “an intensive family- and community-based treatment that addresses multiple determinants of antisocial behavior.”⁸⁷ It is designed for families with children in the juvenile justice system who are violent, chronic offenders and at high risk of out-of-home placement. MST combines four different kinds of therapy and parent training. It has shown positive outcomes in serious delinquents.⁸⁸

Olweus Bullying Prevention Program

Strategies based on a behavioral approach to violence, especially youth violence, have also demonstrated consistent positive effects. Behavior monitoring and

⁸⁴ *Youth Violence: A Report of the Surgeon General*. Op. cit.

⁸⁵ *Nurse Family Partnership. Evidence-Based Public Policy*, <http://www.nursefamilypartnership.org/public-policy>.

⁸⁶ *Nurse-Family Partnership of Pennsylvania*, <http://www.nursefamilypartnership.org/locations/Pennsylvania>.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

reinforcement combined with focusing on positive behavior and achievement with subsequent rewards bring measurable good results.

The most widely acknowledged of these is the Olweus Bullying Prevention Program (OBPP). The program was developed by Dr. Dan Olweus, a research professor of psychology from Norway, who is considered the pioneer in bullying research. With over 35 years of research and successful implementation, the OBPP is the most researched and best-known anti-bullying program available at schools today. It is a whole-school program designed for students at all levels. All students participate in most aspects of the program, and those identified as perpetrators or targets of bullying receive additional individualized interventions.⁸⁹ The first evaluation of the program took place in the 1980s in Bergen, Norway; it showed substantial reductions (50% or more) in self-reported bullying and bully victimization as well as other positive changes in students' behavior.⁹⁰ An evaluation of the Olweus program in twelve elementary schools in the Philadelphia area, performed by S. Black in 2003, revealed significant reductions in self-reported bullying and victimization as well as significant decreases in adults' observations of bullying in the cafeteria and at the playground at schools that had implemented the program with at least moderate fidelity.⁹¹ In Western Pennsylvania, school violence declined by more than 40% in the 2010-2011 school year from the year before; incidents in Allegheny County dropped by more than one half.⁹²

In Pennsylvania, two different modifications of the internationally-recognized, evidence-based Olweus anti-bullying program – HALT! and PA CARES (Creating an Atmosphere of Respect and Environment for Success) -- are offered to thousands of children. To implement the Olweus model in Pennsylvania, grant funding was made available from the Pennsylvania Commission on Crime and Delinquency and the Pennsylvania Department of Education. The Center for Safe Schools, a statewide clearinghouse on school safety and youth violence, provides training, technical assistance, grant management and program evaluations to schools and youth-serving organizations.⁹³ Both programs have demonstrated positive outcomes for students' reports of being bullied, bullying others, perceptions of adult responses to bullying, and attitudes about bullying.⁹⁴

According to current research, bullying at school is “the most common form of violence in our society.”⁹⁵ It causes a variety of negative consequences, such as depression, suicidal thoughts or even suicidal attempts, and an increased tendency to crime and

⁸⁹ Violence Prevention Works! Safer Schools, Safer Communities. *Olweus Bullying Prevention Program*, http://www.violencepreventionworks.org/public/olweus_bullying_prevention_program.page.

⁹⁰ *Olweus Prevention Program: Evidence of Effectiveness*, <http://www.clemson.edu/olweus/evidence.html>.

⁹¹ *Ibid.*

⁹² Violence Prevention Works! Safer Schools, Safer Communities. *Olweus Success Stories*, http://www.violencepreventionworks.org/public/olweus_success_stories.page.

⁹³ Highmark Healthy High 5. Bullying Prevention Institute. *Bullying Prevention: A Statewide Collaborative That Works*. Pittsburgh, PA: Highmark Foundation, 2009, <http://www.bullyingpreventioninstitute.org/LinkClick.aspx?fileticket=bwBwDQLRCao%3d&tabid=61>.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

substance abuse.⁹⁶ Thus, it is a significant public health issue, as well as a public safety issue. Studies by the U.S. Secret Service and the Department of Education revealed that “nearly 75% of the attackers in school shootings indicated that they were bullied or otherwise hurt by their peers prior to the shootings.”⁹⁷ This means that the encouraging results from the bullying-prevention programs at participating Pennsylvania schools are important, and such efforts should be further developed.

Promoting Alternative Thinking Strategies

The Promoting Alternative Thinking Strategies (PATHS) is a school-based program. It is taught to elementary school students and is aimed at improving their emotional and social competence, self-control, positive peer relations, and interpersonal problem-solving. PATHS has been shown positive results for both regular-education and special-education populations; it leads to decreases in several risk factors associated with violence such as aggressive behavior, lack of self-control, anxiety, and depression.

Triple P – Positive Parenting Program

Triple P is one of the most popular and researched parenting programs in the world, used in many countries for over thirty years. It has consistently demonstrated long-term intervention effects. According to one of the studies, on the measure of observed child negative behavior, about 80% of the participating children have achieved reliable change at follow-up.⁹⁸ Triple P and similar parent training programs have been pronounced effective by many highly regarded experts, including the World Health Organization.⁹⁹ A RAND study on the cost-effectiveness of early interventions to prevent serious crimes in California found that training for parents whose children exhibited aggressive behavior was about three times as cost-effective as the “three-strikes” law and was estimated to have prevented 157 serious crimes, such as homicide, rape, arson and robbery, per million dollars spent.¹⁰⁰

Hot-spot or Place-Based Policing

One of the comparatively new and promising approaches to crime prevention is hot-spot policing, or place-based policing. This approach is based on recent studies that have shown the majority of crime tends to be limited to specific and relatively small geographical areas. An expert in evidence-based crime prevention and gun violence prevention in particular, Sherman defined hot spots as “small places in which the occurrence of crime is so frequent that it is highly predictable, at least over a one year

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ William Bor, Matthew R. Sanders, and Carol Markie-Dadds, “The Effects of Triple P-Positive Parenting Program on Preschool Children With Co-Occurring Disruptive Behavior and Attentional/Hyperactive Difficulties,” *Journal of Abnormal Child Psychology*. Vol. 30, No. 6, December 2002. P. 583.

⁹⁹ *Supra* note 35.

¹⁰⁰ P.W. Greenwood, *et al.* Diverting Children From a Life of Crime; Measuring Costs and Benefits. Santa Monica, CA: RAND, 1996, http://familyimpactseminars.org/s_wifis08c01.pdf.

period,” and recommended thinking more “about wheredunit than just whodunit,” thus suggesting a new direction for both criminological theory and crime control policy.¹⁰¹

David Weisburd¹⁰² suggested changing the focus in crime mapping from people to places, from “the people involved in crimes to the contexts of criminal behavior.”¹⁰³ He argued that “place-based policing, as opposed to person-based policing, is more efficient as a focus of police actions; provides a more stable target for police activities; has a stronger evidence base; and raises fewer ethical and legal problems.”¹⁰⁴ His ideas have received growing support. “Crime mapping has become a central feature of cutting-edge law enforcement.”¹⁰⁵ Several studies demonstrated statistically significant crime prevention benefits for the place-based policing approach.¹⁰⁶ Crimes often occur at the same location, for example, near a large shopping mall. Directing police patrols to such places allows them to stop criminal activity taking place at the moment and to make a quick arrest. There is also a deterrence factor: this approach sends a clear message to criminals that police tend to be present at this spot, so they will not congregate there in the future. As Weisburd points out, “policing places puts emphasis on reducing opportunities for crime at places, not on waiting for crimes to occur and then arresting offenders.”¹⁰⁷ By discouraging offenders, “place-based policing offers an approach that can increase public safety while decreasing the human and financial costs of imprisonment for Americans.”¹⁰⁸

According to Sherman, one of the early proponents of this method, a period of fifteen minutes is sufficient to have impact on crime in that designated area. This gives mobile squads an opportunity to cover multiple spots in a limited amount of time. Criminologists noticed that focusing on hot spots not only reduces crime in these high-risk areas but in surrounding areas as well. An example given by Weisburd explains the reason for this: “Say you’re seeing a lot of juvenile crimes being committed around a large shopping mall,” he said. “If you do something at that mall, a lot of [crime is] not moving around the corner because, around the corner, there’s nothing like the mall. There is no similar draw.¹⁰⁹” Instead of trying to cover the whole city, hot-spot policing allows police to concentrate limited human and financial resources in the problem areas, which makes this approach both effective and efficient.

¹⁰¹ Lawrence W. Sherman, *Hot Spots of Crime and Criminal Careers of Places*, http://www.popcenter.org/library/crimeprevention/volume_04/03-Sherman.pdf.

¹⁰² One of the world’s leading criminologists, Distinguished Professor at George Washington University, Director of the Center for Evidence-Based Crime Policy and the 2010 winner of the Stockholm Prize in Criminology.

¹⁰³ David Weisburd, “Place-Based Policing,” *Ideas in American Policing*, Police Foundation. No. 9. January 2008, <http://www.policefoundation.org/content/place-based-policing>.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ See Anthony Braga, “The Effects of Hot Spots Policing on Crime,” *Annals of the American Academy of Political and Social Science*. Vol. 578. November 2001. Pp. 104-125.

¹⁰⁷ *Supra* note 103.

¹⁰⁸ *Ibid.*

¹⁰⁹ Jeremy Arias, “Hot-Spot Policing Could Pay off in Harrisburg, but Overtime Patrols Come at a Cost.” *The Patriot-News*. June 26, 2013, http://www.pennlive.com/midstate/index.ssf/2013/06/harrisburg_hot_spot_policing_h.html.

For hot-spot policing to be successful, departments need to identify their “hot spots” carefully, relying on hard data.¹¹⁰ In its report “Promising Strategies to Reduce Gun Violence, the Office of Juvenile Justice and Delinquency of the U.S. Department of Justice have recommended efforts to deter carrying guns in high crime hotspot areas, where disproportionate amounts of crime and violence are occurring, as a promising strategy that makes “effective use of scarce law enforcement and community resources.”¹¹¹ Its demonstrated success and its efficiency have made hot-spot policing approach attractive to more cities lately.

Hot-spot policing has been recently introduced in Harrisburg. It is executed by a ten-person force composed of members of the Dauphin County Crisis Response Team (CRT). It is headed by Susquehanna Township Police Chief Robert Martin and financed by the Violent Crime Task Force created by the Dauphin County District Attorney Ed Marsico, both members of the Advisory Committee. Police officers from several municipalities serve on the CRT in addition to their regular work. One of the major advantages of the CRT is its mobility: it can relocate very quickly if called for assistance by city officers or to make its presence visible in several hot spots within a short period of time. Another advantage is that its financing comes from the Violent Crimes Task Force fund instead of severely limited Harrisburg city resources. The task force fund draws money from the state taxes on gambling and table games.

Besides police targeting of gun crime hot spots, other interventions that appear promising in reducing firearm homicide include “aggressive prosecution of firearm related crimes, comprehensive crime gun tracing, investigation of gun dealers selling a disproportionate number of guns later used in crime, limiting gun purchases to one per month, and denying handgun purchase for persons convicted of violent or drug related misdemeanors.”¹¹²

Communities That Care

Even with evidence-based strategies and approaches, prevention effectiveness largely depends on whether a specific program is a proper choice for a particular individual, group and community. Another important factor is program implementation, in the details of how a program is delivered: “The manner in which a program is implemented can have an enormous impact on its effectiveness – even the best programs are effective only when implemented with high quality and fidelity to the program’s design.”¹¹³ There exists a special model that can address both of these concerns.

¹¹⁰ *Ibid.*

¹¹¹ U.S. Department of Justice. Office of Juvenile Justice and Delinquency. *Promising Strategies to Reduce Gun Violence*. Washington, D.C., 1999, http://www.ojjdp.gov/pubs/gun_violence/173950.pdf.

¹¹² Kuhn, E.M., *et.al.* Op.cit.

¹¹³ *Ibid.*

Communities That Care (CTC) is a delinquency and violence prevention planning model designed to assist communities in mobilizing, identifying risks and preventive factors, and developing a comprehensive prevention plan.¹¹⁴ The Pennsylvania Commission on Crime and Delinquency (PCCD), through a contract with the Evidence-Based Prevention and Intervention Support (EPIS) Center at the Pennsylvania State University, provides state-wide training, technical assistance and community board development in the CTC model. CTC coalitions operate in over 100 Pennsylvania communities. These coalitions collect local data on the violence risk and protective factors in their particular communities and “use that local data to establish prevention priorities and a strategic prevention plan that is specific to their community, to prevent and reduce these problem behaviors and promote positive youth development and school success.”¹¹⁵ The advantages of the model are community involvement, multidisciplinary cooperation, and attention to specific risk factors and strengths of each community.

Brian Bumbarger, Assistant Director for Knowledge Translation and Dissemination at the Prevention Research Center at Penn State University, characterized the CTC model as “a sophisticated diagnostic tool that gives precision to the process of prevention planning, increasing our confidence that the strategies chosen will be effective and that scarce resources will be used efficiently. Key to that process is the use of evidence-based prevention and intervention programs.”¹¹⁶ In Pennsylvania, CTC used the Blueprints for Violence Prevention, programs with the most clearly documented evidence of effectiveness. From 1998 to the present, PCCD “has funded over 200 replications of these proven effective programs to prevent youth violence and delinquency and to intervene effectively with youth and divert them from the juvenile and criminal justice system.”¹¹⁷

To ensure high quality implementation, wide-scale dissemination, and consistent, sustainable funding of these evidence-based programs, PCCD, in collaboration with the Pennsylvania Department of Public Welfare and the Prevention Research Center at Penn State University, created the EPIS Center. The EPIS Center offers research-informed technical assistance to communities implementing evidence-based programs, promotes greater adoption and support of these programs, facilitates better communication and information exchange between the communities implementing these programs and the state agencies that provide the funding. The Center’s primary goal is to provide technical assistance and support evidence-based programs, “in order to maximize the positive impact of prevention science on outcomes for youth.”¹¹⁸

¹¹⁴ Communities That Care,

http://www.portl.stat.pa.us/portal/server.pt/community/communities_that_care/5461.

¹¹⁵ Brian Bumbarger. Testimony to the House Health Committee of the Pennsylvania General Assembly on June 4, 2013.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ B.L. Rhoades, B.K. Bumbarger, and J.E. Moore. “The Role of a State-Level Prevention Support System in Promoting High-Quality Implementation and Sustainability of Evidence-Based Programs.” *American Journal of Community Psychology*. December 2012. Vol. 50 (3-4).

Unsuccessful Violence Prevention Programs

The Sherman Report declares what doesn't work are programs that are reasonably certain to fail to prevent crime or reduce risk factors for crime, using the identical scientific criteria used for deciding what works.¹¹⁹

Gun Buyback Programs

Gun buyback programs are among those that are widely used and publicized around the country and in Pennsylvania. By 1998, more than 100 gun buyback or exchange programs were conducted by communities in the United States.¹²⁰ Buyback programs are highly visible; they enjoy public support, but their overall benefits to the communities are very modest. As a criminal justice professor at Florida State University Gary Kleck explained in an interview, "the popularity of these programs derives not from any credible evidence that they reduce violence, ... but rather from their lack of political costs, their reliance on purely voluntary participation, and the simple fact that they are such minor interventions."¹²¹ Such programs may reduce risk for gun violence among some participants, but they have not been proven to lower rates of firearm violence. A report of the U.S. Surgeon General confirms that "gun buyback programs, a particularly expensive strategy, have consistently been shown to have no effect on gun violence, including firearm-related homicide and injury."¹²²

Studies have demonstrated that "handguns recovered in buyback programs are not the types most commonly linked to firearm homicides and suicides."¹²³ The guns that are typically surrendered are unlikely to be the participant's only weapon or to have been used to commit a crime; the weapons tend to be old or defective. In fact, there were incidents in which program participants used the buyback money to purchase other guns. "But the major problem with gun buy-back programs is that the relatively small number of guns collected by these programs does not materially reduce the large gun stock in the U.S. or even keep up with the annual increase in American gun ownership."¹²⁴ One benefit of using buyback programs is that "when implemented in concert with a public media campaign about safe gun storage, gun buy-back programs may serve to mobilize the community and alert parents to the dangers of their children's access to guns."¹²⁵ It is worth noting that in a survey asking why people participate in a gun exchange program,

¹¹⁹ Sherman Report.

¹²⁰ Michael P. Romero, Garen J. Wintemute, and Jon S. Vernick, "Characteristics of a Gun Exchange Program, and an Assessment of Potential Benefits," *Injury Prevention*. 1998. Issue 4, <http://injuryprevention.bmj.com/content/4/3/206.full>.

¹²¹ Carl Rotenberg, "Under the Gun: While Intentions Are Good, Gun Buy-Back Programs Just Don't Work, *Studies Show*," *The Times Herald*, June 15, 2013, www.timesherald.com/article/20130615/news01/130619704&template=printart.

¹²² *Supra* note 35.

¹²³ E.M. Kuhn, *et al.*, "Missing the Target: A Comparison of Buyback and Fatality Related Guns," *Injury Prevention*, 2002, Issue 8, <http://injuryprevention.bmj.com/content/8/2/143.full>.

¹²⁴ Carl Rotenberg. *Op.cit.*

¹²⁵ U.S. Department of Justice, Office of Justice Programs. *Promising Strategies to Reduce Gun Violence: Report*. Washington, D.C., February 1999, http://www.ojjdp.gov/pubs/gun_violence/173950.pdf.

concern that children might get and use the gun was cited more often than any other factor as an important reason for participation.¹²⁶ Nevertheless, at present, there appears to be consensus among experts that “although buyback programs may increase awareness of firearm violence, limited resources for firearm injury prevention may be better spent in other ways.”¹²⁷

Home visits following domestic violence incidents

Another preventive police strategy classified as not working is home visits to couples after domestic violence incidents. The purpose is to reduce repeat violence, sometimes deadly, by counseling and monitoring troubled households. Historically, domestic violence murders have proven especially hard to prevent. In spite of restraining orders, husbands or boyfriends, who are usually the abusers in such cases, tend to return to the household, often to commit another act of violence against the victim. Their partners often do not report their return to the police. In the 1990s, programs in Florida and New York failed to produce desired results.¹²⁸ Recently, however, the New York City Police Department (NYPD), alarmed at a sudden increase in murders linked to domestic violence in 2011, has intensified its efforts to combat this daunting kind of crime and has changed its policies aimed at preventing this kind of murders. The NYPD domestic violence unit has implemented a modified version of a similar program and has reported a slight decrease in this murder category in 2012 and in the first half of 2013.¹²⁹ The officers assigned to the domestic violence unit have increased the number of domestic violence arrests; they are making numerous precautionary visits to the households with past episodes, and each station maintains a “high propensity” list of households that get special attention because they are believed to be most at risk for further violence.¹³⁰ Even with these changes, this preventive program does not always work. Another reason this type of prevention program does not work is that “the next victim may not even be on the radar of the officers currently devoted to domestic violence work. Less than a quarter of the victims and perpetrators of domestic homicides had contact with the police in the year before the murder, according to city statistics.”¹³¹

Other Unsuccessful Programs

Other programs found to be unsuccessful include:

- Training in the safe use of guns.¹³²

¹²⁶ Michael P. Romero, Garen J. Wintemute, and Jon S. Vernick. Op. cit.

¹²⁷ E.M. Kuhn, *et.al.* Op. cit.

¹²⁸ U.S. Department of Justice, Office of Justice Programs. *Promising Strategies to Reduce Gun Violence: Report.* Op. cit.

¹²⁹ Goldstein, Joseph. “Police Take On Family Violence to Avert Deaths.” The New York Times. July 24, 2013, <http://www.nytimes.com/2013/07/25/nyregion/police-take-on-family-violence-to-avert-deaths>.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² WHO.

- Neighborhood watch programs organized with police.¹³³
- Arrest of juveniles for minor offenses or trying youth offenders in adult court.¹³⁴
- Correctional boot camps using traditional military basic training.¹³⁵
- “Scared Straight” programs whereby juvenile offenders visit adult prisons.¹³⁶
- Individual counseling.¹³⁷
- Residential programs that take place in psychiatric or correctional institutions.¹³⁸

While the CSPV Guide has found peer-mediation promising, the Surgeon General’s report found that peer-led programs, such as peer counseling or peer mediation, showed potential for harm at the high-school level.¹³⁹

Violence Prevention and Mental Illness

Recent mass shootings put the spotlight on gun purchases by the mentally ill. Not only mental health advocates but legal experts as well believe that this focus is misplaced for a number of reasons and that even successful interventions in this area will not significantly improve public safety.

It is important to remember that people with serious mental illness are much more likely to become victims of violent crimes than perpetrators. In spite of the high visibility of some of these cases, the percentage of shootings by those with mental illness is so low that any reduction of these will have only minimal impact on the total number of deaths and injuries as a result of gun violence.

While improved screening and treatment is desirable, “it will be of limited utility in reducing” killings by mentally ill individuals.¹⁴⁰ There are multiple reasons for this in addition to the fact that persons with mental illness represent a very small percentage of the perpetrators of violent crime overall. The article in *The National Journal*, quoting

¹³³ Sherman Report.

¹³⁴ Sherman Report, WHO.

¹³⁵ Sherman Report, WHO.

¹³⁶ Sherman Report, WHO, Washington State Institute for Public Policy, CSPV.

¹³⁷ WHO.

¹³⁸ WHO.

¹³⁹ Surgeon General.

¹⁴⁰ Margot Sanger-Katz, “Why Improving Mental Health Would Do Little to End Gun Violence,” *National Journal*, January 24, 2013, <http://www.nationaljournal.com/magazine/why-improving-mental-health-would-do-little-end-gun-violence-20130124?print=true>.

prominent mental health experts, lists some of these reasons: “Psychiatric professionals are not good at identifying people who will go on to commit acts of violence; many perpetrators of mass shootings had no contact with the mental-health system; and, even when the potentially violent are identified, treatment for mental illness is not always effective in preventing violent acts.”¹⁴¹

The Judge David L. Bazelon Center for Mental Health Law, which is the leading national legal-advocacy organization representing people with mental disabilities, issued a paper explaining that neither using mental health to divert attention from gun regulation nor pushing mental health reforms, especially mental health record reporting, will improve public safety. The Center representative stated, “Though fixing our broken mental health system is an imperative, we should do so separately from the gun debate, as mental health reforms are likely to have little impact on gun violence.”¹⁴²

However, there is one type of violence where individuals suffering from mental illness do constitute the majority or perpetrators: suicide. Jeffrey Swanson, a professor at the Duke University School of Medicine, called suicide “the elephant in the room” in conversations about mental illness and violence. He said, “When we bring suicide into the picture of gun violence, mental illness legitimately becomes a strong vector of concern; it should become an important component of effective policy to prevent firearm violence.”¹⁴³ People suffering from mental illness are much more likely to harm themselves than others. According to the Congressional testimony of Dr. Thomas Insel, Director of National Institute of Mental Health, out of approximately 38,000 suicides committed in the United States every year, 90 percent involve mental illness.¹⁴⁴ Suicide rates among patients suffering from schizophrenia or major depression are “as high as 15% in the United States – much higher than in countries with better-developed mental health system and more-restrictive access to guns.”¹⁴⁵ Some of the general gun-control preventive measures aimed at limiting unauthorized access to guns, such as target locks, could be especially effective for these individuals, such as in cases involving impulsive adolescents or women suffering from post-partum depression. Better treatment and prevention in this area could bring significant results.

The Interfaith Disability Advocacy Coalition a program of the American Association of People with Disabilities, outlined the following strategies for gun prevention as it regards individuals with mental illness:

¹⁴¹ *Ibid.*

¹⁴² Judge David L. Bazelon Center for Mental Health Law. *Wrong Focus: Mental Health in the Gun Safety Debate*, <http://bazelon.org/News-Publications/Press-Releases/4.17.13-Gun-Violence-Press-Release.aspx>.

¹⁴³ Qtd. in The American Association of People with Disabilities. *Grounded in Faith: Resources on Mental Health and Gun Violence*. April 2013, <http://www.aapd.com/assets/grounded-in-faith-resources.pdf>.

¹⁴⁴ Thomas Insel, *Assessing the State of America's Mental Health System*: Testimony before the Committee on Health, Education, Labor, and Pensions. United States Senate. January 24, 2013, <http://www.help.senate.gov/imo/media/doc/Insel.pdf>. Answers to senators' questions summarized in Appendix 1 in The American Association of People with Disabilities. *Grounded in Faith: Resources on Mental Health and Gun Violence*. April 2013, <http://www.aapd.com/assets/grounded-in-faith-resources.pdf>.

¹⁴⁵ Margot Sanger-Katz, Op.cit.

- Enhanced training of those who work with young people to deter signs of illness and ensure appropriate treatment
- Enhanced availability of mental health service providers and facilities, particularly those designed to provide treatment in a home or community setting, thereby enabling treated individuals to live independent lives
- Better implementation in laws requiring parity between insurance coverage of mental health and physical health
- Improvements in treatment and rehabilitation of incarcerated men and women with mental illness¹⁴⁶

Early Threat Assessment and Detection: The Role of Physicians

Clinicians are trying to identify potential prevention strategies that could be helpful in their regular practice. “Possible techniques that have been suggested include screenings for at-risk behaviors, threat assessments, and earlier help for troubled kids.”¹⁴⁷ Accurate threat assessment presents a major challenge, but there appears to be a consensus among psychiatrists on “kinds of things that are likely to increase the risk in the near future for homicidal behavior. This includes a past history of acting on threats or of having violent or destructive behavior.”¹⁴⁸ Other red flags are social withdrawal; a change in habits (whether in children with mental illness or those who are just severely troubled and prone to violence); a history of violence towards family members, other people, or animals; access to firearms; exposure to violence at home; a past history with the criminal justice system; or spending many hours playing violent video games.¹⁴⁹ None of these factors are clear predictors of homicide or suicide attempts in the future, but they can serve as warning signs to mental health professionals performing a threat assessment. Due to the deterioration of the mental health system, many parents are struggling getting help for their children even when they notice they are becoming increasingly violent. “There are many people out there without the ability to access the system, and they’re basically waiting until something happens,” said Dr. Cassidy in an interview to Medscape.¹⁵⁰ Easy, prompt and reliable access to appropriate mental health care is essential for prevention.

Addressing mental health needs at an early stage is commonly perceived as a critical prevention strategy. “It appears risk for violence in psychotic illnesses is highest early in the course of illness, frequently before people are identified as mentally ill and

¹⁴⁶ The American Association of People with Disabilities. *Grounded in Faith: Resources on Mental Health and Gun Violence*. April 2013, <http://www.aapd.com/assets/grounded-in-faith-resources.pdf>.

¹⁴⁷ Deborah Brauser, *Mental Health Experts Mull Violence Prevention After Newtown*. December 12, 2012, http://www.medscape.com/viewarticle/776553_print.

¹⁴⁸ *Ibid.* Dr. Steven Dubovsky in an interview to Medscape.

¹⁴⁹ *Supra* note 147.

¹⁵⁰ *Ibid.*

receive treatment,” says Paul Appelbaum, a Professor of Psychiatry at Columbia University who met with Vice President Joe Biden’s task force on reducing gun violence.¹⁵¹ Psychiatrists are unanimous in lamenting delays to patients seeking care, delays that often last for years. “Earlier diagnosis and quicker delivery of appropriate treatment, be it behavioral or pharmacological” are perceived as one of the most important goals in prevention and intervention.¹⁵² Dr. Insel explained the National Institute of Mental Health’s (NIMH) has a three-pronged research approach to achieve this aim: (1) optimize early treatment to improve the trajectory of illness in people who are already experiencing the symptoms of serious mental illness; (2) understand and prevent the transition from the pre-symptomatic (prodrome) phase to actual illness; and (3) investigate the genetic and biological mechanisms underlying serious mental illness in order to understand how, in the future, we can preempt illness from ever occurring.¹⁵³

The first strategy, that of reducing the delay between a first psychotic episode and onset of treatment, is pursued through support of the Recovery After an Initial Schizophrenia Episode (RAISE) project. The second line of research is directed at the stage just prior to full psychosis, which is called the prodromal stage. The purpose here is to improve doctors’ ability “to predict who will convert to psychosis, and to develop new approaches to pre-emptive intervention.”¹⁵⁴ The third area deals with genetics as it is was established long ago that schizophrenia, as some other psychiatric conditions, has a genetic component. The ultimate goal is to discover ways “to diagnose early and intervene quickly to preempt later stages of illness.”¹⁵⁵

Law enforcement experts acknowledge that “counseling by physicians to encourage patients to remove firearms from high risk households (such as those with elderly patients suffering from depression or dementia, or depressed adolescents) may also be effective.”¹⁵⁶ Medical scholars and medical associations actively promote this approach.¹⁵⁷ The American Academy of Pediatrics describes its guidelines for violence prevention assessment and counseling as “anticipatory guidance” and recommends that physicians share this information with parents before the birth of a child and continue through adolescence. The guidelines are very specific in outlining factors that might indicate increased risk, such as history of mental illness, previous domestic violence, or substance abuse; exposure to violence in the home, school, or community; degree of

¹⁵¹ Sanger-Katz, Margot. Op.cit.

¹⁵² Insel, Thomas. Op. Cit.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ E.M. Kuhn *et al.* “Missing the Target: A Comparison of Buyback and Fatality Related Guns,” *Injury Prevention*. 2002. Issue 8, <http://injuryprevention.bmj.com/content/8/2/143.full>.

¹⁵⁷ J.H. Price, S.A. Everett, A.W. Bedell, *et al.*, “Reduction of Firearm-Related Violence through Firearm Safety Counseling. The Role of Family Physicians,” *Archives of Family Medicine*, 1997, Issue 6 (Jan./Feb.) 79-83. American Academy of Pediatrics, “The Role of the Pediatrician in Youth Violence Prevention in Clinical Practice and at the Community Level,” *Pediatrics*, 1999, Issue 103 173-81, <http://www.aap.org.policy/re9832.html>.

exposure to media violence; and gang-involvement or gang exposure.¹⁵⁸ If pediatricians identify any of the above risk factors, they can offer parental advice and provide referrals to appropriate intervention and follow-up services, such as child welfare agencies, mental health services, or domestic violence counseling.

Collaboration between pediatricians and child psychiatrists is seen as a promising trend. In his Medscape interview, Dr. Martin Drell, president of the American Academy of Child and Adolescent Psychiatry (AACAP), said, “Child and adolescent psychiatrists need to be there from the beginning. It is our firm belief that if we do prevention and catch things early, we might be able to alter the developmental course of these illnesses and not have disastrous results.”¹⁵⁹ In Pennsylvania, Geisinger Health System strives to promote this close cooperation between pediatricians and mental health professionals and to make mental health services available at the same sites where general pediatric services are provided.

Among psychiatrists, there is growing interest in and belief that prevention in psychiatry is possible. “There is established and growing scientific body of evidence demonstrating methods to prevent mental illness before it starts. These preventive strategies reduce risk factors, enhance protective factors, and practice mental health promotion.”¹⁶⁰ These strategies vary dependent on the targeted population: “using universal approaches that address the entire population, selective approaches for people at elevated risk, and indicated approaches for people showing early signs of an illness.”¹⁶¹ The application of a risk factor model that has been successfully used in preventing cardiovascular disease and injuries to the prevention of mental illness is expected to bring positive results. Prevention efforts focus on children and young people because half of all cases of mental, emotional, and behavioral disorders start by age 14, and three-fourths of disorders start by age 24.¹⁶²

The landmark report prepared in 2009 by the National Research Council and Institute of Medicine titled “Preventing Mental, Emotional, and Behavioral Disorders Among Young People: Progress and Possibilities” contains a chart portraying preventive intervention opportunities by developmental phase, starting as early as prior to conception and going through prenatal care, infancy, early childhood, childhood, early adolescence, adolescence to young adulthood.¹⁶³ A variety of programs should be used dependent on age and on specific family adversities. Home visiting is effective at the prenatal and

¹⁵⁸ American Academy of Pediatrics, “The Role of the Pediatrician in Youth Violence Prevention in Clinical Practice and at the Community Level,” *Pediatrics*, 1999. Issue 103 173-81, <http://www.aap.org/policy/re9832.html>.

¹⁵⁹ Deborah Brauser, “*Gun Violence Plan: Mental Health Experts Cautiously Optimistic*,” January 22, 2013, http://www.medscape.com/viewarticle/778013_print.

¹⁶⁰ W.R. Beardslee, P.I. Chien, P.I., and Cari C. Bell, “Prevention of Mental Disorders, Substance Abuse, and Problem Behaviors: A Developmental Perspective,” *Psychiatric Services*, March 2011, Vo. 62. No. 3. P. 247.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ M.E. O’Connell, T. Boat and K.E. Warner (eds.) *Preventing Mental, Emotional, and Behavioral Disorders Among Young People: Progress and Possibilities*. Washington, D.C.: National Academies Press, 2009, www.iom.edu/CMS/12552/455572/64120.aspx.

infancy stages, to be accompanied or followed with early childhood interventions and parenting skills training. Older children and adolescents can benefit from social and behavioral skills training as well as classroom-based curriculum to prevent risky behaviors. If needed, prevention of depression or prevention of schizophrenia should be added for individuals at risk. Community interventions and policy changes encompass the whole picture.¹⁶⁴

Mental Health Programs to Prevent Violence

Several programs exist at the federal and Pennsylvania level that are geared to preventing violence among persons with mental illness. Some of these programs are outlined below.

Penn Resiliency Program

Prevention of depression appears to be a promising area for high-risk adolescents and pregnant women. One of the effective programs based on a cognitive approach and delivered through the schools is the Penn Resiliency Program (PRP). This program significantly prevented depression, anxiety and adjustment disorders among high-risk participants; according to some studies, it cut the rate of moderate to severe depressive symptoms in half.¹⁶⁵

The University of Pennsylvania researchers who developed the PRP identified “three primary sets of circumstances that require resilience: recovering from adversity or trauma (such as loss of a parent or natural disaster), overcoming risk factors (such as having a parent with a form of psychopathology), and steering through the everyday stressors that most students confront (such as academic pressures or social pressures).”¹⁶⁶ Several factors can help a child offset risk factors and do well in spite of them: strong cognitive abilities and problem-solving skills, adaptability, positive self-perception, a sense of faith and meaning, strong self-regulation skills, optimism and hope and self-efficacy.¹⁶⁷

PRP sessions are offered to elementary and middle-school students, ages ten to fourteen. Develop of self-protective factors such as emotion awareness and regulation, impulse control, cognitive flexibility, realistic optimism, self-efficacy, and strong relationships are targeted.¹⁶⁸ As a school-based preventive intervention, the program teaches valuable problem-solving and coping skills. PRP is one of the most widely researched depression prevention programs. The program founders stress that “group-

¹⁶⁴ *Ibid.*

¹⁶⁵ Jane E. Gillham, *et al.* “Preventing Depression Among Early Adolescents in the Primary Care Setting: A Randomized Controlled Study of the Penn Resiliency Program.” *Journal of Abnormal Child Psychology*. Vol. 34, Issue 2, April 2006. P. 204.

¹⁶⁶ Karen Reivich and Jane Gillham. “Building Resilience in Youth: The Penn Resiliency Program,” *Communique: The Newspaper of the National Association of School Psychologists*, Vol. 38. No. 6. March/April 2010, available at http://www.viriya.net/jabref/resilience/Building_Resilience_in_Youth_The_Penn_Resiliency_Program.pdf.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

leader training and supervision are critical for effective dissemination.”¹⁶⁹ Cognitive behavioral depression prevention programs similar to PRP have also produced substantial preventive effects among adolescents.¹⁷⁰

Project AWARE, eCPR and Mental Health First Aid

On the federal level, a broad-scale public education program recently announced by President Obama and known as Project AWARE (Advancing Wellness and Resilience in Education) would train teachers to identify signs of mental illness, provide Mental Health First Aid, and ensure that students have access to mental health care. Project AWARE is expected to reach 750,000 youngsters.¹⁷¹ Mental health and education experts welcome this initiative, but they want to see more details regarding its implementation. The program appears to be similar to the “Typical or Troubled?” school outreach program developed by the APA’s American Psychiatric Foundation.¹⁷²

An alternative to Project AWARE is Emotional CPR (eCPR). This public health education program was developed by individuals who have experienced mental illness and recovery and are members of the National Coalition for Mental Health Recovery. The goal of this program is to teach anyone in the community to assist others through an emotional crisis. eCPR founders explain their practices in the following way: “The Connecting process of eCPR involves listening skills, practicing presence, and creating a sense of safety for the person experiencing a crisis. The emPowering process helps people better understand how to feel empowered themselves as well as to assist others to feel more hopeful and engaged in life. In the Revitalizing process, people re-engage in relationships with their loved ones or their support system, and they resume or begin routines that support health and wellness which reinforces the person’s sense of mastery and accomplishment, further energizing the healing process.”¹⁷³

eCPR is based on the “principles of deep listening and interacting in a respectful manner.”¹⁷⁴ This program is taught “in layman’s language, avoiding any mental health terms. In this manner it is very accessible, and not stigmatizing.”¹⁷⁵ eCPR offers certification trainings designed for the general public, service providers, administrators and others. There is a special law enforcement version to address the special needs of law enforcement community.

A growing public health education program that is active in Pennsylvania is Mental Health First Aid USA (MHFA). Sharon Engdahl, President of the Mental Wellness Awareness Association and a member of the Advisory Committee, believes MHFA can be

¹⁶⁹ *Building Resilience in Children: the Penn Resiliency Project*, <http://www.ppc.sas.upenn.edu/gillhampowerpoint.pdf>.

¹⁷⁰ Jane E. Gilham *et al.* Op. cit.

¹⁷¹ Gilian Mohney, *Obama Budget Includes \$235 Million For Mental Health Care*, <http://abcnews.go.com/Health/obama-budget-includes-235-million-mental-health-initiatives>.

¹⁷² *Supra* note 159.

¹⁷³ Emotional CPR (eCPR). <http://www.emotional-cpr.org>.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Supra* note 146.

an “answer to transforming the Commonwealth into a caring, compassionate and educated society on knowing how to help a person receive prompt appropriate care at first onset of any mental health problem.”¹⁷⁶

The purpose of the program is to improve “the mental health knowledge and skills of the U.S. public in responding to early-stage mental illnesses and mental health crises.”¹⁷⁷ MHFA aims to “teach members of the public how to respond in a mental health emergency and offer support to someone who appears to be in emotional distress.”¹⁷⁸ The program manual specifically states that it is not intended as a substitute for counseling, medical care or treatment of any kind. MHFA trainings are offered in a variety of settings. The program is designed to educate lay persons on signs and symptoms of various mental disorders, such as depression, anxiety, eating disorders, trauma, psychosis, and deliberate self-injury, and it offers detailed advice on how one can assist in specific situations. While MHFA acknowledges that many mental diseases require professional treatment and encourages getting a person in distress appropriate help from a health professional, it contends that many mental health problems can be resolved or mitigated by seeking support, restoring emotional balance, and employing self-care strategies.”¹⁷⁹

The federal proposed Mental Health First Aid Act of 2013 was introduced in the U.S. House and Senate in January as H.R. 274 and S. 153. States, political subdivisions and nonprofit private entities could apply for grants under the Public Health Service Act to provide training in safe de-escalation of crisis situations, recognition of signs and symptoms of mental illness and timely referral to mental health services. The grants are to be distributed equally geographically across the country, with particular emphasis on rural areas. The Senate version leaves the categories of persons to be trained to be determined by the Secretary of Health and Human Services, while the House version specifies emergency services personnel and other first responders, police officers and other law enforcement personnel, teachers and school administrators, human resources professionals, faith community leaders, nurses and other primary care personnel, students enrolled in elementary and secondary schools and institutions of higher education, parents of those students, veterans and others as determined appropriate by the Secretary. \$20 million would be appropriated for fiscal year 2014.

Family Training and Advocacy Center for Serious Mental Illness

Considerable work in mental health prevention and treatment has been done by the Family Training and Advocacy Center for Serious Mental Illness (FTAC) in Philadelphia. With regard to reducing violence, FTAC contends that the first and most important effort would be

¹⁷⁶ Letter from Ms. Engdahl to the Joint State Government Commission, (April 30, 2013).

¹⁷⁷ Kitchener, Betty et al. *Mental Health First Aid USA*. Annapolis, MD: Anne Arundel County Mental Health Agency, Inc., 2009. P. I.

¹⁷⁸ *Ibid.* P. IV.

¹⁷⁹ *Ibid.*

to establish a culture among mental health providers where they listen to families. Families, and others who are close to the offender, are the most likely group to be victim of violence. And, those same people are the first to notice when their loved one is decompensating, and are in the best position to predict when things might go wrong.¹⁸⁰

To encourage listening to family members and to clarify issues dealing with HIPPA and other regulations, the Family Resource Network has developed the Family Inclusions Standards for mental health providers that give providers a clear and simple set of directions for working with families. They also offer a companion piece entitled “Four Positives of Confidentiality,” that includes “life-saving points on a professional’s Duty to Warn.”¹⁸¹

The second effort FTAC recommends is “a greatly enhanced communication process at the county level.”¹⁸² This process, called Concurrent Integration, was developed by the Forensic System Solutions, a program of the FTAC and the Pennsylvania Mental Health Care Corporation (PMHCC). It is fashioned after a successful business model and treats county departments similar to the departments of a large corporation that all need to work together to achieve a desirable end result. Interdepartmental communication and cooperation are a key to success.

The third effort recommended by FTAC is training, which “should be available and tailored to all the audiences. This includes MHFA, especially to the general public, and those groups that are likely to come into contact with people with a mental illness, i.e. school personnel, clergy, librarians, landlords/residential staff, etc.”¹⁸³ Police should be offered mental health training, and county criminal justice officers should train behavioral health workers on how criminal justice system works in their county. Knowledge and mutual understanding are necessary for a respectful and productive working relationship.

Training constitutes the bulk of FTAC’s work, and it is highly credited for a special training program it developed, called “Enhancing Officer and Community Safety.” It is specifically geared to each audience and takes into account county operations and existing regulations. Participating officers have found the program and the PMHCC/FTAC training booklet “Serious Mental Illness: What Police Officers Need To Know” very helpful.

The training materials include fundamental discussion of serious mental illness in comparison with antisocial personality disorder and substance abuse; psychotic symptoms; common medications, especially their side-effects and consequences of the patient’s non-compliance; violence and suicide risk factors; life-saving communication techniques; and county practice and procedure with an overview of county services. The booklet focuses on schizophrenia, bipolar disorder, and major depression as these three severe and

¹⁸⁰ A letter from the FTAC President David A. Dinich to Ms. Debra Shoemaker, Executive Director of the Pennsylvania Psychiatric Society and an Advisory Committee member. July 13, 2013.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

persistent mental illnesses (SPMI) are of most concern to criminal justice system workers due to their prevalence in the criminal justice population. Training incorporates video clips and role-play scenarios illustrating common situations a police officer may find himself in that involves an individual in mental or emotional distress. Extensive case analysis helps prepare officers to respond appropriately and safely when confronting a person who appears to be mentally ill. Helpful appendices include additional resources on mental health diseases and the contact information for local crisis centers, hospitals, and the mental health delegate. FTAC and similar training programs specifically designed for law enforcement officers may play a significant part in diminishing risk of violence in situations involving a mentally ill person and in increasing safety of the police officer, the mentally ill individual and the public.

Assisted Outpatient Treatment

A specific program targeted at a narrow but important group of people with SPMI is currently attracting attention. It is intended for such people whose life becomes a cycle of hospitalization, temporary improvement thanks to treatment, followed by decline, often due to skipped medication, which leads to another crisis and another hospitalization. Such patients “may deny they have psychiatric disorders, refuse treatment and cascade into out-of-control behavior that can be threatening to themselves or others.”¹⁸⁴ This program orders such patients to receive treatment when they are not hospitalized. These programs are called outpatient commitment, or assisted outpatient treatment. Treatment is enforced by the court order. Caseworkers monitor their patients intensively and ensure that patients attend therapy and adhere to their medication.

In New York, this program is known as Kendra’s Law – named after Kendra Webdale, a woman who was pushed to her death on the New York subway tracks by a man with untreated schizophrenia. A recent study that reviewed implementation of this program by New York State found positive results: “Patients were much less likely to end up back in psychiatric hospitals and were arrested less often. Use of outpatient treatment significantly increased, as did refills of medication.”¹⁸⁵ Even though the Duke study¹⁸⁶ has found Kendra’s Law effective, such programs remain controversial. Opponents believe that outpatient commitment infringes on civil liberties of individuals who have not been involuntarily committed to hospital treatment. Robert Bernstein, president of the Bazelon Center for Mental Health Law, said good mental health care should not have to lean “on the courts to intervene rather than getting involved earlier and better” to persuade patients to accept non-coerced treatment.¹⁸⁷ Opinions of patients who participate in the program and of their families also vary: some regard it as a welcome solution to their long-standing problems while others believe it is a violation of their civil rights. Assisted outpatient treatment deserves further study and careful analysis.

¹⁸⁴ Belluck, Pam. “Program Compelling Outpatient Treatment for Mental Illness Is Working, Study Says.” *The New York Times*. July 30, 2013.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

Early Intervention for Psychosis

Another innovative program, also targeting a narrow but very important group of persons with mental illness, has been recently introduced in Maryland. This program is one of the states' responses to the mass shooting at Newtown, Connecticut. As psychosis is the specific symptom that makes violence more likely, this program is aimed at "identifying young people between the ages of 12 and 30 who are either in full psychosis or at high risk for becoming so, and getting them into immediate treatment."¹⁸⁸ The Center for Excellence on Early Intervention for Serious Mental Illness, established in 2013, intends to contribute to a better understanding of psychosis. Most importantly, "it is an effort to intervene as early as possible, to perhaps salvage lives that might otherwise be lost."¹⁸⁹ The unusual aspect of this initiative is that it does not focus on a particular illness such as bipolar disorder or schizophrenia, but instead on a symptom associated with those diseases in their most extreme form: psychosis. While in general, persons with mental illness are no more likely to commit violence than the rest of population, the probability that they will become violent increases significantly if they reach psychosis.¹⁹⁰ Consequently, targeting this particular group may be most effective in prevention of imminent violent acts.

According to Dr. Robert Buchanan, a Professor of Psychiatry at the University School of Maryland and the director of the Center for Excellence on Early Intervention for Serious Mental Illness, it will operate on several levels:

- Increase outreach to schools, family organizations, pediatricians, and others involved with young people to familiarize them with the symptoms indicating that somebody may be at a high risk for developing psychosis so that they could direct those individuals to the Center for help.
- Expand two clinics dedicated to the diagnosis and treatment of patients at high risk of developing psychosis or those who are already experiencing their first psychotic episode.¹⁹¹

Telemedicine links will enable the Center experts to consult on individual cases in remote parts of Maryland and to share best practices.

¹⁸⁸ Michael Ollove, *New Psychosis Center Aims to Prevent Violence*, The Pew Charitable Trusts, 10.09.13, <http://www.pewstates.org/projects/stateline/headlines/new-psychosis-center-aims-to-preven-violence>.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

After-care for Ex-offenders Suffering from Mental Illness

It is well known that a significant segment of prison population has mental health diagnoses. While these individuals are in prison, they receive treatment; it can be improved, but it is available to them. Once they are released, many of them struggle to access mental health services. It is important to assist them with both long-term and short-term mental health care services. If they stop taking their medications after release, their condition may deteriorate quickly. Arrangements for after-care might prevent potentially dangerous relapses.

CULTURAL INFLUENCES ON VIOLENT BEHAVIOR

Reporting Violence in the Media

The history of the world is replete with evidence that humankind, living together in society, has the potential to be violent. Violence, moreover, is a form of entertainment in our society, from the bone-crunching clashes of (mostly) little boys in Saturday afternoon neighborhood pee-wee football games to the multimillion-dollar-earning players on Monday Night Football. Top-grossing R-rated horror movies and PG-13 action adventure and superhero series are wildly popular. Post-apocalyptic survivor tales are all the rage in young adult fiction. From the most popular television shows to the best-selling thriller authors, violence sells. This is not a unique status: public punishment was a spectacle for centuries around the world. Before radio and television, there were Wild West shows, complete with reenactments of gunfights and battles between cowboys and Indians. Kids growing up in the 1930s and 1940s saw the glamorization of the street gun fight and gangster movies full of car chases and shootouts between law enforcement and the bad guys. Every summer, thousands of people arrive in Gettysburg in early July to watch the reenactment of one of the most deadly battles in American history. Encounters with violent imagery are a continuous presence in our daily life. According to the American Academy of Pediatrics (AAP), “by 18 years of age, the average young person will have viewed an estimated 200,000 acts of violence on television alone.”¹⁹²

In contemporary culture, non-criminal violence is not banned. It is regulated. Cruel and unusual punishment is constitutionally prohibited, and convicted criminals have appeal rights before the death penalty can be enforced. Movies and video games are rated, and music is labeled. Athletes are told that they must give themselves an appropriate amount of time to heal from concussions, but they are not stopped from resuming play and risking further head injury.¹⁹³

This chapter does not attempt to cure our society of its interest in violent entertainment; instead it contains several recommendations designed to minimize the impact of violence in the media on children and youth.

Recommendation #1: To the extent possible, it is important to deny notoriety and celebrity status to perpetrators of violence.

¹⁹² “Policy Statement – Media Violence,” *Pediatrics*, Vol. 124, No. 5, November 2009, p. 1496, www.pediatrics.org/cgi/doi/10.1542/peds.2009-2146.

¹⁹³ “Eligibility Rules,” Pennsylvania Interscholastic Athletic Association, Inc., (accessed October 29, 2013). <http://www.piaa.org/schools/eligibility/>.

The biggest differences between the historical and contemporary violence are twofold: (1) world population has grown, and the sheer number of opportunities for violence to occur have increased; and (2) modern electronic media instantaneously transmit images of violent outbursts directly to cellular phones, computers and televisions, pulling viewers into the events as they unfold and creating a sense of immediacy not previously experienced. An explosion occurs in a major city during a popular athletic event, creating death, mayhem and confusion, and within minutes, pictures and speculation about potential culprits and their motivation are spread across the world through social and corporate media. In no time, cable news networks are on the scene, interviewing available individuals, including peripheral bystanders with minimal significant or meaningful information, providing little more than air-time for the network. Anyone near a television set on April 15, 2013 could not help but be inundated by the media coverage and manhunt following the bomb explosions at the Boston Marathon. Rumors and half-truths are sometimes reported as fact during ongoing tragedies to the detriment of law enforcement's ability to investigate. False suspects may be identified and reputations ruined based on mere speculation or leaked information.

While the news media have a legitimate interest in identifying criminals, there is concern that some individuals may plan more elaborate and deadly attacks in the interest of gaining their "15-minutes of fame." Glamorization of mass shooters, with their pictures on the cover of magazines and their manifestos published online may promote copycat behavior among susceptible individuals.

Recommendation #2: Consistent with the foregoing recommendation, news media should exercise discretion in their reporting of violent incidents to ensure that public safety is maintained and police investigations are not jeopardized during coverage of an ongoing incident.

Journalism is replete with codes and canons of ethics. For example, the Radio Television Digital News Association Code of Ethics shares many of the concerns expressed by the Advisory Committee. Its code contains the following tenets:

- Treat all subjects of news coverage with respect and dignity, showing particular compassion to victims of crime or tragedy.
- Exercise special care when children are involved in a story and give children greater privacy protection than adults.
- Guard against extended coverage of events or individuals that fails to significantly advance a story, place the event in context or add to the public knowledge.
- Refrain from contacting participants in violent situations while the situation is in progress.

- Use technology with skill and thoughtfulness, avoiding techniques that skew facts, distort reality or sensationalize events.¹⁹⁴

Similarly, the Code of the Society of Professional Journalists, contains provisions designed to minimize harm:

- Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- Recognize that gathering and reporting information may cause harm or discomfort; pursuit of the news is not a license for arrogance.
- Show good taste; avoid pandering to lurid curiosity.¹⁹⁵

If all media outlets adhered to these guidelines, many of the Advisory Committee’s concerns about media coverage of violent incidents could be eliminated.

The Influence of Violent Media

What causes a person to cross the threshold between socially-sanctioned violence and unacceptable violence? While the actions of any one individual may be the result of mental health issues coupled with ready access to weapons, broader societal and cultural influences may be the impetus that prompts a person to act violently. Many factors have been identified in studies of violence: biological factors (such as genetics, organic mental health disease, and substance abuse), personal factors (such as age, education, income, child abuse, and exposure to domestic violence), and societal factors (such as poverty, racism, social acceptance of violence, availability of weapons, the responsiveness of the criminal justice system, and the strength of the social welfare system).

Recommendation #3: Parents and guardians should take a more active role in screening and limiting children’s exposure to media violence.

The AAP emphatically believes that exposure to media violence is associated with a variety of physical and mental health problems in children, including “aggressive and violent behavior, bullying, desensitization to violence, fear, depression, nightmares and sleep disturbances.” This conclusion is based on reports from the 1970s and 1980s by the National Institute of Mental Health, the U.S. Surgeon General, and the Federal Communications Commission, which agree that there is “strong evidence” that exposure to media violence can increase aggressive behavior.¹⁹⁶ While this is not a proven, direct causal link between being exposed to media violence and becoming a mass murderer,

¹⁹⁴ “Code of Ethics,” Radio Television Digital News Association, http://www.rtdna.org/article/rtdna_code_of_ethics.

¹⁹⁵ “Code of Ethics,” Society of Professional Journalists, <http://www.spj.org/ethicscode.asp>.

¹⁹⁶ *Supra*, note 30, at 1497.

common sense dictates that exposure to any form of unacceptable behavior should be limited, especially for young children.

The Role of Simulated Violence

Recommendation #4: While a direct causal link between violent video games and violent behavior has not been established to date, the question of a potential correlation between simulated violence and aggressive behavior remains unresolved. Further evidence-based research on the possible effects of exposure to media violence should be encouraged.

For several years, the role of violent video games in mass shootings has been debated. Its genesis can be seen in the aftermath of the 1999 shootings in Columbine High School in Littleton, Colorado, when it was revealed that the shooters in that incident were avid video game players. Numerous studies have been conducted, and the debate has been replete with charges of bad research techniques, faulty conclusions, misrepresentations of data, and politicization of public policy.

In December 2008, the Joint State Government Commission published “The Report of the Task Force on Violent Interactive Video Games.”¹⁹⁷ The Task Force concluded that the state of research was inconclusive: while there may be a slight correlation between exposure to violent video games and aggressive behavior, no direct causal link has been identified; it has been speculated that certain youth, because of other susceptibilities, may participate in violent video games and then act aggressively, but the role of video games is not clear. The report included a call for more scientifically-based, objective research on the positive and negative effects of video games.

In a paper published in 2008, Professor Christopher J. Ferguson at Texas A&M International University reviewed research that attempted to correlate video game playing and school shooting incidents. He concluded that there was no significant relationship demonstrated in the then-existent scientific literature. He also discussed the phenomenon whereby new technology, ideas, and philosophies could generate a “moral panic” about the deleterious effects of the “new” based on misinformation and fears of the unfamiliar.¹⁹⁸

California enacted a law in 2005 prohibiting the sale or rental of violent video games to minors. Challenged by the video-game and software industries, the case made its way to the Supreme Court, which struck down the statute as an unconstitutional restriction of free speech. The court noted that for protected speech to be regulated the law must be justified by a compelling government interest and be narrowly drawn to serve that interest. The court found that the current state of research on the effects of violent video games on violent behavior cannot distinguish effects produced by other media.¹⁹⁹ In 2013,

¹⁹⁷ Report available at http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=19.

¹⁹⁸ Christopher J. Ferguson, “The School Shooting/Violent Video Game Link? Causal Relationship or Moral Panic?,” *Journal of Investigative Psychology and Offender Profiling* 5:(2008)25-37.

¹⁹⁹ *Brown v. Entertainment Merchants Assn.*, 131 S.Ct.2729 (2011).

research continues as to the role of simulated violence in aggressive behavior. Some recent efforts have attempted to look at positive as well as negative effects.

In a recent experimental study from Ohio State University, Professor Brad Bushman suggested that exposure to violent games could cumulatively affect aggression over time.²⁰⁰ He likened the effect to that of a lifetime of smoking--one cigarette does not cause lung cancer, but a steady inhalation of nicotine over time can lead to lung disease. This conclusion is consistent with the AAP's view that constant exposure to violence can lead to desensitization of youth to violent behavior. All of these views fail, however, to identify a direct causal link.

Professor Patrick M. Markey, a member of the Advisory Committee, has written extensively on violent video game research. In a recent article, he examined violent video game sales and crime rates. While game sales have increased immensely, there has not been a concomitant increase in crime, leading Professor Markey to conclude that there is "no clear data suggesting violent video games are linked to actual societal changes in violence."²⁰¹ Alternatively, he notes that recent studies have seen positive effects of video games on teaching children math and science and assisting physicians in medical procedures.

Since the post-World War II period, the United States military has funded and encouraged the development of computer simulations as training tools. First-person shooter military games have been developed specifically for use in training personnel in weapons systems and tactics. These applications have been used to acclimate soldiers to the immediacy of battle and improve weapons proficiency. While these programs may not directly cause an individual to become violent, they do provide a tutorial in violent behavior that may prove detrimental to a disturbed or troubled person. Military video games have also been used as recruitment tools and recently, simulations of violent encounters have been used as therapy to assist soldiers suffering from post-traumatic stress syndrome.²⁰²

The American Psychiatric Association released its latest version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-V) in 2013. Among the areas identified as a condition warranting more clinical research and experience before consideration as a formal disorder is Internet Gaming Disorder (IGD). There is concern that excessive online

²⁰⁰ "Violent Video Games: More Playing Time Equals More Aggression," The Ohio State University, Research and Innovation Communications, accessed February 7, 2013, <http://researchnews.osu.edu/archive/violgametime.htm>.

²⁰¹ P.M. Markey, Invited chapter in H. Friedman (Ed.), *Encyclopedia of Mental Health*, (Oxford: Elsevier Ltd., 2013), <http://mediacoalition.org/only-a-game/video-games-and-mental-health>.

²⁰² See, Hamza Shaban, "Playing War: How the Military Uses Video Games," *The Atlantic*, accessed December 23, 2013, <http://www.theatlantic.com/technology/print/2013/10/playing-war-how-the-military-uses-video-games/280486/>; Robin Andersen and Marin Kurti, "From *America's Army* to *Call of Duty*: Doing Battle with the Military Entertainment Complex," *Democratic Communique* 23, No.1, Spring 2009; Lt. Col. David Grossman, "Teaching Kids to Kill," Phi Beta Kappa Forum, Fall 2000, accessed December 23, 2013, http://killology.org/article_teachkid.htm.

gaming can lead, in the extreme, to addictive behavior, resulting in clinically significant impairment or distress, and withdrawal symptoms when pulled away from gaming.²⁰³

In January 2013, the American Psychological Association (APA) Board of Directors created The Task Force on Violent Media to review its 2005 Resolution on Violence in Video Games and Interactive Media. The Task Force will oversee a comprehensive review of the scientific literature. Based on that review, the Task Force will evaluate the 2005 APA Resolution on Violence in Video Games and Interactive Media. If necessary, a revised policy statement will be developed. The Task Force had its first meeting in June 2013. The Task Force will be considering all published, peer-reviewed, publicly accessible literature that is available for review on or before August 12, 2013.²⁰⁴

In a letter sent to the Task Force, a group of 228 scholars applauded the APA's efforts to revisit the issue but issued several admonitions and concerns about the APA's 2005 Resolution. For instance, studies that cannot prove a negative link between media and violence are harder to publish, and thus may skew the body of research toward studies that find a connection between the media and actual violence. Frequently, the inability to replicate a result is ignored, giving greater weight to research that finds a connection between media violence and actual violence. Confounding variables may be used to show causal relationships between violent media and actual violence, for example, by using a connection between media violence and actual violence, such as those who are predisposed to violence preferring violent media, violence in the home, etc. Methodologies used to measure aggression in the lab do not always correlate to aggressive behavior in the real world. Dissenting views are commonly dismissed. The APA's 2005 and prior statements do not acknowledge research that does not find that media violence is associated with aggression or actual violence.²⁰⁵ Hopefully, the APA review will take into account the concerns expressed by the scholarly group and will help bring about a clarity to this debate.

²⁰³ American Psychiatric Association, "Internet Gaming Disorder," <http://www.dsm5.org/Documents/Internet%20Gaming%20Disorder%20Fact%20Sheet.pdf>.

²⁰⁴ American Psychological Association, APA Task Force on Violent Media, <https://www.apa.org/pi/families/violent-media.aspx>.

²⁰⁵ Scholars' Open Statement to the APA Task Force on Violent Media (Delivered to the APA Task Force September 26, 2013), <http://mediacoalition.org/228-academics-submit-letter-to-apa/>.

In Pennsylvania, the primary statute for dealing with treatment of the mentally ill individuals is the Mental Health Procedures Act.²⁰⁶ The act establishes procedures for the voluntary and involuntary commitment and treatment of a person with mental illness. The Advisory Committee has included both policy and legislative recommendations regarding these topics.

Two important concepts should be borne in mind when reviewing these recommendations. First, while a significant number of the more notorious mass shootings that have occurred in this country have been at the hands of individuals with a mental illness, the overall occurrence of violent behavior in individuals with mental illness is less common. Numerous articles have postulated that an individual with mental illness is more likely to be the victim of a violent crime than a perpetrator of one. Second, the most effective way to prevent violent crime among individuals with mental illness is to improve the recognition, diagnosis and early treatment of mental illness.

Violence Committed by Persons Who Are Mentally Ill

A recent review of literature on mental health and violence concluded the following:

- Mental illness may be a consistent, though modest, risk factor, for violence, though there is no clear evidence of causality.
- Demographic variables such as age, gender, and socioeconomic status are more reliable predictors of violence than is mental illness.
- Substance abuse among individuals with mental illness significantly increases the risk of violence.
- There is a correlation between violence and individuals with mental illness when they are substance abusers or are not receiving treatment.²⁰⁷

²⁰⁶ Act of July 9, 1976 (P.L.817, No.143); 50 Pa. Stat. Ann. § 7101 et seq.

²⁰⁷ The MacArthur Violence Risk Assessment Study, 1996, http://www.macarthur.virginia.edu/read_me_file.html.

- An individual with a severe mental illness who has no history of substance abuse or violence has the same likelihood of being violent as his or her neighbors.
- An individual with mental illness is more likely to be a victim than a perpetrator of violence.
- Because serious mental illness affects a small percentage of the population, it makes—at most—a very small contribution to the overall level of violence in society.²⁰⁸

Over the past 20 years, numerous studies have found that almost half of all individuals with schizophrenia or a bipolar disorder are not receiving treatment.²⁰⁹

Recommendations

Recommendation #5: The Mental Health Procedures Act (MHPA) should be thoroughly reviewed to determine whether to amend involuntary commitment standards to assure greater access to treatment or to add alternatives to treatment, such as assisted outpatient treatment.

The Advisory Committee recognizes that the Pennsylvania House of Representatives adopted House Resolution 226 of 2013, which directs the Joint State Government Commission to review the MHPA and recommend amendments. The Advisory Committee believes that study is a better vehicle to more completely explore mental health procedures, and several members of the Advisory Committee who are primarily engaged in the mental health field have offered their expertise and knowledge to assist the Commission in this endeavor.

Recommendation #6: Additional education and training, which promotes mental health awareness and early intervention should be provided to individuals (such as laypersons, first responders and law enforcement personnel) who come in contact with individuals who are mentally ill, developmentally disabled, or otherwise impaired, and should be made part of continuing education curricula.

A number of educational and training programs exist that can help ensure an appropriate response to a person in crisis because of mental illness or other disorder.²¹⁰

²⁰⁸ National Association of State Mental Health Program Directors and the Council of State Governments Justice Center, “Responding to a High-Profile Tragic Incident Involving a Person with a Serious Mental Illness: A Toolkit for State Mental Health Commissioners,” 2010, 79.

²⁰⁹ “What percentage of individuals with severe psychiatric disorders are receiving no treatment? – Backgrounder,” Treatment Advocacy Center, updated March 2011, www.treatmentadvocacycenter/resources/assisted-outpatient-treatment/about-aot/159.

²¹⁰ See discussion at *Examples of Violence Prevention Programs*, infra.

Because of the nature of the disorder, individuals with autism spectrum disorders may find themselves in violent encounters with police and other first responders. Some recent media reports involving encounters between law enforcement personnel and individuals with autism have ended tragically.²¹¹

Insurance Parity/Medicaid Expansion

Recommendation #7: Additional funding for community mental health services is desperately needed. Insurance coverage parity for mental disorders should continue and Medicaid expansion funds available under federal law should be provided for more community mental health services.

The federal Mental Health Parity and Addiction Equity Act of 2008²¹² (MHPAEA) requires group health plans and health insurance issuers to ensure that financial requirements (such as co-pays and deductibles) and treatment limitations (such as visit limits) applicable to mental health or substance use disorder (MH/SUD) benefits are no more restrictive than the predominant requirements or limitations applied to substantially all medical/surgical benefits. The MHPAEA Act preempts state law only to the extent a state standard or requirement prevents its application.²¹³

The federal Patient Protection and Affordable Care Act²¹⁴ (PPACA) expands these parity requirements to health insurance issued in the individual and small group markets effective January 1, 2014, which is anticipated to add an additional 30 million people subject to the federal parity rules.²¹⁵

Pennsylvania has several statutory provisions that address mental health coverage. The Insurance Company Law of 1921²¹⁶ provides for minimum coverage standards for mental illness for large health insurance plans (groups of 50 or more). Autism spectrum disorder coverage was added as a mandated benefit for large group health insurance policies in 2008 (for policies issued or renewed after July 1, 2009).²¹⁷ The General Assembly may wish to consider amending these provisions to make them applicable to the individual and small group markets similarly to the provisions of the PPACA.

²¹¹ See <http://www.nbcphiladelphia.com/news/local/Man-with-Autism-Caregiver-Shot-by-Off-Duty-Officer-Pros-192583521.html> and <http://www.sungazette.com/page/content.detail/id/591189/Autism-poses-special-challenges-for-police--emergency-personnel.html?nav=5011>. An example of some training materials can be seen at <http://www.asaphilly.org/police.php>.

²¹² Pub. L. 110-343, 122 Stat. 3881 (2008).

²¹³ 196 Prop. Treas. Reg. Part 54, 75 Federal Register 5452 (February 2, 2010).

²¹⁴ Pub. L. 111-148, 124 Stat. 119 (2010).

²¹⁵ "Affordable Care Act Will Expand Mental Health and Substance Use Disorders Benefits and Parity Protections for 62 Million Americans," Kirsten Beronio, Rosa Po, Laura Skopec and Sherry Glied, ASPE Research Brief, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, February 20, 2013, http://aspe.hhs.gov/health/reports/2013/mental/rb_mental.cfm.

²¹⁶ Act of May 17, 1921 (P.L.682, No.284), § 635.1; 40 Pa. Stat. Ann. § 764g.

²¹⁷ *Ibid.*, § 635.2; 40 Pa. Stat. Ann. § 764h.

The Public Welfare Code²¹⁸ requires insurers who provide inpatient psychiatric care coverage to reimburse State-owned psychiatric hospitals at the same rate as it does to contracted psychiatric hospital providers. If there is no such rate, the requisite reimbursement would be at the rate that the medical assistance program would pay for such coverage, even if the hospital does not have a provider agreement with the insurer or does not participate in the insurer's network.

Pennsylvania implemented the MHPAEA by enacting the Health Insurance Coverage Parity and Nondiscrimination Act,²¹⁹ but retained its authority to regulate health insurance in the Commonwealth.

Under the provisions of the PPACA, states have the ability to expand Medicaid coverage to currently uninsured individuals, which would grant them access to mental health benefits that comply with federal parity requirements. It is estimated that approximately 27 million individuals nationwide who are currently uninsured would benefit from this expansion. Several members of the Advisory Committee mentioned this expansion as a possible source of funding of mental health treatment and services.

Mental Health Directives

Recommendation #8: People should be encouraged to prepare mental health advance directives and/or mental health powers of attorney so that they may exercise control over the course of their treatment when they are in crisis and otherwise incapable of making rational choices. Further, hospitals and members of the medical community should inquire as to the existence of these documents with the same regularity with which inquiries into the existence of living wills occur.

In 2004 the Pennsylvania General Assembly added a new Chapter 58 (Mental Health Care) to Title 20 of the Pennsylvania Consolidated Statutes.²²⁰ Under this chapter, an individual may prepare a mental health care directive that instructs medical personnel on the individual's preferences for mental health treatment should the individual become incapable, by reason of mental illness, to decide on his or her own. An individual may also execute a mental health power of attorney that designates a mental health care agent to make mental health care decisions on his or her behalf. Decision-making powers may include preference for a treatment facility, consent or refusal of certain types of treatment, dietary restrictions, religious preferences, temporary custody of children, and family notification. While these directives can provide guidance to others, not all aspects are legally binding and are treated as simply advisory.

²¹⁸ Act of June 13, 1967 (P.L.31, No.21), § 1416; 62 Pa. Stat. Ann. § 101 *et seq.*

²¹⁹ *Supra* note 203 at art. VI-B; 40 Pa. Stat. Ann. § 908-11 *et seq.*

²²⁰ 20 Pa.C.S. Ch. 58.

Recommendation #9: Pennsylvania should codify its existing duty to warn, currently found in case law, into a statutory requirement delineating the need and limits of a duty to protect.

A mental health professional has a duty to warn a third party of potential harm by the professional's patient where a specific and immediate threat of serious bodily injury has been conveyed by the client to the professional regarding a specifically identified or readily identifiable victim (subject to the standard of care of the profession).²²¹

Under the MHPA regulations, nonconsensual release of information is authorized in certain circumstances: for example, "in response to an emergency medical situation when release of information is necessary to prevent serious risk of bodily harm or death. Only specific information pertinent to the relief of the emergency may be released on a nonconsensual basis."²²² This regulation has been interpreted to include situations in which a client's threats to harm a third party are disclosed.²²³

Due to the genesis of the rule as a holding in a lawsuit, the duty as currently stated does not provide much guidance as to its interpretation. Additionally, mental health professionals are sometimes hesitant to issue a warning because of concerns about potential violations of federal and state privacy laws, liability for failure to issue a warning or for issuing an unfounded warning. There are also concerns about the potential harm to a client or victim of issuing a warning. Twenty-four states have statutorily mandated a duty to warn about the violent propensities of certain mentally ill individuals.²²⁴ The Advisory Committee determined that including this duty in a statute would provide better clarity and guidance to persons required to interpret the rule.²²⁵

Under the proposed legislation, mental health professionals would have a duty to protect individuals and the public from the threat of danger presented by a person receiving behavioral or mental health treatment if the all the following circumstances apply:

- The person has communicated an explicit threat of imminent serious physical harm or death to an identified or identifiable victim or the general public.
- The professional reasonably believes, or by the standards of his profession should believe, that the person has the intent and ability to carry out the threat.

²²¹ *Emerich v. Philadelphia Center for Human Development, Inc.*, 720 A.2d 1032 (Pa. 1998).

²²² 55 Pa.Code § 5100.32(a)(9).

²²³ *Ms. B. v. Montgomery County Emergency Service*, 799 F.Supp. 534 (E.D. Pa. 1992); *affirmed*, 989 F.2d 488 (3d Cir. 1993); *cert. denied*, 510 U. S. 860 (1993).

²²⁴ Alabama, Arizona, California, Colorado, Delaware, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Tennessee, Utah, Virginia, and Washington.

²²⁵ The proposed amendment to the MHPA to codify this duty, which the Advisory Committee prefers to refer to as a "duty to protect," is set forth at *Proposed "Duty to Protect" Legislation*, *infra*.

- The threat has been communicated while the professional is engaged in his professional duties.

Generally, a professional is expected to look at the totality of the circumstances surrounding the threat to determine whether notice should be given and other appropriate responses made.

In fulfilling this duty, a professional may take any precautions that a reasonably prudent professional would take under the circumstances, including communicating the threat to all identified or identifiable victims, notifying a law enforcement agency in the vicinity of where the client or any potential victim resides, taking reasonable steps to initiate proceedings for voluntary or involuntary commitment if appropriate, or changing the nature of therapy if doing so would be likely to diffuse the threat.

A professional who complies with this duty would be immune from civil liability. Disclosures made in good faith under this duty would not be considered breaches of confidentiality and would be authorized without consent under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).²²⁶

Privacy Concerns

The Advisory Committee believes that disclosures under the proposed duty to warn statute are specifically authorized under the provisions of federal and state privacy laws discussed below.

The regulations promulgated under HIPAA govern the release of personally identifiable health information by covered entities, which include health plans, health care clearinghouses and health care providers that transmit any covered information in electronic form. HIPAA covers most health care providers in the United States. Various privacy rules govern what health information may be released and under what circumstances. Under HIPAA, “psychotherapy notes” may not be disclosed without the prior authorization of the patient.²²⁷ “Psychotherapy notes” are defined as follows:

Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual’s medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date.²²⁸

²²⁶ Pub.L. 104-191, 110 Stat. 1936 (1996).

²²⁷ 45 C.F.R. § 164.508.

²²⁸ 45 C.F.R. § 164.501.

Disclosures are regulatorily authorized without the consent of the patient for number of reasons. Specifically:

A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

- (i)(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
- (B) Is to a person or persons reasonable able to prevent or lessen the threat, including the target of the threat; . . .

There is a presumption of “good faith” as follows:

A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity’s actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.²²⁹

As a general rule, communications between psychiatrists and psychologists are protected in Pennsylvania and may not be disclosed in any civil or criminal matter.²³⁰ Additionally, the Code of Ethics of licensed psychologists requires them to safeguard the confidentiality of information received during the course of teaching, practice, or investigation. However, limited disclosure is authorized:

A psychologist may reveal the following information about a client:

Information received in confidence is revealed only after most careful deliberation and when there is clear and imminent danger to an individual or to society, and then only to appropriate professional workers or public authorities. This Code of Ethics does not prohibit a psychologist from taking reasonable measures to prevent harm when a client has expressed a serious threat or intent to kill or seriously injure an identified or readily identifiable person or group of people and when the psychologist determines that the client is likely to carry out the threat or intent. Reasonable measures may include directly advising the potential victim of the threat or intent of the client. Because these measures should not be taken without careful consideration of clients and their situation, consultation with other mental health professionals should be sought whenever there is time to do so to validate the clinical impression that the threat or intent of harm is likely to be carried out.²³¹

²²⁹ 45 C.F.R. § 164.512(j).

²³⁰ 42 Pa.C.S. § 5944.

²³¹ 49 Pa. Code § 41.61, Code of Ethics, Principle 5 (b)(1).

A similar disclosure is permitted for licensed social workers, marriage and family therapists and professional counselors:

Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient, or the client's/patient's parent, guardian, court-appointed representative or the holder of the client's/patient's power of attorney, has given informed consent, except in those circumstances in which failure to do so would violate a court order or specific Federal or State privacy statutes or regulations, or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by these situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.²³²

Under Pennsylvania Department of Public Welfare regulations, all mental health programs are to be administered under the supervision of a psychiatrist who is to monitor all treatment plans on a regular basis²³³ All persons working in any of the above facilities are subject to the confidentiality provisions of the MHPA.

²³² 49 Pa. Code § 47.72(d)(1).

²³³ See 55 Pa. Code § 5200.23 (psychiatric outpatient clinics), § 5210.22 (adult partial hospitalization), § 5210.32 (children and youth partial hospitalization), § 5221.21 (intensive case managers to be supervised by a mental health professional) and § 5230.55 (psychiatric rehabilitation services directors to supervise staff).

RESPONSIBLE GUN OWNERSHIP

The right to bear arms is a fundamental liberty guaranteed in the Constitutions of both the Commonwealth of Pennsylvania and the United States. Pennsylvania's Constitution, in Article I – Declaration of rights, § 21 states that “[T]he right of the citizens to bear arms in defense of themselves and the State shall not be questioned.” The Second Amendment to the United States Constitution states that “[A] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Despite the seemingly straightforward nature of these Constitutional guarantees, the courts of Pennsylvania and the United States have held that these rights are not absolute. The state may regulate firearms consistent with its police power to protect the safety of its citizenry.²³⁴ However, regulations must be narrowly drawn, and subject to strict scrutiny that they serve a legitimate purpose.

The District of Columbia enacted a prohibition on the possession of handguns. An additional provision of the law required registered firearms, such a long-guns to be kept unloaded and disassembled or secured by a locking device in the home. The United States Supreme Court held in *Heller*²³⁵ that such restrictions are an unconstitutional deprivation of the right to bear arms for self-defense. The court recognized that limitations on the right to bear arms may be constitutional, but it this case determined that the statute overreached those limits.

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explain that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. [citations omitted] For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.[citations omitted] Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.²³⁶

²³⁴ Gardner v. Jenkins, 541 A.2d 406, 409 (Pa. Commw. Ct. 1988); Morley v. City of Philadelphia Licenses & Inspections Unit, 844 A.2d 637 (Pa. Cmmw. Ct. 2004).

²³⁵ District of Columbia v. Heller, 554 U.S. 570, 627-628 (2008).

²³⁶ *Ibid.*

When confronted with a similar situation involving the City of Chicago, the Court held in 2010 that the Second Amendment is applicable to the States through the 14th Amendment. As in *Heller*, the Court's emphasis was on the ability of individual's to defend themselves in their homes.²³⁷

Regulation of Firearms in Pennsylvania

In 1864, Pennsylvania enacted one of its first concealed carry laws:

Section 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same* That any person, within the limits of the county of Schuylkill, who shall carry any fire arms, slung shot, dirk knife, or other deadly weapon, concealed upon his person, with the intent, therewith, unlawfully and maliciously, to do injury to any other person, shall be deemed guilty of a misdemeanor, and upon the conviction thereof, shall be sentenced to undergo solitary confinement, at hard labor, in the prison of said county, for a period of not less than one month, nor more than one year, and pay a fine of not less than twenty-five, nor more than one hundred dollars, or either, or both, at the discretion of the court; and the jury trying the case may infer such intent, as aforesaid, from the fact of the said defendant carrying such weapon, in the manner aforesaid.²³⁸

In 1866, this law was extended to Luzerne County. The act was challenged as a violation of the state constitutional right to bear arms. In a per curiam opinion released March 1, 1875, the Pennsylvania Supreme Court ruled that the “carrying upon the person of the defendant a concealed weapon, to wit, a pistol, with an intent, unlawfully and maliciously, to do bodily harm to another, . . . Such an unlawful act and malicious intent as this has no protection under the 21st section of the Bill of Rights, saving the right of citizens to bear arms in defence of themselves and the state.”²³⁹ Slightly more than two weeks later, a new law was enacted to prohibit the carrying of any concealed “fire-arms, slug-shot, handy-billy, dirk-knife, razor or any other deadly weapon” by any person within the Commonwealth.²⁴⁰ The fine was increased to \$500 and confinement to one year. Also enacted was the presumption of intent provided for in the 1864 act.

Subsequently, in 1876, Pennsylvania enacted a prohibition against any person “who shall playfully or wantonly point or discharge a gun, pistol or other fire-arm at any other person,”²⁴¹ and in 1881, it enacted a prohibition against selling any “cannon, revolver, pistol or other such deadly weapon” to any person under 16 years of age.²⁴² Then,

²³⁷ McDonald v. City of Chicago, 561 U.S. 3025 (2010).

²³⁸ Act of May 5, 1864 (P.L.823, No.717); repealed.

²³⁹ Wright v Commonwealth, 77 Pa. 470 (1875).

²⁴⁰ Act of March 18, 1875 (P.L.33, No.38); formerly 18 Pa. Stat. Ann. § 401.

²⁴¹ Act of May 8, 1876 (P.L.146, No.119); formerly 18 Pa. Stat. Ann. § 2115.

²⁴² Act of June 10, 1881 (P.L.111, No.124); formerly 18 Pa. Stat. Ann. § 1191.

in 1929, Pennsylvania' first regulation of automatic weapons was enacted: the sale, possession, or transfer of "machine guns," defined as "any firearm that fires two or more shots consecutively at a single function of the trigger or firing device," was prohibited.²⁴³

In 1931, Pennsylvania enacted the first Uniform Firearms Act, to make handgun regulation consistent across the Commonwealth.²⁴⁴ Significant provisions of this act included the following:

- The term "firearm" was defined as a pistol or revolver with a barrel of less than 12 inches, a shotgun with a barrel of less than 24 inches, or a rifle with a barrel of less than 15 inches (in other words, a handgun).
- The requirement of a license to carry a handgun in a vehicle or concealed upon the person (§ 7).
- The disqualification of certain persons from purchasing a handgun, including a person under the age of 18, a person convicted of a crime of violence, a drug addict, an habitual drunkard or a person of unsound mind (§ 8).
- A 48-hour waiting period to purchase a handgun (§ 9).
- Registration of the sale of all handguns (§ 11).
 - One copy was to go to local police, one to the Secretary of the Commonwealth, and one to be retained by the dealer for six years.
 - Information about the firearm was to include caliber, length of barrel, make, model and manufacturer's number.
 - Information about the purchaser was to include name, address, occupation, race and date of birth.
- The term "crime of violence" was defined as murder, rape, mayhem, aggravated assault and battery, assault with intent to kill, robbery, burglary, breaking and entering with intent to commit a felony, and kidnapping.

In 1939, the Uniform Firearms Act and other older firearms regulations were folded into The Penal Code,²⁴⁵ which included provisions prohibiting sales to minors (§ 626), manufacture and sale of toy guns (§ 627) and sales of machine guns (§ 629). The Penal Code was replaced by the Crimes Code, enacted in 1972 as Title 18 of the Pennsylvania Consolidated Statutes, with the Uniform Firearms Act included as Chapter 61 of that title.

²⁴³ Act of April 25, 1929 (P.L.777, No.329); formerly 18 Pa. Stat. Ann. §§ 1581-1584.

²⁴⁴ Act of June 11, 1931 (P.L.497, No. 158); repealed.

²⁴⁵ The Penal Code, act of June 24, 1939 (P.L.872, No.375); repealed.

The prohibition against sale or possession of offensive weapons is now defined as:

Any bomb, grenade, machine gun, sawed-off shotgun with a barrel less than 18 inches, firearm specially made or specially adapted for concealment or silent discharge, any blackjack, sandbag, metal knuckles, dagger, knife, razor or cutting instrument, the blade of which is exposed in an automatic way by switch, push-button, spring mechanism, or otherwise, any stun gun, stun baton, taser or other electronic or electric weapon or other implement for the infliction of serious bodily injury which serves no common lawful purpose.²⁴⁶

In 1989, five students were killed and 29 wounded at an elementary school playground in Stockton, California by a man with a history of arrests, mental illness and alcoholism, using an AK-47 assault rifle equipped with a 75-round ammunition drum. This incident led to the enactment in California of the country's first assault weapons ban, the Roberti-Roos Assault Weapon Act. This incident, and subsequent mass shootings led to the enactment in 1993 of the Public Safety and Recreational Firearms Use Protection Act of 1994 (federal assault weapons ban), which expired in 2004.²⁴⁷ Following enactment of the federal ban, the Pennsylvania General Assembly established a select committee to investigate the use of certain automatic and semiautomatic weapons in Pennsylvania.²⁴⁸ The Select Committee held meetings throughout the Commonwealth and ultimately proposed substantial amendments to Chapter 61. During floor debate on those amendments, former Senator Vincent Fumo remarked:

[W]e went throughout this Commonwealth and conducted hearings on the issues of not only semiautomatic and automatic firearms but the issues in general of firearms and crime as they pertained to the Commonwealth of Pennsylvania. . . . the objective and goal of the committee from the very first day was to try to craft legislation which would be a model not only for Pennsylvania but for the rest of the nation to follow that would address the true issue of firearms and crime. . . . we strove for a way to deal with illegal gun sales, which we determined was, in fact, the most important contributory factor to crime.²⁴⁹

The proposed amendments became law in 1995 and included provisions regarding disqualifications from ownership and for background checks for criminal history, juvenile delinquency, and mental health records.

²⁴⁶ 18 Pa.C.S. § 908.

²⁴⁷ Brady Campaign to Prevent Gun Violence, *Twenty Years Since a Nightmare: Stockton, CA School Shooting of 35 Led to Strengthening of Gun Laws*, Press Release dated January 15, 2009, <http://www.reuters.com/article/2009/01/15/idUS226787+15-Jan-2009+PRN20090115>.

²⁴⁸ Pa. House Resolution 242 (1994).

²⁴⁹ Pa. Sen. Legis. J., May 22, 1995, p. 168.

Under the current Uniform Firearms Act, firearms are regulated on the basis of the type of firearm, with handguns²⁵⁰ subject to greater regulation than long-guns²⁵¹ in some instances. Several issues arise in a review of the current Uniform Firearms Act, including the procedures for background checks generally, the limited background checks required for transfers of long-guns, the reporting and use of mental health records to disqualify a person from gun ownership, restoration of gun rights and reporting of lost or stolen weapons, all of which will be addressed with greater specificity in separate sections of this chapter. A brief description of the current law in Pennsylvania follows:

Disqualification

Persons who have been convicted of certain crimes are prohibited from owning or possessing any type of firearm. Section 6105 lists disqualifying convictions:

- Prohibited offensive weapons and weapons of mass destruction.
- Corrupt organizations.
- Possession of weapon on school property.
- Murder, voluntary manslaughter, involuntary manslaughter (if based on reckless use of a firearm).
- Aggravated assault, assault by prisoner and assault by life prisoner.
- Stalking.
- Kidnapping, unlawful restraint, and luring a child into a motor vehicle or structure.
- Rape, involuntary deviate sexual intercourse, and indecent assault.
- Arson and related offenses and causing or risking a catastrophe.
- Burglary, criminal trespass (second degree or higher felony), robbery, robbery of motor vehicle, theft by unlawful taking or disposition (upon second felony conviction), theft by extortion (when accompanied by threats of violence), receiving stolen property (upon second felony conviction).

²⁵⁰ A “handgun” is any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable. 37 Pa. Code § 33.102.

²⁵¹ A “long-gun” is any weapon that is not a “handgun,” designed to or may readily be converted to expel a projectile by the action of an explosion, or the frame or receiver of the weapon. 37 Pa. Code § 33.102.

- False reports to law enforcement authorities (if a fictitious report of gun theft).
- Impersonating a public servant (if impersonating a law enforcement officer).
- Intimidation of witnesses or victims and retaliation against witness, victim or party.
- Escape and weapons or implements of escape.
- Riot.
- Prohibiting of paramilitary training.
- Possession of firearm by minor.
- Corruption of minors.
- Sale or lease of weapons and explosives.
- Equivalent offenses under prior Commonwealth law, other state law or federal law.

Additionally, other classes of individuals are also prohibited from gun ownership:

- Fugitives from justice.
- Persons convicted under federal, state or Pennsylvania drug laws, if punishment may exceed two years' imprisonment.
- Persons convicted of driving under the influence on three or more separate occasions within a five-year period.
- Persons adjudicated incompetent or involuntarily committed under the MHPA.
- Illegal aliens or person who are unlawfully in the United States.
- Persons who are the subject of an active protection from abuse order where relinquishment of firearms was ordered (temporary).
- Persons adjudicated delinquent for certain violent criminal offenses.

- Persons adjudicated delinquent under other Pennsylvania, state or federal equivalent law (temporary).
- Persons prohibited from possessing or acquiring a firearm under federal law relating to misdemeanor crimes of domestic violence against certain individuals.

Relief from Disability

Relief from a disability and restoration of firearms rights may occur in several circumstances:

- Relief from disability may be granted if conviction is vacated, a full pardon granted, or if federal relief has been granted and 10 years has elapsed since the most recent conviction (§ 6105(d)).
- Relief may be granted to persons adjudicated incompetent or involuntarily committed if a court determines that the person may possess a firearm without risk to that person or any other person (§6105(f)).
- Restoration of firearms rights procedure if disqualification was result prior laws that had shorter sentences, are no longer legal violations (§ 6105.1).

Background Checks

Persons purchasing or transferring firearms are subject to several conditions. Persons purchasing handguns and long-guns from licensed firearms dealers are subject to background checks regarding criminal history, juvenile delinquency and mental health records. The Pennsylvania State Police (PSP) administers the background checks, and denials of purchases based on the checks are subject to appeal within the PSP and then to the Attorney General. The PSP are instructed to distribute to firearms dealers a summary of firearms laws and firearm safety brochures. (§ 6125)

There is a 48-hour waiting period from the time of the application for purchase of a handgun and delivery by the seller. Furthermore, the handgun must be securely wrapped and not loaded at delivery. Applications and records of sale for handguns are filled out in triplicate, with the original sent to the PSP within 14 days of the sale, one copy to the purchaser, and the other copy to be retained by the dealer for 20 years. The application includes the name, address, birthdate, gender, race, physical description, and Social Security number of the purchaser, the date of the purchase, the caliber, barrel length, make, model, and manufacturer's number of the handgun. A seller cannot sell or transfer a handgun without a locking device. (§ 6142)

Private sales of long-guns (between two individuals) are not subject to background checks, although private sales of handguns are. However, transfers of any guns between family members are exempt from any background checks.

Firearms Registry

No government or law enforcement agency is permitted to create, maintain, or operate any registry of firearm ownership within the Commonwealth. (§ 6111.4) Local governments are prohibited from regulating gun ownership; no county, municipality or township may in any manner regulate the lawful ownership, possession, transfer, or transportation of firearms, ammunition, or ammunition components when carried or transported for purposes not prohibited by the laws of the Commonwealth. (§ 6120)

If a firearm is confiscated or recovered from a disqualified person, local law enforcement is required to determine how and from whence the person gained possession of the firearm, and to notify the PSP. Firearm tracing through the National Tracing Center of the Federal Bureau of Alcohol, Tobacco and Firearms and Explosives is specifically authorized. (§ 6127)

License to Carry

The law prohibits carrying a handgun in any vehicle or concealed on or about the person without a license (exceptions for law enforcement, military, licensed hunters, dog trainers, others with cause to carry in the course of business, employment duties, etc.). (§ 6106) The following rules apply to licenses to carry:

- Applicant must be 21 years of age or older.
- Application must be for one of these reasons: self-defense, employment, hunting and fishing, target shooting, gun collecting, or another proper reason.
- The sheriff will investigate the applicant's record of criminal conviction, whether the applicant is under indictment, whether the person's character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, to verify that the applicant has not been not excluded from ownership, and conduct a criminal background, juvenile delinquency, and mental health check.
- License shall be issued if it appears no good cause exists to deny.
- License valid for five years.
- License may be revoked for good cause.

- Upon conviction, a court must determine if the defendant has a license to carry and shall notify the sheriff of the identity of the person and the nature of the crime or conduct.
- Notice of adjudication of incompetency or involuntary commitment for inpatient care and treatment should be given to county sheriff.
- The Attorney General may negotiate and enter into reciprocity agreements with other states to provide for mutual recognition of a license to carry; provide an annual report to General Assembly of agreements entered; mandate to annually contact states without reciprocity agreements to determine ability of Pennsylvania license holders to carry in-state and negotiate reciprocity agreements.
- The PSP shall establish a nationwide toll-free telephone number, known as the Firearms License Validation System to respond to law enforcement agencies regarding validity of license to carry.
- Temporary emergency licenses may be made available if there is evidence of imminent danger to the person or the person's minor child.

Generally, only handguns may be carried loaded in a vehicle. (§6106.1) Long-guns are permitted to be carried only as authorized under the Pennsylvania Game Law. There is also a prohibition against carrying any firearms upon public streets or any public property during a declared emergency unless the person is licensed to carry or actively engaged in a defense of the person's life or property from peril or threat. No firearm, accessory or ammunition may be seized during an emergency that could not be seized absent the emergency. (§6107)²⁵²

Reciprocity

Persons who can lawfully purchase long-guns in Pennsylvania are not prohibited from doing so in other jurisdictions. (§ 6141.1) Additionally, a person carrying a handgun in any vehicle who has a valid license for the weapon under other state law is exempt from the license to carry provisions. (§ 6106(b)(11)) An individual does not need to obtain a Pennsylvania carry license if they are licensed in another state, regardless of whether there is a reciprocity agreement between Pennsylvania and that state if the state provides a reciprocal privilege and the Attorney General has determined that the firearm laws of that state are similar to the firearms laws of Pennsylvania. (§ 6106(b)(15))

²⁵² *But see* 35 Pa.C.S. § 7301. In declaring a disaster emergency, the Governor may limit or suspend sales of alcoholic beverages, firearms, explosives and combustibles.

Pennsylvania currently has formal, written reciprocity agreements with 18 other states, and under other forms of reciprocity, Pennsylvania has an additional agreements with 10 other states. Effective February 1, 2013, Attorney General Kathleen Kane modified the reciprocity agreement between Florida and Pennsylvania. Under the previous agreement, Pennsylvania residents could obtain concealed carry permits from Florida and circumvent Pennsylvania's concealed carry rules through the so-called "Florida gun loophole." Under the new agreement, Pennsylvania residents wishing to hold a concealed carry permit must obtain it in Pennsylvania. These changes do not affect Florida residents or persons who hold dual residence in Florida and Pennsylvania.²⁵³

Straw Purchases

The General Assembly established a Straw Purchase Prevention Education Program. An educational and public outreach program within the Office of Attorney General to inform individuals of the illegal nature of purchasing a firearm for an individual prohibited from owning firearms. A grant program is established, with priority based on the highest incidence of firearm violence in Commonwealth counties. (§§ 6181 – 6187)

Local Ordinances

The Uniform Firearms Act prohibits local government from regulating gun ownership. Section 6120 specifically states, "[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of the Commonwealth." Nonetheless, certain limited county ordinances regulating firearms have been found to be constitutional. Under state law found at 18 Pa.C.S. § 913, it is illegal to carry a firearm into a court facility. Jefferson County enacted an ordinance that provided that the Sheriff subject every person entering the county courthouse to a point of entry search using metal detectors. The Commonwealth Court held that this search was not a violation of the right to bear arms under the Pennsylvania Constitution, but instead was a valid public safety ordinance necessary to implement the state law and to restrict the constitutional right as it is an "exercise of the police power for the good order of society and the protection of the citizens."²⁵⁴ Similarly, under the theory that a prohibition on firearms in a sensitive area, such as a government building, is permissible, the Commonwealth Court has held that a Department of Labor and Industry (L&I) Weapons Policy Statement appended to its Workplace Violence Manual prohibiting employees from carrying weapons on departmental premises does not violate the employees' constitutional right to bear arms.²⁵⁵

²⁵³ *Attorney General Kathleen G. Kane Implements Gun Safety Reform: Closes Gun Loophole with Florida.* Press Release, Office of the Attorney General, Commonwealth of Pennsylvania, March 12, 2013, www.attorneygeneral.gov/printPage.aspx?ID=6811. For the latest analysis of Pennsylvania's reciprocity requirements, see *Commonwealth v McKown*, 2013 Pa. Super. 282 (2013).

²⁵⁴ *Minich v. County of Jefferson*, 919 A.2d 356, 361 (Pa. Cmmw. Ct. 2007).

²⁵⁵ *Perry v. State Civil Service Commission (Department of Labor and Industry)*, 38 A.3d 942 (Pa. Cmmw. Ct. 2011).

Hunting and Fishing

Pennsylvania's fish and game laws provide for additional regulation of firearms. Waterway conservation officers and their deputies are authorized to carry firearms (30 Pa.C.S. § 901) and wildlife conservation officers are authorized to carry concealed weapons (34 Pa.C.S. § 901). The Pennsylvania Game Commission may regulate firearms and ammunition used in hunting (34 Pa.C.S. §§ 2102, 2126, 2322 and Chapter 25). Age restrictions are found in 34 Pa.C.S. § 2711.

Weapons Forfeitures

Persons convicted of sex offenses may be required to forfeit their firearms (18 Pa.C.S. § 3141). Persons who are the subject of a protection from abuse order (PFA) may be required to temporarily relinquish their firearms, and if a person is arrested for violating a PFA, the police may seize all firearms possessed by the individual. (23 Pa.C.S. Chapter 61). Additionally, firearms used to violate the state's drug laws may be seized and destroyed.

Recently, Arizona enacted a law prohibiting the destruction of weapons surrendered under community gun buyback events, calling for their sale instead.²⁵⁶

Approved by the Governor on May 1, 2013, California has passed new gun control legislation. New section 30015 of the California Penal Code appropriated \$24 million to help alleviate a 20,000 person backlog in the Armed & Prohibited Persons System (APPS). Under the jurisdiction of the Attorney General, the APPS cross-references five databases to find people who legally purchased handguns and registered assault weapons since 1996 with those prohibited from owning or possessing firearms. Once identified, the now-illegally possessed firearms are confiscated. The APPS dates from 2001.

Training

There is no specific statute authorizing training for gun owners; however, first time hunters are required to take a hunter's education course. Law enforcement officers and private security officers, must complete training before being authorized to carry firearms in the Commonwealth.

²⁵⁶ "Arizona Gov. Jan Brewer signs bill banning destruction of guns surrendered at buyback events," *The Washington Post*, April 29, 2013, http://articles.washingtonpost.com/2013-04-29/national/38905381_1_jan-brewer-weapons-buyback.

Table 5
PENNSYLVANIA FIREAMS TRAINING REQUIREMENTS

Statute	Purdon's Citation	Officer's Title	Requirement
Act of March 10, 1949 (P.L. 30, No.14), The Public School Code of 1949, § 778(b)	24 Pa. Stat. Ann. § 7-778(b)	School police officers	If authorized to carry firearms, must complete training before beginning job
Public School Code of 1949, § 2009-A(13)	24 Pa. Stat. Ann. § 20-2009-A(13)	Campus police	Council of trustees at State System of Higher Education may authorize to carry firearms but must receive training
Act of April 12, 1957 (P.L.61, No.34)	36 Pa. Stat. Ann. § 36-3504.1a	Delaware River Port Authority police	to receive training and meet annual firearms training qualifications
Act of October 10, 1974 (P.L.705, No.235), Lethal Weapons Training Act	22 Pa. Stat. Ann. § 41 et seq.	All privately employed agents who carry or use lethal weapons in their employment ²⁵⁷	To receive training and certification every five years
Act of December 7, 1982 (P.L. 784, No.225), Dog Law, § 901(b.2)	3 Pa. Stat. Ann. § 459.901(b.2)	Dog wardens	May not carry weapons unless certified as having received firearms training
Act of February 9, 1984 (P.L.3, No.2), Deputy Sheriff's Education and Training Act	71 Pa. Stat. Ann. § 2101 et seq.	Deputy sheriffs	Training mandated
Act of December 13, 2005 (P.L.432, No.79), Retired Law Enforcement Identification Act	53 Pa. Stat. Ann. § 753.1 et seq.	Retired law enforcement officers	Annual training and certification for those authorized to carry concealed under federal Law Enforcement Officers' Safety Act of 2004
22 Pa.C.S. § 3711		Humane society police	may not carry weapons unless certified as having received firearms training
34 Pa.C.S. §2704		First time hunters	First time hunters must take a hunter education course
53 Pa.C.S. § 2167		Municipal police officers ²⁵⁸	To receive training before being authorized to carry firearms
61 Pa.C.S. § 6306		Probation and parole officers	Training and certification required prior to being authorized to carry a firearm in performance of employment

Source: Information compiled by Joint State Government Commission.

²⁵⁷ "Privately employed agents" are any persons employed for the purpose of providing watch guard, protective patrol, detective or criminal investigative services either for another for a fee or for his employer. Includes a police officer of a municipal authority. Excludes local, State or Federal Government employees or railroad employees. Additionally, industrial police may not carry weapons when off-duty under the provisions of the act of May 25, 1937 (P.L. 799, No. 221).

²⁵⁸ Special fire police are specifically prohibited from carrying firearms. 35 Pa.C.S. § 7435.

Federal Firearms Regulation

Federal firearms laws and regulations are administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the Department of the Justice.²⁵⁹ Relevant gun laws administered by the ATF include the Gun Control Act of 1968 (18 U.S.C. Chapter 44), the National Firearms Act (26 U.S.C. Chapter 53), the Arms Export Control Act (22 U.S.C. Chapter 2778), and the Importation, Manufacture, Distribution and Storage of Explosive Materials (18 U.S.C. Chapter 40).

In enacting the Gun Control Act of 1968, Congress described the purpose of the act as follows:

The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.²⁶⁰

Under the act, persons must be licensed as an importer, manufacturer, or dealer (“dealers”) in order to engage in interstate or foreign commerce in firearms or ammunition. It limits armor-piercing ammunition manufacture to government purposes only. Dealers are prohibited from selling shotguns or rifles to anyone under age 18 and other firearms to anyone under age 21, to any individual who is not in the state of the licensee, or to any person ineligible under state law to possess a firearm or ammunition. Possession of a firearm in a school zone is declared illegal. Transportation of firearms is permitted for any lawful purpose if the firearm is unloaded and neither the firearm nor the ammunition is readily accessible from the passenger compartment of the transportation vehicle. Violent felons are prohibited from purchasing, owning, or possessing body armor exempt for work

²⁵⁹ “The ATF is the unique law enforcement agency in the United States Department of Justice that protects our communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products. We partner with communities, industries, law enforcement, and public safety agencies to safeguard the public we serve through information sharing, training, research, and use of technology.” “Mission Statement,” United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, accessed March 20, 2013, www.atf.gov/about/mission/.

²⁶⁰ “*Federal Firearms Regulations Reference Guide, 2005.*” U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Enforcement Programs and Services, Firearms Programs Division, ATF Publication 5300.4, Revised September 2005, www.atf.gov/publications/download/p/atf-p-5300-4.pdf.

purposes. Transfer of handguns cannot be made unless the gun has a secure gun storage or safety device.

The National Firearms Act created a registry of firearms not in the possession or under the control of the United States. Manufacturers, importers, and anyone making a firearm must identify each firearm with an individual serial number. Transfer and possession of machine guns outside of government authority is prohibited. Stolen or lost firearms are to be reported to the ATF immediately upon discovery. Arms importers are required to register with the ATF.²⁶¹

Under the Arms Export Control Act, the President may designate and control the import and export of defense articles and services on the U.S. Munitions Import List.²⁶²

The Brady Handgun Violence Prevention Act (Public Law 103-159) authorized the Attorney General established a National Instant Background Check System (NICS) to determine whether the transfer of a firearm is in violation of federal or state law. Within the FBI, a National Instant Criminal Background Check System was also established.²⁶³ States may choose to use the NICS system, or they may enact their own background check system. Approximately a dozen states including Pennsylvania, have become “point-of-contact” states, where the background check is initiated at the state level.

The NICS system has encountered a few problems. Federal background checks are conducted through the FBI’s NICS (National Instant Criminal Background Check System), which includes three federal databases. The Interstate Identification Index lists those persons whose criminal history records have been submitted to the FBI, which includes findings of not guilty by reason of insanity or incompetence to stand trial. The NICS Index includes persons who have been reported by a federal agency or a state, and include a Mental Defective File and a Denied Persons File. The Denied Persons file does not contain information about why a person listed was denied a firearms purchase. Under the 2007 NICS Improvement Amendments Act, financial incentives were added to encourage states to report mental health records. In January 2013 the PSP submitted over 600,000 mental health records to the NICS, a collection representing 15 years of accumulated records.²⁶⁴

The NICS allows for background checks on individuals who travel out-of-state to purchase guns. A Pennsylvania resident who, while attending a gun show in another state, purchases a gun from a federal firearms licensee would be subject to a background check through the NICS. The NICS database, however, is only as accurate as the information reported to it, and underreporting has been a serious issue. The 2007 Virginia Tech student who was prohibited from purchasing firearms under federal law because of mental health

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ 28 C.F.R. Part 25.

²⁶⁴ Theresa Katalinas, “PA Mental Health Records Included in Gun Check Database,” *Phoenixville (Pa.) Patch*, January 24, 2013. <http://phoenixville.patch.com/articles/pa-mental-health-records-included-in-gun-check-database-33024c23>.

issues but was able to purchase guns because Virginia did not submit all mental health record generated a greater outcry for submission of this data.

Some states have been reluctant to forward mental health records to the federal government for federal firearms background checks because of confidentiality concerns (in particular, the HIPAA privacy rule). In response to these concerns, the U.S. Department of Health and Human Services has issued an Advance Notice of Proposed Rulemaking seeking comments on ways to eliminate barriers from reporting mental health records. One method under consideration is to create an express permission in the HIPAA rules for reporting the relevant information to the NICS. The deadline for submission of commentary was June 7, 2013.²⁶⁵

The following table compares Pennsylvania’s disqualifications from firearms ownership in contrast to those under federal law.

Table 6
PENNSYLVANIA AND FEDERAL
FIREARMS DISQUALIFICATIONS

Pennsylvania		Federal Law
Crimes	Status	18 U.S.C. § 922(g)
Prohibited offensive weapons; weapons of mass destruction; facsimile weapons of mass destruction		Person convicted of a crime punishable by imprisonment exceeding one year
Corrupt organizations		Person dishonorably discharged from the Armed Forces
Possession of a weapon on school property		A person, who having been a citizen of the U.S., renounces his citizenship
Murder; voluntary manslaughter; involuntary manslaughter, if based on the reckless use of a firearm	Fugitive from justice (not including summary offenses)	Fugitive from justice
Aggravated assault; assault by prisoner; assault by life prisoner	Person convicted of an offense under Pa., Federal or other state drug law by punishable by imprisonment exceeding two years	Unlawful user of or who is addicted to a controlled substance
Stalking; kidnapping; unlawful restraint; luring a child into a motor vehicle or structure	Person convicted of DUI on three or more separate occasions in previous five years; applicable after 3 rd conviction	
Rape; involuntary deviate sexual intercourse; aggravated indecent assault	Person adjudicated incompetent	Person adjudicated as a mental defective or who has been admitted to a mental institution
Arson and related offenses; causing or risking a catastrophe	Person involuntarily committed for inpatient care and treatment under §§302, 303 and 304 of the MHPA	

²⁶⁵ Request for Comments, 78 Fed. Reg. 23872 (April 23, 2013).

Pennsylvania		Federal Law
Crimes	Status	18 U.S.C. § 922(g)
Burglary; criminal trespass (2 nd degree felony or higher); robbery; robbery of a motor vehicle; theft by unlawful taking or disposition (upon 2 nd felony offense); theft by extortion when accompanied by threats of violence; receiving stolen property (upon 2 nd felony offense)	Illegal aliens	Alien unlawfully in the US or admitted under a nonimmigrant visa
False reports to law enforcement authorities (if involved theft of a firearm under prohibiting of paramilitary training)	Subject of a PFA who was ordered to relinquish firearms during period of order	A person subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or partner's child
Impersonating a public servant (if impersonating a law enforcement officer)	Lifetime ban for persons adjudicated delinquent of following offenses if committed by an adult: murder, voluntary manslaughter, aggravated assault, assault by prisoner, assault by life prisoner, kidnapping, rape, involuntary deviate sexual intercourse, arson and related offenses, burglary, robbery, theft by extortion with threats of violence	
Intimidation of witnesses or victims; retaliation against witness, victim or party	Adjudicated delinquent; terminates 15 years after last delinquent adjudication or upon reach age 30, whichever is earlier	
Escape; weapons or implements for escape; riot	A person convicted of a misdemeanor crime of domestic violence	A person convicted of a misdemeanor crime of domestic violence
Prohibiting of paramilitary training		
Possession of firearm by minor; corruption of minors		
Sale or lease of weapons and explosives		
Equivalent offenses under prior PA law, federal or other state law		

Source: Information compiled by Joint State Government Commission.

Recommendations Relating to Pennsylvania Firearms Laws

Recommendation #10: Pennsylvania's Uniform Firearms Act contained in Chapter 61 of Title 18 is difficult to read and contains overlapping and confusing provisions. It should be repealed and re-written in a clear, concise manner that allows a layperson to more easily find and understand current law.

The re-codification of the Uniform Firearms Act set forth in the chapter entitled, *Legislation Regarding Firearms and Other Dangerous Articles*,²⁶⁶ is intended to simply re-write the act for clarification. No other substantive changes are intended except where clearly and specifically commented upon in the draft legislation. For example, there are at

²⁶⁶ *Infra*, p. 165.

least ten different places where the term “firearm” is defined within Chapter 61. Sometimes firearm means a handgun, sometimes it means a long-gun, sometimes it means any weapon capable of firing a projectile, and in yet other places it has another meaning. Without changing the applicability of the statute, where “firearm” means “handgun,” the term “handgun” is used. Similarly, when all firearms are included in a provision, the term “firearms” is used, and so on.

Universal Background Checks

Recommendation #11: Pennsylvania already requires background checks for all transfers of handguns except those between family members and requires background checks for the retail transfer of long-guns. The background checks required under Pennsylvania law prior to the purchase of a firearm suffice and need not be expanded further.

Numerous proposals arising in the aftermath of the Sandy Hook shootings contained a call for universal background checks. Sometimes this suggestion was made in conjunction with “closing the gun show loophole.” The first step in determining the advisability of such a recommendation is to ascertain exactly what is meant by these terms. Generally, these discussions revolve around the private sale of firearms. Federal law does not regulate the sale of firearms between private individuals, and states’ laws differ. The so-called “gun show loophole” gained its name because a gun show is a convenient place for a prospective private seller to encounter a large pool of potential purchasers, and at many gun shows, a thriving private marketplace develops in the parking lot. This misnomer causes confusion, because there is no special exception granted for gun shows – private sales, wherever they take place, are not subject to background checks in most states. This situation could just as easily be called “the living room loophole.” A recent survey of state laws revealed that 32 states have no laws requiring background checks on the private sale of firearms. Conversely, ten states²⁶⁷ have procedures that result in background checks occurring at some point in the process of a private gun sale. An additional six states have a partial universal background check, in that private sales of handguns only are subject to background checks.²⁶⁸ Nevada and Oregon allow for voluntary background checks on private gun sales.²⁶⁹

In terms of raw numbers, in 2010, the CDC reported that 31,672 individuals died due to injury from firearms. Of those, 19,392 were suicides, 606 were accidental discharges, and 11,078 were homicides.²⁷⁰ According to statistics reported by the PSP,

²⁶⁷ California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, New Jersey, New York, and Rhode Island.

²⁶⁸ Iowa, Michigan, Maryland, Nebraska, Pennsylvania, and North Carolina.

²⁶⁹ “Private Sales Policy Summary,” Law Center to Prevent Gun Violence, June 28, 2013, <http://smartgunlaws.org/private-sales-policy-summary/>.

²⁷⁰ U.S. Department of Health and Human Services. Centers for Disease Control and Prevention, Office of Surveillance, Epidemiology and Laboratory Services, National Center for Health Statistics, Division of Vital Statistics, *National Vital Statistics Reports*, Vol. 61, No. 4. (May 8, 2013). “Deaths, Final Data for 2010,” Table 10.

during the five year period 2008-2012, an average of 73.6 percent of homicides in Pennsylvania were committed using some type of firearm. When analyzed by type of gun used, 58.18 percent of all homicides in Pennsylvania were committed with a handgun, with rifles and shotguns accounting for 3.6 percent. An additional 11 percent were attributed to “undesigned” firearms.²⁷¹ National statistics compiled by the FBI indicate that 67.8 percent of homicides nationwide were committed using some type of firearm. When analyzed by type of gun used, 49.1 percent of homicides nationwide were committed with a handgun, with rifles and shotguns accounting for 5.4 percent. An additional 13.3 percent were attributed to “other guns/type not stated.”²⁷² These statistics can clearly support the claim that handguns are the firearms most commonly used and that further regulation of long-guns is unnecessary in light of the relatively few number of homicides committed using long-guns.

On July 17, 2013, the Pennsylvania House Judiciary Committee held a public hearing on the Pennsylvania procedure for firearm background checks. Of particular interest to the Advisory Committee is the question of the utility of Pennsylvania’s PICS system. The National Shooting Sports Foundation and the Pennsylvania Association of Firearms Retailers both testified that they found the PICS system to be redundant of the NICS program. In contrast, the PSP testified that the NICS does not capture all the prohibited persons that PICS does. The PSP submitted several examples of how the two systems differ.

- Federal standards exclude many criminal history records because of insufficient fingerprint sample quality. Pennsylvania maintains these records despite these concerns, and thus the PICS system is more likely to identify a prohibited person accurately.
- PICS conducts background checks on persons holding weapons for safekeeping for persons who are disqualified because of domestic violence issues.
- PICS also conducts background checks prior to returning firearms seized or recovered as evidence.²⁷³

Additional concerns regarding the addition of private sales of long-guns to the background check requirements relate to the anticipated increased volume of checks this would generate. Some claim that there are no records to determine the number of private long-gun sales that occur. There is the potential for the PICS system to be overwhelmed by private, long-gun sales. According to several witnesses, there was a surge in firearm purchases at the end of 2012 that resulted in lengthy (30-40 minute delays) in processing PICS background checks, and the addition of private sales of long-guns are feared to result in similar, if not longer, delays. The PSP testified that it has increased the number of phone

²⁷¹ See Table 4, *infra.* at p. 16.

²⁷² *Supra* note 7.

²⁷³ Testimony presented by Lieutenant Colonel Scott R. Snyder, Deputy Commissioner of Staff, Pennsylvania State Police, before the Pennsylvania General Assembly, House Committee on Judiciary on July 17, 2013.

lines dedicated to the PICS system from 72 to 96. (It is also working on a project to go online in the fall of 2013 that will allow internet access for background checks and electronic reporting of mental health records.) A separate project is in the works regarding arrest notifications. These initiatives are fully-funded by federal grants.

Location Bans

Recommendation #12: Weapons at local government meetings should not be banned, because it would impinge on an individual's constitutional right to bear arms without producing any measureable safety benefit.

Following the fatal shooting at the Ross Township, Monroe County municipal meeting, there was renewed interest in banning firearms in government buildings and meetings. A restriction could be accomplished in one of two ways. A statewide ban, similar to that applying to court facilities, could be added to the Crimes Code. Alternatively, the Uniform Firearms Act could be specifically amended to allow local municipalities to determine if they wish to ban firearms from their public buildings or meetings. However, neither of these possibilities would have averted the tragedy at Ross Township, as the shooter began firing through the windows of the building before entering it.²⁷⁴

Other states have taken different positions on location bans:

- Nineteen states prohibit firearms on university and college campuses.
- Twenty states prohibit firearms in bars.
- Eleven states prohibit firearms in places of worship.
- Fourteen states prohibit firearms in state parks.
- California prohibits the possession of a firearm or deadly weapon within any state or local public building, or at any meeting required to be open to the public.
- Colorado and Nevada allow location bans in any public building where permanent security/metal detectors are used.
- Florida prohibits any person to openly carry a handgun or carry a concealed weapon or firearm into a number of places, including any meeting of the governing body of a county, public school district, municipality, or special district.

²⁷⁴ Peter Hall, "Police swarm shooting scene at Ross Township municipal building, news conference at 11:30," *The Morning Call*, August 6, 2013, http://articles.mcall.com/2013-08-06/news/mc-monroe-ross-township-municipal-building-shootin-20130805_1_township-official-hamilton-township-state-police.

- Georgia prohibits carrying firearms in public buildings.
- Kentucky and Missouri prohibit firearms at any meeting of the governing body of a county, municipality, or special district or at any meeting of the General Assembly or a committee of the General Assembly. A person, holding a concealed deadly weapon license, is not precluded from carrying a concealed deadly weapon at a meeting of the body of which he or she is a member.
- Louisiana prohibits firearms in a meeting place of the governing authority of a political subdivision.
- Missouri allows any unit of government to prohibit the carrying of concealed weapons in that portion of a building owned, leased, or controlled by that unit of government. Signs regarding the prohibition must be posted.
- Nebraska prohibits firearms at a meeting of the governing body of a county, public school district, municipality, or other political subdivision.
- Oregon prohibits possession of a loaded or unloaded firearm while in or on the premises of a public building. Recently, the Oregon Supreme Court upheld a Portland ban on carrying loaded guns in public places as not a violation of the Second Amendment.²⁷⁵
- South Carolina prohibits firearms in the office of or the business meeting of the governing body of a county, public school district, municipality, or special purpose district.
- Wyoming prohibits firearms at any meeting of a governmental entity.

Disqualification from Gun Ownership

Recommendation #13: Inchoate crimes (criminal attempt, solicitation and conspiracy) are added to the list of crimes that disqualify a person from gun ownership, as new § 6211(b)(39).

This recommendation is a response to a recent Pennsylvania Supreme Court case that held that the plain language of the statute does not encompass attempts to commit disqualifying crimes as grounds for disqualification from firearms ownership.²⁷⁶

²⁷⁵ “Ban on carrying loaded guns absent a concealed-carry permit is upheld by Oregon supremes,” *ABA Journal*, August 16, 2013,
http://www.abajournal.com/news/article/ban_on_carrying_loaded_guns_absent_a_concealed.

²⁷⁶ *Com. v. Clegg*, 27 A.3d 1266 (Pa. 2011).

Recommendation #14: The term “adjudicated incompetent” should be replaced with a reference to “adjudicated incapacitated under to 20 Pa.C.S., Chapter 55,” as new §§ 6211(c)(4), 6226 and 6235(5).

In several places in the Uniform Firearms Act, the language refers to persons who are adjudicated “incompetent.” Pennsylvania no longer declares an individual “incompetent” or “mentally defective,” although the term “incompetent” remains scattered throughout various provisions of the law. Instead, there are specific procedures to be followed in the situation where a person is adjudicated as “incapacitated.” An “incapacitated individual” means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.²⁷⁷ Pennsylvania does not provide a specific prohibition for persons found not guilty by reason of insanity or incompetence to proceed at trial as some other states do, although such persons brought into this disqualification under section 406 of the Mental Health Procedures Act, which provides for involuntary treatment of such persons under section 304 of the MHPA.

Recommendation #15: Add adjudication as a juvenile delinquent for possession with intent to deliver a narcotic to the list of disqualifying crimes. This disqualification should apply for 15 years or until the individual turns 30 years old. See new § 6211(c)(8)(iii).

Recommendation #16: Reduce from 60 days to 72 hours the time for persons disqualified from gun ownership to dispose of their firearms. (New § 6213(a)).

The Advisory Committee noted that 60 days is too long a time to allow a disqualified person to retain possession of their firearms while making arrangements for their disposal, and therefore agreed that 72 hours was more than sufficient.

Recommendation #17: Add provisions to clarify that when a person is disqualified from gun ownership, all weapons in the household should be removed. (New § 6213(b)).

The Advisory Committee was particularly concerned about situations in which suicidal persons are involuntarily committed and required to relinquish any firearms in their possession but other members of their household may still possess firearms and thereby negate the protective effect of the disqualification.

Recommendation #18: Similar to those used for enforcement of protection from abuse disqualifications, add provisions to allow sheriffs to enforce other disqualifications with or without warrant. (New § 6214).

²⁷⁷ 20 Pa.C.S. § 5501 (relating to meaning of incapacitated individual).

Under current law, there is no enforcement mechanism requiring a person disqualified from gun ownership because of criminal convictions or because of status/conduct to surrender his firearms. The Advisory Committee agreed that local law enforcement and sheriffs should have the ability to enforce these relinquishments in a manner similar to that used for persons subject to protection from abuse orders.

Restoration of Firearms Rights

Recommendation #19: The General Assembly should consider whether all involuntary commitments under Section 302 of the Mental Health Procedures Act should result in firearms disqualifications. To the extent they do result in disqualification, there should be a simplified path to restoration of firearms rights in certain circumstances. (New § 6216(c)).

Involuntary commitments under section 302 of the MHPA are an involuntary emergency examination and treatment that lasts no longer than 120 hours. If an individual is discharged at the end of the 120 hours, there will not have been any due process proceeding or formal adjudication, yet the person will be disqualified from gun ownership. Standards vary from county to county on what behavior constitutes a “danger to self or others” and this net is cast very widely. A number of the Advisory Committee members felt that unless the person subject to the 302 commitment has made overt threats to use firearms, the examination should not constitute grounds for firearms disqualification. A number of other members felt that the disqualification should be enforced, but that a remedy could be created after the fact that would restore firearms rights under certain circumstances. One possible scenario would allow for automatic restoration of firearms rights after a specific period of time lapses with no further involuntary commitments or after the last involuntary commitment (e.g., one to five years).

Under current law, a person involuntarily committed under section 302 may challenge the disqualification by petition to the local court of common pleas to review the commitment. This can be expensive and time-consuming. A limited restoration remedy is also available if a person is discharged within two hours of the emergency examination and a physician certifies that the person was not suffering from a severe mental disability (recodified as new § 6226(f)). This, however, requires the individual being subject to the examination to be aware of this option and the wherewithal to pursue it.

Illegal Handguns

Recommendation #20: Add a new provision to the Uniform Firearms Act to require prompt reporting of lost or stolen firearms. (New § 6242)

According to the law enforcement members of the Advisory Committee, the biggest gun control issue facing Pennsylvania is the proliferation of illegal handguns in our cities, large and small. Combating illegal markets is a major issue. According to a 2000 report

by the ATF, firearms trafficking can occur through a variety of channels, including corrupt federal firearms licensees, straw purchases, theft and unlicensed dealing. During a two-year study period of 1,530 firearms trafficking investigations, nearly half of all investigations involved straw purchases, with firearms theft involved in over 25 percent of the investigations and unlicensed sellers another 20 percent. Of the 84,128 firearms illegally diverted in these investigations, approximately 26,000 firearms were diverted at gun shows.²⁷⁸ Pennsylvania's Uniform Firearms Act indirectly addresses straw purchases through the following requirements:

- 18 Pa.C.S. § 6111(b)(2) requires the buyer of a handgun to attest that he/she is the actual buyer of the gun on the application to purchase.
- 18 Pa.C.S. § 6113(a)(4) prohibits a dealer from selling a firearm to an individual until the person provides proof of identity or the person's identity is known to the dealer.
- 18 Pa.C.S. § 6115 prohibits loans secured by, or lending or giving firearms (handguns). Exceptions are made for persons who:
 - are licensed to carry;
 - exempt from licensing;
 - participating in a hunter safety program, firearm training program or competition;
 - a youth under the supervision, guidance and instruction of an adult;
 - a person hunting or trapping in compliance with the Game Law; or
 - a gift by bequest, or giving or loaning a firearm to another in one's dwelling or place of business if the firearm is retained within the dwelling or place of business.
- 18 Pa.C.S. § 6116 penalizes individual who provide false identification.

Additionally, in 2008 Pennsylvania enacted a Straw Purchase Prevention Education Program.²⁷⁹ The program is based in the Attorney General's office and provides resources and direct grant money to the "Don't Lie for the Other Guy Program," and similar programs that offer straw purchase prevention education and public service outreach. The program is intended to inform individuals of the illegal nature of purchasing a firearm for an individual prohibited from owning firearms. Grants are awarded based on the highest incidence of firearm violence in a county.

The Don't Lie for the Other Guy Program is the product of a collaboration between firearms industry (the National Shooting Sports Foundation (NSSF) -- the industry's trade association) and the ATF and the Office of Justice Programs (OJP) within the U.S. Department of Justice to assist law enforcement in educating firearms retailers to be better

²⁷⁸ "Following the Gun: Enforcing Federal Laws Against Firearms Traffickers," United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, June 2000.

²⁷⁹ 18 Pa.C.S. §§ 6181-6187.

able to identify and deter illegal straw purchases and to raise public awareness that straw purchasing is a serious crime.

Pennsylvania's straw purchase prevention education program is unique among the states, and there is some research to support its role in reducing straw purchases. In 2008, the RAND Corporation conducted a study funded by a National Institute of Justice grant.²⁸⁰ One of the strategies employed was to target new gun buyers with a public safety message intended to improve gun-law awareness. Gun sales in a neighborhood in Los Angeles were studied, and buyers who initiated a gun transaction on odd-numbered days received a follow-up letter advising them that law enforcement had a record of the gun purchase and that the buyer should properly record future transfers of the gun. A subsequent review revealed that the letters had no effect on the LEGAL transfer rate of guns or on the short-term rate at which guns subsequently turned up in a crime. However, the rate at which guns were reported "stolen" was more than double the rate for those who did not receive the letter.²⁸¹

While the straw purchase program will not eliminate all straw purchases, the reminder of the illegality of participating in one at the time of the firearms purchase may deter some individuals from participating.

Fourteen states have provided some form of legislative attempt to prohibit straw purchases. California, Colorado, Delaware, Illinois, Maryland, and Nebraska have specific prohibitions against engaging in a firearms transaction on behalf of a person who is not legally qualified to own a weapon. Several states take a more generalized approach and make it illegal to entice a seller to transfer firearms under circumstances that the person knows would violate state or federal law: Alabama, Mississippi, North Carolina, Ohio, and Utah. In some states, it is also a specific crime to provide false or misleading information with intent to deceive the seller about the legality of the transfer: Alabama, New Jersey, North Carolina, Oregon, and Utah. A few others deal specifically with knowing transfers to minors, including New Jersey and Ohio. The responsible party who is subject to criminal punishment varies, as do the penalties. The following table compares states straw purchase laws.

²⁸⁰ Greg Ridgeway, Glenn L. Pierce, Anthony Braga, George Tita, Garen Wintermute, and Wendell Roberts, "Strategies for Disrupting Illegal Firearm Markets: A Case Study of Los Angeles," Santa Monica, Calif: RAND Corporation, 2008, www.nij.gov/nij/topics/crim/gun-violence/trafficking/illegal-markets.htm.

²⁸¹ Greg Ridgeway, Anthony A. Braga, George Tita, and Glenn L. Pierce, "Intervening in gun markets: an experiment to assess the impact of targeted gun-law messaging," *Journal of Experimental Criminology*, Vol. 7 (2011): 103-109.

Table 7
STATE STRAW PURCHASE LAWS

State	Maximum term of imprisonment	Maximum fine	Party punished
Alabama	2 to 20 years	\$5,000	Purchaser
California	One year in county jail	\$1,000	Seller
Colorado	2 to 6 years	\$2,000 to \$500,000	Purchaser
Delaware	First offense: 3 years Subsequent offenses: 15 years		Purchaser
Illinois	One firearm: 3 to 7 years in state penitentiary 2 to 5 firearms within one yr.: 4 to 15 years in state penitentiary 6 or more firearms within two yrs.: 9 to 40 years in state penitentiary Providing false and misleading information	\$25,000 \$25,000 \$25,000 \$250,000 for each violation	Purchaser Purchaser Purchaser
Maryland	Dealer's license revoked 10 years	\$25,000	Seller
Mississippi	3 years	\$5,000	Purchaser
Nebraska	5 years	\$10,000	Purchaser and dealer
New Jersey	3 to 5 years	\$15,000	Seller and purchaser
North Carolina	1 to 3 years		Purchaser
Ohio	6 to 18 months	\$5,000	Seller
Oregon	One year	\$6,250	Seller and purchaser
Utah	Zero to 5 years	\$5,000	Seller and purchaser

Source: Information compiled by Joint State Government Commission.

Wisconsin takes a different approach and holds a purchaser who knowingly furnishes a firearm to an ineligible person who then commits a crime to be a principal in the commission of the crime. This crime carries a maximum period of imprisonment of 10 years and a maximum fine of \$25,000.

Another issue related to straw purchasing is the practice of participating in a straw purchase and then later claiming the weapon was stolen when it turns up in a crime. Statistics are not readily available to determine how many guns used in crimes were reported stolen, and how many of them were actually stolen versus how many were obtained through a straw purchase. There is sufficient belief that this is an issue so that a number of states have adopted mandatory reporting laws for lost or stolen weapons.

As part of President Obama's plan to reduce gun violence,²⁸² the U.S. Department of Justice was directed to prepare an annual report analyzing information on lost and stolen guns. The report, issued June 2013, provides information that may be of use in Pennsylvania.²⁸³ The report discusses the difficulty in quantifying the number of lost and stolen guns from private individuals. Reporting to law enforcement is voluntary in some states, and law enforcement reporting to the FBI's National Crime Information Center is also voluntary, resulting in a number of undocumented and undetectable weapons entering illegal markets. Based on data that were gathered, Texas, Georgia, Florida, California, and North Carolina had the largest number of firearms reported lost or stolen in 2012. Pennsylvania came in 8th, after Washington, D.C. and Ohio.

Of greater significance to Pennsylvanians is the number of lost and stolen firearms reported by federal firearms licensees (FFLs). Under federal law, FFLs are required to report the theft or loss of any firearm to the ATF within 48 hours. For the year 2012, Pennsylvania led the country in number of firearms reported lost or stolen by FFLs, at 1502, 9 percent of the total losses reported that year. The next four states were Texas (1,263), Maryland (984), New York (775) and Georgia (738). The majority of those weapons (1,311) were reported lost by FFLs. The report also found that pistols were the most common weapon reported stolen, while rifles were most often reported lost. The disparity between the number of weapons lost or stolen from FFLs versus private owners could lead to the conclusion that private losses and/or thefts are not being fully reported to law enforcement.

The Advisory Committee agreed that lost or stolen firearms should be reported promptly to law enforcement. Pennsylvania House Bill 1515 was introduced by Representative Dean and referred to the House Judiciary Committee earlier this year. New section 6242 of the proposed Pennsylvania Firearms Act is based substantially on that bill. Subsection (d) was added to the bill language to specify when a recovered firearm is to be returned to the lawful owner. The penalties increase with the number of violations. Although it may appear that requiring lawful gun owners to report losses and thefts to law enforcement places the onus on law-abiding citizens for the acts of criminals, reporting these thefts and losses allows police to more accurately trace how these weapons come to be in illegal hands and hopefully prosecute those who participate in illegal markets, as well as allowing the missing weapon to be returned to its rightful owner when recovered.

²⁸² For a summary of this plan, *see* pages 23-24 of this report.

²⁸³ "2012 Summary: Firearms Reported Lost and Stolen," U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of the Director- Strategic Management, June 17, 2013,

The table below shows how other states address this issue:

Table 8
STATE STATUTES ON REPORTING
LOST OR STOLEN WEAPONS

State	Time Frame for Reporting	Maximum Imprisonment	Maximum Fine	Other Liability
Connecticut Conn. Gen. Stat. § 53-202(g)	72 hours	1 st offense: 0 Subsequent offense: 1 to 5 years	\$90 \$5,000	First offense does not affect firearms rights
Delaware Del. Code tit. 11, § 1461 (as amended 5/14/2013)	48 hours	1 st offense: 0 Subsequent offense: up to two years	\$100 to \$500	
Massachusetts Mass. Gen. Laws, ch. 140, § 129C	Forthwith		1 st offense: \$200 to \$1,000 2 nd offense: \$1,000 to \$5,000	Loss of license to own firearm
Michigan Mich. Comp. Laws § 28.430	5 days		\$500	
New Jersey N.J. Stat. §§ 2C:58-19; 2C:58-12(g)	36 hours		1 st offense: \$500 Subsequent offenses \$1,000	If an assault firearm is used in the commission of a crime, the registrant of that assault firearm shall be civilly liable for any damages resulting from that crime. Doesn't apply if theft reported within 24 hrs.
New York Penal Law § 400.10	24 hours	One year	\$1,000	
Ohio Rev. Code § 2923.20	Forthwith	30 days	\$250	
Rhode Island R.I. Gen. Laws § 11-47-48.1	24 hours		\$50 to \$100	

Source: Information compiled by Joint State Government Commission.

In Pennsylvania, a number of municipalities have passed local ordinances requiring reporting of lost or stolen weapons. These include the following:

Abington Township, Aliquippa, Allentown, Ambler, Baldwin, Braddock, Brentwood, Bridgeport, Castle Shannon, Catasauqua, Charleroi, Cheltenham, Chester, Clairton, Conshohocken, Duquesne, Easton, Erie, Glassport, Harrisburg, Hatfield Township, Heidelberg, Homestead, Jenkintown, Lancaster, Liberty, Lincoln, Munhall, Norristown, Oxford,

Philadelphia, Pittsburgh, Plymouth Township, Pottsville, Radnor Township, Reading, Sharon Hill, Swarthmore, Upper Merion Township, West Chester, West Conshohocken, West Homestead, West Mifflin, Whitaker, Whitmarsh Township, Wilkinsburg, Wilson and York.²⁸⁴

Firearms Safety

Recommendation # 21: Add a provision to the Uniform Firearms Act to require individuals to take reasonable safety precautions when firearms are in a home where children reside. (New § 6243(a) and (b))

Recommendation #22: Include a check-off box on applications to purchase handguns for the buyer to acknowledge receipt of a firearms safety brochure. (New § 6222(c)(5))

The Advisory Committee determined that gun owners should bear the responsibility for the safe storage of their firearms, especially when there are children present in the home. Accordingly, new section 6243(a) and (b) requires individuals residing in a home with a child under the age of 13 to take reasonable efforts to safely store their firearms.²⁸⁵ What is an appropriate measure to safely secure firearms is determined by consideration of what a reasonable person would do under similar circumstances. Appropriate measures may include the use of locking devices and firearms safes.

The American Academy of Pediatrics recommends that pediatricians counsel parents on firearm ownership and safe storage practices to mitigate the risk of injury to children. Many pediatricians and family practitioners may be asking about gun ownership as part of their overall injury prevention guidance for parents. However, concerns have been raised by members of the Advisory Committee on the increasing practice of all physicians to question whether there are guns in their patients' homes. Some individuals have expressed concern that this violates both their privacy rights and their Second Amendment rights.

When President Obama released his recommended executive orders and actions in response to the shooting at Sandy Hook Elementary School, proposed Order #16 was to clarify that the PPACA does not prohibit doctors asking their patients about guns in their homes. This may have caused some confusion. This statement is NOT a directive to physicians to ask about gun ownership – it merely states that nothing in the PPACA prohibits it. Further, there is nothing in the Medicare/Medicaid laws that direct physicians to do so.

Florida enacted a statute in 2011 that prohibited physicians from routinely asking patients if they own guns unless it was relevant to the patient's medical care or safety. This

²⁸⁴ CeaseFirePA, accessed May 20, 2013, <http://www.ceasefirepa.org/issues/lostorstolen>.

²⁸⁵ The Advisory Committee discussed expanding this requirement to include any place where a child is present. However, such a provision may be unenforceable.

statute, however, was declared unconstitutional within two months of its enactment. This reversal may also have caused confusion. While the defunct Florida statute would have PROHIBITED the questioning, its failure on constitutional grounds did not mandate questioning.

Earlier this year, Montana enacted a law addressing questions about gun ownership by physicians in an alternate way. Montana's new law would prohibit a medical provider from refusing to provide health care to a person who declines to answer questions about gun ownership or from inquiring about gun ownership as a condition for the provision of health care.

Miscellaneous Amendments

The Advisory Committee recommends the following changes to the Uniform Firearms Act as follows:

Recommendation #23: Define "physician" to ensure that the same level of qualifications of persons authorizing involuntary commitments are required for those who can attest to the individual's relief for firearms disqualification. (New § 6226(g))

Recommendation #24: The form in new § 6232(c) should be modified to account for the fact that there may be individuals who were previously disqualified from possessing or acquiring a firearm but who may do so now, but they would not be able to truthfully complete an application under § 6109(c), which only addresses individuals who have *never* been so disqualified. In other words, the application does not adequately address all potential circumstances, such as where an applicant's conviction was overturned, or the applicant was pardoned for the crime, or the applicant's mental health issues have been resolved and the disability to possess or acquire a firearm has been removed.

Recommendation #25: The time frame for notifications of disqualifications to law enforcement authorities should be statutorily shortened from 7 days to 5 days for internal consistency. (New §§ 6214(c), 6226(c) and 6232(g))

SCHOOL SAFETY

Numerous issues complicate the determination of how to ensure the safety of our schools and students. Pennsylvania's approximately 500 school districts cover a wide variety of environments. Within those school districts there can be anywhere from a few to dozens of buildings, none of which adhere to a single architectural plan. Some public schools are located in busy urban areas while others sit in the middle of farm fields. There are also private schools, parochial schools, charter schools, religious schools, community colleges, four-year private universities and the member colleges and universities of the Pennsylvania State System of Higher Education. Their students range from the extremely wealthy to the very poor, from young children to young adults. Each setting presents its own challenges to ensure safety. What works in a rural elementary school may not be effective in a community college located downtown in a small city.

Safety Audits

Recommendation #26: All school entities enrolling children from pre-kindergarten to 12th grade in Pennsylvania should undergo a safety audit. Additionally, safety audits should recur on an annual basis.

The PSP Police Risk and Vulnerability Assessment Team (RVAT) was created in 2003 to assess critical infrastructure and key assets throughout the state to identify and reduce vulnerabilities to terrorist attacks. Upon request, the RVAT will conduct assessments for public and private entities. Among the types of facilities that may be assessed are schools. The focus is on facility security, emergency plans, access control, and physical infrastructure.²⁸⁶ As of April 2013, the RVAT had assessed 250 schools and 20 colleges.²⁸⁷ Following the shooting at Virginia Tech in 2007, the RVAT assessed Pennsylvania's college campuses and issued recommendations, including the following: standardization of campus police and security forces, development of all-hazards plans on each campus, securing all buildings with keyless locking devices, development of a multi-layered communication system for emergency communications, equipping all classrooms and common areas with locking devices to allow persons to shelter-in-place and provision of information and guidance on security procedures for all students, employees and family members at orientation.²⁸⁸

²⁸⁶ The RVAT can be contacted at: 717-346-4085, 717-346-2634 or ra-pspoffdomesticsecurity@state.pa.us.

²⁸⁷ Testimony submitted by Colonel Frank Noonan, Commissioner, Pennsylvania State Police at Pennsylvania House Select Committee on School Safety, Public Hearing on School Safety and Security, April 18, 2013, Harrisburg, PA.

²⁸⁸ Domestic Security Office, Pennsylvania State Police, *Pennsylvania College Campus Security Assessment Report*, August 2007.

These assessments are free, but it is the understanding of the Advisory Committee that they are currently limited to one school building per school district. Given that there are 3,318 separate school buildings under the jurisdiction of the Pennsylvania Department of Education alone, this limitation is not surprising. The Advisory Committee recommends that following the initial audit, a general meeting of personnel from all schools in the school district could be arranged and instruction and guidance offered for assessments of all buildings. Additionally, while the PSP is responsible for the RVAT teams, municipal police and the chiefs of police could be instrumental in assisting with safety assessments of the remaining schools in the school district.

The Auditor General's office, under The Fiscal Code,²⁸⁹ conducts school performance audits approximately every three years. Physical elements such as locked doors and controlled points of ingress and egress, as well as the school district's emergency plan, emergency responder involvement, bullying policies, visitation policies, and appropriate internet filters are evaluated. Through January 2013 the Auditor General had conducted 570 initial safe school reviews, including basic on-site security reviews of more than a 1,000 school buildings in Pennsylvania.²⁹⁰

The U.S. Department of Education supports the Readiness and Emergency Management for Schools (REMS) Technical Assistance Center. A discretionary grant program known as the REMS grants provided local education agencies with funding to "create, strengthen, and improve emergency management plans at the district and school-building levels, including training school personnel on emergency management procedures; communicating with parents about emergency plans and procedures; and coordinating with local law enforcement, public safety or emergency management, public health, and mental health agencies and local government." Types of projects included:

reviewing and revising emergency management plans, training school staff, conducting building and facilities audits, communicating emergency response policies to parents and guardians, implementing the National Incident Management System (NIMS), developing an infectious disease plan, developing or revising food defense plans, purchasing school safety equipment (to a limited extent), conducting drills and tabletop simulation exercises; and preparing and distributing copies of emergency management plans.

These grants have not been funded since 2010, although the Technical Assistance Center is still available as a resource to schools.²⁹¹ Also available is the U.S. Department

²⁸⁹ Act of April 9, 1929 (P.L.176, No.343), § 403; 72 Pa.Stat. Ann. § 403.

²⁹⁰ Testimony Submitted by Auditor General Eugene DePasquale to Senate Veterans Affairs and Emergency Preparedness and Education Committees regarding School Safety and Emergency Planning, March 13, 2013. *Available at:*

<http://www.auditorgen.state.pa.us/Department/Press/DePasqualeTalksSchoolSafetyatSenateHearing.html>.

²⁹¹ U.S. Department of Education, Readiness and Emergency Management for Schools. *Available at:* <http://www2.ed.gov/programs/dvpemergencyresponse/index.html> . (Website visited November 20, 2013).

of Education “Guide to School Vulnerability Assessments” which provides guidance as to the key elements to be considered when selecting an assessment tool.²⁹²

Recommendation #27: School annual safety plans should be complete and updated regularly. All schools of any type in the Commonwealth should provide blueprints of every school building to local law enforcement. School safety audits should be a required element of each school’s annual safety plan. School safety mandates should be fully funded and should provide for accountability. Failure to comply with school safety mandates should have adverse financial repercussions for the school district or other sponsoring entity.

Recommendation #28: School safety plans should address multi-layered communications, both within the school and with law enforcement and emergency responders, such as computer/phone “hotlines,” silent alarms and panic buttons, plans for alternative responses based on the nature of the threat encountered (e.g., lockdowns versus shelter-in-place, etc.) and should also include detailed recommendations from the school safety audit.

Under the Emergency Management Services Code

every school district and custodial child care facility, in cooperation with the local Emergency Management Agency and the Pennsylvania Emergency Management Agency, shall develop and implement a comprehensive disaster response and emergency preparedness plan consistent with the guidelines developed by the Pennsylvania Emergency Management Agency and other pertinent State requirements. The plan shall be reviewed annually and modified as necessary. A copy of the plan shall be provided to the county emergency management agency.²⁹³

Consistent with this directive, the Department of Education has promulgated regulations specifying the content of these plans under 22 Pa. Code § 10.24:

Section 10.24. Emergency and nonemergency response and preparedness.

(a) Each school district, in cooperation with the local emergency management agency and the Pennsylvania Emergency Management Agency, shall develop and implement a comprehensive disaster response and emergency preparedness plan as required under 35 Pa.C.S. §7701(g) (relating to duties concerning disaster prevention). The plan shall be reviewed annually and modified as necessary.

(b) A school district’s comprehensive disaster response and emergency preparedness plan shall be consistent with the guidelines developed by the

²⁹² Office of Safe and Drug-Free Schools, U.S. Department of Education, *A Guide to School Vulnerability Assessments: Key Principles for Safe Schools* (2008), http://rems.ed.gov/docs/VA_Report_2008.pdf.

²⁹³ 35 Pa.C.S. § 7701(g).

Pennsylvania Emergency Management Agency and other applicable State requirements as required under 35 Pa.C.S. §7701(g).

(c) In developing a comprehensive disaster response and emergency preparedness plan, a school district shall consider the framework presented in the National Incident Management System.

(d) A school district shall provide the emergency management agency of every county of which the school district is a part a copy of the district's comprehensive disaster response and emergency preparedness plan as required under 35 Pa.C.S. §7701(g).

(e) A school district shall provide to each local police department and each local fire department having jurisdiction over geographic territory of which the school district is a part a copy of the district's comprehensive disaster and response emergency preparedness plan.

(f) In an emergency, a school district shall follow the procedures in its comprehensive disaster response and emergency preparedness plan adopted under 35 Pa.C.S. §7701(g).

(g) By September 30 of each year, a school entity shall assemble and make ready for immediate deployment to the Incident Command Post, that is, a physical location established in accordance with the school entity's plan adopted under 35 Pa.C.S. §7701(g) to manage an emergency incident or disaster, the following information for the purpose of assisting local police and fire departments in responding to an emergency:

- (1) Blueprints or floor plans of the school buildings.
- (2) Aerial photo, map or layout of the school campus, adjacent properties and surrounding streets or roads.
- (3) Locations of predetermined or prospective command posts.
- (4) Current teacher/employee roster.
- (5) Current student roster.
- (6) Most recent school yearbook.
- (7) School fire-alarm shutoff location and procedures.
- (8) School sprinkler system shutoff location and procedures.
- (9) Gas/utility line layouts and shutoff valve locations.
- (10) Cable/satellite television shutoff location and procedures.
- (11) Other information the school entity deems pertinent to assist local police and fire departments in responding to an emergency.

It is the understanding of the Advisory Committee that many school districts do not comply with this mandate. This information could prove vital during an incident and all schools immediately attempt to comply or face budgetary sanctions from the Department of Education.

Armed Personnel in School Buildings

Recommendation #29: Priority status for grants for school resource officers should be given to those school buildings that are the most distant in response time from local law enforcement.

Under the Public School Code of 1949,²⁹⁴ the board of directors of a school district may enter into agreements with other political subdivisions and use school funds to share costs such as benefits and salaries of school resource officers and probation officers.²⁹⁵ Additionally, any school district may apply to the Court of Common Pleas of the county in which the school district is located in to appoint a school police officer, who serves as an employee of the school district.²⁹⁶ The Office of Safe Schools makes targeted grants to school entities to fund programs that address school violence. Sixty percent of the money allocated to the Department of Education for targeted grants is to be used to pay for costs associated with the training and compensation of school resource officers and school police officers.²⁹⁷ Maximum individual grants are capped at \$60,000 for school year 2013-2014, and all funds must be expended by June 30, 2014. Only one school resource officer may be funded per school district or municipality (municipalities may apply to fund school resource officers at non-public schools).²⁹⁸

Priority for these grants is statutorily established. Given the economic difficulties facing local government, a number of municipalities have eliminated their local police forces and rely on the PSP for law enforcement services.²⁹⁹ The result of this move is that some rural school buildings are 30-40 minutes away from the nearest law enforcement entity. Among the findings of the post-Columbine Safe School Initiative is that in

close to half of the incidents were known to last 15 minutes or less from the beginning of the shooting to the time the attacker was apprehended, surrendered or stopped shooting. . . . One-quarter of the incidents were over within five minutes of their inception. . . . The fact that it was not through law enforcement intervention that most of the targeted school violence

²⁹⁴ Act of March 10, 1949 (P.L.30, No.14).

²⁹⁵ *Ibid.*, § 617.

²⁹⁶ *Ibid.*, § 778.

²⁹⁷ *Ibid.*, § 1302-A(c.1).

²⁹⁸ Office of Safe Schools Targeted Grants for School Resource Officer, Municipality Request for Information 2013-2014.

http://www.education.state.pa.us/portal/server.pt?parentname=SearchResult&space=SearchResult&in_tx_query=grant+information&parentid=0&in_hi_userid=2&control=bannerstart&cached=false (Website visited November 19, 2013).

²⁹⁹ Gary Zajac, Ph.D. and Lindsay Kawalski, M.A., "An Examination of Pennsylvania State Police Coverage of Municipalities". *The Center for Rural Pennsylvania*, October 2012. See also, Colonel Frank Noonan, Commissioner, Pennsylvania State Police, 2013-2014 Budget Request, Pennsylvania State Police, Statement to House Appropriations Committee, February 20, 2013.

incidents studied were stopped appears in large part to be a function of how brief most of these incidents were in duration.³⁰⁰

In those rural areas where response time is so long, the importance of a school police resource officer on site becomes very important. The Advisory Committee recommends the following amendment to the Public School Code of 1949:

Section 1302-A. Office for Safe Schools.

* * *

(d) The office shall have the following duties as to targeted grants:

(1) Targeted grants shall be allocated through a competitive grant review process established by the office. School entities must satisfy the requirements of this section and section 1303-A to be eligible for grants. The application for a targeted grant shall include:

- (i) the purpose for which the targeted grant shall be utilized;
- (ii) information indicating need for the targeted grant, including, but not limited to, school violence statistics;
- (iii) an estimated budget;
- (iv) methods of measuring outcomes; and
- (v) any other criteria as the office may require.

(2) The office shall:

(i) Give priority in grant funding under section (c) to a school entity designated as a persistently dangerous school as defined in 22 Pa. Code § 403.2 (relating to definitions).

(i.1) Give priority in grant funding under section (c) to school entities located more than 15 minutes from the nearest law enforcement agency.

(ii) Give priority in grant funding under subsection (c) to school entities with the greatest need to establish safety and order.

(iii) To the greatest extent possible, ensure that grant funding is geographically dispersed to school entities and municipalities throughout this Commonwealth.

(iv) For school entities and municipalities that apply for funding for the training and compensation of school resource officers and school police officers under subsection (c.1), give priority to school entities and municipalities that utilize school resource officers or school police officers who have completed additional training recommended by the Department of Education relating to interaction with all children and adolescents within a school setting.

(v) For school entities that apply for funding for school police officers under subsection (c.1), give priority to school entities that use school police officers who satisfy all of the following:

³⁰⁰ United States Secret Service and United States Department of Education, "The Final Report and Findings of The Safe School Initiative: Implications for the Prevention of School Attacks in the United States," Washington, D.C., May 2002, p. 28, <http://www2.ed.gov/admins/lead/safety/preventingattackreport.pdf>.

(A) Are retired Federal agents or retired State, municipal or military police officers.

(B) Are independent contractors of the school entity.

(C) Are compensated on an hourly basis and receive no other compensation or fringe benefits from the school entity.

(D) Have completed such annual training as shall be required by the Municipal Police Officers' Education and Training Commission pursuant to 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training).

(E) Are in satisfaction of the requirements of section 111.

(F) Have been indemnified by the school entity pursuant to 42 Pa.C.S. § 8548 (relating to indemnity).

(G) Are utilized by a school entity that has not employed a school police officer within the three years immediately preceding the effective date of this clause.

Nothing in this clause shall be construed to impact on grant decisions for school entities and municipalities that apply for funding for hiring of school resource officers pursuant to subsection (c.1).

(3) The office shall provide all targeted grant agreements to the Department of Education's comptroller for review and approval prior to awarding the grant. The school entity or municipality shall provide the office with full and complete access to all records relating to the performance of the grant, and shall submit, at such time and in such form as may be prescribed, truthful and accurate information that the office may require. The office shall conduct a thorough annual evaluation of each program for which a grant under this section is made. The office shall seek repayment of funds if it determines that funds were not utilized for the original stated purpose.

* * *

Recommendation #30: While the Advisory Committee supports schools that choose to hire police officers or school resource officers, the Advisory Committee strongly opposes arming school administrators, teachers or other non-law enforcement personnel.

While there are some school administrators and teachers who may be willing to be trained to carry weapons on school property, the Advisory Committee is opposed to doing so. Concerns have been expressed about the safety of a teacher in a classroom wearing a handgun on his hip, ranging from the possibility of the teacher being disarmed by disruptive students to creating an environment of fear that is not conducive to learning. Questions also arise as to when the school employee should use his weapon. Police officers undergo extensive training in the use of their weapons and teachers do not. Therefore, it is unreasonable to expect a teacher to have the same firearms competency as a law enforcement officer, and not sound policy to assign such responsibility to a teacher. Parameters for use of the weapons would only be as good as the person entrusted to carry

one. Additionally, some law enforcement personnel have expressed concerns that if an armed teacher or administrator is in a school building during an active shooter incident and law enforcement enters the building and sees an armed person running down a hallway, they may take action to stop the person before the person can identify himself. In the confusion and mayhem of such an incident, it would be all too easy for the teacher or administrator to become a casualty of the police. Another concern is that school employees who bring a weapon into the workplace (i.e., the school) could potentially become perpetrators of violence themselves against their coworkers or students. Despite initial enthusiasm, the prospect of arming teachers has lost any impetus nationwide.³⁰¹

Threat Assessments and Response Preparedness

Recommendation #31: All schools should have Threat Assessment and Crisis Response Teams in place.

The U.S. Secret Service and Department of Education *Safe School Initiative* recommended that educators and law enforcement officials focus their efforts for preventing school attacks in two principal areas:

- developing the capacity to pick up on and evaluate available or knowable information that might indicate that there is a risk of a targeted school attack; and,
- employing the results of these risk evaluations or “threat assessments” in developing strategies to prevent potential school attacks from occurring.³⁰²

A companion document to the Final Report and Findings of the *Safe School Initiative*, is a guide to threat assessments in schools. The threat assessment process involves an analysis of the type of threat and level of risk posed, followed by an assessment of the person making the threat.³⁰³ Focus must be on facts, not characteristics or character traits, and the central question is whether a student poses a threat, not that a threat was made. Additionally, three elements are required to develop and operate an effective school threat assessment program: authority to conduct an assessment, capacity to conduct

³⁰¹ David A. Leib, “Even in pro-gun states, bid to arm teachers stalls,” *Columbia Missourian*, April 8, 2013, <http://bigstory.ap.org/article/even-pro-gun-states-bid-arm-teachers-stalls>; and Lisa Fingerroot and Chas Sisk, “Middle TN schools shun new law allowing armed teachers, stick with SROs: Officials don’t expect to use new law aimed at smaller districts,” *The Tennessean*, June 3, 2013, <http://www.timesfreepress.com/news/2013/jun/03/many-tn-schools-shun-new-law-allowing-armed-teache/>.

³⁰² *Supra* note 266 at p. 11.

³⁰³ National Center for the Analysis of Violent Crime, Critical Incident Response Group, Federal Bureau of Investigation, *The School Shooter: A Threat Assessment Perspective*, Quantico, VA, 1999, <http://www.fbi.gov/stats-services/publications/school-shooter.pdf>.

inquiries and investigations, and systems relationships.³⁰⁴ A planning team, consisting of school administrators, law enforcement officials, mental health agencies who work with schools, teachers, school security officials, school psychologists, and mental health workers should design a threat assessment process for each school district.³⁰⁵

Recommendation #32: Schools should provide for safety drills that address various risks, including active threats, terrorism, explosives and other scenarios that will allow students, staff and administrators to be better prepared to respond appropriately to a variety of threats as they evolve.

With regard to school safety, PEMA focuses on planning, training, and practice for emergency situations. The School Safety Planning Committee, chaired by PEMA and the Pennsylvania Department of Education developed the current school safety guidelines in an “All Hazards” Safe Schools Planning Toolkit. It includes information about natural and technological hazards, as well as intentional acts and includes checklists for lockdowns, shootings, hostage situations and intruder/trespassers. PEMA is also responsible for Multi-Hazards Safe School training and expects to release update training information in the fall of 2013.³⁰⁶

For fiscal year 2013-2014, the Federal Emergency Management Agency (FEMA) had over \$350 million in funding available for State Homeland Security Program (SHSP) grants. SHSP supports the implementation of state Homeland Security Strategies to address the identified planning, organization, equipment, training, and exercise needs to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events.³⁰⁷ This program and other similar federal grant programs are a potential source of funding for joint training and emergency drills and exercises between school districts and local emergency management personnel.

Student Assistance Programs

Recommendation #33: Student assistance programs should be fully funded and adequately staffed in every school district.

Recommendation #34: Student assistance programs, school counselors, and administrators should be sharing pertinent information with each other on a timely basis during a preliminary risk analysis.

³⁰⁴ The United States Secret Service and United States Department of Education, *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*, Washington, D.C., May 2002 at pg. 29, http://www.secretserve.gov.natc/ssi_guide.pdf or <http://www2.ed.gov/admins/lead/safety/threatassessmentguide.pdf>.

³⁰⁵ *Ibid.*, at 72-73.

³⁰⁶ Glenn M. Cannon, Esq., Director, Pennsylvania Emergency Management Agency, testimony presented to Pennsylvania House Select Committee on School Safety, Public Hearing on School Safety and Security, Harrisburg, PA, April 18, 2013.

³⁰⁷ Federal Emergency Management Agency, FY 2013 Homeland Security Grant Program, <http://www.fema.gov/fy-2013-homeland-security-grant-program-hsgp-0>, accessed November 22, 2013.

Pennsylvania's Student Assistance Program is an interagency cooperative effort of the Pennsylvania Department of Education's Division of School Options and Safety, The Pennsylvania Department of Health's Bureau of Drug and Alcohol Programs and the Pennsylvania Department of Public Welfare's Office of Mental Health and Substance Abuse Services. Each school is mandated to have a professional trained team that includes school staff and liaisons from community alcohol, drug and mental health agencies. The goal is to assist school personnel in identifying barriers to success for students. While intended to serve grades K-12, many school districts have only a nominal program.

Creating Safe School Climates

Recommendation #35: In addition to security and risk assessment measures, all schools should focus on primary prevention, by creating and maintaining a safe school climate.

Recommendation #36: The Pennsylvania Department of Education should add training for students at the beginning of each school year on what is dangerous behavior, how to report it and to whom to report it.

Recommendation #37: Department of Education curricula should include positive behavioral support, social and emotional development and learning and instill good behaviors through positive reinforcements.

Recommendation #38: The Department of Education should adopt the Standards for Student Interpersonal Skills that it created for all schools. These standards could be useful in helping create a safe school climate.

A safe school climate can do much to deter and prevent the development of situations in which a student ultimately feels to compelled to lash out violently against fellow students, teachers and other school personnel. The U.S. Secret Service and U.S. Department of Education recommend the following actions to develop a culture of connection and climate of safety in each school:

- Assess the school's emotional climate.
- Emphasize the importance of listening in schools, both in verbal exchanges as well as "listening" to the behavior of those students who have difficulty articulating feelings and emotions.
- Take a strong but caring stance against the code of silence.
- Work actively to change the perception that talking to an adult about a student contemplating violence is considered "snitching."
- Find ways to stop bullying.

- Empower students by involving them in planning, creating and sustaining a school culture of safety and respect.
- Ensure that every student feels that he or she has a trusting relationship with at least one adult at school.
- Create mechanisms for developing and sustaining safe school climates.
- Be aware of physical environments and their effects on creating comfort zones.
- Emphasize an integrated systems model, such that all stakeholders, students, teachers, administrators, school board members, parents, law enforcement personnel, after-school and community-based groups are involved in collaborative efforts to enhance the school and community climate.
- All climates of safety ultimately are “local.”³⁰⁸

Recommendation #39: Schools should be receptive to receiving advice and training on creating safe school environments. School teachers and administrators should not be solely responsible for investigations and assessments.

School districts are under pressure from multiple sources, not the least of which are financial ones, tied to performance standards and the No Child Left Behind Act of 2001.³⁰⁹ The temptation is to handle risk internally and prevent the school from being viewed negatively. While this protectiveness is understandable, schools must be willing to readily and forthrightly communicate with law enforcement, staff, students and families about potential risks.

Mental Health Services for Students

Recommendation #40: All schools should have access to mental health services for their students and early intervention programs to detect and prevent potentially violent behavior. This includes school counselors, social workers, school nurses, deans, guidance counselors, psychiatrists and psychologists, as well as other mental health professionals and staff dedicated to maintaining the social and mental health of the student body. Schools, police and mental health services should coordinate activities on the local level. Additionally, the Pennsylvania Departments of Education, Public Welfare and Health should coordinate at the state level to ensure a

³⁰⁸ *Supra*, note 2 at pp. 69-72.

³⁰⁹ Pub.L.No. 107-110, 115 Stat.1425, § 9532 (20 U.S.C. §7912).

continuum of services for children needing support from any of the departmental programs.

In tight budget times, these types of “ancillary” employees are frequently the first to be cut. These support personnel have a vital role in ensuring the safety and security of the schools and can be an early warning system, if given the opportunity.

Persistently Dangerous Schools

Recommendation #41: The Pennsylvania Department of Education should amend its definition of “dangerous school” in order to not penalize those schools where incidents are safely and positively resolved.

Under the federal No Child Left Behind Act of 2001:

Each State receiving funds under this chapter shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

The definition of “persistently dangerous school” is left to the discretion of the individual state. In Pennsylvania, Department of Education regulations define a persistently dangerous school as a public elementary, secondary, or charter school that meets one of the following criteria in the most recent school year and in one additional year of the two years prior to the most recent school year. For schools with enrollment of 250 or less, at least five dangerous incidents must occur. For schools with enrollment between 250 and 1,000, a number of dangerous incidents that represents at least 2 percent of the school’s enrollment and for school’s whose enrollment is over 1,000, 20 or more dangerous incidents. A dangerous incident is defined as a weapons possession incident resulting in arrest (guns, knives or other weapons) or a violent incident resulting in arrest (homicide, kidnapping, robbery, sexual offenses, and assaults).³¹⁰

The Advisory Committee is concerned that the way Pennsylvania has defined a “persistently dangerous school” can lead to unfair treatment of some schools. For example, a school that successfully screens and stops a person with a weapon from entering the school will have that incident counted against the school as a dangerous incident, although school security succeeded in preventing that person with a weapon from entering the premises.

³¹⁰ 22 Pa. Code §§ 403.2 and 403.6.

Reporting Criminal Behavior in Schools

Recommendation #42: The Department of Education definition of a reportable crime under its regulations should be amended to be consistent with the definitions used by law enforcement for Uniform Crime Reporting purposes.

Because these definitions differ, schools have more leeway in determining what crimes to report to local law enforcement and how to evaluate those crimes. The Advisory Committee has been informed that this can sometimes lead to schools minimizing the level of criminal activity at a school, as part of the self-preservation/protectiveness discussed above.

Funding Concerns

While Senate Resolution No. 6 did not direct the Advisory Committee to review funding recommendations, the committee considered it important to offer a few suggestions that might help the Commonwealth to implement those recommendations that have a fiscal impact. In a period when revenue remains scarce, wise and efficient use of existing monies is vital. Pennsylvania has a number of violence prevention and school safety initiatives and programs in place; however, some are underfunded, some are implemented “in name only,” and others simply ignored. This happens because some mandates are unfunded; some mandates have no enforcement mechanism, and in some communities there are redundant services. Some school districts complain that educational money is being shifted more and more to alternative education placements that the school districts must finance with the same dollars they are expected to use to provide quality “brick and mortar” public schools. Some programs are funded that do not produce good outcomes, but an adequate review process to verify that or a meaningful process to curtail the funding of inefficient programs does not exist. To that end, the Advisory Committee recommends:

Recommendation #43: The Department of Education should review ALL educational settings receiving state educational money, including traditional public school districts, charter schools, cyber schools and other alternative settings to ensure that they are meeting the same performance standards and financial accountability as school districts. If programs are not meeting standards, then funding should be terminated.

The Office of Safe Schools within the Pennsylvania Department of Education received \$8.5 million in funds to make grants for violence prevention programs in schools. Sixty percent of that funding is set aside for hiring school resource officers, and the remaining forty percent is earmarked for other types of violence prevention programs. With a staff of less than five, the Office cannot audit or otherwise verify that violence prevention programs it funds are effective or whether resource officers meet the qualifications set forth in the Public School Code of 1949.

Recommendation #44: The staff complement at the Department of Education's Office of Safe Schools should be expanded to include auditors who can verify grant recipients are efficiently using grant dollars.

PROPOSED “DUTY TO PROTECT” LEGISLATION

The Advisory Committee recommends the amendment of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, as follows:

Section 111.1. Duty to protect.

(a) Criteria for duty to apply.--In accordance with the procedures under subsection (b), a mental health professional shall attempt to protect a potential victim or potential victims from a threat of danger from a client of the mental health professional if all of the following apply:

(1) The client has communicated to the mental health professional an explicit threat of imminent serious physical harm or death to a clearly identified or identifiable victim or the general public or a mental health professional reasonably believes after considering the totality of the circumstances that a client of the mental health professional presents an imminent threat of serious physical harm or death to a clearly identified or identifiable victim or the general public.

(2) The mental health professional reasonably believes, or by the standards of the professional’s profession should believe, that the client has the intent and ability to carry out the threat.

(3) The threat has been communicated to the professional by the threatening client while the professional is engaged in his professional duties.

(b) Actions necessary to discharge duty.--A mental health professional may

(1) use therapeutic interventions or take therapeutic precautions that a reasonable prudent mental health professional would take under the circumstances to diffuse the danger;

(2) communicate the threat to all identified or identifiable victims;

(3) communicate the threat to any individual whose knowledge is likely to protect the health and life of a third party or the public;

(4) notify a law enforcement agency in the vicinity where the client or any potential victim resides; or

(5) take reasonable steps to initiate proceedings for voluntary or involuntary commitment if appropriate.

(c) Immunity from civil liability.--No cause of action shall exist against a mental health professional, and no legal liability may be imposed for breaching a duty to warn of a threat of danger by a client unless the mental health professional:

(1) fails to comply with this section; and

(2) the failure to comply is the result of an intentional or grossly negligent act or omission that results in harm to a potential victim of the client's threats.

(d) Confidentiality.--

(1) A disclosure made in good faith under this section may not be considered a breach of confidentiality between the mental health professional and the client.

(2) For a mental health professional who is a "covered entity" under the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191, disclosures authorized under this section are declared to be disclosures authorized without the consent of the client under 45 C.F.R. § 164.512(j)(1).

(e) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Client.” A person receiving behavioral or mental health treatment from a mental health professional.

“Mental health professional.” A person licensed or certified in this Commonwealth in any mental health-related field to whom the confidentiality provisions of this act apply.

Comment

This provision is to intended to codify the “duty to warn” adopted in *Emerich v. Philadelphia Center for Human Development, Inc.* 720 A.2d 1032 (Pa. 1998). However, it differs from *Emerich* in several significant ways. It includes threats against the general public, outlines how the duty is to be discharged, and adds specific immunity and confidentiality provisions.

The Mental Health Procedures Act does not have a definitional section. Definitions for the act are provided under regulations. The regulations define a “health professional in mental health” as:

A person who by years of education, training, and experience in mental health settings has achieved professional recognition and standing as defined by their respective discipline, including, but not limited to medicine, social work, psychology, nursing, occupational therapy, recreational therapy, and vocational rehabilitation; and who has obtained if applicable, licensure, registration, or certification. 55 Pa. Code §§ 5100.2, 5210.3 (f).

For purposes of the duty to protect, only those persons with sufficient training and education should bear the responsibility of deciding when to issue a warning.

It is the responsibility of the health care professional to determine whether the threat is credible, which necessarily involves consideration of the use of intoxicants by the person making the threat.

In determining what actions should be taken by a mental health professional under subsection (b), the professional should consider the totality of the circumstances as to the best way to protect the potential victims of the individual’s threats.

Any person who becomes aware of an explicit threat of imminent serious physical harm or death made by an individual against a clearly identified or identifiable victim or the general public may report the threat to local law enforcement, if the person acts in good faith and believes the threat is credible.

LEGISLATION REGARDING FIREARMS AND OTHER DANGEROUS ARTICLES

The Advisory Committee recommends the repeal of Chapter 61 of Title 18 of the Pennsylvania Consolidated Statutes, to be replaced by a new Chapter 62, as set forth in the following proposed legislation.³¹¹

TITLE 18 CRIMES AND OFFENSES

* * *

ARTICLE G MISCELLANEOUS OFFENSES

Chapter

[61] 62. Firearms and Other Dangerous Articles

* * *

[CHAPTER 61 FIREARMS AND OTHER DANGEROUS ARTICLES

Subchapter

- A. Uniform Firearms Act
- B. Firearms Generally
- C. Other Dangerous Articles
- D. Straw Purchase Prevention Education Program

SUBCHAPTER A UNIFORM FIREARMS ACT

Sec.

- 6101. Short title of subchapter.
- 6102. Definitions.
- 6103. Crimes committed with firearms.
- 6104. Evidence of intent.
- 6105. Persons not to possess, use, manufacture, control, sell or transfer firearms.
- 6105.1. Restoration of firearm rights for offenses under prior laws of this Commonwealth.
- 6106. Firearms not to be carried without a license.

³¹¹ For purposes of this report, Chapter 61 is single-spaced, while proposed Chapter 62 is double-spaced.

- 6106.1. Carrying loaded weapons other than firearms.
- 6107. Prohibited conduct during emergency.
- 6108. Carrying firearms on public streets or public property in Philadelphia.
- 6109. Licenses.
- 6110. Persons to whom delivery shall not be made (Repealed).
- 6110.1. Possession of firearm by minor.
- 6110.2. Possession of firearm with altered manufacturer's number.
- 6111. Sale or transfer of firearms.
- 6111.1. Pennsylvania State Police.
- 6111.2. Firearm sales surcharge.
- 6111.3. Firearm Records Check Fund.
- 6111.4. Registration of firearms.
- 6111.5. Rules and regulations.
- 6112. Retail dealer required to be licensed.
- 6113. Licensing of dealers.
- 6114. Judicial review.
- 6115. Loans on, or lending or giving firearms prohibited.
- 6116. False evidence of identity.
- 6117. Altering or obliterating marks of identification.
- 6118. Antique firearms.
- 6119. Violation penalty.
- 6120. Limitation on the regulation of firearms and ammunition.
- 6121. Certain bullets prohibited.
- 6122. Proof of license and exception.
- 6123. Waiver of disability or pardons.
- 6124. Administrative regulations.
- 6125. Distribution of uniform firearm laws and firearm safety brochures.
- 6126. Firearms Background Check Advisory Committee (Expired).
- 6127. Firearm tracing.

§ 6101. Short title of subchapter.

This subchapter shall be known and may be cited as the Pennsylvania Uniform Firearms Act of 1995.

§ 6102. Definitions.

Subject to additional definitions contained in subsequent provisions of this subchapter which are applicable to specific provisions of this subchapter, the following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Commissioner.” The Commissioner of the Pennsylvania State Police.

“Commonwealth Photo Imaging Network.” The computer network administered by the Commonwealth and used to record and store digital photographs of an individual's face and any scars, marks, tattoos or other unique features of the individual.

“Conviction.” A conviction, a finding of guilty or the entering of a plea of guilty or nolo contendere, whether or not judgment of sentence has been imposed, as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a

conviction which has been expunged or overturned or for which an individual has been pardoned unless the pardon expressly provides that the individual may not possess or transport firearms.

“County treasurer.” The county treasurer or, in home rule or optional plan counties, the person whose duties encompass those of a county treasurer.

“Crime punishable by imprisonment exceeding one year.” The term does not include any of the following:

(1) Federal or State offenses pertaining to antitrust, unfair trade practices, restraints on trade or regulation of business.

(2) State offenses classified as misdemeanors and punishable by a term of imprisonment not to exceed two years.

“Firearm.” Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.

“Fund.” The Firearm Ownership Fund established in section 6111.3 (relating to Firearm Ownership Fund).

“Law enforcement officer.” Any person employed by any police department or organization of the Commonwealth or political subdivision thereof who is empowered to effect an arrest with or without warrant and who is authorized to carry a firearm in the performance of that person’s duties.

“Loaded.” A firearm is loaded if the firing chamber, the nondetachable magazine or, in the case of a revolver, any of the chambers of the cylinder contain ammunition capable of being fired. In the case of a firearm which utilizes a detachable magazine, the term shall mean a magazine suitable for use in said firearm which magazine contains such ammunition and has been inserted in the firearm or is in the same container or, where the container has multiple compartments, the same compartment thereof as the firearm. If the magazine is inserted into a pouch, holder, holster or other protective device that provides for a complete and secure enclosure of the ammunition, then the pouch, holder, holster or other protective device shall be deemed to be a separate compartment.

“Pennsylvania Sheriffs’ Association.” The State association of sheriffs authorized by the act of June 14, 1923 (P.L.774, No.305), entitled “An act authorizing the sheriffs of the several counties of this Commonwealth to organize themselves into a State Association, for the purpose of holding annual meetings, to secure more uniformity and cooperation in the conduct of their offices, and providing for the payment of certain expenses in connection with such meetings by the various counties.”

“Safekeeping permit.” As defined in 23 Pa.C.S. § 6102 (relating to definitions).

“Sheriff.”

(1) Except as provided in paragraph (2), the sheriff of the county.

(2) In a city of the first class, the chief or head of the police department.

“State.” When used in reference to different parts of the United States, includes the District of Columbia, the Commonwealth of Puerto Rico and territories and possessions of the United States.

§ 6103. Crimes committed with firearms.

If any person commits or attempts to commit a crime enumerated in section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) when armed with a firearm contrary to the provisions of this subchapter, that person may, in addition to the punishment provided for the crime, also be punished as provided by this subchapter.

§ 6104. Evidence of intent.

In the trial of a person for committing or attempting to commit a crime enumerated in section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), the fact that that person was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of that person's intention to commit the offense.

§ 6105. Persons not to possess, use, manufacture, control, sell or transfer firearms.

(a) Offense defined.--

(1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

(2) (i) A person who is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm under paragraph (1) or subsection (b) or (c) shall have a reasonable period of time, not to exceed 60 days from the date of the imposition of the disability under this subsection, in which to sell or transfer that person's firearms to another eligible person who is not a member of the prohibited person's household.

(ii) This paragraph shall not apply to any person whose disability is imposed pursuant to subsection (c)(6).

(a.1) Penalty.--

(1) A person convicted of a felony enumerated under subsection (b) or a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, who violates subsection (a) commits a felony of the second degree.

(2) A person who is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108 (relating to relief), which order provided for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect, commits a misdemeanor of the first degree if he intentionally or knowingly fails to relinquish a firearm, other weapon or ammunition to the sheriff as required by the order unless, in lieu of relinquishment, he provides an affidavit which lists the firearms, other weapons or ammunition to the sheriff in accordance with either 23 Pa.C.S. § 6108(a)(7)(i)(B), 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 (relating to relinquishment to third party for safekeeping).

(3)(i) A person commits a misdemeanor of the third degree if he intentionally or knowingly accepts possession of a firearm, other weapon or ammunition from a person he knows is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which order provided for the relinquishment of the firearm, other weapon or ammunition during the period of time the order is in effect.

(ii) This paragraph shall not apply to:

(A) a third party who accepts possession of a firearm, other weapon or ammunition relinquished pursuant to 23 Pa.C.S. § 6108.3; or

(B) a dealer licensed pursuant to section 6113 (relating to licensing of dealers) or subsequent purchaser from a dealer licensed pursuant to section 6113, who accepts possession of a firearm, other weapon or ammunition relinquished pursuant to 23 Pa.C.S. § 6108.2.

(4) It shall be an affirmative defense to any prosecution under paragraph (3) that the person accepting possession of a firearm, other weapon or ammunition in violation of paragraph (3):

(i) notified the sheriff as soon as practicable that he has taken possession; and

(ii) relinquished possession of any firearm, other weapon or ammunition possessed in violation of paragraph (3) as directed by the sheriff.

(5) A person who has accepted possession of a firearm, other weapon or ammunition pursuant to 23 Pa.C.S. § 6108.3 commits a misdemeanor of the first degree if he intentionally or knowingly returns a firearm, other weapon or ammunition to a defendant or intentionally or knowingly allows a defendant to have access to the firearm, other weapon or ammunition prior to either of the following:

(i) The sheriff accepts return of the safekeeping permit issued to the party pursuant to 23 Pa.C.S. § 6108.3(d)(1)(i).

(ii) The issuance of a court order pursuant to subsection (f)(2) or 23 Pa.C.S. § 6108.1(b) (relating to return of relinquished firearms, other weapons and ammunition and additional relief) which modifies a valid protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which order provided for the relinquishment of the firearm, other weapon or ammunition by allowing the defendant to take possession of the firearm, other weapon or ammunition that had previously been ordered relinquished.

(b) Enumerated offenses.--The following offenses shall apply to subsection (a):

Section 908 (relating to prohibited offensive weapons).

Section 911 (relating to corrupt organizations).

Section 912 (relating to possession of weapon on school property).

Section 2502 (relating to murder).

Section 2503 (relating to voluntary manslaughter).

Section 2504 (relating to involuntary manslaughter) if the offense is based on the reckless use of a firearm.

Section 2702 (relating to aggravated assault).

Section 2703 (relating to assault by prisoner).

Section 2704 (relating to assault by life prisoner).

Section 2709.1 (relating to stalking).

Section 2716 (relating to weapons of mass destruction).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 2910 (relating to luring a child into a motor vehicle or structure).

Section 3121 (relating to rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3125 (relating to aggravated indecent assault).

Section 3301 (relating to arson and related offenses).

Section 3302 (relating to causing or risking catastrophe).

Section 3502 (relating to burglary).

Section 3503 (relating to criminal trespass) if the offense is graded a felony of the second degree or higher.

Section 3701 (relating to robbery).

Section 3702 (relating to robbery of motor vehicle).

Section 3921 (relating to theft by unlawful taking or disposition) upon conviction of the second felony offense.

Section 3923 (relating to theft by extortion) when the offense is accompanied by threats of violence.

Section 3925 (relating to receiving stolen property) upon conviction of the second felony offense.

Section 4906 (relating to false reports to law enforcement authorities) if the fictitious report involved the theft of a firearm as provided in section 4906(c)(2).

Section 4912 (relating to impersonating a public servant) if the person is impersonating a law enforcement officer.

Section 4952 (relating to intimidation of witnesses or victims).

Section 4953 (relating to retaliation against witness, victim or party).

Section 5121 (relating to escape).

Section 5122 (relating to weapons or implements for escape).

Section 5501(3) (relating to riot).

Section 5515 (relating to prohibiting of paramilitary training).

Section 5516 (relating to facsimile weapons of mass destruction).

Section 6110.1 (relating to possession of firearm by minor).

Section 6301 (relating to corruption of minors).

Section 6302 (relating to sale or lease of weapons and explosives).

Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.

(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):

(1) A person who is a fugitive from justice. This paragraph does not apply to an individual whose fugitive status is based upon a nonmoving or moving summary offense under Title 75 (relating to vehicles).

(2) A person who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years.

(3) A person who has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or the former 75 Pa.C.S. § 3731, on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of subsection (a) shall only apply to transfers or purchases of firearms after the third conviction.

(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), 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.

(5) A person who, being an alien, is illegally or unlawfully in the United States.

(6) A person who is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which order provided for the relinquishment of firearms during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the relinquishment of firearms.

(7) A person who was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under sections 2502, 2503, 2702, 2703 (relating to assault by prisoner), 2704, 2901, 3121, 3123, 3301, 3502, 3701 and 3923.

(8) A person who was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense enumerated in subsection (b) with the exception of those crimes set forth in paragraph (7). This prohibition shall terminate 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.

(9) A person who is prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(9) (relating to unlawful acts). If the offense which resulted in the prohibition under 18 U.S.C. § 922(g)(9) was committed, as provided in 18 U.S.C. § 921(a)(33)(A)(ii) (relating to definitions), by a person in any of the following relationships:

- (i) the current or former spouse, parent or guardian of the victim;
- (ii) a person with whom the victim shares a child in common;
- (iii) a person who cohabits with or has cohabited with the victim as a spouse, parent or guardian; or

(iv) a person similarly situated to a spouse, parent or guardian of the victim; then the relationship need not be an element of the offense to meet the requirements of this paragraph.

(d) Exemption.--A person who has been convicted of a crime specified in subsection (a) or (b) or a person whose conduct meets the criteria in subsection (c)(1), (2), (5), (7) or (9) may make application to the court of common pleas of the county where the principal residence of the applicant is situated for relief from the disability imposed by this section

upon the possession, transfer or control of a firearm. The court shall grant such relief if it determines that any of the following apply:

(1) The conviction has been vacated under circumstances where all appeals have been exhausted or where the right to appeal has expired.

(2) The conviction has been the subject of a full pardon by the Governor.

(3) Each of the following conditions is met:

(i) The Secretary of the Treasury of the United States has relieved the applicant of an applicable disability imposed by Federal law upon the possession, ownership or control of a firearm as a result of the applicant's prior conviction, except that the court may waive this condition if the court determines that the Congress of the United States has not appropriated sufficient funds to enable the Secretary of the Treasury to grant relief to applicants eligible for the relief.

(ii) A period of ten years, not including any time spent in incarceration, has elapsed since the most recent conviction of the applicant of a crime enumerated in subsection (b), a felony violation of The Controlled Substance, Drug, Device and Cosmetic Act or the offense which resulted in the prohibition under 18 U.S.C. § 922(g)(9).

(e) Proceedings.--

(1) If a person convicted of an offense under subsection (a), (b) or (c)(1), (2), (5), (7) or (9) makes application to the court, a hearing shall be held in open court to determine whether the requirements of this section have been met. The commissioner and the district attorney of the county where the application is filed and any victim or survivor of a victim of the offense upon which the disability is based may be parties to the proceeding.

(2) Upon application to the court of common pleas pursuant to paragraph (1) by an applicant who is subject to the prohibition under subsection (c)(3), the court shall grant such relief if a period of ten years, not including any time spent in incarceration, has passed since the applicant's most recent conviction under subsection (c)(3).

(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), the court may grant such 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.

(2) If application is made under this subsection for relief from the disability imposed under subsection (c)(6), notice of such application shall be given to the person who had petitioned for the protection from abuse order, and such person shall be a party to the proceedings. Notice of any court order or amendment to a court order restoring firearms possession or control shall be given to the person who had petitioned for the protection from abuse order, to the sheriff and to the Pennsylvania State Police. The application and any proceedings on the application shall comply with 23 Pa.C.S. Ch. 61 (relating to protection from abuse).

(3) All hearings conducted under this subsection shall be closed unless otherwise requested to be open by the applicant.

(4) (i) The owner of any seized or confiscated firearms or of any firearms ordered relinquished under 23 Pa.C.S. § 6108 shall be provided with a signed and dated written receipt by the appropriate law enforcement agency. This receipt shall include, but not

limited to, a detailed identifying description indicating the serial number and condition of the firearm. In addition, the appropriate law enforcement agency shall be liable to the lawful owner of said confiscated, seized or relinquished firearm for any loss, damage or substantial decrease in value of said firearm that is a direct result of a lack of reasonable care by the appropriate law enforcement agency.

(ii) Firearms shall not be engraved or permanently marked in any manner, including, but not limited to, engraving of evidence or other identification numbers. Unless reasonable suspicion exists to believe that a particular firearm has been used in the commission of a crime, no firearm shall be test fired. Any reduction in the value of a firearm due to test firing, engraving or permanently marking in violation of this paragraph shall be considered damage, and the law enforcement agency shall be liable to the lawful owner of the firearm for the reduction in value caused by the test firing, engraving or permanently marking.

(iii) For purposes of this paragraph, the term "firearm" shall include any scope, sight, bipod, sling, light, magazine, clip, ammunition or other firearm accessory attached to or seized, confiscated or relinquished with a firearm.

(g) Other restrictions.--Nothing in this section shall exempt a person from a disability in relation to the possession or control of a firearm which is imposed as a condition of probation or parole or which is imposed pursuant to the provision of any law other than this section.

(h) License prohibition.--Any person who is prohibited from possessing, using, controlling, selling, purchasing, transferring or manufacturing any firearm under this section shall not be eligible for or permitted to obtain a license to carry a firearm under section 6109 (relating to licenses).

(i) Firearm.--As used in this section only, the term "firearm" shall include any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

(j) Copy of order to State Police.--If the court grants relief from the disabilities imposed under this section, a copy of the order shall be sent by the prothonotary within ten days of the entry of the order to the Pennsylvania State Police and shall include the name, date of birth and Social Security number of the individual.

§ 6105.1. Restoration of firearm rights for offenses under prior laws of this Commonwealth.

(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);

(2) the applicant has been convicted of any other crime punishable by imprisonment exceeding one year as defined in section 6102 (relating to definitions);
or

(3) the applicant's character and reputation is such that the applicant would be likely to act in a manner dangerous to public safety.

(b) Notice and standing.--

(1) Notice of an application for restoration of firearms rights shall be provided to the Pennsylvania State Police, the district attorney of the county where the disabling offense occurred and the district attorney of the county where the application is filed. The district attorney of the county where the application is filed, the district attorney of the county where the disabling offense occurred and the Pennsylvania State Police may, at their option, be parties to the proceeding.

(2) Notwithstanding paragraph (1), the standing of the Pennsylvania State Police as a party to a proceeding under this section shall be limited to determinations of whether the offense meets the definition of the phrase "disabling offense" or whether the provisions of subsection (a)(1) and (2) have been satisfied.

(c) Copy of order to Pennsylvania State Police.--If the court grants restoration of firearms rights to an applicant, a copy of the order shall be sent by the prothonotary within ten days of the entry of the order to the district attorneys and the Pennsylvania State Police, Firearms Division, and shall include the name, date of birth and Social Security number of the applicant.

(d) Expungement and pardon.--A restoration of firearms rights under this section shall not result in the expungement of any criminal history record information nor will it constitute a gubernatorial pardon.

(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 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.

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.

"Restoration of firearms rights." Relieving any and all disabilities with respect to a person's right to own, possess, use, control, sell, purchase, transfer, manufacture, receive, ship or transport firearms, including any disabilities imposed pursuant to this subchapter. The phrase shall also mean the restoration of the right to vote, to hold public office and to serve on a jury.

§ 6106. Firearms not to be carried without a license.

(a) Offense defined.--

(1) Except as provided in paragraph (2), any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.

(2) A person who is otherwise eligible to possess a valid license under this chapter but carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license and has not committed any other criminal violation commits a misdemeanor of the first degree.

(b) Exceptions.--The provisions of subsection (a) shall not apply to:

(1) Constables, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.

(2) Members of the army, navy, marine corps, air force or coast guard of the United States or of the National Guard or organized reserves when on duty.

(3) The regularly enrolled members of any organization duly organized to purchase or receive such firearms from the United States or from this Commonwealth.

(4) Any persons engaged in target shooting with a firearm, if such persons are at or are going to or from their places of assembly or target practice and if, while going to or from their places of assembly or target practice, the firearm is not loaded.

(5) Officers or employees of the United States duly authorized to carry a concealed firearm.

(6) Agents, messengers and other employees of common carriers, banks, or business firms, whose duties require them to protect moneys, valuables and other property in the discharge of such duties.

(7) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person, having in his possession, using or carrying a firearm in the usual or ordinary course of such business.

(8) Any person while carrying a firearm which is not loaded and is in a secure wrapper from the place of purchase to his home or place of business, or to a place of repair, sale or appraisal or back to his home or place of business, or in moving from one place of abode or business to another or from his home to a vacation or recreational home or dwelling or back, or to recover stolen property under section 6111.1(b)(4) (relating to Pennsylvania State Police), or to a place of instruction intended to teach the safe handling, use or maintenance of firearms or back or to a location to which the person has been directed to relinquish firearms under 23 Pa.C.S. § 6108 (relating to relief) or back upon return of the relinquished firearm or to a licensed dealer's place of business for relinquishment pursuant to 23 Pa.C.S. § 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or back upon return of the relinquished firearm or to a location for safekeeping pursuant to 23 Pa.C.S. § 6108.3 (relating to relinquishment to third party for safekeeping) or back upon return of the relinquished firearm.

(9) Persons licensed to hunt, take furbearers or fish in this Commonwealth, if such persons are actually hunting, taking furbearers or fishing as permitted by such license,

or are going to the places where they desire to hunt, take furbearers or fish or returning from such places.

(10) Persons training dogs, if such persons are actually training dogs during the regular training season.

(11) Any person while carrying a firearm in any vehicle, which person possesses a valid and lawfully issued license for that firearm which has been issued under the laws of the United States or any other state.

(12) A person who has a lawfully issued license to carry a firearm pursuant to section 6109 (relating to licenses) and that said license expired within six months prior to the date of arrest and that the individual is otherwise eligible for renewal of the license.

(13) Any person who is otherwise eligible to possess a firearm under this chapter and who is operating a motor vehicle which is registered in the person's name or the name of a spouse or parent and which contains a firearm for which a valid license has been issued pursuant to section 6109 to the spouse or parent owning the firearm.

(14) A person lawfully engaged in the interstate transportation of a firearm as defined under 18 U.S.C. § 921(a)(3) (relating to definitions) in compliance with 18 U.S.C. § 926A (relating to interstate transportation of firearms).

(15) Any person who possesses a valid and lawfully issued license or permit to carry a firearm which has been issued under the laws of another state, regardless of whether a reciprocity agreement exists between the Commonwealth and the state under section 6109(k), provided:

(i) The state provides a reciprocal privilege for individuals licensed to carry firearms under section 6109.

(ii) The Attorney General has determined that the firearm laws of the state are similar to the firearm laws of this Commonwealth.

(16) Any person holding a license in accordance with section 6109(f)(3).

(c) Sportsman's firearm permit.--

(1) Before any exception shall be granted under paragraph (b)(9) or (10) of this section to any person 18 years of age or older licensed to hunt, trap or fish or who has been issued a permit relating to hunting dogs, such person shall, at the time of securing his hunting, furtaking or fishing license or any time after such license has been issued, secure a sportsman's firearm permit from the county treasurer. The sportsman's firearm permit shall be issued immediately and be valid throughout this Commonwealth for a period of five years from the date of issue for any legal firearm, when carried in conjunction with a valid hunting, furtaking or fishing license or permit relating to hunting dogs. The sportsman's firearm permit shall be in triplicate on a form to be furnished by the Pennsylvania State Police. The original permit shall be delivered to the person, and the first copy thereof, within seven days, shall be forwarded to the Commissioner of the Pennsylvania State Police by the county treasurer. The second copy shall be retained by the county treasurer for a period of two years from the date of expiration. The county treasurer shall be entitled to collect a fee of not more than \$6 for each such permit issued, which shall include the cost of any official form. The Pennsylvania State Police may recover from the county treasurer the cost of any such form, but may not charge more than \$1 for each official permit form furnished to the county treasurer.

(2) Any person who sells or attempts to sell a sportsman's firearm permit for a fee in excess of that amount fixed under this subsection commits a summary offense.

(d) Revocation of registration.--Any registration of a firearm under subsection (c) of this section may be revoked by the county treasurer who issued it, upon written notice to the holder thereof.

(e) Definitions.--

(1) For purposes of subsection (b)(3), (4), (5), (7) and (8), the term "firearm" shall include any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of the weapon.

(2) As used in this section, the phrase "place of instruction" shall include any hunting club, rifle club, rifle range, pistol range, shooting range, the premises of a licensed firearms dealer or a lawful gun show or meet.

§ 6106.1. Carrying loaded weapons other than firearms.

(a) General rule.--Except as provided in Title 34 (relating to game), no person shall carry a loaded pistol, revolver, shotgun or rifle, other than a firearm as defined in section 6102 (relating to definitions), in any vehicle. The provisions of this section shall not apply to persons excepted from the requirement of a license to carry firearms under section 6106(b)(1), (2), (5) or (6) (relating to firearms not to be carried without a license) nor shall the provisions of this section be construed to permit persons to carry firearms in a vehicle where such conduct is prohibited by section 6106.

(b) Penalty.--A person who violates the provisions of this section commits a summary offense.

§ 6107. Prohibited conduct during emergency.

(a) General rule.--No person shall carry a firearm upon the public streets or upon any public property during an emergency proclaimed by a State or municipal governmental executive unless that person is:

(1) Actively engaged in a defense of that person's life or property from peril or threat.

(2) Licensed to carry firearms under section 6109 (relating to licenses) or is exempt from licensing under section 6106(b) (relating to firearms not to be carried without a license).

(b) Seizure, taking and confiscation.--Except as otherwise provided under subsection (a) and notwithstanding the provisions of 35 Pa.C.S. Ch. 73 (relating to Commonwealth services) or any other provision of law to the contrary, no firearm, accessory or ammunition may be seized, taken or confiscated during an emergency unless the seizure, taking or confiscation would be authorized absent the emergency.

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

"Accessory." Any scope, sight, bipod, sling, light, magazine, clip or other related item that is attached to or necessary for the operation of a firearm.

"Firearm." The term includes any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any weapon.

§ 6108. Carrying firearms on public streets or public property in Philadelphia.

No person shall carry a firearm, rifle or shotgun at any time upon the public streets or upon any public property in a city of the first class unless:

- (1) such person is licensed to carry a firearm; or
- (2) such person is exempt from licensing under section 6106(b) of this title (relating to firearms not to be carried without a license).

§ 6109. Licenses.

(a) Purpose of license.--A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle throughout this Commonwealth.

(b) Place of application.--An individual who is 21 years of age or older may apply to a sheriff for a license to carry a firearm concealed on or about his person or in a vehicle within this Commonwealth. If the applicant is a resident of this Commonwealth, he shall make application with the sheriff of the county in which he resides or, if a resident of a city of the first class, with the chief of police of that city.

(c) Form of application and content.--The application for a license to carry a firearm shall be uniform throughout this Commonwealth and shall be on a form prescribed by the Pennsylvania State Police. The form may contain provisions, not exceeding one page, to assure compliance with this section. Issuing authorities shall use only the application form prescribed by the Pennsylvania State Police. One of the following reasons for obtaining a firearm license shall be set forth in the application: self-defense, employment, hunting and fishing, target shooting, gun collecting or another proper reason. The application form shall be dated and signed by the applicant and shall contain the following statement:

I have never been convicted of a crime that prohibits me from possessing or acquiring a firearm under Federal or State law. I am of sound mind and have never been committed to a mental institution. I hereby certify that the statements contained herein are true and correct to the best of my knowledge and belief. I understand that, if I knowingly make any false statements herein, I am subject to penalties prescribed by law. I authorize the sheriff, or his designee, or, in the case of first class cities, the chief or head of the police department, or his designee, to inspect only those records or documents relevant to information required for this application. If I am issued a license and knowingly become ineligible to legally possess or acquire firearms, I will promptly notify the sheriff of the county in which I reside or, if I reside in a city of the first class, the chief of police of that city.

(d) Sheriff to conduct investigation.--The sheriff to whom the application is made shall:

- (1) investigate the applicant's record of criminal conviction;
- (2) investigate whether or not the applicant is under indictment for or has ever been convicted of a crime punishable by imprisonment exceeding one year;
- (3) investigate whether the applicant's character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety;
- (4) investigate whether the applicant would be precluded from receiving a license under subsection (e)(1) or section 6105(h) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms); and

(5) conduct a criminal background, juvenile delinquency and mental health check following the procedures set forth in section 6111 (relating to sale or transfer of firearms), receive a unique approval number for that inquiry and record the date and number on the application.

(e) Issuance of license.--

(1) A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle and shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license. A license shall not be issued to any of the following:

(i) An individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.

(ii) An individual who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) An individual convicted of a crime enumerated in section 6105.

(iv) An individual who, within the past ten years, has been adjudicated delinquent for a crime enumerated in section 6105 or for an offense under The Controlled Substance, Drug, Device and Cosmetic Act.

(v) An individual who is not of sound mind or who has ever been committed to a mental institution.

(vi) An individual who is addicted to or is an unlawful user of marijuana or a stimulant, depressant or narcotic drug.

(vii) An individual who is a habitual drunkard.

(viii) An individual who is charged with or has been convicted of a crime punishable by imprisonment for a term exceeding one year except as provided for in section 6123 (relating to waiver of disability or pardons).

(ix) A resident of another state who does not possess a current license or permit or similar document to carry a firearm issued by that state if a license is provided for by the laws of that state, as published annually in the Federal Register by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury under 18 U.S.C. § 921(a)(19) (relating to definitions).

(x) An alien who is illegally in the United States.

(xi) An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

(xii) An individual who is a fugitive from justice. This subparagraph does not apply to an individual whose fugitive status is based upon nonmoving or moving summary offense under Title 75 (relating to vehicles).

(xiii) An individual who is otherwise prohibited from possessing, using, manufacturing, controlling, purchasing, selling or transferring a firearm as provided by section 6105.

(xiv) An individual who is prohibited from possessing or acquiring a firearm under the statutes of the United States.

(3) The license to carry a firearm shall be designed to be uniform throughout this Commonwealth and shall be in a form prescribed by the Pennsylvania State Police. The license shall bear the following:

(i) The name, address, date of birth, race, sex, citizenship, height, weight, color of hair, color of eyes and signature of the licensee.

(ii) The signature of the sheriff issuing the license.

(iii) A license number of which the first two numbers shall be a county location code followed by numbers issued in numerical sequence.

(iv) The point-of-contact telephone number designated by the Pennsylvania State Police under subsection (l).

(v) The reason for issuance.

(vi) The period of validation.

(4) The sheriff shall require a photograph of the licensee on the license. The photograph shall be in a form compatible with the Commonwealth Photo Imaging Network.

(5) The original license shall be issued to the applicant. The first copy of the license shall be forwarded to the Pennsylvania State Police within seven days of the date of issue. The second copy shall be retained by the issuing authority for a period of seven years. Except pursuant to court order, both copies and the application shall, at the end of the seven-year period, be destroyed unless the license has been renewed within the seven-year period.

(f) Term of license.--

(1) A license to carry a firearm issued under subsection (e) shall be valid throughout this Commonwealth for a period of five years unless extended under paragraph (3) or sooner revoked.

(2) At least 60 days prior to the expiration of each license, the issuing sheriff shall send to the licensee an application for renewal of license. Failure to receive a renewal application shall not relieve a licensee from the responsibility to renew the license.

(3) Notwithstanding paragraph (1) or any other provision of law to the contrary, a license to carry a firearm that is held by a member of the United States Armed Forces or the Pennsylvania National Guard on Federal active duty and deployed overseas that is scheduled to expire during the period of deployment shall be extended until 90 days after the end of the deployment.

(4) Possession of a license, together with a copy of the person's military orders showing the dates of overseas deployment, including the date that the overseas deployment ends, shall constitute, during the extension period specified in paragraph (3), a defense to any charge filed pursuant to section 6106 (relating to firearms not to be carried without a license) or 6108 (relating to carrying firearms on public streets or public property in Philadelphia).

(g) Grant or denial of license.--Upon the receipt of an application for a license to carry a firearm, the sheriff shall, within 45 days, issue or refuse to issue a license on the basis of the investigation under subsection (d) and the accuracy of the information contained in the application. If the sheriff refuses to issue a license, the sheriff shall notify the applicant in writing of the refusal and the specific reasons. The notice shall be sent by certified mail to the applicant at the address set forth in the application.

(h) Fee.--

(1) In addition to fees described in paragraphs (2)(ii) and (3), the fee for a license to carry a firearm is \$19. This includes all of the following:

(i) A renewal notice processing fee of \$1.50.

(ii) An administrative fee of \$5 under section 14(2) of the act of July 6, 1984 (P.L.614, No.127), known as the Sheriff Fee Act.

(2) (Expired).

(3) An additional fee of \$1 shall be paid by the applicant for a license to carry a firearm and shall be remitted by the sheriff to the Firearms License Validation System Account, which is hereby established as a special restricted receipt account within the General Fund of the State Treasury. The account shall be used for purposes under subsection (1). Moneys credited to the account and any investment income accrued are hereby appropriated on a continuing basis to the Pennsylvania State Police.

(4) No fee other than that provided by this subsection or the Sheriff Fee Act may be assessed by the sheriff for the performance of any background check made pursuant to this act.

(5) The fee is payable to the sheriff to whom the application is submitted and is payable at the time of application for the license.

(6) Except for the administrative fee of \$5 under section 14(2) of the Sheriff Fee Act, all other fees shall be refunded if the application is denied but shall not be refunded if a license is issued and subsequently revoked.

(7) A person who sells or attempts to sell a license to carry a firearm for a fee in excess of the amounts fixed under this subsection commits a summary offense.

(i) Revocation.--A license to carry firearms may be revoked by the issuing authority for good cause. A license to carry firearms shall be revoked by the issuing authority for any reason stated in subsection (e)(1) which occurs during the term of the permit. Notice of revocation shall be in writing and shall state the specific reason for revocation. Notice shall be sent by certified mail to the individual whose license is revoked, and, at that time, notice shall also be provided to the Pennsylvania State Police by electronic means, including e-mail or facsimile transmission, that the license is no longer valid. An individual whose license is revoked shall surrender the license to the issuing authority within five days of receipt of the notice. An individual whose license is revoked may appeal to the court of common pleas for the judicial district in which the individual resides. An individual who violates this section commits a summary offense.

(i.1) Notice to sheriff.--Notwithstanding any statute to the contrary:

(1) Upon conviction of a person for a crime specified in section 6105(a) or (b) or upon conviction of a person for a crime punishable by imprisonment exceeding one year or upon a determination that the conduct of a person meets the criteria specified in section 6105(c)(1), (2), (3), (5), (6) or (9), the court shall determine if the defendant has a license to carry firearms issued pursuant to this section. If the defendant has such a license, the court shall notify the sheriff of the county in which that person resides, on a form developed by the Pennsylvania State Police, of the identity of the person and the nature of the crime or conduct which resulted in the notification. The notification shall be transmitted by the judge within seven days of the conviction or determination.

(2) Upon adjudication that a person is incompetent or upon the involuntary commitment of a person to a mental institution for inpatient care and treatment under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, or upon involuntary treatment of a person as described under section 6105(c)(4), the judge of the court of common pleas, mental health review officer or county mental health and mental retardation administrator shall notify the sheriff of the county in

which that person resides, on a form developed by the Pennsylvania State Police, of the identity of the person who has been adjudicated, committed or treated and the nature of the adjudication, commitment or treatment. The notification shall be transmitted by the judge, mental health review officer or county mental health and mental retardation administrator within seven days of the adjudication, commitment or treatment.

(j) Immunity.--A sheriff who complies in good faith with this section shall be immune from liability resulting or arising from the action or misconduct with a firearm committed by any individual to whom a license to carry a firearm has been issued.

(k) Reciprocity.--

(1) The Attorney General shall have the power and duty to enter into reciprocity agreements with other states providing for the mutual recognition of a license to carry a firearm issued by the Commonwealth and a license or permit to carry a firearm issued by the other state. To carry out this duty, the Attorney General is authorized to negotiate reciprocity agreements and grant recognition of a license or permit to carry a firearm issued by another state.

(2) The Attorney General shall report to the General Assembly within 180 days of the effective date of this paragraph and annually thereafter concerning the agreements which have been consummated under this subsection.

(l) Firearms License Validation System.--

(1) The Pennsylvania State Police shall establish a nationwide toll-free telephone number, known as the Firearms License Validation System, which shall be operational seven days a week, 24 hours per day, for the purpose of responding to law enforcement inquiries regarding the validity of any Pennsylvania license to carry a firearm.

(2) Notwithstanding any other law regarding the confidentiality of information, inquiries to the Firearms License Validation System regarding the validity of any Pennsylvania license to carry a firearm may only be made by law enforcement personnel acting within the scope of their official duties.

(3) Law enforcement personnel outside this Commonwealth shall provide their originating agency identifier number and the license number of the license to carry a firearm which is the subject of the inquiry.

(4) Responses to inquiries by law enforcement personnel outside this Commonwealth shall be limited to the name of the licensee, the validity of the license and any information which may be provided to a criminal justice agency pursuant to Chapter 91 (relating to criminal history record information).

(m) Inquiries.--

(1) The Attorney General shall, not later than one year after the effective date of this subsection and not less than once annually, contact in writing the appropriate authorities in any other state which does not have a current reciprocity agreement with the Commonwealth to determine if:

(i) the state will negotiate a reciprocity agreement;

(ii) a licensee may carry a concealed firearm in the state; or

(iii) a licensee may apply for a license or permit to carry a firearm issued by the state.

(2) The Attorney General shall maintain a current list of those states which have a reciprocity agreement with the Commonwealth, those states which allow licensees to carry a concealed firearm and those states which allow licensees to apply for a license

or permit to carry a firearm. This list shall be posted on the Internet, provided to the Pennsylvania State Police and made available to the public upon request.

(m.1) Temporary emergency licenses.--

(1) A person seeking a temporary emergency license to carry a concealed firearm shall submit to the sheriff of the county in which the person resides all of the following:

(i) Evidence of imminent danger to the person or the person's minor child. For purposes of this subparagraph, the term "minor" shall have the same meaning as provided in 1 Pa.C.S. § 1991 (relating to definitions).

(ii) A sworn affidavit that contains the information required on an application for a license to carry a firearm and attesting that the person is 21 years of age or older, is not prohibited from owning firearms under section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) or any other Federal or State law and is not currently subject to a protection from abuse order or a protection order issued by a court of another state.

(iii) In addition to the provisions of subsection (h), a temporary emergency license fee established by the Commissioner of the Pennsylvania State Police for an amount that does not exceed the actual cost of conducting the criminal background check or \$10, whichever is less.

(iv) An application for a license to carry a firearm on the form prescribed pursuant to subsection (c).

(2) Upon receipt of the items required under paragraph (1), the sheriff immediately shall conduct a criminal history, juvenile delinquency and mental health record check of the applicant pursuant to section 6105. Immediately upon receipt of the results of the records check, the sheriff shall review the information and shall determine whether the applicant meets the criteria set forth in this subsection. If the sheriff determines that the applicant has met all of the criteria, the sheriff shall immediately issue the applicant a temporary emergency license to carry a concealed firearm.

(3) If the sheriff refuses to issue a temporary emergency license, the sheriff shall specify the grounds for the denial in a written notice to the applicant. The applicant may appeal the denial or challenge criminal records check results that were the basis of the denial, if applicable, in the same manner as a denial of a license to carry a firearm under this section.

(4) A temporary emergency license issued under this subsection shall be valid for 45 days and may not be renewed. A person who has been issued a temporary emergency license under this subsection shall not be issued another temporary emergency license unless at least five years have expired since the issuance of the prior temporary emergency license. During the 45 days the temporary emergency license is valid, the sheriff shall conduct an additional investigation of the person for the purposes of determining whether the person may be issued a license pursuant to this section. If, during the course of this investigation, the sheriff discovers any information that would have prohibited the issuance of a license pursuant to this section, the sheriff shall be authorized to revoke the temporary emergency license as provided in subsection (i).

(5) The temporary emergency license issued pursuant to this section shall be consistent with the form prescribed in subsection (e)(3), (4) and (5). In addition to the information provided in those paragraphs, the temporary emergency license shall be clearly marked "Temporary."

(6) A person who holds a temporary emergency license to carry a firearm shall have the same rights to carry a firearm as a person issued a license to carry a firearm under this section. A licensee under this subsection shall be subject to all other duties, restrictions and penalties under this section, including revocation pursuant to subsection (i).

(7) A sheriff who issues a temporary emergency license to carry a firearm shall retain, for the entire period during which the temporary emergency license is in effect, the evidence of imminent danger that the applicant submitted to the sheriff that was the basis for the license, or a copy of the evidence, as appropriate.

(8) A person applying for a temporary emergency license shall complete the application required pursuant to subsection (c) and shall provide at the time of application the information required in paragraph (1).

(9) Prior to the expiration of a temporary emergency license, if the sheriff has determined pursuant to investigation that the person issued a temporary emergency license is not disqualified and if the temporary emergency license has not been revoked pursuant to subsection (i), the sheriff shall issue a license pursuant to this section that is effective for the balance of the five-year period from the date of the issuance of the temporary emergency license. Records and all other information, duties and obligations regarding such licenses shall be applicable as otherwise provided in this section.

(10) As used in this subsection, the term “evidence of imminent danger” means:

(i) a written document prepared by the Attorney General, a district attorney, a chief law enforcement officer, judicial officer or their designees describing the facts that give a person reasonable cause to fear a criminal attack upon the person or the person’s minor child. For the purposes of this subparagraph, the term “chief law enforcement officer” shall have the same meaning as provided in 42 Pa.C.S. § 8951 (relating to definitions) and “judicial officer” shall have the same meaning as provided in 42 Pa.C.S. § 102 (relating to definitions).

(ii) a police report.

(m.2) Inconsistent provisions.--Notwithstanding the provisions of section 7506 (relating to violation of rules regarding conduct on Commonwealth property), 75 Pa.C.S. § 7727 (relating to additional limitations on operation) or the act of June 28, 1995 (P.L.89, No.18), known as the Conservation and Natural Resources Act, and regulations promulgated under that act, a firearm may be carried as provided in subsection (a) by:

(1) a law enforcement officer whose current identification as a law enforcement officer shall be construed as a valid license to carry a firearm; or
(2) any licensee.

(m.3) Construction.--Nothing in this section shall be construed to:

(1) Permit the hunting or harvesting of any wildlife with a firearm or ammunition not otherwise permitted by 34 Pa.C.S. (relating to game).

(2) Authorize any Commonwealth agency to regulate the possession of firearms in any manner inconsistent with the provisions of this title.

(n) Definition.--As used in this section, the term “licensee” means an individual who is licensed to carry a firearm under this section.

§ 6110. Persons to whom delivery shall not be made (Repealed).

§ 6110.1. Possession of firearm by minor.

(a) Firearm.--Except as provided in subsection (b), a person under 18 years of age shall not possess or transport a firearm anywhere in this Commonwealth.

(b) Exception.--Subsection (a) shall not apply to a person under 18 years of age:

(1) who is under the supervision of a parent, grandparent, legal guardian or an adult acting with the expressed consent of the minor's custodial parent or legal guardian and the minor is engaged in lawful activity, including safety training, lawful target shooting, engaging in an organized competition involving the use of a firearm or the firearm is unloaded and the minor is transporting it for a lawful purpose; or

(2) who is lawfully hunting or trapping in accordance with 34 Pa.C.S. (relating to game).

(c) Responsibility of adult.--Any person who knowingly and intentionally delivers or provides to the minor a firearm in violation of subsection (a) commits a felony of the third degree.

(d) Forfeiture.--Any firearm in the possession of a person under 18 years of age in violation of this section shall be promptly seized by the arresting law enforcement officer and upon conviction or adjudication of delinquency shall be forfeited or, if stolen, returned to the lawful owner.

§ 6110.2. Possession of firearm with altered manufacturer's number.

(a) General rule.--No person shall possess a firearm which has had the manufacturer's number integral to the frame or receiver altered, changed, removed or obliterated.

(b) Penalty.--A person who violates this section commits a felony of the second degree.

(c) Definition.--As used in this section, the term "firearm" shall have the same meaning as that term is defined in section 6105(i) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), except that the term shall not include antique firearms as defined in section 6118 (relating to antique firearms).

§ 6111. Sale or transfer of firearms.

(a) Time and manner of delivery.--

(1) Except as provided in paragraph (2), no seller shall deliver a firearm to the purchaser or transferee thereof until 48 hours shall have elapsed from the time of the application for the purchase thereof, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.

(2) Thirty days after publication in the Pennsylvania Bulletin that the Instantaneous Criminal History Records Check System has been established in accordance with the Brady Handgun Violence Prevention Act (Public Law 103-159, 18 U.S.C. § 921 et seq.), no seller shall deliver a firearm to the purchaser thereof until the provisions of this section have been satisfied, and, when delivered, the firearm shall be securely wrapped and shall be unloaded.

(b) Duty of seller.--No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, until the conditions of subsection (a) have been satisfied and until he has:

(1) For purposes of a firearm as defined in section 6102 (relating to definitions), obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the purchaser or transferee. The form of this application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer. The application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee, the date of the application and the caliber, length of barrel, make, model and manufacturer's number of the firearm to be purchased or transferred. The application/record of sale shall also contain the following question:

Are you the actual buyer of the firearm(s), as defined under 18 Pa.C.S. § 6102 (relating to definitions), listed on this application/record of sale? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person, unless you are legitimately acquiring the firearm as a gift for any of the following individuals who are legally eligible to own a firearm:

- (1) spouse;
- (2) parent;
- (3) child;
- (4) grandparent; or
- (5) grandchild.

(1.1) On the date of publication in the Pennsylvania Bulletin of a notice by the Pennsylvania State Police that the instantaneous records check has been implemented, all of the following shall apply:

(i) In the event of an electronic failure under section 6111.1(b)(2) (relating to Pennsylvania State Police) for purposes of a firearm which exceeds the barrel and related lengths set forth in section 6102, obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the purchaser or transferee.

(ii) The form of the application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer.

(iii) For purposes of conducting the criminal history, juvenile delinquency and mental health records background check which shall be completed within ten days of receipt of the information from the dealer, the application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee and the date of application.

(iv) No information regarding the type of firearm need be included other than an indication that the firearm exceeds the barrel lengths set forth in section 6102.

(v) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential

purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), no information on the application/record of sale provided pursuant to this subsection shall be retained as precluded by section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information onto a computer, and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check.

(1.2) Fees collected under paragraph (3) and section 6111.2 (relating to firearm sales surcharge) shall be transmitted to the Pennsylvania State Police within 14 days of collection.

(1.3) In addition to the criminal penalty under section 6119 (relating to violation penalty), any person who knowingly and intentionally maintains or fails to destroy any information submitted to the Pennsylvania State Police for purposes of a background check pursuant to paragraphs (1.1) and (1.4) or violates section 6111.4 shall be subject to a civil penalty of \$250 per violation, entry or failure to destroy.

(1.4) Following implementation of the instantaneous records check by the Pennsylvania State Police on or before December 1, 1998, no application/record of sale shall be completed for the purchase or transfer of a firearm which exceeds the barrel lengths set forth in section 6102. A statement shall be submitted by the dealer to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, containing the number of firearms sold which exceed the barrel and related lengths set forth in section 6102, the amount of surcharge and other fees remitted and a list of the unique approval numbers given pursuant to paragraph (4), together with a statement that the background checks have been performed on the firearms contained in the statement. The form of the statement relating to performance of background checks shall be promulgated by the Pennsylvania State Police.

(2) Inspected photoidentification of the potential purchaser or transferee, including, but not limited to, a driver's license, official Pennsylvania photoidentification card or official government photoidentification card. In the case of a potential buyer or transferee who is a member of a recognized religious sect or community whose tenets forbid or discourage the taking of photographs of members of that sect or community, a seller shall accept a valid-without-photo driver's license or a combination of documents, as prescribed by the Pennsylvania State Police, containing the applicant's name, address, date of birth and the signature of the applicant.

(3) Requested by means of a telephone call that the Pennsylvania State Police conduct a criminal history, juvenile delinquency history and a mental health record check. The purchaser and the licensed dealer shall provide such information as is necessary to accurately identify the purchaser. The requester shall be charged a fee equivalent to the cost of providing the service but not to exceed \$2 per buyer or transferee.

(4) Received a unique approval number for that inquiry from the Pennsylvania State Police and recorded the date and the number on the application/record of sale form.

(5) Issued a receipt containing the information from paragraph (4), including the unique approval number of the purchaser. This receipt shall be prima facie evidence of the purchaser's or transferee's compliance with the provisions of this section.

(6) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105, no information received via telephone following the implementation of the instantaneous background check system from a purchaser or transferee who has received a unique approval number shall be retained by the Pennsylvania State Police.

(7) For purposes of the enforcement of 18 U.S.C. § 922(d)(9), (g)(1) and (s)(1) (relating to unlawful acts), in the event the criminal history or juvenile delinquency background check indicates a conviction for a misdemeanor that the Pennsylvania State Police cannot determine is or is not related to an act of domestic violence, the Pennsylvania State Police shall issue a temporary delay of the approval of the purchase or transfer. During the temporary delay, the Pennsylvania State Police shall conduct a review or investigation of the conviction with courts, local police departments, district attorneys and other law enforcement or related institutions as necessary to determine whether or not the misdemeanor conviction involved an act of domestic violence. The Pennsylvania State Police shall conduct the review or investigation as expeditiously as possible. No firearm may be transferred by the dealer to the purchaser who is the subject of the investigation during the temporary delay. The Pennsylvania State Police shall notify the dealer of the termination of the temporary delay and either deny the sale or provide the unique approval number under paragraph (4).

(c) Duty of other persons.--Any person who is not a licensed importer, manufacturer or dealer and who desires to sell or transfer a firearm to another unlicensed person shall do so only upon the place of business of a licensed importer, manufacturer, dealer or county sheriff's office, the latter of whom shall follow the procedure set forth in this section as if he were the seller of the firearm. The provisions of this section shall not apply to transfers between spouses or to transfers between a parent and child or to transfers between grandparent and grandchild.

(d) Defense.--Compliance with the provisions of this section shall be a defense to any criminal complaint under the laws of this Commonwealth or other claim or cause of action under this chapter arising from the sale or transfer of any firearm.

(e) Nonapplicability of section.--This section shall not apply to the following:

(1) Any firearm manufactured on or before 1898.

(2) Any firearm with a matchlock, flintlock or percussion cap type of ignition system.

(3) Any replica of any firearm described in paragraph (1) if the replica:

(i) is not designed or redesigned to use rimfire or conventional center fire fixed ammunition; or

(ii) uses rimfire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(f) Application of section.--

(1) For the purposes of this section only, except as provided by paragraph (2), "firearm" shall mean any weapon which is designed to or may readily be converted to

expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

(2) The provisions contained in subsections (a) and (c) shall only apply to pistols or revolvers with a barrel length of less than 15 inches, any shotgun with a barrel length of less than 18 inches, any rifle with a barrel length of less than 16 inches or any firearm with an overall length of less than 26 inches.

(3) The provisions contained in subsection (a) shall not apply to any law enforcement officer whose current identification as a law enforcement officer shall be construed as a valid license to carry a firearm or any person who possesses a valid license to carry a firearm under section 6109 (relating to licenses).

(4) (i) The provisions of subsection (a) shall not apply to any person who presents to the seller or transferor a written statement issued by the official described in subparagraph (iii) during the ten-day period ending on the date of the most recent proposal of such transfer or sale by the transferee or purchaser stating that the transferee or purchaser requires access to a firearm because of a threat to the life of the transferee or purchaser or any member of the household of that transferee or purchaser.

(ii) The issuing official shall notify the applicant's local police authority that such a statement has been issued. In counties of the first class the chief of police shall notify the police station or substation closest to the applicant's residence.

(iii) The statement issued under subparagraph (ii) shall be issued by the district attorney, or his designee, of the county of residence if the transferee or purchaser resides in a municipality where there is no chief of police. Otherwise, the statement shall be issued by the chief of police in the municipality in which the purchaser or transferee resides.

(g) Penalties.--

(1) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly or intentionally sells, delivers or transfers a firearm in violation of this section commits a misdemeanor of the second degree.

(2) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly or intentionally sells, delivers or transfers a firearm under circumstances intended to provide a firearm to any person, purchaser or transferee who is unqualified or ineligible to control, possess or use a firearm under this chapter commits a felony of the third degree and shall in addition be subject to revocation of the license to sell firearms for a period of three years.

(3) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally requests a criminal history, juvenile delinquency or mental health record check or other confidential information from the Pennsylvania State Police under this chapter for any purpose other than compliance with this chapter or knowingly and intentionally disseminates any criminal history, juvenile delinquency or mental health record or other confidential information to any person other than the subject of the information commits a felony of the third degree.

(3.1) Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally obtains or furnishes information collected or maintained pursuant to section 6109 for any purpose other than compliance with this chapter or who knowingly or intentionally disseminates, publishes or otherwise makes available

such information to any person other than the subject of the information commits a felony of the third degree.

(4) Any person, purchaser or transferee commits a felony of the third degree if, in connection with the purchase, delivery or transfer of a firearm under this chapter, he knowingly and intentionally:

- (i) makes any materially false oral statement;
- (ii) makes any materially false written statement, including a statement on any form promulgated by Federal or State agencies; or
- (iii) willfully furnishes or exhibits any false identification intended or likely to deceive the seller, licensed dealer or licensed manufacturer.

(5) Notwithstanding section 306 (relating to liability for conduct of another; complicity) or any other statute to the contrary, any person, licensed importer, licensed dealer or licensed manufacturer who knowingly and intentionally sells, delivers or transfers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used in the commission of a crime or attempt to commit a crime shall be criminally liable for such crime or attempted crime.

(6) Notwithstanding any act or statute to the contrary, any person, licensed importer, licensed manufacturer or licensed dealer who knowingly and intentionally sells or delivers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used in the commission of a crime or attempt to commit a crime shall be liable in the amount of the civil judgment for injuries suffered by any person so injured by such crime or attempted crime.

(h) Subsequent violation penalty.--

(1) A second or subsequent violation of this section shall be a felony of the second degree. A person who at the time of sentencing has been convicted of another offense under this section shall be sentenced to a mandatory minimum sentence of imprisonment of five years. A second or subsequent offense shall also result in permanent revocation of any license to sell, import or manufacture a firearm.

(2) Notice of the applicability of this subsection to the defendant and reasonable notice of the Commonwealth's intention to proceed under this section shall be provided prior to trial. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine by a preponderance of the evidence if this section is applicable.

(3) There shall be no authority for a court to impose on a defendant to which this subsection is applicable a lesser sentence than provided for in paragraph (1), to place the defendant on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

(4) If a sentencing court refuses to apply this subsection where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this subsection.

(5) For the purposes of this subsection, a person shall be deemed to have been convicted of another offense under this section whether or not judgment of sentence has been imposed for that violation.

(i) Confidentiality.--All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer, State or local governmental agency or department that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.

(j) Exemption.--

(1) The provisions of subsections (a) and (b) shall not apply to:

(i) sales between Federal firearms licensees; or

(ii) the purchase of firearms by a chief law enforcement officer or his designee, for the official use of law enforcement officers.

(2) For the purposes of this subsection, the term "chief law enforcement officer" shall include the Commissioner of the Pennsylvania State Police, the chief or head of a police department, a county sheriff or any equivalent law enforcement official.

§ 6111.1. Pennsylvania State Police.

(a) Administration.--The Pennsylvania State Police shall have the responsibility to administer the provisions of this chapter.

(b) Duty of Pennsylvania State Police.--

(1) Upon receipt of a request for a criminal history, juvenile delinquency history and mental health record check of the potential purchaser or transferee, the Pennsylvania State Police shall immediately during the licensee's call or by return call forthwith:

(i) review the Pennsylvania State Police criminal history and fingerprint records to determine if the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law;

(ii) review the juvenile delinquency and mental health records of the Pennsylvania State Police to determine whether the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law; and

(iii) inform the licensee making the inquiry either:

(A) that the potential purchase or transfer is prohibited; or

(B) provide the licensee with a unique approval number.

(2) In the event of electronic failure, scheduled computer downtime or similar event beyond the control of the Pennsylvania State Police, the Pennsylvania State Police shall immediately notify the requesting licensee of the reason for and estimated length of the delay. If the failure or event lasts for a period exceeding 48 hours, the dealer shall not be subject to any penalty for completing a transaction absent the completion of an instantaneous records check for the remainder of the failure or similar event, but the dealer shall obtain a completed application/record of sale following the

provisions of section 6111(b)(1) and (1.1) (relating to sale or transfer of firearms) as if an instantaneous records check has not been established for any sale or transfer of a firearm for the purpose of a subsequent background check.

(3) The Pennsylvania State Police shall fully comply, execute and enforce the directives of this section as follows:

(i) The instantaneous background check for firearms as defined in section 6102 (relating to definitions) shall begin on July 1, 1998.

(ii) The instantaneous background check for firearms that exceed the barrel lengths set forth in section 6102 shall begin on the later of:

(A) the date of publication of the notice under section 6111(a)(2); or

(B) December 31, 1998.

(4) The Pennsylvania State Police and any local law enforcement agency shall make all reasonable efforts to determine the lawful owner of any firearm confiscated or recovered by the Pennsylvania State Police or any local law enforcement agency and return said firearm to its lawful owner if the owner is not otherwise prohibited from possessing the firearm. When a court of law has determined that the Pennsylvania State Police or any local law enforcement agency have failed to exercise the duty under this subsection, reasonable attorney fees shall be awarded to any lawful owner of said firearm who has sought judicial enforcement of this subsection.

(c) Establish a telephone number.--The Pennsylvania State Police shall establish a telephone number which shall be operational seven days a week between the hours of 8 a.m. and 10 p.m. local time for purposes of responding to inquiries as described in this section from licensed manufacturers, licensed importers and licensed dealers. The Pennsylvania State Police shall employ and train such personnel as are necessary to administer expeditiously the provisions of this section.

(d) Distribution.--The Pennsylvania State Police shall provide, without charge, summaries of uniform firearm laws and firearm safety brochures pursuant to section 6125 (relating to distribution of uniform firearm laws and firearm safety brochures).

(e) Challenge to records.--

(1) Any person who is denied the right to receive, sell, transfer, possess, carry, manufacture or purchase a firearm as a result of the procedures established by this section may challenge the accuracy of that person's criminal history, juvenile delinquency history or mental health record pursuant to a denial by the instantaneous records check by submitting a challenge to the Pennsylvania State Police within 30 days from the date of the denial.

(2) The Pennsylvania State Police shall conduct a review of the accuracy of the information forming the basis for the denial and shall have the burden of proving the accuracy of the record. Within 20 days after receiving a challenge, the Pennsylvania State Police shall notify the challenger of the basis for the denial, including, but not limited to, the jurisdiction and docket number of any relevant court decision and provide the challenger an opportunity to provide additional information for the purposes of the review. The Pennsylvania State Police shall communicate its final decision to the challenger within 60 days of the receipt of the challenge. The decision of the Pennsylvania State Police shall include all information which formed a basis for the decision.

(3) If the challenge is ruled invalid, the person shall have the right to appeal the decision to the Attorney General within 30 days of the decision. The Attorney General shall conduct a hearing de novo in accordance with the Administrative Agency Law. The burden of proof shall be upon the Commonwealth.

(4) The decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved party.

(f) Notification of mental health adjudication, treatment, commitment, drug use or addiction.--

(1) Notwithstanding any statute to the contrary, judges of the courts of common pleas shall notify the Pennsylvania State Police, on a form developed by the Pennsylvania State Police, of:

(i) the identity of any individual who has been adjudicated as an incompetent or as a mental defective or who has been involuntarily committed to a mental institution under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, or who has been involuntarily treated as described in section 6105(c)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) or as described in 18 U.S.C. § 922(g)(4) (relating to unlawful acts) and its implementing Federal regulations; and

(ii) any finding of fact or court order related to any person described in 18 U.S.C. § 922(g)(3).

(2) The notification shall be transmitted by the judge to the Pennsylvania State Police within seven days of the adjudication, commitment or treatment.

(3) Notwithstanding any law to the contrary, the Pennsylvania State Police may disclose, electronically or otherwise, to the United States Attorney General or a designee, any record relevant to a determination of whether a person is disqualified from possessing or receiving a firearm under 18 U.S.C. § 922 (g)(3) or (4) or an applicable state statute.

(g) Review by court.--

(1) Upon receipt of a copy of the order of a court of competent jurisdiction which vacates a final order or an involuntary certification issued by a mental health review officer, the Pennsylvania State Police shall expunge all records of the involuntary treatment received under subsection (f).

(2) A person who is involuntarily committed pursuant to section 302 of the Mental Health Procedures Act may petition the court to review the sufficiency of the evidence upon which the commitment was based. If the court determines that the evidence upon which the involuntary commitment was based was insufficient, the court shall order that the record of the commitment submitted to the Pennsylvania State Police be expunged. A petition filed under this subsection shall toll the 60-day period set forth under section 6105(a)(2).

(3) The Pennsylvania State Police shall expunge all records of an involuntary commitment of an individual who is discharged from a mental health facility based upon the initial review by the physician occurring within two hours of arrival under section 302(b) of the Mental Health Procedures Act and the physician's determination that no severe mental disability existed pursuant to section 302(b) of the Mental Health Procedures Act. The physician shall provide signed confirmation of the determination

of the lack of severe mental disability following the initial examination under section 302(b) of the Mental Health Procedures Act to the Pennsylvania State Police.

(h) Juvenile registry.--

(1) The contents of law enforcement records and files compiled under 42 Pa.C.S. § 6308 (relating to law enforcement records) concerning a child shall not be disclosed to the public except if the child is 14 years of age or older at the time of the alleged conduct and if any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts which constitute any offense enumerated in section 6105.

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed an act or acts which constitute an offense enumerated in section 6105 and the child previously has been adjudicated delinquent by a court as a result of an act or acts which included the elements of one of such crimes.

(2) Notwithstanding any provision of this subsection, the contents of law enforcement records and files concerning any child adjudicated delinquent for the commission of any criminal activity described in paragraph (1) shall be recorded in the registry of the Pennsylvania State Police for the limited purposes of this chapter.

(i) Reports.--The Pennsylvania State Police shall annually compile and report to the General Assembly, on or before December 31, the following information for the previous year:

(1) number of firearm sales, including the types of firearms;

(2) number of applications for sale of firearms denied, number of challenges of the denials and number of final reversals of initial denials;

(3) summary of the Pennsylvania State Police's activities, including the average time taken to complete a criminal history, juvenile delinquency history or mental health record check; and

(4) uniform crime reporting statistics compiled by the Pennsylvania State Police based on the National Incident-based Reporting System.

(j) Other criminal information.--The Pennsylvania State Police shall be authorized to obtain any crime statistics necessary for the purposes of this chapter from any local law enforcement agency.

(j.1) Delinquency and mental health records.--The provisions of this section which relate to juvenile delinquency and mental health records checks shall be applicable when the data has been made available to the Pennsylvania State Police but not later than October 11, 1999.

(j.2) Records check.--The provisions of this section which relate to the instantaneous records check conducted by telephone shall be applicable 30 days following notice by the Pennsylvania State Police pursuant to section 6111(a)(2).

(j.3) Immunity.--The Pennsylvania State Police and its employees shall be immune from actions for damages for the use of a firearm by a purchaser or for the unlawful transfer of a firearm by a dealer unless the act of the Pennsylvania State Police or its employees constitutes a crime, actual fraud, actual malice or willful misconduct.

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

“Firearm.” The term shall have the same meaning as in section 6111.2 (relating to firearm sales surcharge).

“Physician.” Any licensed psychiatrist or clinical psychologist as defined in the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act.

§ 6111.2. Firearm sales surcharge.

(a) Surcharge imposed.--There is hereby imposed on each sale of a firearm subject to tax under Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, an additional surcharge of \$3. This shall be referred to as the Firearm Sale Surcharge. All moneys received from this surcharge shall be deposited in the Firearm Instant Records Check Fund.

(b) Increases or decreases.--Five years from the effective date of this subsection, and every five years thereafter, the Pennsylvania State Police shall provide such information as necessary to the Legislative Budget and Finance Committee for the purpose of reviewing the need to increase or decrease the instant check fee. The committee shall issue a report of its findings and recommendations to the General Assembly for a statutory change in the fee.

(c) Revenue sources.--Funds received under the provisions of this section and section 6111(b)(3) (relating to sale or transfer of firearms), as estimated and certified by the Secretary of Revenue, shall be deposited within five days of the end of each quarter into the fund.

(d) Definition.--As used in this section only, the term “firearm” shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosion or the frame or receiver of any such weapon.

§ 6111.3. Firearm Records Check Fund.

(a) Establishment.--The Firearm Records Check Fund is hereby established as a restricted account in the State Treasury, separate and apart from all other public money or funds of the Commonwealth, to be appropriated annually by the General Assembly, for use in carrying out the provisions of section 6111 (relating to firearm ownership). The moneys in the fund on June 1, 1998, are hereby appropriated to the Pennsylvania State Police.

(b) Source.--The source of the fund shall be moneys collected and transferred under section 6111.2 (relating to firearm sales surcharge) and moneys collected and transferred under section 6111(b)(3).

§ 6111.4. Registration of firearms.

Notwithstanding any section of this chapter to the contrary, nothing in this chapter shall be construed to allow any government or law enforcement agency or any agent thereof to create, maintain or operate any registry of firearm ownership within this Commonwealth. For the purposes of this section only, the term “firearm” shall include any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

§ 6111.5. Rules and regulations.

The Pennsylvania State Police shall in the manner provided by law promulgate the rules and regulations necessary to carry out this chapter, including regulations to ensure the identity, confidentiality and security of all records and data provided pursuant hereto.

§ 6112. Retail dealer required to be licensed.

No retail dealer shall sell, or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer, any firearm as defined in section 6113(d) (relating to licensing of dealers) without being licensed as provided in this chapter.

§ 6113. Licensing of dealers.

(a) General rule.--The chief or head of any police force or police department of a city, and, elsewhere, the sheriff of the county, shall grant to reputable applicants licenses, in form prescribed by the Pennsylvania State Police, effective for three years from date of issue, permitting the licensee to sell firearms direct to the consumer, subject to the following conditions in addition to those specified in section 6111 (relating to sale or transfer of firearms), for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in this subchapter:

(1) The business shall be carried on only upon the premises designated in the license or at a lawful gun show or meet.

(2) The license, or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

(3) No firearm shall be sold in violation of any provision of this subchapter.

(4) No firearm shall be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of the purchaser's identity.

(5) A true record in triplicate shall be made of every firearm sold, in a book kept for the purpose, the form of which may be prescribed by the Pennsylvania State Police, and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the information required by section 6111. The record shall be maintained by the licensee for a period of 20 years.

(6) No firearm as defined in section 6102 (relating to definitions) shall be displayed in any part of any premises where it can readily be seen from the outside. In the event that the Commissioner of the Pennsylvania State Police shall find a clear and present danger to public safety within this Commonwealth or any area thereof, firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police by the licensee during the hours when the licensee is closed for business.

(7) The dealer shall possess all applicable current revenue licenses.

(b) Fee.--The fee for issuing said license shall be \$30, which fee shall be paid into the county treasury.

(c) Revocation.--Any license granted under subsection (a) of this section may be revoked for cause by the person issuing the same, upon written notice to the holder thereof.

(d) Definitions.--For the purposes of this section and section 6112 (relating to retail dealer required to be licensed) only unless otherwise specifically provided, the term "firearm" shall include any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

§ 6114. Judicial review.

The action of the chief of police, sheriff, county treasurer or other officer under this subchapter shall be subject to judicial review in the manner and within the time provided by 2 Pa.C.S. Ch. 7 Subch. B (relating to judicial review of local agency action). A judgment sustaining a refusal to grant a license shall not bar, after one year, a new application; nor shall a judgment in favor of the petitioner prevent the defendant from thereafter revoking or refusing to renew such license for any proper cause which may thereafter occur. The court shall have full power to dispose of all costs.

§ 6115. Loans on, or lending or giving firearms prohibited.

(a) Offense defined.--No person shall make any loan secured by mortgage, deposit or pledge of a firearm, nor, except as provided in subsection (b), shall any person lend or give a firearm to another or otherwise deliver a firearm contrary to the provisions of this subchapter.

(b) Exception.--

(1) Subsection (a) shall not apply if any of the following apply:

(i) The person who receives the firearm is licensed to carry a firearm under section 6109 (relating to licenses).

(ii) The person who receives the firearm is exempt from licensing.

(iii) The person who receives the firearm is engaged in a hunter safety program certified by the Pennsylvania Game Commission or a firearm training program or competition sanctioned or approved by the National Rifle Association.

(iv) The person who receives the firearm meets all of the following:

(A) Is under 18 years of age.

(B) Pursuant to section 6110.1 (relating to possession of firearm by minor) is under the supervision, guidance and instruction of a responsible individual who:

(I) is 21 years of age or older; and

(II) is not prohibited from owning or possessing a firearm under section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(v) The person who receives the firearm is lawfully hunting or trapping and is in compliance with the provisions of Title 34 (relating to game).

(vi) A bank or other chartered lending institution is able to adequately secure firearms in its possession.

(2) Nothing in this section shall be construed to prohibit the transfer of a firearm under 20 Pa.C.S. Ch. 21 (relating to intestate succession) or by bequest if the individual receiving the firearm is not precluded from owning or possessing a firearm under section 6105.

(3) Nothing in this section shall be construed to prohibit the loaning or giving of a firearm to another in one's dwelling or place of business if the firearm is retained within the dwelling or place of business.

(4) Nothing in this section shall prohibit the relinquishment of firearms to a third party in accordance with 23 Pa.C.S. § 6108.3 (relating to relinquishment to third party for safekeeping).

§ 6116. False evidence of identity.

In addition to any other penalty provided in this chapter, the furnishing of false information or offering false evidence of identity is a violation of section 4904 (relating to unsworn falsification to authorities).

§ 6117. Altering or obliterating marks of identification.

(a) Offense defined.--No person shall change, alter, remove, or obliterate the manufacturer's number integral to the frame or receiver of any firearm which shall have the same meaning as provided in section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(b) Presumption.--(Deleted by amendment).

(c) Penalty.--A violation of this section constitutes a felony of the second degree.

§ 6118. Antique firearms.

(a) General rule.--This subchapter shall not apply to antique firearms.

(b) Exception.--Subsection (a) shall not apply to the extent that such antique firearms, reproductions or replicas of firearms are concealed weapons as provided in section 6106 (relating to firearms not be carried without a license), nor shall it apply to the provisions of section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) if such antique firearms, reproductions or replicas of firearms are suitable for use.

(c) Definition.--As used in this section, the term "antique firearm" means:

(1) Any firearm with a matchlock, flintlock or percussion cap type of ignition system.

(2) Any firearm manufactured on or before 1898.

(3) Any replica of any firearm described in paragraph (2) if such replica:

(i) is not designed or redesigned for using rimfire or conventional center fire fixed ammunition; or

(ii) uses rimfire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

§ 6119. Violation penalty.

Except as otherwise specifically provided, an offense under this subchapter constitutes a misdemeanor of the first degree.

§ 6120. Limitation on the regulation of firearms and ammunition.

(a) General rule.--No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

(a.1) No right of action.--

(1) No political subdivision may bring or maintain an action at law or in equity against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement, injunctive relief or any other relief or remedy resulting from or relating to either the lawful design or manufacture of firearms or ammunition or the lawful marketing or sale of firearms or ammunition to the public.

(2) Nothing in this subsection shall be construed to prohibit a political subdivision from bringing or maintaining an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the political subdivision.

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

“Dealer.” The term shall include any person engaged in the business of selling at wholesale or retail a firearm or ammunition.

“Firearms.” This term shall have the meaning given to it in section 5515 (relating to prohibiting of paramilitary training) but shall not include air rifles as that term is defined in section 6304 (relating to sale and use of air rifles).

“Political subdivision.” The term shall include any home rule charter municipality, county, city, borough, incorporated town, township or school district.

§ 6121. Certain bullets prohibited.

(a) Offense defined.--It is unlawful for any person to possess, use or attempt to use a KTW teflon-coated bullet or other armor-piercing ammunition while committing or attempting to commit a crime of violence as defined in section 6102 (relating to definitions).

(b) Grading.--An offense under this section constitutes a felony of the third degree.

(c) Sentencing.--Any person who is convicted in any court of this Commonwealth of a crime of violence and who uses or carries, in the commission of that crime, a firearm loaded with KTW ammunition or any person who violates this section shall, in addition to the punishment provided for the commission of the crime, be sentenced to a term of imprisonment for not less than five years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a crime subject to this subsection nor place him on probation nor shall the term of imprisonment run concurrently with any other term of imprisonment including that imposed for the crime in which the KTW ammunition was being used or carried. No person sentenced under this subsection shall be eligible for parole.

(d) Definition.--As used in this section the term “armor-piercing ammunition” means ammunition which, when or if fired from any firearm as defined in section 6102 that is used or attempted to be used in violation of subsection (a) under the test procedure of the National Institute of Law Enforcement and Criminal Justice Standard for the Ballistics Resistance of Police Body Armor promulgated December 1978, is determined to be capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States Department of Justice and published in December of 1978.

§ 6122. Proof of license and exception.

(a) General rule.--When carrying a firearm concealed on or about one’s person or in a vehicle, an individual licensed to carry a firearm shall, upon lawful demand of a law enforcement officer, produce the license for inspection. Failure to produce such license either at the time of arrest or at the preliminary hearing shall create a rebuttable presumption of nonlicensure.

(b) Exception.--An individual carrying a firearm on or about his person or in a vehicle and claiming an exception under section 6106(b) (relating to firearms not to be carried without a license) shall, upon lawful demand of a law enforcement officer, produce satisfactory evidence of qualification for exception.

§ 6123. Waiver of disability or pardons.

A waiver of disability from Federal authorities as provided for in 18 U.S.C. § 925 (relating to exceptions; relief from disabilities), a full pardon from the Governor or an overturning of a conviction shall remove any corresponding disability under this subchapter except the disability under section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

§ 6124. Administrative regulations.

The commissioner may establish form specifications and regulations, consistent with section 6109(c) (relating to licenses), with respect to uniform forms control, including the following:

- (1) License to carry firearms.
- (2) Firearm registration.
- (3) Dealer's license.
- (4) Application for purchase of a firearm.
- (5) Record of sale of firearms.

§ 6125. Distribution of uniform firearm laws and firearm safety brochures.

It shall be the duty of the Pennsylvania State Police beginning January 1, 1996, to distribute to every licensed firearm dealer in this Commonwealth firearms safety brochures at no cost to the dealer. The brochures shall be written by the Pennsylvania State Police, with the cooperation of the Pennsylvania Game Commission, and shall include a summary of the major provisions of this subchapter, including, but not limited to, the duties of the sellers and purchasers and the transferees of firearms. The brochure or a copy thereof shall be provided without charge to each purchaser.

§ 6126. Firearms Background Check Advisory Committee (Expired).

§ 6127. Firearm tracing.

(a) Illegal possession.--Upon confiscating or recovering a firearm from the possession of anyone who is not permitted by Federal or State law to possess a firearm, a local law enforcement agency shall use the best available information, including a firearms trace where necessary, to determine how and from where the person gained possession of the firearm.

(b) Tracing.--Local law enforcement shall use the National Tracing Center of the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives in complying with subsection (a).

(c) Notification.--Local law enforcement agencies shall advise the Pennsylvania State Police of all firearms that are recovered in accordance with this section.

SUBCHAPTER B
FIREARMS GENERALLY

Sec.

6141. Purchase of firearms in contiguous states (Repealed).

6141.1. Purchase of rifles and shotguns outside this Commonwealth.

6142. Locking device for firearms.

§ 6141. Purchase of firearms in contiguous states (Repealed).

§ 6141.1. Purchase of rifles and shotguns outside this Commonwealth.

Nothing in this chapter shall be construed to prohibit a person in this Commonwealth who may lawfully purchase, possess, use, control, sell, transfer or manufacture a firearm which exceeds the barrel and related lengths set forth in section 6102 (relating to definitions) from lawfully purchasing or otherwise obtaining such a firearm in a jurisdiction outside this Commonwealth.

§ 6142. Locking device for firearms.

(a) Offense defined.--It shall be unlawful for any licensee to sell, deliver or transfer any firearm as defined in section 6102 (relating to definitions), other than an antique firearm as defined in section 6118 (relating to antique firearms), to any other person, other than another licensee, unless the transferee is provided with or purchases a locking device for that firearm or the design of the firearm incorporates a locking device.

(b) Exceptions.--Firearms for transfer to or possession by any law enforcement officer employed by any Federal, State or local government entity or rail police employed and certified by a rail carrier as a police officer are not subject to the provisions of this section.

(c) Penalties.--A violation of the provisions of this section shall be a summary offense.

(d) Good faith compliance.--A licensee who in good faith complies with this section shall not be civilly liable as a result of such compliance with this section, except for any acts or omissions intentionally designed to harm or for grossly negligent acts or omissions which result in harm.

(e) Admissibility of evidence.--A transferee's purchase or receipt of a locking device in conjunction with the purchase of a firearm pursuant to this section shall not be admissible as evidence in any civil action brought against the transferee.

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

"Licensee." Any licensed manufacturer, importer or dealer of firearms.

"Locking device." Either of the following:

(1) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; or

(2) a device that is incorporated into the design of a firearm and that is designed to prevent the operation of the firearm by anyone not having access to the device.

SUBCHAPTER C
OTHER DANGEROUS ARTICLES

Sec.

6161. Carrying explosives on conveyances.

6162. Shipping explosives.

§ 6161. Carrying explosives on conveyances.

(a) Offense defined.--A person is guilty of a misdemeanor of the second degree if he enters into or upon any railroad train, locomotive, tender or car thereof, or into or upon any automobile or other conveyance used for the carrying of freight or passengers, having in his custody or about his person any nitroglycerine or other explosive, other than as freight regularly shipped as such.

(b) Powers of crew.--The conductor or person having charge and control of any railroad train, coach, or other conveyance for the carriage of freight or passengers, may arrest any person found violating the provisions of this section and detain such person until reaching some place, where such person may be delivered to a constable or other police authority.

(c) Venue.--It shall be lawful to prosecute such offenders in any county through which said public conveyance passes, without reference to the place where such offenders were arrested.

§ 6162. Shipping explosives.

(a) Offense defined.--A person is guilty of a misdemeanor of the third degree if he knowingly delivers, or causes to be delivered to any transportation company, or to any person engaged in the business of transportation, any explosive material adapted for blasting, or for any other purpose for which such articles may be used, under any false or deceptive invoice or description, or without informing the carrier at or before the time when such delivery is made, of the true nature of the same, and without having the keg, barrel, can or package containing the same plainly marked with the name of the explosive material therein contained, together with the word "dangerous."

(b) Damages.--Any person convicted of an offense under this section shall, in addition to any other penalty, be responsible for all damages to persons or property directly or indirectly resulting from the explosion of any such article.

(c) Opening of suspected containers.--Any person engaged in the business of transportation, upon affidavit made of the fact that any container tendered for transportation, not in compliance with the provisions of this section is believed to contain explosive material, may require such container to be opened, and refuse to receive any such container unless such requirement is complied with.

(d) Disposition of explosives.--If such container is opened and found to contain any explosive material, the container and its contents shall be forthwith removed to any lawful place for the storing of explosives. After conviction of the offender, or after three months from such removal, the container, with its contents, shall be sold at public sale, after the expiration of ten days from notice of the time and place of such sale, published in one newspaper in the county where such seizure shall have been made. The proceeds of such

sale, after deducting therefrom the expenses of removal, storage, advertisement and sale, shall be paid into the treasury of the county.

SUBCHAPTER D
STRAW PURCHASE PREVENTION
EDUCATION PROGRAM

Sec.

- 6181. Scope of subchapter.
- 6182. Legislative findings and declarations.
- 6183. Definitions.
- 6184. Straw Purchase Prevention Education Program.
- 6185. Powers and duties of Attorney General.
- 6186. Straw Purchase Prevention Education Fund.
- 6187. Transfer for initial funding.

§ 6181. Scope of subchapter.

This subchapter provides for the establishment of the Straw Purchase Prevention Education Program within the Office of Attorney General.

§ 6182. Legislative findings and declarations.

The General Assembly finds and declares that:

(1) The illegal purchase of firearms throughout this Commonwealth is a threat to public safety and security.

(2) Urban areas are experiencing increased violence as a result of criminal misuse of firearms. Stemming the flow of these illegal firearms through straw purchases will help to curb the crime rate throughout this Commonwealth and increase public safety.

(3) Educating the public that illegally purchasing a firearm for someone otherwise prohibited from possessing one is a serious crime and punishable under Federal law by ten years' imprisonment advances public safety.

(4) Committed to educating firearms dealers and the general public, the National Shooting Sports Foundation, in partnership with the Bureau of Alcohol, Tobacco, Firearms and Explosives, in July 2000 created the "Don't Lie for the Other Guy Program."

(5) The "Don't Lie for the Other Guy Program" was developed to raise public awareness that it is a serious crime to purchase a firearm for someone who cannot legally do so and to educate firearms dealers on how to better detect and deter potential straw purchases. The campaign delivers the message that anyone attempting an illegal firearm purchase faces a stiff Federal penalty.

(6) The "Don't Lie for the Other Guy Program" is vital to educating federally licensed firearms dealers and their employees on how to recognize and deter the illegal purchase of firearms through straw purchases. This program is an important tool for the Bureau of Alcohol, Tobacco, Firearms and Explosives to pursue its mission of preventing terrorism, reducing violent crime and protecting the public.

(7) The nationally recognized "Don't Lie for the Other Guy Program" has been endorsed by United States attorneys throughout the nation, various law enforcement

agencies, the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Department of Justice.

(8) It is in the best interest of this Commonwealth to establish a straw purchase prevention education program within the Office of Attorney General to provide resources and direct grant money to the “Don’t Lie for the Other Guy Program” and similar programs that offer straw purchase prevention education.

§ 6183. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Fund.” The Straw Purchase Prevention Education Fund established in section 6186 (relating to Straw Purchase Prevention Education Fund).

“Program.” The Straw Purchase Prevention Education Program established in section 6184 (relating to Straw Purchase Prevention Education Program).

§ 6184. Straw Purchase Prevention Education Program.

(a) Establishment.--The Straw Purchase Prevention Education Program is established and shall provide resources and direct grant money to underwrite the cost of implementing an educational and public service outreach program in the community.

(b) Outreach.--The educational and public service outreach program shall inform individuals of the illegal nature of purchasing a firearm for an individual prohibited from owning firearms. The outreach program shall be developed by a not-for-profit organization which:

(1) Is a national trade association representing the shooting, hunting and firearm industry.

(2) Has a membership consisting of firearm manufacturers, firearm distributors, firearm retailers, publishers and sportsmen’s organizations.

(3) Has been in existence for at least 45 years prior to the effective date of this section.

(c) Priority of grants.--Grants shall be prioritized based on the highest incidence of firearm violence in a county of this Commonwealth.

§ 6185. Powers and duties of Attorney General.

In addition to any other powers and duties, the Attorney General of the Commonwealth shall:

(1) Establish a grant program to provide moneys from the fund pursuant to section 6184 (relating to Straw Purchase Prevention Education Program).

(2) Promulgate rules and regulations to carry out the provisions of this subchapter.

§ 6186. Straw Purchase Prevention Education Fund.

(a) Establishment.--The Straw Purchase Prevention Education Fund is hereby established in the State Treasury as a restricted account. The fund shall consist of funds appropriated by the General Assembly.

(b) Continuing appropriation.--All moneys in the fund and the interest accruing thereon are hereby appropriated to the Office of Attorney General on a continuing basis to carry out the provisions of this subchapter.

§ 6187. Transfer for initial funding.

The sum of \$100,000 is hereby transferred from the General Fund to the Straw Purchase Prevention Education Fund for expenditure during the fiscal year July 1, 2009, to June 30, 2010, to carry out the provisions of this subchapter.]

CHAPTER 62

FIREARMS AND OTHER DANGEROUS ARTICLES

Subchapter

A. General Provisions

B. Disqualifications

C. Sales and Background Checks

D. Licensure

E. Safety and Responsibility

F. Straw Purchases

G. Violations

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

6201. Short title.

6202. Definitions.

6203. Administration.

6204. Judicial review.

6205. Forms.

6206. Annual report.

6207. Preservation of constitutional rights.

§ 6201. Short title.

This chapter shall be known and may be cited as the Pennsylvania Firearms Act.

Source for § 6201

Section 6201 is derived from 18 Pa.C.S. § 6101.

§ 6202. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Antique firearm.”

(1) Subject to paragraph (2), any of the following:

(i) A firearm with a matchlock, flintlock or percussion cap type of ignition system.

(ii) A firearm manufactured during or before 1898.

(iii) A replica of any firearm described in paragraph (2) if the replica:

(A) is not designed or redesigned for using rimfire or conventional center fire fixed ammunition; or

(B) uses rimfire or conventional center fire fix ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade.

(2) A firearm that would otherwise meet the definition under paragraph (1) shall not be considered an antique firearm for purposes of the following:

(i) Section 6211 (relating to disqualification from possession or ownership).

(ii) Section 6212 (relating to disqualification based on protection from abuse order).

(iii) Section 6232 (relating to license to carry) if the antique firearm is suitable for use.

“Armor piercing ammunition.” As defined in 18 U.S.C. § 921(a)(17) (relating to definitions).

Note

Under 18 U.S.C. § 921(a)(17), the term “armor piercing ammunition is defined as follows:

(A) The term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(B) The term “armor piercing ammunition” means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term “armor piercing ammunition” does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

The term “armor-piercing ammunition” is defined in 18 Pa.C.S. § 6121(d) as follows:

ammunition which, when or if fired from any firearm as defined in section 6102 that is used or attempted to be used in violation of subsection (a) under the test procedure of the National Institute of Law Enforcement and Criminal Justice Standard for the Ballistics Resistance of Police Body Armor promulgated December 1978, is determined to be capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as

formulated by the United States Department of Justice and published in December of 1978.

“Barrel length.” The measurement of a firearm determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.

“Commissioner.” The Commissioner of the Pennsylvania State Police.

“Commonwealth Photo Imaging Network.” The computer network administered by the Commonwealth and used to record and store digital photographs of an individual’s face and any scars, marks, tattoos or other unique features of the individual.

“Conviction.” A conviction, a finding of guilty or the entering of a plea of guilty or nolo contendere, after judgment of sentence has been imposed, as determined by the law of the jurisdiction in which the prosecution was held. The term excludes a conviction that has been expunged or overturned or for which an individual has been pardoned unless the pardon expressly provides that the individual may not possess or transport a firearm.

Note

The phrase “after judgment of sentence has been imposed” replaces “whether or not judgment of sentence has been imposed.” In effect, this change lengthens the time period before a firearm must be relinquished when a disqualifying offense has been committed.

“County treasurer.” The county treasurer or, in a home rule or optional plan county, the individual whose duties encompass those of a county treasurer.

“Crime punishable by imprisonment exceeding one year.” The term excludes a Federal or State offenses pertaining to antitrust, unfair trade practices, restraints on trade or regulation of business.

Note

The definition under 18 Pa.C.S. § 6102 contains the exclusion of “State offenses classified as misdemeanors and punishable by a term of imprisonment not to exceed two years.” That exclusion is not contained in this definition, as it is unnecessary. Under 18 Pa.C.S. § 1104, only a misdemeanor of the first degree is subject to a term of imprisonment not to exceed two years:

A person who has been convicted of a misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall be not more than:

- (1) Five years in the case of a misdemeanor of the first degree.**
- (2) Two years in the case of a misdemeanor of the second degree.**
- (3) One year in the case of a misdemeanor of the third degree.**

The exclusion simply re-states what § 1104 provides. Therefore, a “crime punishable by imprisonment exceeding one year” would include a felony and a misdemeanor of the first or second degree.

“Dealer” or “licensed dealer.” Any of the following:

(1) A person licensed under this chapter.

(2) A person engaged in the business of selling firearms at wholesale or retail. For purposes of this paragraph, the phrase “engaged in the business” means devoting time, attention and labor to:

(i) manufacturing firearms or ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms or ammunition manufactured;

(ii) dealing in firearms through the repetitive purchase and resale of firearms, but not regarding occasional sales, exchanges or purchases of firearms for the enhancement of a personal collection or for a hobby or regarding the sale of all or part of the person’s personal collection of firearms; or

(iii) importing firearms or ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms or ammunition imported.

(3) A person engaged in the business of repairing firearms or of making or fitting special barrels, stocks or trigger mechanisms to firearms. For purposes of this paragraph, the phrase “engaged in the business” means devoting time, attention and labor to engaging in the activity as a regular course of trade or business with the principal objective of livelihood and profit, but not regarding the occasional repair of firearms or the occasional fitting of special barrels, stocks or trigger mechanisms to firearms.

(4) A pawnbroker. For purposes of this paragraph, the term “pawnbroker” means a person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of a firearm as security for the payment or repayment of money.

(5) Except as otherwise provided in paragraph (2)(ii), a person who sells or trades firearms at a gun show or event. For purposes of this paragraph, the term “gun show” shall be as defined in 27 C.F.R. § 178.100(b) (relating to conduct of business away from licensed premises).

Note

Under the Code of Federal Regulations (27 C.F.R. § 178.100(b)):

A gun show or an event is a function sponsored by any national, State, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

For purposes of this definition, the phrase “with the principal objective of livelihood and profit” shall mean that the intent underlying the sale or disposition is predominantly one of pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.

“Disability.” An individual’s disqualification from the ownership, possession or control of a firearm.

“Firearm.” Either of the following:

(1) A weapon that is designed to or may readily be converted to expel a projectile by the action of an explosive.

(2) The frame or receiver of a weapon under paragraph (1).

“Firearm background check.” A review of the criminal history, juvenile delinquency history and mental health records of an individual applying to obtain ownership of a firearm.

“Handgun.” Any of the following firearms:

(1) A pistol or revolver with a barrel length less than 15 inches.

(2) A shotgun with a barrel length less than 18 inches.

(3) A rifle with a barrel length less than 16 inches.

(4) A pistol, revolver, rifle or shotgun with an overall length of less than 26 inches.

“Law enforcement officer.” Any of the following:

(1) An individual who is:

(i) employed by a police department or organization of the Commonwealth or political subdivision thereof;

(ii) empowered to effect an arrest with or without warrant; and

- (iii) authorized to carry a firearm in the performance of that individual's duties.
- (2) A sheriff or deputy sheriff.
- (3) A constable or deputy constable who is:
- (i) empowered to effect an arrest with or without warrant; and
 - (ii) certified or qualified pursuant to 44 Pa.C.S. § 7148 (relating to use of firearms) to carry or use a firearm in the performance of that individual's duties.

Note

Under 44 Pa.C.S. § 7148, with the review and approval of the Pennsylvania Commission on Crime and Delinquency, the Constables' Education and Training Board is required to establish standards for the certification or qualification of constables and deputy constables to carry or use firearms in the performance of any duties.

"License to carry." Authorization under section 6232 (relating to license to carry) to carry a handgun concealed on or about the individual or in a vehicle within this Commonwealth.

"Loaded." A firearm is loaded if the firing chamber, the nondetachable magazine or, in the case of a revolver, any of the chambers of the cylinder contain ammunition capable of being fired. In the case of a firearm that uses a detachable magazine, the term means a magazine suitable for use in the firearm that contains ammunition and has been inserted in the firearm or is in the same container or, where the container has multiple compartments, the same compartment as the firearm. If the magazine is inserted into a pouch, holder, holster or other protective device that provides for a complete and secure enclosure of the ammunition, then the pouch, holder, holster or other protective device shall be deemed to be a separate compartment.

“Locking device.” Either of the following:

(1) A device that when installed on a handgun is designed to prevent the handgun from being operated without first deactivating the device.

(2) A device that is incorporated into the design of a handgun and that is designed to prevent the operation of the handgun by anyone not having access to the device.

“Long-gun.” A firearm that is not a handgun.

“Private sale.” A sale or transfer between two non-licensed individuals.

“Purchaser.” An individual acquiring a firearm by purchase or other transfer of ownership.

“Safekeeping permit.” As defined in 23 Pa.C.S. § 6102(a) (relating to definitions).

Note

Under 23 Pa.C.S. § 6102(a), a safekeeping permit is defined as “[a] permit issued by a sheriff allowing a person to take possession of any firearm, other weapon or ammunition that a judge ordered a defendant to relinquish in a protection from abuse proceeding.”

“Seller.” An individual licensed as an importer, manufacturer or dealer of firearms.

“Sheriff.”

(1) Except as provided in paragraph (2), the sheriff of the county.

(2) In a city of the first class, the chief or head of the police department.

“State.” When used in reference to different parts of the United States, includes the District of Columbia, the Commonwealth of Puerto Rico and territories and possessions of the United States.

Source for § 6202

The definitions under § 6202 are derived from the following:

Term	Basis for Definition
Antique firearm	18 Pa.C.S. § 6118(c); <i>also see</i> 18 Pa.C.S. § 6118(a) & (b)
Armor piercing ammunition	18 U.S.C. § 921(a)(17)
Barrel length	18 Pa.C.S. § 6102 (<i>see</i> definition of firearm)
Commissioner	18 Pa.C.S. § 6102 (commissioner)
Commonwealth Photo Imaging Network	18 Pa.C.S. § 6102 (Commonwealth Photo Imaging Network)
Conviction	18 Pa.C.S. § 6102 (conviction)
County treasurer	18 Pa.C.S. § 6102 (county treasurer)
Crime punishable by Imprisonment exceeding one year	18 Pa.C.S. § 6102 (crime punishable by imprisonment exceeding one year)
Dealer or licensed dealer: paragraphs (1)-(4)	18 U.S.C. § 921(a)(11) (<i>see also</i> paragraphs (12), (21) & (22))
Dealer or licensed dealer: paragraph (5)	27 C.F.R. § 178.100(b)
Disability	
Firearm	18 Pa.C.S. §§ 6105(i), 6106(e)(1), 6107(c), 6111.2(d) & 6113(d)
Firearm background check	
Handgun	18 Pa.C.S. § 6102 (<i>see</i> definition of firearm) 37 Pa. Code § 33.102 (handgun)
Law enforcement officer: paragraph (1)	18 Pa.C.S. § 6102 (law enforcement officer)
Law enforcement officer: paragraph (2)	
License to carry	
Loaded	18 Pa.C.S. § 6102 (loaded)
Locking device	18 Pa.C.S. § 6142(f)
Long-gun	37 Pa. Code § 33.102 (long-gun)
Private sale	37 Pa. Code § 33.102 (private sale)
Purchaser	
Safekeeping permit	18 Pa.C.S. § 6102 (safekeeping permit)
Seller	
Sheriff	18 Pa.C.S. § 6102 (sheriff)
State	18 Pa.C.S. § 6102 (state)

Note

The definition of the terms “fund” and “Pennsylvania Sheriffs’ Association” under 18 Pa.C.S. § 6102 are omitted from this section.

§ 6203. Administration.

(a) Duty of state police.--The Pennsylvania State Police shall have the responsibility to administer the provisions of this chapter.

(b) Rules and regulations.--The Pennsylvania State Police shall promulgate rules and regulations necessary to carry out this chapter, including regulations to ensure the identity, confidentiality and security of all records and data provided under this chapter.

(c) Immunity.--The Pennsylvania State Police and its employees are immune from actions for damages for the use of a firearm by a purchaser or for the unlawful transfer of a firearm by a seller unless the act of the Pennsylvania State Police or its employees constitutes a crime, actual fraud, actual malice or willful misconduct.

Source for § 6203

Section 6203 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6111.1(a)
(b)	§ 6111.5
(c)	§ 6111.1(j.3)

§ 6204. Judicial review.

(a) Procedure.--The action of a chief of police, sheriff, county treasurer or other officer under this chapter is subject to judicial review in the manner and within the time provided by 2 Pa.C.S. Ch. 7 Subch. B (relating to judicial review of local agency action).

(b) Judgment.--

(1) A judgment sustaining a refusal to grant a license does not bar, after one year, a new application for a license.

(2) A judgment in favor of the petitioner does not prevent the defendant from thereafter revoking or refusing to renew the license for any proper cause that may later occur.

(c) Costs.--The court may dispose of all costs regarding judicial review under this section.

Source for § 6204

Section 6204 is derived from 18 Pa.C.S. § 6114.

§ 6205. Forms.

Consistent with section 6232(c) (relating to license to carry), the Commissioner may establish form specifications and regulations, with respect to uniform forms control, including the following:

- (1) License to carry a handgun.
- (2) Firearm registration.
- (3) Dealer's license.
- (4) Application for purchase of a firearm.
- (5) Record of sale of firearms.

Source for § 6205

Section 6205 is derived from 18 Pa.C.S. § 6124.

§ 6206. Annual report.

On or before December 31, the Pennsylvania State Police shall annually compile and report to the General Assembly the following information for the previous year:

- (1) The number of firearm sales, including the types of firearms.
- (2) The number of applications for sale of firearms denied.
- (3) The number of challenges to denials of applications for sale of firearms.
- (4) The number of final reversals of initial denials of applications for sale of firearms.
- (5) A summary of the activities of the Pennsylvania State Police, including the average time taken to complete a firearm background check.

(6) Uniform crime reporting statistics compiled by the Pennsylvania State Police based on the National Incident-based Reporting System enforcement agency.

Source for § 6206

Section 6206 is derived from 18 Pa.C.S. § 6111.1(i).

§ 6207. Preservation of constitutional rights.

(a) Registry of firearms ownership prohibited.--

(1) Subject to paragraph (2) and notwithstanding any section of this chapter to the contrary, nothing in this chapter may be construed to allow a government or law enforcement agency or any agent thereof to create, maintain or operate any registry of firearm ownership within this Commonwealth.

(2) Maintenance of records specified under this chapter for the specific purposes authorized by this chapter is permissible.

(b) Limitation on regulation of firearms and ammunition.--No political subdivision may:

(1) regulate in any manner the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth; or

(2) bring or maintain an action at law or in equity against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement, injunctive relief or any other relief or remedy resulting from or relating to either the lawful design or manufacture of firearms or ammunition or the lawful marketing or sale of firearms or ammunition to the public. Nothing in this paragraph may be construed to prohibit a political subdivision from bringing or maintaining an action against a

firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the political subdivision.

(c) Seizure, taking and confiscation.--Except as provided in section 6241(b) (relating to other firearms restrictions) and notwithstanding the provisions of 35 Pa.C.S. Ch. 73 (relating to Commonwealth services) or any other provision of law to the contrary, no firearm, accessory or ammunition may be seized, taken or confiscated during an emergency proclaimed by a State or municipal governmental executive unless the seizure, taking or confiscation would be authorized absent the emergency.

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

“Accessory.” A scope, sight, bipod, sling, light, magazine, clip or other related item that is attached to or necessary for the operation of a firearm.

“Firearm.” As defined in section 6202 (relating to definitions), except that the term shall not include an air rifle as defined in section 6304(g) (relating to sale and use of air rifles).

Note

With respect to the definition of “firearm,” *also see* the definition under 18 Pa.C.S. § 5515 (prohibiting of paramilitary training). The term “air rifle” is defined in 18 Pa.C.S. § 6304(g) as follows:

Any air gun, air pistol, spring gun, spring pistol, B-B gun, or any implement that is not a firearm, which impels a pellet of any kind with a force that can reasonably be expected to cause bodily harm. The term does not include a paintball gun or paintball marker as defined in section 2707.2 (relating to paintball guns and paintball markers).

“Political subdivision.” The term shall include any home rule charter municipality, county, city, borough, incorporated town, township or school district.

Note

Under 18 Pa.C.S. § 6120(a), there is a reference to “county, municipality or township,” but under 18 Pa.C.S. §6120(a.1), the reference is to a “political subdivision,” which is broader and encompasses more forms of local government. That term is defined to “include any home rule charter municipality, county, city, borough, incorporated town, township or school district.” Proposed subsection (b) uses this broader concept and does not include just a county, municipality or township.

Source for § 6207:

Section 6207 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6111.4
(b)(1)	§ 6120(a)
(b)(2)	§ 6120(a.1)
(c)	§ 6107(b)
(d)	§§ 6107(c) & 6120(b)

Comment to § 6207:

Subject to § 6221(f), regarding the retention of information for the sale or transfer of firearms, subsection (a) does not preclude the Pennsylvania State Police from maintaining copies of applications to purchase handguns under § 6222 (sale or transfer of handguns) or records of licenses to carry handguns as necessary under § 6233 (Firearms License Validation System).

SUBCHAPTER B

DISQUALIFICATIONS

Sec.

6211. Disqualification from possession or ownership.

6212. Disqualification based on protection from abuse order.

6213. Relinquishment of firearms upon disqualification.

6214. Notice of disqualifying event to sheriff.

6215. Disposition of firearms in law enforcement custody.

6216. Relief from disability.

6217. Effect of federal waiver or pardon.

6218. Restoration of firearms rights for offenses under prior laws.

§ 6211. Disqualification from possession or ownership.

(a) Offense defined.--No individual may possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth if either of the following has occurred:

(1) The individual has been convicted of an offense under subsection (b), within or outside this Commonwealth, regardless of the length of sentence.

(2) The conduct of the individual meets the criteria established in subsection (c).

(b) Disqualifying offenses.--The following offenses shall apply to subsection (a)(1):

(1) Section 908 (relating to prohibited offensive weapons).

(2) Section 911 (relating to corrupt organizations).

(3) Section 912 (relating to possession of weapon on school property).

(4) Section 2502 (relating to murder).

(5) Section 2503 (relating to voluntary manslaughter).

(6) Section 2504 (relating to involuntary manslaughter) if the offense is based on the reckless use of a firearm.

(7) Section 2702 (relating to aggravated assault).

(8) Section 2703 (relating to assault by prisoner).

(9) Section 2704 (relating to assault by life prisoner).

(10) Section 2709.1 (relating to stalking).

(11) Section 2716 (relating to weapons of mass destruction).

- (12) Section 2901 (relating to kidnapping).
- (13) Section 2902 (relating to unlawful restraint).
- (14) Section 2910 (relating to luring a child into a motor vehicle or structure).
- (15) Section 3121 (relating to rape).
- (16) Section 3123 (relating to involuntary deviate sexual intercourse).
- (17) Section 3125 (relating to aggravated indecent assault).
- (18) Section 3301 (relating to arson and related offenses).
- (19) Section 3302 (relating to causing or risking catastrophe).
- (20) Section 3502 (relating to burglary).
- (21) Section 3503 (relating to criminal trespass) if the offense is graded a felony of the second degree or higher.
- (22) Section 3701 (relating to robbery).
- (23) Section 3702 (relating to robbery of motor vehicle).
- (24) Section 3921 (relating to theft by unlawful taking or disposition) upon conviction of the second felony offense.
- (25) Section 3923 (relating to theft by extortion) when the offense is accompanied by threats of violence.
- (26) Section 3925 (relating to receiving stolen property) upon conviction of the second felony offense.
- (27) Section 4906 (relating to false reports to law enforcement authorities) if the fictitious report involved the theft of a firearm as provided in section 4906(c)(2).
- (28) Section 4912 (relating to imitating a public servant) if the individual is imitating a law enforcement officer.

(29) Section 4952 (relating to intimidation of witnesses or victims).

(30) Section 4953 (relating to retaliation against witness, victim or party).

(31) Section 5121 (relating to escape).

(32) Section 5122 (relating to weapons or implements for escape).

(33) Section 5501(3) (relating to riot).

(34) Section 5515 (relating to prohibiting of paramilitary training).

(35) Section 5516 (relating to facsimile weapons of mass destruction).

(36) Section 6110.1 (relating to possession of firearm by minor).

(37) Section 6301 (relating to corruption of minors).

(38) Section 6302 (relating to sale or lease of weapons and explosives).

(39) An attempt under section 901 (relating to criminal attempt), solicitation under section 902 (relating to criminal solicitation) or conspiracy under section 903 (relating to criminal conspiracy) to commit any of the offenses set forth in paragraphs (1) through (38).

(40) An offense equivalent to any of the offenses set forth in paragraphs (1) through (39) under:

(i) the prior laws of this Commonwealth; or

(ii) the statutes of any other state or of the United States.

(c) Disqualifying conduct.--In addition to any individual who has been convicted of an offense under subsection (b), the following individuals are subject to the prohibition under subsection (a):

(1) An individual who is a fugitive from justice. This paragraph does not apply to an individual whose fugitive status is based upon a nonmoving or moving summary offense under Title 75 (relating to vehicles).

(2) An individual who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years.

(3) An individual who has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or the former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance), on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of subsection (a) applies only to transfers or purchases of firearms after the third conviction.

(4) An individual who has been adjudicated as incapacitated under 20 Pa.C.S. Ch. 55 (relating to incapacitated persons) to possess a firearm.

(5) An individual who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303 or 304 of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act. This subparagraph does 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 individual was committable.

Note

Instead of an individual “adjudicated as incapacitated . . . to possess a firearm,” 18 Pa.C.S. § 6105(c)(4) refers to a person “adjudicated as an incompetent”. Pennsylvania no longer has a procedure to declare an individual “incompetent” or “mentally defective,” although the term “incompetent” remains scattered throughout various provisions of the law. Instead, there are specific procedures to be followed in the situation where a person is adjudicated as “incapacitated.” Under 20 Pa.C.S. § 5501:

“Incapacitated person” means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.

Pennsylvania does not provide a specific prohibition for persons found not guilty by reason of insanity or incompetent to proceed at trial as some other states do, although they are brought into this disqualification under section 406 of the Mental Health Procedures Act (MHPA), which provides for involuntary treatment of such persons under section 304 of the MHPA.

(6) An individual who, being an alien, is illegally or unlawfully in the United States.

(7) An individual who is the subject of an active protection from abuse order issued under 23 Pa.C.S. § 6108 (relating to relief), which order provided for the relinquishment of firearms during the period of time the order is in effect. This prohibition terminates upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the relinquishment of firearms.

Note

See § 6212 (disqualification based on protection from abuse order).

(8) An individual who was adjudicated delinquent by a court under 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any

other state as a result of conduct, which, if committed by an adult, would constitute an offense under any of the following:

(i) Section 2502, 2503, 2702, 2703, 2704, 2901, 3121, 3123, 3301, 3502, 3701 or 3923.

(ii) Subsection (b), except for those crimes under subparagraph (i). The prohibition under this subparagraph terminates 15 years after the last applicable delinquent adjudication or upon the individual reaching the age of 30 years, whichever date occurs earlier.

(iii) Section 13(a)(30) of The Controlled Substance, Drug, Device and Cosmetic Act. The prohibition under this subparagraph terminates 15 years after the last applicable delinquent adjudication or upon the individual reaching the age of 30 years, whichever date occurs earlier.

(9) An individual who is prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(9) (relating to unlawful acts). If the offense that resulted in the prohibition under 18 U.S.C. § 922(g)(9) was committed, as provided in 18 U.S.C. § 921(a)(33)(A)(ii) (relating to definitions), by an individual in any of the following relationships, then the relationship need not be an element of the offense to meet the requirements of this paragraph:

(i) The current or former spouse, parent or guardian of the victim.

(ii) An individual with whom the victim shares a child in common.

(iii) An individual who cohabits with or has cohabited with the victim as a spouse, parent or guardian.

(iv) An individual similarly situated to a spouse, parent or guardian of the victim.

Note

Under 18 Pa.C.S. § 922(g)(9), it is unlawful for any person who has been convicted in any court of a misdemeanor crime of domestic violence “to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

(d) License prohibition.--An individual who is prohibited from possessing, using, controlling, selling, purchasing, transferring or manufacturing a firearm under this section may not be eligible for or permitted to obtain a license to carry under section 6232 (relating to license to carry).

Source for § 6211

Section 6211 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6105(a)(1)
(b)(1)-(38) & (40)	§ 6105(b)
(b)(39)	
(c)	§ 6105(c) (but paragraph (8)(iii) is new)
(d)	§ 6105(h)

Comment to § 6211

Inchoate crimes (criminal attempt, solicitation and conspiracy) are included as subsection (b)(39) in response to *Commonwealth v. Clegg*, 27 A.3d 1266 (Pa. 2011), wherein the Pennsylvania Supreme Court ruled that the plain language of the statute did not encompass attempts to commit disqualifying crimes as grounds for disqualification from firearms ownership.

§ 6212. Disqualification based on protection from abuse order.

(a) Transfer period.--Section 6213 (relating to relinquishment of firearms upon disqualification) does not apply to an individual whose disability is the result of the

individual becoming the subject of an active protection from abuse order as provided in under section 6211(c)(7) (relating to disqualification from possession or ownership).

(b) Relinquishment to sheriff.--An individual who is the subject of an active protection from abuse order issued under 23 Pa.C.S. § 6108 (relating to relief), which order provided for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect, commits a misdemeanor of the first degree if the individual intentionally or knowingly fails to relinquish the firearms, other weapons or ammunition to the sheriff as required by the order unless, in lieu of relinquishment, the individual provides an affidavit that lists the firearms, other weapons or ammunition to the sheriff in accordance with 23 Pa.C.S. § 6108(a)(7)(i)(B), 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 (relating to relinquishment to third party for safekeeping).

(c) Acceptance of weapons from disqualified individual.--An individual who intentionally or knowingly accepts possession of a firearm, other weapon or ammunition from another individual who the individual knows is the subject of an active protection from abuse order issued under 23 Pa.C.S. § 6108, which order provided for the relinquishment of the firearm, other weapon or ammunition during the period of time the order is in effect, is guilty of a misdemeanor of the third degree. This prohibition does not apply to:

(1) A third party accepting possession of the firearm, other weapon or ammunition relinquished under 23 Pa.C.S. § 6108.3.

(2) A dealer licensed under section 6231 (relating to licensure of firearms dealers) or subsequent purchaser from a dealer licensed pursuant to section 6231, who accepts

possession of the firearm, other weapon or ammunition relinquished under 23 Pa.C.S. § 6108.2.

(d) Affirmative defense.--It is an affirmative defense to any prosecution under subsection (b) that the individual accepting possession of a firearm, other weapon or ammunition in violation of that subsection:

(1) notified the sheriff as soon as practical that the individual has taken possession;
and

(2) relinquished possession of the firearm, other weapon or ammunition possessed in violation of subsection (b) as directed by the sheriff.

(e) Access to weapons.--An individual who has accepted possession of a firearm, other weapon or ammunition under 23 Pa.C.S. § 6108.3 commits a misdemeanor of the first degree if the individual intentionally or knowingly returns the firearm, other weapon or ammunition to the defendant or intentionally or knowingly allows the defendant to have access to the firearm, other weapon or ammunition prior to either of the following:

(1) The sheriff accepts return of the safekeeping permit issued to the party under 23 Pa.C.S. § 6108.3(d)(1)(i).under section 6216(e) (relating to relief from disability) or 23 Pa.C.S. § 6108.1(b) (relating to return of relinquished firearms, other weapons and ammunition and additional relief) which modifies a valid protection from abuse order issued under 23 Pa.C.S. § 6108, which order provided for the relinquishment of the firearm, other weapon or ammunition by allowing the defendant to take possession of the firearm, other weapon or ammunition that had previously been ordered relinquished.

Source for § 6212

Section 6212 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6105(a)(2)(ii)
(b)	§ 6105(a.1)(2)
(c)	§ 6105(a.1)(3)
(d)	§ 6105(a.1)(4)
(e)	§ 6105(a.1)(5)

§ 6213. Relinquishment of firearms upon disqualification.

(a) Time frame for relinquishment.--Except as provided otherwise in section 6212 (relating to disqualification based on protection from abuse order), an individual who is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm under section 6211 (relating to disqualification from possession or ownership) shall have a reasonable period of time not to exceed 72 hours from the date of the imposition of the disability under section 6211 in which to sell or transfer that individual's firearms to another eligible individual who is not a member of the prohibited individual's household.

(b) Firearms included.--All firearms owned by a person living in the household of the prohibited individual shall be transferred under subsection (a).

(c) Enforcement.--An arrest for a violation of this section may be without warrant upon probable cause by a police officer or sheriff.

(d) Seizure of firearms, other weapons and ammunition.--Subsequent to an arrest under subsection (c), the police officer or sheriff shall seize all firearms, other weapons and ammunition in the defendant's possession. As soon as it is reasonably possible, the arresting officer shall deliver the confiscated firearms, other weapons and ammunition to the office of the sheriff. The sheriff shall maintain possession of the firearms, other weapons and ammunition until the court determines that the defendant is no longer

disqualified from firearms ownership under section 6216 (relief from disability), at which time, the firearms, other weapons and ammunition shall be promptly returned to the defendant.

(e) Receipt for relinquished firearm.--The owner of a seized or confiscated firearm or of a firearm ordered relinquished under 23 Pa.C.S. § 6108 shall be provided with a signed and dated written receipt by the appropriate law enforcement agency. This receipt shall include, but not be limited to, a detailed identifying description indicating the serial number and condition of the firearm.

Source for § 6213

Section 6213 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6105(a)(2)(i)
(b)	
(c)	
(d)	
(e)	§ 6105(f)(4)(i): 1 st and 2 nd sentences

Note

The Advisory Committee considers 60 days to be too long to allow a disqualified person to retain possession of their firearms while making arrangements for their disposal. The Advisory Committee decided that a time period of 72 hours was more than sufficient.

Comment to § 6213

Subsection (b) is intended to clarify that an individual prohibited from gun ownership should not have access to firearms owned by another individual living in the same household. Subsections (c) and (d) authorize local law enforcement to enforce the provisions of this section.

§ 6214. Notice of disqualifying event to sheriff.

(a) Disqualifying offense or conduct.--

(1) Subject to the provisions of section 6212 (relating to disqualification based on protection from abuse order), this subsection shall apply upon:

(i) conviction of an individual for a crime specified in section 6211(a) or (b) (relating to disqualification from possession or ownership);

(ii) conviction of an individual for a crime punishable by imprisonment exceeding one year; or

(iii) a determination that the conduct of an individual meets the criteria specified in section 6211(c)(1), (2), (3), (6), (7) or (9).

(2) Subject to paragraph (1), the court shall determine whether the defendant has a license to carry a handgun issued under section 6232 (relating to license to carry). If the defendant has a license, the court shall notify the sheriff of the county in which that individual resides, on a form developed by the Pennsylvania State Police, of the identity of the individual and the nature of the crime or conduct that resulted in the notification.

(b) Disqualification for mental health reasons.--

(1) This subsection shall apply upon:

(i) adjudication that an individual is incapacitated under 20 Pa.C.S. Ch. 55 (relating to incapacitated persons) to possess a firearm;

(ii) the involuntary commitment of an individual to a mental institution for inpatient care and treatment under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act; or

(iii) the involuntary treatment of an individual as described under section 6211(c)(5).

(2) Subject to paragraph (1), the judge of the court of common pleas, mental health review officer or county mental health and mental retardation administrator shall notify the sheriff of the county in which that individual resides, on a form developed by the Pennsylvania State Police, of the identity of the individual who has been adjudicated, committed or treated and the nature of the adjudication, commitment or treatment.

(c) Timing of notice.--The notification required under this section shall be transmitted to the sheriff within five days of the disqualifying event.

Source for § 6214

This section is derived from 18 Pa.C.S. § 6109(i.1), but the time period of seven days is changed to five days in subsection (c).

§ 6215. Disposition of firearms in law enforcement custody.

(a) Liability for loss or damage.--The appropriate law enforcement agency shall be liable to the lawful owner of a confiscated, seized or relinquished firearm for any loss, damage or substantial decrease in value of the firearm that is a direct result of a lack of reasonable care by the appropriate law enforcement agency.

(b) Permanent markings and test firing.--

(1) A firearm may not be engraved or permanently marked in any manner, including engraving of evidence or other identification numbers.

(2) Unless reasonable suspicion exists to believe that a particular firearm has been used in the commission of a crime, no firearm may be test fired.

(3) Any reduction in the value of a firearm due to test firing, engraving or permanently marking in violation of this subsection shall be considered damage, and the law enforcement agency is liable to the lawful owner of the firearm for the reduction in value caused by the test firing, engraving or permanently marking.

(4) For purposes of this subsection, a firearm includes any scope, sight, bipod, sling, light, magazine, clip, ammunition or other firearm accessory attached to or seized, confiscated or relinquished with a firearm.

(c) Confiscated or recovered firearms.--Subject to subsection (d), the Pennsylvania State Police and a local law enforcement agency shall make all reasonable efforts to determine the lawful owner of a firearm confiscated or recovered by the Pennsylvania State Police or a local law enforcement agency and return the firearm to its lawful owner if the owner is not otherwise prohibited from possessing the firearm. When a court determines that the Pennsylvania State Police or a local law enforcement agency failed to exercise the duty under this subsection, reasonable attorney fees shall be awarded to the lawful owner of a firearm who sought judicial enforcement of this subsection.

(d) Firearm tracing.--Upon confiscating or recovering a firearm from the possession of an individual who is not permitted by Federal or State law to possess a firearm, a local law enforcement agency shall use the best available information, including a firearms trace where necessary, to determine how and from where the individual gained possession of the firearm. In conducting a firearms trace in compliance with this subsection, a local law enforcement agency shall:

(1) use the National Tracing Center of the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives; and

(2) advise the Pennsylvania State Police of all firearms that are recovered in accordance with this subsection.

Source for § 6215

Section 6215 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6105(f)(4)(i): 3 rd sentence
(b)(1), (2) & (3)	§ 6105(f)(4)(ii)
(b)(4)	§ 6105(f)(4)(iii)
(c)	§ 6111.1(b)(4)
(d)	§ 6127

§ 6216. Relief from disability.

(a) Who may apply for relief.--An individual who is disqualified under section 6211 (relating to disqualification from possession or ownership) may apply for relief from the disability imposed by this subchapter.

(b) Application and hearing regarding certain offenses.--

(1) This subsection shall apply in the case of an individual whose disqualification is based on section 6211(a), (b) or (c)(1), (2), (3), (6), (8) or (9).

(2) Application for relief from disability under this chapter shall be made to the court of common pleas of the county where the principal residence of the applicant is situated.

(3) A hearing under this subsection shall be held in open court to determine whether the requirements of this section have been met.

(4) The commissioner and the district attorney of the county where the application is filed and any victim or survivor of a victim of the offense upon which the disability is based has standing to participate in the proceeding under this section.

(5) The court shall grant relief if it determines that any of the following apply:

(i) The conviction has been vacated under circumstances where all appeals have been exhausted or where the right to appeal has expired.

(ii) The conviction has been the subject of a full pardon by the Governor.

(iii) Each of the following conditions is met:

(A) The Secretary of the Treasury of the United States has relieved the applicant of an applicable disability imposed by Federal law upon the possession, ownership or control of a firearm as a result of the applicant's prior conviction, except that the court may waive this condition if the court determines that the Congress of the United States has not appropriated sufficient funds to enable the Secretary of the Treasury to grant relief to applicants eligible for the relief.

(B) Excluding any time spent in incarceration, a period of 10 years has elapsed since the most recent conviction of the applicant of any of the following:

(I) An offense under in section 6211(b) or (c)(3) or (9).

(II) A felony violation of the act of April 14, 1972 (P.L.233, No.64),

known as The Controlled Substance, Drug, Device and Cosmetic Act.

Note

Paragraph (5)(iii)(B)(I) refers to a conviction for any of the offenses under § 6211(b), along with disqualifying conduct regarding driving under the influence of alcohol or a controlled substance and regarding 18 U.S.C. § 922(g)(9).

(c) Application and hearing regarding incapacity or commitment.--

(1) This subsection shall:

(i) apply in the case of an individual whose disqualification is based on section 6211(c)(4) or (5); and

(ii) be subject to the certification provision under section 6211(c)(5).

(2) Application for relief from disability under this chapter shall be made to the court of common pleas of the county in which the order under 20 Pa.C.S. Ch. 55 (relating to incapacitated persons) or the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, was issued.

(3) A hearing under this subsection shall be closed unless otherwise requested to be open by the applicant.

(4) The court may grant any relief it deems appropriate if:

(i) the court determines that the applicant may possess a firearm without risk to the applicant or any other individual; or

(ii) the treating licensed physician or licensed clinical psychologist of the disqualified individual provides testimony or a sworn statement that the disqualification is no longer necessary to protect the health or safety of the individual or any other individual.

(d) Application and hearing regarding protection from abuse orders.--Application for relief from disability under this chapter for an individual whose disqualification is based on section 6211(c)(7) shall be governed by 23 Pa.C.S. Ch. 61 (relating to protection from abuse).

(e) Relief not granted.--Nothing in this section exempts an individual from a disability in relation to the possession or control of a firearm that is imposed:

(1) as a condition of probation or parole; or

(2) under any other provision of law.

(f) Order granting relief from disability.--If the court grants relief from the disability under this section, a copy of the order shall be sent by the prothonotary within ten days of

the entry of the order to the Pennsylvania State Police and shall include the name, date of birth and Social Security number of the individual.

Source for § 6216

Section 6216 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	
(b)(1) & (2)	§ 6105(d): 1 st sentence
(b)(3)	§ 6105(e)(1): 1 st sentence
(b)(4)	§ 6105(e)(1): 2 nd sentence
(b)(5)	§ 6105(d) (second sentence); § 6105(e)(2)
(c)(1) & (2)	
(c)(3)	§ 6105(f)(3)
(c)(4)(i)	§ 6105(f)(1)
(c)(4)(ii)	
(d)	Replaces § 6105(f)(2) & (4)
(e)	§ 6105(g)
(f)	§ 6105(j)

Subsections (a) and (c)(1) provide a general statement regarding relief and are not explicitly part of 18 Pa.C.S. Subsection (c)(2) is implicit in 18 Pa.C.S. but is not derived from any particular provision. Subsection (d) replaces 18 Pa.C.S. § 6105(f)(2) and (4), in deference to 23 Pa.C.S. Ch. 61.

Note

Due to the reorganization of the provisions from Chapter 61 into new Chapter 62, the provisions under 18 Pa.C.S. § 6105(h) and (i) are unnecessary and therefore excluded from proposed statutory recommendations.

§ 6217. Effect of Federal waiver or pardon.

(a) General rule.--Subject to subsection (b), any of the following events remove a corresponding disability under this subchapter:

(1) A waiver of disability from Federal authorities as provided for in 18 U.S.C.

§ 925 (relating to exceptions; relief from disabilities).

(2) A full pardon from the Governor.

(3) An overturning of a conviction.

(b) Disability not automatically removed.--A disability imposed under sections 6211 (relating to disqualification from possession or ownership) or 6212 (relating to disqualification based on protection from abuse order) may not be automatically relieved as provided in subsection (a), but shall be subject to the procedures set forth in section 6216 (relating to relief from disability).

Source for § 6217

Section 6217 is derived from 18 Pa.C.S. § 6123.

§ 6218. Restoration of firearms rights for offenses under prior laws.

(a) Restoration available.--An individual convicted of a disabling offense may apply to the court of common pleas in the county where the principal residence of the applicant is situated for restoration of firearms rights unless any of the following apply:

(1) The applicant has been convicted of any other offense specified in section 6211(a) or (b) (relating to disqualification from possession or ownership) or the applicant's conduct meets the criteria in section 6211(c)(1), (2), (3), (4), (5), (6), (7) or (8)(i).

(2) The applicant has been convicted of any other crime punishable by imprisonment exceeding one year.

Note

The term “crime punishable by imprisonment exceeding one year” is defined in § 6202.

(3) The applicant's character and reputation is such that the applicant would be likely to act in a manner dangerous to public safety.

(b) Notice.--Notice of an application for restoration of firearms rights shall be provided to the following, who may choose to be a party to the proceeding:

(1) Pennsylvania State Police.

(2) The district attorney of the county where the disabling offense occurred.

(3) The district attorney of the county where the application is filed.

(c) Procedure.--The court shall hold a hearing in open court regarding the application under this section, subject to the following:

(1) The court shall grant restoration of firearms rights to an applicant if it determines that the requirements of this section have been met.

(2) The role of the Pennsylvania State Police as a party to a proceeding under this section shall be limited to a determination of whether:

(i) the applicant's offense meets the definition of a disabling offense under this section; or

(ii) the applicant is ineligible for restoration of firearms rights under subsection (a)(1) or (2).

(3) If the court grants restoration of firearms rights to an applicant, a copy of the order shall be sent by the prothonotary within ten days of the entry of the order to the persons listed in subsection (b) and include the name, date of birth and Social Security number of the applicant.

(d) Limited effect of restoration.--A restoration of firearms rights under this section may not:

(1) result in the expungement of criminal history record information; or

(2) constitute a gubernatorial pardon.

(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 that meets all of the following criteria:

(1) Is violation of any of the following former laws:

(i) The act of May 1, 1929 (P.L.905, No.403), known as The Vehicle Code.

(ii) The act of April 29, 1959 (P.L.58, No.32), known as The Vehicle Code.

(iii) The act of June 24, 1939 (P.L.872, No.375), known as the Penal Code.

(2) 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 years or conduct that no longer constitutes a violation of law.

(3) Is not an offense that, 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 any of the following:

(i) A current or former spouse, parent or guardian of the victim.

(ii) An individual with whom the victim shares a child in common.

(iii) An individual who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian.

(iv) An individual similarly situated to a spouse, parent or guardian of the victim.

“Restoration of firearms rights.” Relieving each disability with respect to an individual’s right to own, possess, use, control, sell, purchase, transfer, manufacture, receive, ship or transport a firearm, including a disability imposed by this subchapter.

Source for § 6218

Section 6218 is derived from 18 Pa.C.S. § 6105.1.

Note

Under 18 Pa.C.S. § 6105.1, the definition of “restoration of firearms rights” included this final sentence: “The phrase shall also mean the restoration of the right to vote, to hold public office and to serve on a jury.” That sentence is excluded from Chapter 62 for several reasons.

Section 6105.1 was added by the act of December 9, 2002 (P.L.1391, No.172). The legislative history indicates that the amendment was intended to address a gap between Pennsylvania law and the federal law regarding minor, old offenses under prior Pennsylvania law. Those same offenses under current law would not result in a firearms disability, but, because the old offenses were ungraded misdemeanors, they resulted in a federal firearms disability for Pennsylvania residents. *See House Legislative Journal* (Nov. 27, 2002), pages 2407-2409. While there was no discussion regarding the restoration of the additional civil rights during this debate, in order for a state restoration of firearms rights to be applicable to a federal disability, the restoration of the rights must include the core civil rights of voting, holding public office and serving on a jury. 18 U.S.C. §§ 921(a)(20) and 922(g).

Pennsylvania’s courts have declined to rule on the applicability of this provision of § 6105.1, but a recent Superior Court case sheds some light on its potential interpretation. In *Commonwealth v. Stiver*, 50 A.3d 702 (Pa. Super. Ct. 2012), the Superior Court ruled that a trial court did not have authority to restore a former felon’s rights to hold public office or serve on a jury under 18 Pa.C.S. § 6105 (new § 6133.3). The court came to this decision because the Pennsylvania Constitution and other state law controlled these issues.

Under Article II, Section 7 of the Pennsylvania Constitution, any individual convicted of an “infamous crime” is ineligible to hold public office. Any crime graded as a felony is considered an infamous crime for purposes of this constitutional provision. *Commonwealth ex rel. Baldwin v. Richard*, 751 A2d 647 (Pa. 2000).

Protection of the right to serve on a jury is addressed in the Judicial Code at 42 Pa.C.S. § 4502:

§ 4502. Qualifications of jurors.

(a) General rule.--Every citizen of this Commonwealth who is of the required minimum age for voting for State or local officials and who resides in the county shall be qualified to serve as a juror therein unless such citizen:

(1) is unable to read, write, speak and understand the English language;

(2) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or

(3) has been convicted of a crime punishable by imprisonment for more than one year and has not been granted a pardon or amnesty therefor.

(b) Definition.--For purposes of this section, "convicted of a crime punishable by imprisonment for more than one year" does not include a conviction for any offense under or violation of 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, which offense or violation, if it had been committed after July 1, 1977:

(1) would have been substantially similar to an offense currently graded as a summary offense under 75 Pa.C.S. (relating to vehicles); or

(2) would not have been a violation of law.

Restoration of voting rights is unnecessary, as convicted felons who are incarcerated on the date of an election may not vote, but are automatically eligible to register to vote upon release. *Voting Rights of Convicted Felons, Convicted Misdemeanants and Pretrial Detainees*, Commonwealth of Pennsylvania, Department of State, available at <http://www.votespa.com/portal/server.pt?open=514&objID=1174123&mode=2> (accessed July 2, 2013). See also *Mixon v. Commonwealth*, 759 A.2d 442 (Pa. Commw. Ct. 2000), *aff'd per curiam*, 783 A.2d 763 (Pa. 2001).

The court in *Stiver* further noted (in footnote 1) that if § 6105 were amended to include language regarding restoration of civil rights like that provided in § 6105.1, "it is unlikely that it would afford *Stiver* relief because he would still be prohibited under the Pennsylvania Constitution from holding public office."

Based on the foregoing analysis, the sentence regarding restoration of civil rights other than firearms rights is not re-enacted, as the Advisory Committee considers the provision to be unenforceable.

SUBCHAPTER C

SALES AND BACKGROUND CHECKS

Sec.

6221. Sale or transfer of firearms.

6222. Sale or transfer of handguns.

6223. Sale or transfer of long-guns.

6224. Firearm sale surcharge.

6225. Firearm background checks.

6226. Access to mental health records for firearm background check purposes.

6227. Access to juvenile registry for firearm background check purposes.

6228. Challenge to firearm background check.

§ 6221. Sale or transfer of firearms.

(a) Applicability.--

(1) No seller may sell or deliver a firearm to another individual until the conditions of this section have been met.

(2) The provisions of this section are in addition to any requirements imposed under sections 6222 (relating to sale or transfer of handguns) and 6223 (relating to sale or transfer of long-guns).

(3) This section does not apply to transfers to another seller or to a licensed collector.

(4) This section does not apply to transactions involving antique firearms.

(5) The provisions of this section and sections 6222 and 6223 do not apply to:

(i) Sales between Federal firearms licensees.

(ii) The purchase of firearms by the Commissioner, the chief or head of a police department, a county sheriff or any equivalent law enforcement official, or a designee of any of the foregoing, for the official use of law enforcement officers.

(6) Compliance with this provisions of this section and sections 6222 and 6223 is a defense to any criminal complaint under the laws of this Commonwealth or other claim or cause of action under this subchapter arising from the sale or transfer of any firearm.

(b) Presentation of photoidentification.--

(1) A seller of a firearm shall inspect photoidentification of a potential purchaser or transferee, which may include a driver's license, official Pennsylvania photoidentification card or other official government photoidentification card.

(2) In the case of a potential purchaser or transferee of a firearm who is a member of a recognized religious sect or community whose tenets forbid or discourage the taking of photographs of members of that sect or community, a seller of firearms shall accept a valid-without-photo driver's license or a combination of documents, as prescribed by the Pennsylvania State Police, containing the applicant's name, address, date of birth and the signature of the applicant.

(c) Background check.--

(1) A seller of a firearm shall request by means of a telephone call that the Pennsylvania State Police conduct a criminal history, juvenile delinquency history and a mental health records check of a potential purchaser or transferee.

(2) The purchaser or transferee and the seller shall provide the necessary information accurately identify the purchaser or transferee.

(3) The person requesting the check under this subsection shall be charged a fee equivalent to the cost of providing the service but not to exceed \$2 per purchaser or transferee.

(d) Approval number.--A transfer of a firearm may not occur until the seller has received a unique approval number for background check from the Pennsylvania State Police and recorded the date and the number on the application/record of sale form.

(e) Receipt.--A seller of a firearm shall issue a receipt containing the information from subsection (d), including the unique approval number of the purchaser. This receipt is prima facie evidence of the purchaser's or transferee's compliance with the provisions of this section.

(f) Retention of information.--Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to this subchapter, no information received via telephone following the implementation of the instantaneous background check system from a purchaser who has received a unique approval number may be retained by the Pennsylvania State Police.

(g) Temporary delay in approval of purchase or transfer.--For purposes of the enforcement of 18 U.S.C. § 922(d)(9), (g)(1) and (s)(1) (relating to unlawful acts), in the event the criminal history or juvenile delinquency background check indicates a conviction for a misdemeanor that the Pennsylvania State Police cannot determine is or is not related to an act of domestic violence, the Pennsylvania State Police shall issue a temporary delay of the approval of the purchase or transfer, subject to the following:

(1) During the temporary delay, the Pennsylvania State Police shall conduct a review or investigation of the conviction with courts, local police departments, district attorneys and other law enforcement or related institutions as necessary to determine whether or not the misdemeanor conviction involved an act of domestic violence.

(2) The Pennsylvania State Police shall conduct the review or investigation as expeditiously as possible.

(3) No firearm may be transferred by the seller to the purchaser who is the subject of the investigation during the temporary delay.

(4) The Pennsylvania State Police shall notify the seller of the termination of the temporary delay and either deny the sale or provide the unique approval number under subsection (d).

(h) Disposition of fees collected.--Fees collected under paragraph (c)(3) and section 6224 (relating to firearm sale surcharge) shall be transmitted to the Pennsylvania State Police within 14 days of collection.

Source for § 6221

Section 6221 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)(1)	§ 6111(b): introductory language; <i>also see</i> § 6111(f)(1)
(a)(2)	
(a)(3)	§ 6111(b): introductory language
(a)(4)	§ 6111(e)
(a)(5)	§ 6111(j)
(a)(6)	§ 6111(d)
(b)	§ 6111(b)(2)
(c)	§ 6111(b)(3)
(d)	§ 6111(b)(4)
(e)	§ 6111(b)(5)
(f)	§ 6111(b)(6)
(g)	§ 6111(b)(7)
(h)	§ 6111(b)(1.2)

§ 6222. Sale or transfer of handguns.

(a) Applicability.--

(1) This section applies to the sale or transfer of a handgun, in addition to the requirements of section 6221 (relating to sale or transfer of firearms).

(2) Subsection (b) does not apply to any law enforcement officer whose current identification as a law enforcement officer is construed as a valid license to carry a handgun or any individual who possesses a valid license to carry a handgun under section 6232 (relating to license to carry).

(3) Subsection (b) does not apply to an applicant who presents to the seller a written statement stating that the applicant requires access to a firearm because of a threat to the life of the applicant or a member of the household of that applicant. The written statement shall conform to the following:

(i) The statement shall be issued by:

(A) the chief of police in the municipality in which the purchaser resides;

or

(B) if the applicant resides in a municipality where there is no chief of police, the district attorney, or the designee of the district attorney, of the county of residence of the applicant.

(ii) The statement shall be issued during the ten-day period ending on the date of the most recent proposal of the transfer or sale by the purchaser.

(iii) The issuing official shall notify the applicant's local police authority that the statement has been issued. In a county of the first class, the chief of police shall notify the police station or substation closest to the applicant's residence.

(b) Time and manner of delivery.--Subject to subsection (a)(3):

(1) No seller may deliver a handgun to a purchaser until 48 hours have elapsed from the time of the application for the purchase of the handgun.

(2) When delivered, the handgun shall be securely wrapped and unloaded.

(c) Application form.--A seller of a handgun shall obtain an application/record of sale from the potential purchaser filled out in triplicate. The form of this application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the seller. The application/record of sale shall include the following information:

(1) Date of application.

(2) Name, address, date of birth, gender, race, physical description and Social Security number of the purchaser.

(3) Caliber, length of barrel, make, model and manufacturer's number of the handgun to be purchased.

(4) The following question:

Are you the actual buyer of the handgun(s) listed on this application/record of sale? Warning: You are not the actual buyer if you are acquiring the handgun(s) on behalf of another individual, unless you are legitimately acquiring the firearm as a gift for any of the following individuals who are legally eligible to own a handgun:

(1) Spouse.

(2) Parent.

(3) Child.

(4) Grandparent.

(5) Grandchild.

(5) A statement, next to a check-off box, that the purchaser has received a firearms safety brochure as set forth in section 6243(c) (relating to firearms safety). The purchaser shall indicate the receipt of the brochure by checking the box.

(d) Disposition of application.--An application under this section shall be distributed as follows:

(1) The original shall be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale.

(2) One copy shall be retained by the seller for a period of 20 years.

(3) One copy shall be provided to the purchaser.

(e) Locking device.--No seller shall sell, deliver or transfer a handgun to any purchaser unless the purchaser is provided with or purchases a locking device for that handgun or the design of the handgun incorporates a locking device, except for the following situations:

(1) The purchaser is another seller.

(2) The handgun meets the definition of an antique firearm.

(3) The handgun is for transfer to or possession by a law enforcement officer or by rail police employed and certified by a rail carrier as a police officer.

(f) Loans on and lending or giving handguns.--Except as provided in subsections (g) and (h), no individual may:

(1) Make a loan secured by mortgage, deposit or pledge of a handgun.

(2) Lend or give a handgun to another individual.

(3) Otherwise deliver a handgun contrary to the provisions of this subchapter.

(g) Exceptions to lending or giving prohibition.--Subsection (f) shall not apply if any of the following apply:

(1) The person who receives the handgun is licensed to carry a firearm under section 6232.

(2) The person who receives the handgun is exempt from licensing.

(3) The person who receives the handgun is engaged in a hunter safety program certified by the Pennsylvania Game Commission or a firearm training program or competition sanctioned or approved by the National Rifle Association.

(4) The person who receives the handgun meets all of the following requirements:

(i) Is under 18 years of age.

(ii) Pursuant to section 6241(d) (relating to other firearms restrictions) is under the supervision, guidance and instruction of a responsible individual who:

(A) is 21 years of age or older; and

(B) is not prohibited from owning or possessing a firearm under sections 6211 (relating to disqualification for possession or ownership) or 6212 (relating to disqualification based on protection from abuse order).

(5) The person who receives the handgun is lawfully hunting or trapping and is in compliance with the provisions of Title 34 (relating to game).

(6) A bank or other chartered lending institution receiving the handgun is able to adequately secure firearms in its possession.

(h) Impact of prohibition on lending.--Nothing in this section shall be construed to prohibit any of the following:

(1) The transfer of a firearm under 20 Pa.C.S. Ch. 21 (relating to intestate succession) or by bequest if the individual receiving the handgun is not precluded from owning or possessing a firearm under sections 6211 or 6212.

(2) The lending or giving of a handgun to another in one's dwelling or place of business if the handgun is retained within the dwelling or place of business.

(3) The relinquishment of a firearm to a third party in accordance with 23 Pa.C.S. § 6108.3 (relating to relinquishment to third party for safekeeping).

(i) Private sales of handguns.--An individual who is not a seller as defined in section 6202 (relating to definitions) and who desires to sell or transfer a handgun to another unlicensed individual may do so only upon the place of business of a seller or the county sheriff's office. If the transaction occurs at the county sheriff's office, the sheriff shall follow the procedure set forth in this section and section 6222 (relating to sale or transfer of handguns) as if the sheriff were the seller of the handgun. This subsection does not apply to a transfer between spouses, a parent and child, or a grandparent and grandchild.

Source for § 6222

Section 6222 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)(1)	§ 6111(f)(1) & (2)
(a)(2)	§ 6111(f)(3)
(a)(3)	§ 6111(f)(4)
(b)	§ 6111(a)(1)
(c) & (d)	§ 6111(b)(1)
(e)	§ 6142(a) & (b)
(f)	§ 6115(a)
(g)	§ 6115(b)(1)
(h)(1)	§ 6115(b)(2)
(h)(2)	§ 6115(b)(3)
(h)(3)	§ 6115(b)(4)
(i)	§ 6111(c)

Note

The provisions of 18 Pa.C.S. § 6111(a)(2) are supplied by new § 6221. The phrase “employed by any Federal, State or local government entity or rail police employed and certified by a rail carrier as a police officer,” which is found in 18 Pa.C.S. § 6142(b), is not carried over to § 6222(f)(3) as it is too limiting.

The statement and check-off box under subsection (c)(5) are not part of Chapter 61.

§ 6223. Sale or transfer of long-guns.

(a) Applicability.--This section applies to the sale or transfer of a long-gun, in addition to the requirements of section 6221 (relating to sale or transfer of firearms).

(b) No application required.--Following implementation of the instantaneous records check by the Pennsylvania State Police on or before December 1, 1998, no application/record of sale shall be completed for the purchase or transfer of a long-gun.

(c) Cumulative statement of transfers.--A statement shall be submitted by the seller to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the transfer, containing:

(1) The number of long-guns transferred.

(2) The amount of surcharge and other fees remitted under section 6224(a) (relating to firearm sale surcharge).

(3) A list of the unique approval numbers given under section 6221(d).

(4) A statement that background checks as provided in section 6221(c) have been performed on the purchasers of the long-guns contained in the statement. The form of the statement relating to performance of background checks shall be promulgated by the Pennsylvania State Police.

(d) Failure of Pennsylvania Instant Check System.--In the event of an electronic failure under section 6225 (relating to firearm background checks), the following apply:

(1) A seller of a long-gun shall obtain an application/record of sale from the potential purchaser filled out in triplicate.

(2) The form of the application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the seller.

(3) For purposes of conducting the criminal history, juvenile delinquency and mental health records background check, which shall be completed within ten days of receipt of the information from the seller, the application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser and the date of application.

(4) No information regarding the type of firearm need be included other than an indication that the firearm is a long-gun.

(5) The application shall be distributed as follows:

(i) The original shall be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale.

(ii) One copy shall be retained by the seller for a period of 20 years.

(iii) One copy shall be provided to the purchaser.

(6) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser is prohibited from possessing a firearm under this subchapter, no information on the application/record of sale provided under this subsection may be retained as precluded

by section 6207(a) (relating to preservation of constitutional rights) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information onto a computer.

(7) An application/record of sale received by the Pennsylvania State Police under this subsection shall be destroyed within 72 hours of the completion of the firearm background check.

Source for § 6223

Section 6223 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a), (b) & (c)	§ 6111(b)(1.4)
(d)(1)	§ 6111(b)(1.1)(i)
(d)(2)	§ 6111(b)(1.1)(ii)
(d)(3)	§ 6111(b)(1.1)(iii)
(d)(4)	§ 6111(b)(1.1)(iv)
(d)(5)	§ 6111(b)(1.1)(i)
(d)(6) & (7)	§ 6111(b)(1.1)(v)

§ 6224. Firearm sale surcharge.

(a) Imposition of surcharge.--There is hereby imposed on each sale of a firearm subject to tax under Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, an additional surcharge of \$3, which shall be referred to as the firearm sale surcharge.

(b) Increase or decrease in surcharge.--Five years from October 11, 1995, and every five years thereafter, the Pennsylvania State Police shall provide the necessary information to the Legislative Budget and Finance Committee for the purpose of reviewing the need to increase or decrease the instant check fee. The committee shall issue a report of its findings and recommendations to the General Assembly for a statutory change in the fee.

(c) Use of surcharge.--The Pennsylvania State Police shall use the firearm sale surcharge to carry out the provisions of sections 6221 (relating to sale or transfer of firearms), 6222 (relating to sale or transfer of handguns) and 6223 (relating to sale or transfer of long-guns).

Source for § 6224

Section 6224 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6111.2(a)
(b)	§ 6111.2(b)
(c)	§ 6111.3(a)

Note

The firearms sales surcharge established in 18 Pa.C.S. § 6111.2(c) and the background check fee established in 18 Pa.C.S. § 6111(c)(3) are to be estimated and certified by the Secretary of Revenue and deposited within five days of the end of each quarter into the Firearms Records Check Fund. Under 18 Pa.C.S. § 6111.3(b), the source of the Firearms Records Check Fund is the firearms sales surcharge and the background check fee. However, 18 Pa.C.S. § 6111(b)(1.2) requires both of these fees to be transmitted to the Pennsylvania State Police within 14 days of collection. The amendments that added the firearms sales surcharge, the Firearms Records Check Fund and the background check fee were all part of an omnibus package of amendments to Title 18 made by the act of June 13, 1995 (Sp. Sess. No.1, P.L.1024, No.17), effective October 11, 1995 (120 days). Later that year, by the act of November 22, 1995 (P.L.621, No.66), an additional amendment to Title 18 was enacted, effective immediately, adding the language that the fees should be paid within 14 days to the State Police. This amendment did not acknowledge the June amendment, but under normal statutory construction rules, the later enacted amendment governs. The regulations found at 37 Pa. Code §33.111(h) and (i) support that interpretation, in that they also require transmittal of both fees within 14 days to the State Police. As part of the recodification of Chapter 61 into Chapter 62, the conflicting provisions are eliminated.

§ 6225. Firearm background checks.

(a) Duties upon receipt of request.--Upon receipt of a request for a firearm background check of a potential purchaser or transferee, the Pennsylvania State Police shall immediately during the seller's call or by return call forthwith complete the following:

(1) Review the Pennsylvania State Police criminal history and fingerprint records to determine whether the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law.

(2) Review the juvenile delinquency and mental health records of the Pennsylvania State Police to determine whether the potential purchaser or transferee is prohibited from receipt or possession of a firearm under Federal or State law.

(3) Make one of the following responses to the inquiry:

(i) Inform the seller that the potential purchaser or transferee is prohibited from receipt or possession of a firearm.

(ii) Provide the seller with a unique approval number.

(b) Effect of unavailability of instantaneous records check system.--In the event of electronic failure, scheduled computer downtime or similar event beyond the control of the Pennsylvania State Police, the following shall apply:

(1) The Pennsylvania State Police shall immediately notify the requesting seller of the reason for and estimated length of the delay.

(2) If the failure or event lasts for a period exceeding 48 hours, the seller shall not be subject to any penalty for completing a transaction absent the completion of an instantaneous records check for the remainder of the failure or similar event.

(3) The seller shall obtain a completed application/record of sale following the provisions of sections 6221 (relating to sale or transfer of firearms), 6222 (relating to sale or transfer of handguns) and 6223 (relating to sale or transfer of long-guns) as if an instantaneous records check system has not been established for any sale or transfer of a firearm for the purpose of a subsequent background check.

(c) Establishment of telephone number.--The Pennsylvania State Police shall establish a telephone number that shall be operational seven days a week between the hours of 8 a.m. and 10 p.m. local time for purposes of responding to inquiries as described in this section from sellers. The Pennsylvania State Police shall employ and train such individuals as are necessary to expeditiously administer the provisions of this section.

(d) Criminal information.--In addition to the information to be reviewed by the Pennsylvania State Police under subsection (a)(1), the Pennsylvania State Police may obtain criminal statistics necessary for the purposes of this subchapter from a local law enforcement agency.

(e) Confidentiality.--Information provided by a potential purchaser, transferee or applicant shall be confidential and not subject to public disclosure. This information includes, but is not limited to, the following:

(1) The name or identity of the potential purchaser, transferee or applicant.

(2) Information furnished by the potential purchaser or transferee under this section or an applicant for a license to carry under section 6232 (relating to license to carry).

Source for § 6225

Section 6225 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6111.1(b)(1)

Subsection	Basis in 18 Pa.C.S.
(b)	§ 6111.1(b)(2)
(c)	§ 6111.1(c)
(d)	§ 6111.1(j)
(e)	§ 6111(i): 1 st sentence

§ 6226. Access to mental health records for firearm background check purposes.

(a) Notification of mental health adjudication, treatment or commitment.--

Notwithstanding any statute to the contrary, a judge of the court of common pleas shall notify the Pennsylvania State Police, on a form developed by the Pennsylvania State Police, of the identity of any of the following individuals:

(1) An individual who has been adjudicated as incapacitated pursuant 20 Pa.C.S. Ch. 55 (relating to incapacitated persons) to possess a firearm.

(2) An individual who has been involuntarily committed to a mental institution under the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act.

(3) An individual who has been involuntarily treated as described in section 6211(c)(5) (relating to disqualification from possession or ownership).

(4) An individual as described in 18 U.S.C. § 922(g)(4) (relating to unlawful acts) and its implementing Federal regulations.

(b) Notification of drug use or addiction.-- Notwithstanding any statute to the contrary, a judge of the court of common pleas shall notify the Pennsylvania State Police, on a form developed by the Pennsylvania State Police, of any finding of fact or court order related to any individual described in 18 U.S.C. § 922(g)(3).

(c) Timing of notification.--The notification under this section shall be transmitted by the judge to the Pennsylvania State Police within five days of the adjudication, commitment or treatment.

(d) Sharing of information with Federal authorities.--Notwithstanding any law to the contrary, the Pennsylvania State Police may disclose, electronically or otherwise, to the United States Attorney General or a designee, any record relevant to a determination of whether an individual is disqualified from possessing or receiving a firearm under 18 U.S.C. § 922 (g)(3) or (4) or an applicable State statute.

(e) Court review.--An individual who is involuntarily committed under section 302 of the Mental Health Procedures Act may petition the court to review the sufficiency of the evidence upon which the commitment was based, subject to the following:

(1) If the court determines that the evidence upon which the involuntary commitment was based was insufficient, the court shall order that the record of the commitment submitted to the Pennsylvania State Police be expunged.

(2) Upon receipt of a copy of the order of a court of competent jurisdiction that vacates a final order or an involuntary certification issued by a mental health review officer, the Pennsylvania State Police shall expunge all records of the involuntary treatment received under subsection (a).

(f) Expungement on physician certification.--The Pennsylvania State Police shall expunge all records of an involuntary commitment if all of the following conditions are met:

(1) The individual is discharged from a mental health facility based upon the initial review by the physician occurring within two hours of arrival under section 302(b) of the Mental Health Procedures Act.

(2) The physician determines that no severe mental disability existed under section 302(b) of the Mental Health Procedures Act.

(3) The physician shall provide signed confirmation of the determination of the lack of severe mental disability following the initial examination under section 302(b) of the Mental Health Procedures Act to the Pennsylvania State Police.

(g) Definition--As used in this section, the term “physician” means a physician who may authorize an involuntary commitment under the Mental Health Procedures Act.

Source for § 6226

Section 6226 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6111.1(f)(1)(i)
(b)	§ 6111.1(f)(1)(ii)
(c)	§ 6111.1(f)(2)
(d)	§ 6111.1(f)(3)
(e)(1)	§ 6111.1(g)(2)
(e)(2)	§ 6111.1(g)(1)
(f)	§ 6111.1(g)(3)
(g)	Replaces § 6111.1(k)

Note

The timing of the notification is changed from seven days to five days in § 6226(c).

The sentence in 18 Pa.C.S. § 6111.1(g)(2) regarding a petition tolling the 60-day period is not incorporated into Chapter 62. This provision is unnecessary in light of § 6213(a), which shortens the period in which a firearm must be relinquished upon disqualification from 60 days to 72 hours.

The definition of “physician” in § 6226(g) is modified from 18 Pa.C.S. § 6111.1(k), which defines the term as any licensed psychiatrist or clinical psychologist as defined in the Mental Health Procedures Act.

§ 6227. Access to juvenile registry for firearm background check purposes.

(a) Disclosure.--The contents of law enforcement records and files compiled under 42 Pa.C.S. § 6308 (relating to law enforcement records) concerning a child shall not be

disclosed to the public except if the child is 14 years of age or older at the time of the alleged conduct and if any of the following apply:

(1) The child has been adjudicated delinquent by a court as a result of an act that constitutes an offense enumerated in section 6211 (relating to disqualification from possession or ownership).

(2) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed an act that constitutes an offense enumerated in section 6211 and the child previously had been adjudicated delinquent by a court as a result of an act that included the elements of one of the offenses.

(b) Limited use.--Notwithstanding any provision of this section, the contents of law enforcement records and files concerning any child adjudicated delinquent for the commission of any criminal activity described in subsection (a) shall be recorded in the registry of the Pennsylvania State Police for the limited purposes of this subchapter.

Source for § 6227

Section 6227 is derived from 18 Pa.C.S. § 6111.1(h).

§ 6228. Challenge to firearm background checks.

(a) Right to challenge.--An individual who is denied the right to receive, sell, transfer, possess, carry, manufacture or purchase a firearm as a result of the procedures in section 6225 (relating to firearms background checks) may challenge the accuracy of that individual's criminal history, juvenile delinquency history or mental health records reviewed during the check by submitting a challenge to the Pennsylvania State Police within 30 days from the date of the denial.

(b) Review of accuracy of records.--The Pennsylvania State Police shall conduct a review of the accuracy of the information forming the basis for the denial and shall have the burden of proving the accuracy of the record.

(c) Notice of findings.--Within 20 days after receiving a challenge, the Pennsylvania State Police shall notify the challenger of the basis for the denial, including, but not limited to, the jurisdiction and docket number of any relevant court decision and shall provide the challenger an opportunity to provide additional information for the purposes of the review. The Pennsylvania State Police shall communicate its final decision to the challenger within 60 days of the receipt of the challenge. The decision of the Pennsylvania State Police shall include all information that formed a basis for the decision.

(d) Appeal to Attorney General.--If the challenge is ruled invalid, the individual shall have the right to appeal the decision to the Attorney General within 30 days of the decision. The Attorney General shall conduct a hearing de novo in accordance with the Administrative Agency Law. The burden of proof shall be upon the Commonwealth.

(e) Appeal to Commonwealth Court.--An aggrieved party may appeal the decision of the Attorney General to the Commonwealth Court.

Source for § 6228

Section 6228 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6111.1(e)(1)
(b) & (c)	§ 6111.1(e)(2)
(d)	§ 6111.1(e)(3)
(e)	§ 6111.1(e)(4)

Note

The provisions of 18 Pa.C.S. § 6111.1(b)(3), (j.1) and (j.2) are omitted from this recodification because all three provisions simply concern transitional language dealing with the implementation of the

instantaneous background check system. The provisions are now fully executed and are unnecessary as part of Chapter 62.

SUBCHAPTER D

LICENSURE

Sec.

6231. Licensure of firearms dealers.

6232. License to carry.

6233. Firearms License Validation System.

6234. Revocation of license to carry.

6235. Disqualification from license to carry.

6236. Exemption from license to carry.

6237. Sportsman's firearm permit.

§ 6231. Licensure of firearms dealers.

(a) Retail dealer required to be licensed.--No retail dealer shall sell, or otherwise transfer or expose for sale or transfer, or have in his possession with intent to sell or transfer, any firearm without being licensed as provided in this section.

(b) Issuance of license.--A license to sell firearms direct to the consumer shall be issued in accordance with the following:

(1) The chief or head of any police force or police department of a city, and, elsewhere, the sheriff of the county, shall grant to a license to a reputable applicant.

(2) The license shall be in the form prescribed by the Pennsylvania State Police.

(3) The license shall be effective for three years from date of issue.

(4) A fee of \$30 shall be charged for the issuance of the license and paid into the county treasury.

(c) Conditions of license.--A license issued under this section shall be subject to the following and any breach of any condition shall cause the license to be forfeited and the licensee subject to punishment as provided in this subchapter:

(1) The conditions specified in sections 6221 (relating to sale or transfer of firearms), 6222 (relating to sale or transfer of handguns) and 6223 (relating to sale or transfer of long-guns) shall apply.

(2) The business may be carried on only:

(i) on the premises designated in the license; or

(ii) at a lawful gun show or meet.

(3) The license, or a copy certified by the issuing authority, shall be displayed on the premises where it can easily be read.

(4) No firearm may be sold in violation of any provision of this subchapter.

(5) No firearm may be sold under any circumstances unless the purchaser is individually known to the transferor or presents clear evidence of the purchaser's identity.

(6) A record of each handgun transaction shall be kept in accordance with the provisions of section 6222.

(7) No handgun shall be displayed in any part of any premises where it can readily be seen from the outside.

(8) In the event that the Commissioner shall find a clear and present danger to public safety within this Commonwealth or any area thereof, firearms shall be stored and safeguarded pursuant to regulations to be established by the Pennsylvania State Police by the licensee during the hours when the licensee is closed for business.

(9) The dealer shall possess all applicable current revenue licenses.

(c) Revocation.--A license granted under this section may be revoked for cause by the issuing authority upon written notice to the licensee.

Source for § 6231

Section 6231 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6112
(b)(1)-(3)	§ 6113(a) (introductory language)
(b)(4)	§ 6113(b)
(c)	§ 6113(a)(1)-(7)
(d)	§ 6113(c)

§ 6232. License to carry.

(a) License required.--No individual may carry a handgun concealed on or about the individual, or in any vehicle within this Commonwealth, other than the individual's place of abode or fixed place of business, without first obtaining a license under this section.

(b) Who may apply; place of application.--

(1) Subject to paragraph (2), an individual who is 21 years of age or older may apply to a sheriff for a license to carry.

(2) If an applicant is a resident of this Commonwealth, the application for a license to carry shall be made to either of the following:

(i) If the applicant is a resident of a city of the first class, the chief of police of that city.

(ii) Except as provided in subparagraph (i), the sheriff of the county in which the applicant resides.

(c) Form of application and content.--An application for a license to carry shall conform to the following requirements:

(1) The application shall be uniform throughout this Commonwealth and on a form prescribed by the Pennsylvania State Police. The form may contain provisions, not exceeding one page, to assure compliance with this section. An issuing authority shall use only the application form prescribed by the Pennsylvania State Police.

(2) One of the following reasons for obtaining a license to carry shall be set forth in the application:

- (i) Self-defense.
- (ii) Employment.
- (iii) Hunting and fishing.
- (iv) Target shooting.
- (v) Gun collecting.
- (vi) Another proper reason.

(3) An application form shall be dated and signed by the applicant and shall contain the following statement:

I am of sound mind. I have never been convicted of a crime that prohibits me from possessing or acquiring a firearm under Federal or State law, or if I have previously been disqualified from possessing or acquiring a firearm for this reason, the disability has been removed according to 18 Pa.C.S. § 6216(b). I have never been involuntarily committed to a mental institution, or if I have previously been disqualified from possessing or acquiring a firearm for this reason, the disability has been removed according to 18 Pa.C.S. § 6216(c). I hereby certify that the statements contained herein are true and correct to the best of my knowledge and belief. I understand that, if I knowingly make any

false statements herein, I am subject to penalties prescribed by law. I authorize the sheriff, or the designee of the sheriff, or, in the case of first class cities, the chief or head of the police department, or the designee of the chief or head of the police department, to inspect only those records or documents relevant to information required for this application. If I am issued a license and knowingly become ineligible to legally possess or acquire firearms, I will promptly notify the sheriff of the county in which I reside or, if I reside in a city of the first class, the chief of police of that city.

Note

The form under this subsection is modified for technical purposes and differs from the form set forth in § 6109(c), which provided the following: “I have never been convicted of a crime that prohibits me from possessing or acquiring a firearm under Federal or State law. I am of sound mind and have never been involuntarily committed to a mental institution.” This new language accounts for the fact that there may be individuals who were previously disqualified from possessing or acquiring a firearm but who may do so now, but they would not be able to truthfully complete an application under § 6109(c), which only addresses individuals who have *never* been so disqualified. In other words, the application does not adequately address all potential circumstances, such as where an applicant’s conviction was overturned, or the applicant was pardoned for the crime, or the applicant’s mental health issues have been resolved and the disability to possess or acquire a firearm has been removed. In addition, for clarification purposes, the modifier “involuntarily” precedes “committed to a mental institution” in the form under this subsection.

(d) Sheriff to conduct investigation.--The sheriff to whom the application is made shall perform all of the following:

- (1) Investigate the applicant’s record of criminal conviction.
- (2) Investigate whether or not the applicant is under indictment for or has ever been convicted of a crime punishable by imprisonment exceeding one year.

(3) Investigate whether the applicant's character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety.

(4) Investigate whether the applicant would be precluded from receiving a license under this chapter.

Note

See, e.g., §§ 6211 and 6212.

(5) Conduct a firearm background check following the procedures set forth in section 6221 (relating to sale or transfer of firearms) and 6222 (relating to sale or transfer of handguns), receive a unique approval number for that inquiry and record the date and number on the application.

(e) Grant or denial of license.--

(1) After an investigation not to exceed 45 days, the sheriff shall issue a license to carry to an applicant if it appears that there exists no good cause for the applicant to be denied the license.

(2) The sheriff may refuse to issue a license on the basis of the investigation under subsection (d) and the accuracy of the information contained in the application.

(3) If the sheriff refuses to issue a license, the sheriff shall notify the applicant in writing of the refusal and the specific reasons for the refusal. The notice shall be sent by certified mail to the applicant at the address set forth in the application.

(f) License form and content.--A license to carry shall be uniform throughout this Commonwealth and in a form prescribed by the Pennsylvania State Police. The license shall bear the following:

(1) The name, address, date of birth, race, sex, citizenship, height, weight, color of hair, color of eyes and signature of the licensee.

(2) The signature of the sheriff issuing the license.

(3) A license number of which the first two numbers shall be a county location code followed by numbers issued in numerical sequence.

(4) The point-of-contact telephone number designated by the Pennsylvania State Police under section 6233 (relating to Firearms License Validation System).

(5) The reason for issuance.

(6) The period of validation.

(7) A photograph of the licensee in a form compatible with the Commonwealth Photo Imaging Network.

(g) Disposition of license.--The original license shall be issued to the applicant. The first copy of the license shall be forwarded to the Pennsylvania State Police within five days of the date of issue. The second copy shall be retained by the issuing authority for a period of seven years. Except pursuant to court order, both copies and the application shall, at the end of the seven-year period, be destroyed unless the license has been renewed within the seven-year period.

(h) Term of license.--

(1) A license to carry issued under this section is valid throughout this Commonwealth for a period of five years unless extended under paragraph (3) or sooner revoked.

(2) At least 60 days prior to the expiration of each license, the issuing sheriff shall send to the licensee an application for renewal of license. Failure to receive a renewal application does not relieve a licensee from the responsibility to renew the license.

(3) Notwithstanding paragraph (1) or any other provision of law to the contrary, a license to carry a firearm that is held by a member of the United States Armed Forces or the Pennsylvania National Guard on Federal active duty and deployed overseas that is scheduled to expire during the period of deployment shall be extended until 90 days after the end of the deployment.

(4) Possession of a license, together with a copy of the individual's military orders showing the dates of overseas deployment, including the date that the overseas deployment ends, shall constitute, during the extension period specified in paragraph (3), a defense to any charge filed pursuant to this section or section 6241(c) (relating to other firearms restrictions).

(i) Proof of license.--

(1) Upon the lawful demand of a law enforcement officer, an individual carrying a firearm concealed on or about the individual or in a vehicle shall:

(i) produce the license to carry for inspection by the law enforcement officer;

or

(ii) if the individual claims an exception under section 6236 (relating to exemption from license to carry), produce satisfactory evidence of qualification for exception to the law enforcement officer.

(2) Failure to produce a license to carry either at the time of arrest or at the preliminary hearing shall create a rebuttable presumption of nonlicensure.

(j) Emergency circumstances.--

(1) If an individual provides evidence of imminent danger to the individual or a child of the individual, the person receiving the individual's application for a license to carry under this section shall provide expedited procedures regarding the application, investigation and decision-making processes under subsections (c), (d) and (e), taking into consideration the nature of the emergency circumstances that warrant the expedited procedures.

(2) The Commissioner may establish an additional fee for an initial license to carry granted as a result of an expedited process under this subsection, which additional fee may not exceed the actual cost of conducting a criminal background check on the individual or \$10, whichever is less.

(3) As used in this subsection, the term "evidence of imminent danger" shall mean a written document that:

(i) is prepared by the Attorney General, a district attorney, a chief law enforcement officer, a judicial officer or a designee of any of the Attorney General, district attorney, chief law enforcement officer or judicial officer; and

(ii) describes the facts that give an individual reasonable cause to fear a criminal attack upon the individual or a child of the individual, where the child is under the age of 21 years.

For purposes of this paragraph, the term "chief law enforcement officer" shall be as defined in 42 Pa.C.S. § 8951 (relating to definitions) and "judicial officer" shall be as defined in 42 Pa.C.S. § 102 (relating to definitions).

Note

Under 42 Pa.C.S. § 8951, the term “chief law enforcement officer” is defined as “[t]he head of a duly constituted municipal law enforcement agency which regularly provides primary police services to a political subdivision or, in the absence of any such municipal law enforcement agency, the commanding officer of the Pennsylvania State Police installation which regularly provides primary police services to the political subdivision.”

Under 42 Pa.C.S. § 102, the term “judicial officers” is defined as “[j]udges, magisterial district judges and appointive judicial officers.”

(k) Fees.--Fees may be collected for a license to carry, subject to the following conditions:

(1) In addition to the fee described in paragraph (2), the fee for a license to carry shall be \$19, which includes both of the following:

(i) A renewal notice processing fee of \$1.50.

(ii) An administrative fee of \$5 under section 14(2) of the act of July 6, 1984 (P.L.614, No.127), known as the Sheriff Fee Act.

(2) An additional fee of \$1 shall be paid by the applicant for a license to carry and shall be remitted by the sheriff to the Firearms License Validation System Account, which is hereby established as a special restricted receipt account within the General Fund of the State Treasury. The account shall be used for purposes set forth in section 6233 (relating to Firearms License Validation System). Money credited to the account and any investment income accrued are hereby appropriated on a continuing basis to the Pennsylvania State Police.

(3) No fee other than that provided by this subsection or the Sheriff Fee Act may be assessed by the sheriff for the performance of any background check made pursuant to this chapter.

(4) A fee under this subsection is payable to the sheriff to whom the application is submitted and is payable at the time of application for the license.

(5) Except for the administrative fee of \$5 under section 14(2) of the Sheriff Fee Act, fees regarding an application for a license to carry shall be refunded if the license is denied.

(6) No fee under this subsection may be refunded if a license to carry had been issued and is subsequently revoked.

(l) Immunity.--A sheriff who complies in good faith with this section is immune from liability resulting or arising from the action or misconduct with a firearm committed by any individual to whom a license to carry has been issued.

(m) Construction.--Nothing in this section shall be construed to:

(1) Permit the hunting or harvesting of any wildlife with a firearm or ammunition not otherwise permitted by 34 Pa.C.S. (relating to game).

(2) Authorize a Commonwealth agency to regulate the possession of firearms in any manner inconsistent with the provisions of this title.

Source for § 6232

Section 6232 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§§ 6106(a) & 6109(a)
(b)	§ 6109(b)
(c)	§ 6109(c)
(d)	§ 6109(d)
(e)	§ 6109(e)(1): 1 st sentence; § 6109(g)
(f)(1)-(6)	§ 6109(e)(3)
(f)(7)	§ 6109(e)(4)
(g)	§ 6109(e)(5)
(h)	§ 6109(f)
(i)	§ 6122

Subsection	Basis in 18 Pa.C.S.
(j)	Replaces § 6109(m.1) (see § 6109(m.1)(10) for the definition of “evidence of imminent danger”)
(k)	§ 6109(h)(1)-(6)
(l)	§ 6109(j)
(m)	§ 6109(m.3)

Note

The provisions of 18 Pa.C.S. § 6109(e)(1) and (g) address when an license to carry may be issued. While consistent in their requirements, the subsections contain a slight difference in the language governing the approval of a license application. These two provisions have been combined into new § 6232(e), using the approval language from § 6109(e)(1).

The seven-day period under 18 Pa.C.S. § 6109(e)(5) has been changed to five days under § 6232(g).

The provisions of 18 Pa.C.S. § 6109(n) are unnecessary and therefore excluded from proposed statutory recommendations.

The Advisory Committee favored the elimination of the concept of temporary emergency licenses as set forth in 18 Pa.C.S. § 6109(m.1), instead using the same provisions regarding a license to carry but with the ability of a chief of police or sheriff to expedite procedures because of an emergency situation involving imminent danger to the applicant or to a child of the applicant (if the child is under 21 years old).

§ 6233. Firearms License Validation System.

(a) Establishment.--The Pennsylvania State Police shall establish a nationwide toll-free telephone number, known as the Firearms License Validation System, which shall be operational seven days a week, 24 hours per day, to respond to law enforcement inquiries regarding the validity of a Pennsylvania license to carry.

(b) Limited access.--Notwithstanding any other law regarding the confidentiality of information, inquiries to the Firearms License Validation System regarding the validity of a Pennsylvania license to carry may only be made by law enforcement individuals acting within the scope of their official duties.

(c) Out-of-state inquiries.--Inquiries from law enforcement individuals from outside this Commonwealth shall be subject to the following:

(1) The inquiring individuals shall provide their originating agency identifier number and the license number of the license to carry that is the subject of the inquiry.

(2) Responses shall be limited to the name of the license holder, the validity of the license and any information that may be provided to a criminal justice agency under Chapter 91 (relating to criminal history record information).

Source for § 6233

Section 6233 is derived from 18 Pa.C.S. § 6109(I).

§ 6234. Revocation of license to carry.

(a) Revocation for good cause.--A license to carry may be revoked by the issuing authority for good cause.

(b) Disqualified holders.--A license to carry shall be revoked by the issuing authority for any reason stated in section 6235 (relating to disqualification from license to carry) that occurs during the term of the permit.

(c) Notice.--Notice of revocation shall be:

(1) In writing and state the specific reason for revocation.

(2) Sent by certified mail to the individual whose license is revoked. At the same time, notice shall also be provided to the Pennsylvania State Police by electronic means, including e-mail or facsimile transmission, that the license is no longer valid.

(d) Surrender of license.--An individual whose license is revoked must surrender the license to the issuing authority within five days of receipt of the notice.

(e) Appeal of revocation.--An individual whose license is revoked may appeal to the court of common pleas for the judicial district in which the individual resides.

Source for § 6234

Section 6234 is derived from 18 Pa.C.S. § 6109(i) (except the last sentence).

§ 6235. Disqualification from license to carry.

Note

Although the Advisory Committee acknowledges that several of the paragraphs under this section may contain antiquated provisions, the Advisory Committee does not favor repealing any of them. Based on unique circumstances, they all may at some point become important disqualifications (even though not widely used, or perhaps not seemingly used at all, in modern times). For example, paragraph (1) may be important if the police happen to know of someone “whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.”

A license may not be issued to any of the following:

(1) An individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.

(2) An individual who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(3) An individual convicted of a crime enumerated in section 6211 (relating to disqualification from possession or ownership).

(4) An individual who, within the past ten years, has been adjudicated delinquent for a crime enumerated in section 6211 or for an offense under The Controlled Substance, Drug, Device and Cosmetic Act.

(5) An individual who has been adjudicated as incapacitated pursuant 20 Pa.C.S. Ch. 55 (relating to incapacitated persons) to possess a firearm or who has ever been involuntarily committed to a mental institution for inpatient care and treatment.

(6) An individual who is addicted to or is an unlawful user of marijuana or a stimulant, depressant or narcotic drug.

(7) An individual who is a habitual drunkard.

(8) An individual who is charged with or has been convicted of a crime punishable by imprisonment for a term exceeding one year except as provided for in section 6131.4 (relating to effect of federal waiver or pardon).

(9) A resident of another state who does not possess a current license or permit or similar document to carry a firearm issued by that state if a license is provided for by the laws of that state, as published annually in the Federal Register by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury under 18 U.S.C. § 921(a)(19) (relating to definitions).

(10) An alien who is illegally in the United States.

(11) An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

(12) An individual who is a fugitive from justice. This paragraph does not apply to an individual whose fugitive status is based upon nonmoving or moving summary offense under Title 75 (relating to vehicles).

(13) An individual who is otherwise prohibited from possessing, using, manufacturing, controlling, purchasing, selling or transferring a firearm as provided by section 6211.

(14) An individual who is prohibited from possessing or acquiring a firearm under the statutes of the United States.

Source for § 6235

Section 6235 is derived from 18 Pa.C.S. § 6109(e)(1).

Note

See the Note following § 6211(c)(5).

§ 6236. Exemption from license to carry.

(a) General rule.--The following individuals may not be required to obtain a license to carry in order to carry a handgun concealed on or about the person or in a vehicle within this Commonwealth:

(1) Any of the following:

(i) A constable, sheriff or prison or jail warden.

(ii) A deputy of a person under subparagraph (i).

(iii) A policeman of this Commonwealth or any of its political subdivisions.

(iv) Another law enforcement officer not otherwise described in this paragraph.

(2) A member of the Army, Navy, Marine Corps, Air Force or Coast Guard of the United States or of the National Guard or organized reserves when on duty.

(3) A regularly enrolled member of an organization duly organized to purchase or receive firearms from the United States or this Commonwealth.

(4) An individual engaged in target shooting with a firearm, if the individual is at or is going to or from a places of assembly or target practice and if, while so going, the firearm is not loaded.

(5) An officer or employee of the United States duly authorized to carry a concealed firearm.

(6) An agent, messenger or other employee of a common carrier, bank or business firm, whose duties require the individual to protect moneys, valuables and other property in the discharge of the individual's duties.

(7) An individual engaged in the business of manufacturing, repairing or dealing in firearms, or the agent or representative of the individual, who possesses, uses or carries a firearm in the usual or ordinary course of the business.

(8) An individual who carries a firearm, which is not loaded and is in a secure wrapper:

(i) from the place of purchase to the individual's home or place of business;

(ii) to a place of repair, sale or appraisal and back to the individual's home or place of business;

(iii) while moving from one place of abode or business to another;

(iv) from the individual's home to a vacation or recreational home or dwelling and back to the individual's home;

(v) to recover stolen property under section 6215(c) (relating disposition of firearms in law enforcement custody);

(vi) to a place of instruction intended to teach the safe handling, use or maintenance of firearms and back to the individual's home or place of business;

(vii) to a location to which the individual has been directed to relinquish firearms under 23 Pa.C.S. § 6108 (relating to relief) and back upon return of the relinquished firearm;

(viii) to a licensed dealer's place of business for relinquishment under 23 Pa.C.S. § 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) and back upon return of the relinquished firearm; or

(ix) to a location for safekeeping under 23 Pa.C.S. § 6108.3 (relating to relinquishment to third party for safekeeping) and back upon return of the relinquished firearm.

(9) An individual licensed to hunt, take furbearers or fish in this Commonwealth, if the individual is:

(i) actually hunting, taking furbearers or fishing as permitted by the license; or

(ii) going to or from the place where the individual desires to hunt, take furbearers or fish.

(10) An individual training dogs, if the individual is actually training dogs during the regular training season.

(11) An individual who is carrying a handgun in a vehicle, if the individual possesses a valid and lawfully issued license for that handgun, which license has been issued under the laws of the United States or another state.

(12) An individual who has a lawfully issued license to carry pursuant to section 6232 (relating to license to carry) and:

(i) the license expired within six months prior to the date of arrest; and

(ii) the individual is otherwise eligible for renewal of the license to carry.

(13) An individual who is:

(i) otherwise eligible to possess a handgun under this chapter; and

(ii) operating a motor vehicle that is registered in the individual's name or the name of the individual's spouse or parent, where the motor vehicle contains a handgun for which a valid license to carry has been issued pursuant to section 6232 to the individual's spouse or parent owning the firearm.

(14) An individual lawfully engaged in the interstate transportation of a firearm as defined under 18 U.S.C. § 921(a)(3) (relating to definitions) in compliance with 18 U.S.C. § 926A (relating to interstate transportation of firearms).

(15) An individual who possesses a valid and lawfully issued license or permit to carry that has been issued under the laws of another State, regardless of whether a reciprocity agreement exists between the Commonwealth and the state under section 6244 (relating to relationship to other states' firearms laws) if:

(i) the state provides a reciprocal privilege for individuals licensed to carry under section 6232; and

(ii) The Attorney General has determined that the firearm laws of the state are similar to the firearm laws of this Commonwealth.

(16) An individual holding a license in accordance with section 6232(h)(3).

(b) Effect of other inconsistent law.--Notwithstanding the provisions of section 7506 (relating to violation of rules regarding conduct on Commonwealth property), 75 Pa.C.S. § 7727 (relating to additional limitations on operation) or the act of June 28, 1995 (P.L.89, No.18), known as the Conservation and Natural Resources Act, and regulations promulgated under that act, a handgun may be carried concealed on or about the person or in a vehicle within this Commonwealth by:

(1) A law enforcement officer whose current identification as a law enforcement officer shall be construed as a valid license to carry.

(2) An individual licensed to carry.

Source for § 6236

Section 6236 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6106(b)
(b)	§ 6109(m.2)

Note

The provisions of 18 Pa.C.S. § 6106(e)(1), in which the term “firearm” is defined, are not incorporated into Chapter 62. That definition was necessary because of the multitude of definitions of “firearm” spread throughout Chapter 61. However, by defining the terms “handgun” and “long-gun” in Chapter 62 to more clearly delineate what type of firearm applies to each proposed section, a separate definition of “firearm” is unnecessary.

§ 6237. Sportsman’s firearm permit.

(a) Requirement.--Before any exception may be granted under section 6236(b)(9) or (10) (relating to exemption from license to carry) to an individual who is 18 years of age or older and who is licensed to hunt, trap or fish or who has been issued a permit relating to hunting dogs, that individual shall secure a sportsman’s firearm permit from the county treasurer.

(b) Application.--An application for a permit under this section shall be subject to the following:

(1) An application may be made at the time of securing a hunting, furtaking or fishing license or any time after that license is issued.

(2) A permit under this section shall be issued immediately and be valid throughout this Commonwealth for a period of five years from the date of issue for a legal handgun, when carried in conjunction with a valid hunting, furtaking or fishing license or permit relating to hunting dogs.

(3) A permit under this section shall be in triplicate on a form to be furnished by the Pennsylvania State Police.

(4) The original permit shall be delivered to the applicant. Within seven days, the first copy of the permit shall be forwarded to the Commissioner of the Pennsylvania State Police by the county treasurer. The second copy of the permit shall be retained by the county treasurer for a period of two years from the date of expiration.

(c) Fee.--The county treasurer may collect a fee of not more than \$6 for each permit issued, which shall include the cost of any official form. The Pennsylvania State Police may recover from the county treasurer the cost of the form but may not charge more than \$1 for each official permit form furnished to the county treasurer.

(d) Revocation of permit.--Upon written notice to the holder of the revocation, a permit issued under this section may be revoked by the county treasurer who issued it.

(e) Definition.--As used in this section, the phrase “place of instruction” shall include a hunting club, rifle club, rifle range, pistol range, shooting range, the premises of a licensed dealer or a lawful gun show or meet.

Source for § 6237

Section 6237 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a), (b) & (c)	§ 6106(c)(1)
(d)	§ 6106(d)
(e)	§ 6106(e)(2)

General Note

The provisions of 18 Pa.C.S. § 6109(m.1) (temporary emergency licenses) are not separately incorporated into Chapter 62. Instead, § 6232(j) includes the concept of emergency circumstances, to be read in conjunction with the other provisions regarding a license to carry.

SUBCHAPTER E

SAFETY AND RESPONSIBILITY

Sec.

6241. Other firearms restrictions.

6242. Reporting lost or stolen weapons.

6243. Firearms safety.

6244. Relationship to other states' firearms laws.

6245. Carrying explosives on conveyances.

6246. Shipping explosives.

§ 6241. Other firearms restrictions.

(a) Carrying loaded weapons other than handguns.--

(1) No individual may carry a loaded pistol, revolver, shotgun or rifle in any vehicle, except as follows:

(i) As provided in Title 34 (relating to game).

(ii) With respect to an individual exempt from the requirement of a license to carry under section 6236 (a)(1), (2), (5) or (6) (relating to exemption from license to carry).

(2) Paragraph (1) shall not be construed to permit an individual to carry a handgun in a vehicle if that conduct is prohibited by section 6232 (relating to license to carry).

(b) Carrying firearms during an emergency.--No individual may carry a firearm upon the public streets or public property during an emergency proclaimed by a State or municipal governmental executive unless the individual is:

(1) actively engaged in a defense of that individual's life or property from peril or threat; and

(2) licensed to carry under section 6232 or exempt from licensing under section 6236.

(c) Carrying firearms on public streets or public property in city of the first class.--No individual may carry a handgun, rifle or shotgun at any time upon the public streets or public property in a city of the first class unless the individual is licensed to carry under section 6232 or exempt from licensing under section 6236.

(d) Possession of a handgun by a minor.--No individual under 18 years of age may possess or transport a handgun anywhere in this Commonwealth except as follows:

(1) The individual is under the supervision of a parent, grandparent, legal guardian or an adult acting with the expressed consent of the minor's custodial parent or legal guardian and either:

(i) The individual is engaged in lawful activity, including safety training, lawful target shooting or engaging in an organized competition involving the use of a handgun.

(ii) The handgun is unloaded and the individual is transporting it for a lawful purpose.

(2) The individual is lawfully hunting or trapping in accordance with Title 34 (relating to game).

Source for § 6241

Section 6241 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6106.1(a)
(b)	§ 6107(a)
(c)	§ 6108
(d)	§ 6110.1(a) & (b)

§ 6242. Reporting lost or stolen firearms.

(a) Duty to report.--An owner or other person lawfully in possession of a firearm who suffers the loss or theft of a firearm shall, within 72 hours of the discovery of the loss or theft, report the facts and circumstances of the loss or theft to the municipal police of the jurisdiction in which the loss or theft is believed to have occurred or the Pennsylvania State Police. The person making the report shall provide all known information about the firearm, including the following:

- (1) Name and address of the owner.
- (2) All known facts and circumstances pertaining to the loss or theft.
- (3) Name of the manufacturer and importer.
- (4) Model.
- (5) Type of action.
- (6) Caliber or gauge.
- (7) Serial number.
- (8) Any other information deemed necessary by the officer or police department receiving the report.

(b) Sharing of information.—Within 24 hours of receiving a report under this section, a law enforcement agency that receives a report under this section shall forward notice of

the loss or theft as well as all information obtained under subsection (a) to the Pennsylvania State Police.

(c) Pennsylvania State Police.--The Pennsylvania State Police shall:

(1) receive, collect and file the information forwarded to it under subsection (b);
and

(2) cooperate and undertake to furnish or make the information available to all law enforcement agencies in this Commonwealth for the purpose of coordinating law enforcement efforts to locate the firearm.

(d) Return of firearm.--A lost or stolen firearm recovered by the Pennsylvania State Police or a local law enforcement agency shall be returned to the lawful owner, subject to the provisions of section 6215 (relating to disposition of firearms in law enforcement custody).

(e) Penalty.--Notwithstanding any other provision of law, a person who violates subsection (a) commits:

(1) A summary offense for the first offense, punishable by a fine not to exceed \$500.

(2) A misdemeanor of the second degree for a second offense.

(3) A misdemeanor of the first degree for a third or subsequent offense.

Source for § 6242

Section 6242 is not part of Chapter 61 but is based on 2013 House Bill No. 1515 (Printer's No. 1996), which was referred to the House Judiciary Committee on June 10, 2013. Section 6242(d) is not part of the House bill.

Note

The Advisory Committee agreed that lost or stolen firearms should be reported promptly to law enforcement and that the penalties under subsection (e) should increase with the number of violations.

§ 6243. Firearms safety.

(a) Parental responsibility for firearm safety.--An individual living in the same residence with a child under 13 years of age shall make reasonable efforts to safely store and secure all firearms in the residence.

(b) Notice.--Firearms safety brochures provided under subsection (c) shall contain:

(1) information regarding the obligation and potential criminal consequences for failure to comply under subsection (a); and

(2) guidance on appropriate methods of securing firearms.

(c) Firearms safety brochures.--The Pennsylvania State Police shall distribute to every licensed dealer in this Commonwealth firearms safety brochures at no cost to the dealer. The brochure or a copy of the brochure shall be provided without charge to each purchaser. The brochures shall be written by the Pennsylvania State Police with the cooperation of the Pennsylvania Game Commission and shall include a summary of the major provisions of this chapter, including the duties of the sellers and purchasers of firearms.

Source for § 6243

Section 6243 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a) & (b)	
(c)	§§ 6111.1(d), 6125

Comment to § 6243

An appropriate measure to safely secure firearms is determined by consideration of what a reasonable person would do under similar

circumstances. An appropriate measure may include the use of a locking device or a firearms safe.

§ 6244. Relationship to other states' firearms laws.

(a) Purchase of long-guns outside Commonwealth.--Nothing in this chapter shall be construed to prohibit an individual in this Commonwealth who may lawfully purchase, possess, use, control, sell, transfer or manufacture a long-gun from lawfully purchasing or otherwise obtaining a long-gun in a jurisdiction outside this Commonwealth.

(b) Authorization to enter reciprocity agreements.--The Attorney General may enter into reciprocity agreements with other States providing for the mutual recognition of a license to carry issued by this Commonwealth and a license or permit to carry a handgun issued by the other state. In the performance of this duty, the Attorney General has the following powers and duties:

(1) Negotiate reciprocity agreements and grant recognition of a license or permit to carry a handgun issued by another State.

(2) Report to the General Assembly within 180 days of May 9, 2006, and annually thereafter concerning the agreements that have been consummated under this subsection.

(3) Not later than one year after May 9, 2006, and not less than once annually, contact in writing the appropriate authorities in another State that does not have a current reciprocity agreement with the Commonwealth to determine whether:

(i) the other State will negotiate a reciprocity agreement;

(ii) an individual licensed to carry in this Commonwealth may carry a concealed handgun in the other State; or

(iii) an individual licensed to carry in this Commonwealth may apply for a license or permit to carry a concealed handgun issued by the other State.

(4) Maintain a current list of those States that:

(i) have a reciprocity agreement with the Commonwealth;

(ii) allow individuals licensed to carry in this Commonwealth to carry a concealed handgun; or

(iii) allow individuals licensed to carry in this Commonwealth to apply for a license or permit to carry a handgun.

The list under this paragraph shall be posted on the Internet, provided to the Pennsylvania State Police and made available to the public upon request.

Source for § 6244

Section 6244 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6141.1
(b)(1) & (2)	§ 6109(k)
(b)(3) & (4)	§ 6109(m)

§ 6245. Carrying explosives on conveyances.

(a) Offense defined.--A person who has in his custody or about his person any nitroglycerine or other explosive, other than as freight regularly shipped as such, is guilty of a misdemeanor of the second degree if he enters into or upon:

(1) A railroad train, locomotive, tender or car thereof.

(2) An automobile or other conveyance used for the carrying of freight or passengers.

(b) Powers of crew.--The conductor or person having charge and control of a railroad train, coach or other conveyance for the carriage of freight or passengers, may arrest an

individual found violating this section and detain the individual until reaching some place, where the individual may be delivered to a constable or other police authority.

(c) Venue.--An individual committing an offense under this section may be prosecuted in a county through which the public conveyance passes, without reference to the place where the individual was arrested.

Source for § 6245

Section 6245 is derived from 18 Pa.C.S. § 6161.

§ 6246. Shipping explosives.

(a) Offense defined.--A person is guilty of a misdemeanor of the third degree if the person knowingly delivers, or causes to be delivered, to a transportation company or a person engaged in the business of transportation, explosive material adapted for blasting or another purpose for which the material may be used in either of the following circumstances:

(1) Under a false or deceptive invoice or description.

(2) Without:

(i) informing the carrier, at or before the time when the delivery is made, of the true nature of the material delivered; and

(ii) having the keg, barrel, can or package containing the material plainly marked with the name of the explosive material therein contained, together with the word "dangerous."

(b) Damages.—In addition to any other penalty, a person convicted of an offense under this section is responsible for all damages to persons or property directly or indirectly resulting from the explosion of the material.

(c) Opening of suspected containers.--Upon affidavit made of the fact that a container tendered for transportation, not in compliance with this section, is believed to contain explosive material, a person engaged in the business of transportation may require the container to be opened and refuse to receive the container unless there is compliance with that requirement.

(d) Disposition of explosives.--If a container is opened and found to contain explosive material, the container and its contents shall be removed to a lawful place for the storing of explosives. After conviction of the offender, or after three months from the removal, the following shall occur:

(1) The container, with its contents, shall be sold at public sale, after the expiration of ten days from notice of the time and place of the sale, published in one newspaper in the county where the seizure was made.

(2) The proceeds of the sale, after deducting the expenses of removal, storage, advertisement and sale, shall be paid into the treasury of the county.

Source for § 6246

Section 6246 is derived from 18 Pa.C.S. § 6162.

SUBCHAPTER F

STRAW PURCHASE PREVENTION EDUCATION PROGRAM

Sec.

6251. Scope of subchapter.

6252. Legislative findings and declarations.

6253. Definitions.

6254. Straw Purchase Prevention Education Program.

6255. Powers and duties of Attorney General.

6256. Straw Purchase Prevention Education Fund.

6257. Transfer for initial funding.

§ 6251. Scope of subchapter.

This subchapter provides for the establishment of the Straw Purchase Prevention Education Program within the Office of Attorney General.

Source for § 6251

Section 6251 is derived from 18 Pa.C.S. § 6181.

§ 6252. Legislative findings and declarations.

The General Assembly finds and declares that:

(1) The illegal purchase of firearms throughout this Commonwealth is a threat to public safety and security.

(2) Urban areas are experiencing increased violence as a result of criminal misuse of firearms. Stemming the flow of these illegal firearms through straw purchases will help to curb the crime rate throughout this Commonwealth and increase public safety.

(3) Educating the public that illegally purchasing a firearm for someone otherwise prohibited from possessing one is a serious crime and punishable under Federal law by ten years' imprisonment advances public safety.

(4) Committed to educating firearms dealers and the general public, the National Shooting Sports Foundation, in partnership with the Bureau of Alcohol, Tobacco, Firearms and Explosives, in July 2000 created the "Don't Lie for the Other Guy Program."

(5) The “Don’t Lie for the Other Guy Program” was developed to raise public awareness that it is a serious crime to purchase a firearm for someone who cannot legally do so and to educate firearms dealers on how to better detect and deter potential straw purchases. The campaign delivers the message that anyone attempting an illegal firearm purchase faces a stiff Federal penalty.

(6) The “Don’t Lie for the Other Guy Program” is vital to educating federally licensed firearms dealers and their employees on how to recognize and deter the illegal purchase of firearms through straw purchases. This program is an important tool for the Bureau of Alcohol, Tobacco, Firearms and Explosives to pursue its mission of preventing terrorism, reducing violent crime and protecting the public.

(7) The nationally recognized “Don’t Lie for the Other Guy Program” has been endorsed by United States attorneys throughout the nation, various law enforcement agencies, the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Department of Justice.

(8) It is in the best interest of this Commonwealth to establish a straw purchase prevention education program within the Office of Attorney General to provide resources and direct grant money to the “Don’t Lie for the Other Guy Program” and similar programs that offer straw purchase prevention education.

Source for § 6252

Section 6252 is derived from 18 Pa.C.S. § 6182.

§ 6253. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Fund.” The Straw Purchase Prevention Education Fund established in section 6256 (relating to Straw Purchase Prevention Education Fund).

“Program.” The Straw Purchase Prevention Education Program established in section 6254 (relating to Straw Purchase Prevention Education Program).

Source for § 6253

Section 6253 is derived from 18 Pa.C.S. § 6183.

§ 6254. Straw Purchase Prevention Education Program.

(a) Establishment.--The Straw Purchase Prevention Education Program is established and shall provide resources and direct grant money to underwrite the cost of implementing an educational and public service outreach program in the community.

(b) Outreach.--The educational and public service outreach program shall inform individuals of the illegal nature of purchasing a firearm for an individual prohibited from owning firearms. The outreach program shall be developed by a not-for-profit organization that:

(1) Is a national trade association representing the shooting, hunting and firearm industry.

(2) Has a membership consisting of firearm manufacturers, firearm distributors, firearm retailers, publishers and sportsmen’s organizations.

(3) Has been in existence for at least 45 years prior to the effective date of this section.

(c) Priority of grants.--Grants shall be prioritized based on the highest incidence of firearm violence in a county of this Commonwealth.

Source for § 6254

Section 6254 is derived from 18 Pa.C.S. § 6184.

§ 6255. Powers and duties of Attorney General.

In addition to any other powers and duties, the Attorney General of the Commonwealth shall:

- (1) Establish a grant program to provide moneys from the fund under section 6254 (relating to Straw Purchase Prevention Education Program).
- (2) Promulgate rules and regulations to carry out the provisions of this subchapter.

Source for § 6255

Section 6255 is derived from 18 Pa.C.S. § 6185.

§ 6256. Straw Purchase Prevention Education Fund.

(a) Establishment.--The Straw Purchase Prevention Education Fund is hereby established in the State Treasury as a restricted account. The fund shall consist of funds appropriated by the General Assembly.

(b) Continuing appropriation.--All moneys in the fund and the interest accruing thereon are hereby appropriated to the Office of Attorney General on a continuing basis to carry out this subchapter.

Source for § 6256

Section 6256 is derived from 18 Pa.C.S. § 6186.

§ 6257. Transfer for initial funding.

The sum of \$100,000 is hereby transferred from the General Fund to the Straw Purchase Prevention Education Fund for expenditure during the fiscal year July 1, 2009, to June 30, 2010, to carry out the provisions of this subchapter.

Source for § 6257

Section 6257 is derived from 18 Pa.C.S. § 6187.

SUBCHAPTER G

VIOLATIONS

Sec.

6261. Violations in general.

6262. Felony violations.

6263. Misdemeanor violations.

6264. Summary offenses.

6265. Other legal consequences.

6266. Civil liability.

6267. Second or subsequent violations of sale or transfer of firearms provisions.

§ 6261. Violations in general.

(a) Crimes committed with handguns.--An individual who commits or attempts to commit a crime enumerated in sections 6211 (relating to disqualification from possession or ownership) when armed with a handgun contrary to the provisions of this chapter, that individual may, in addition to the punishment provided for the crime, also be punished as provided by this subchapter.

(b) Evidence of intent.--In the trial of an individual for committing or attempting to commit a crime enumerated in sections 6211, the fact that the individual was armed with a handgun, used or attempted to be used, and had no license to carry the handgun, is evidence of that individual's intention to commit the offense.

(c) Imputed criminal liability.--Notwithstanding section 306 (relating to liability for conduct of another; complicity) or any other statute to the contrary, any individual or seller who knowingly and intentionally sells, delivers or transfers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used in the commission of a crime or attempt to commit a crime shall be criminally liable for the crime or attempted crime.

(d) Default violation.--Except as otherwise specifically provided, an offense under this subchapter constitutes a misdemeanor of the first degree.

Source for § 6261

Section 6261 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6103
(b)	§ 6104
(c)	§ 6111(g)(5)
(d)	§ 6119

§ 6262. Felony violations.

(a) Felony of the second degree.--The following offenses are felonies of the second degree:

(1) A violation of section 6211(a) (relating to disqualification from possession or ownership) or 6212 (relating to disqualification based on protection from abuse order) by an individual convicted of an offense under section 6211(b) or a felony under the act of April 14, 1972 (P.L.233, No.64) known as The Controlled Substance, Drug,

Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of another state.

(2) Possessing a firearm that has had the manufacturer's number integral to the frame or receiver altered, changed, removed or obliterated.

(3) Changing, altering, removing or obliterating the manufacturer's number integral to the frame or receiver of any firearm.

(b) Felony of the third degree.--The following offenses are felonies of the third degree:

(1) Except as provided in section 6263 (relating to misdemeanor offenses) and except in an individual's place of residence or fixed place of business, carrying a handgun in a vehicle or concealed on or about the individual without a valid and lawfully issued license to carry issued under this chapter.

(2) Except as provided in section 6222(g) (relating to sale or transfer of handguns), knowingly and intentionally delivering to or providing a handgun to an individual under the age of 18 years.

(3) Any of the following knowing and intentional acts by a person or seller:

(i) Selling, delivering or transferring a firearm under circumstances intended to provide a firearm to any person, purchaser or transferee who is unqualified or ineligible to control, possess or use a firearm under this chapter.

(ii) Requesting a criminal history, juvenile delinquency or mental health record check or other confidential information from the Pennsylvania State Police under this chapter for any purpose other than compliance with this chapter.

(iii) Disseminating a criminal history, juvenile delinquency or mental health record or other confidential information to any person other than the subject of the information.

(iv) Obtaining or furnishing information collected or maintained under section 6232 (relating to license to carry) for a purpose other than compliance with this chapter.

(v) Disseminating, publishing or otherwise making available information described in subparagraph (ii) to a person other than the subject of the information.

(4) Any of the following knowing and intentional acts by person, purchaser or transferee, in connection with the purchase, delivery or transfer of a firearm under this chapter:

(i) Making a materially false oral statement.

(ii) Making a materially false written statement, including a statement on a form promulgated by a Federal or State agency.

(iii) Willfully furnishing or exhibiting false identification intended or likely to deceive the seller, licensed dealer or licensed manufacturer.

(5) Possessing, using or attempting to use armor piercing ammunition while committing or attempting to commit a crime enumerated under section 6211(b).

Source for § 6262

Section 6262 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)(1)	§ 6105(a.1)(1)
(a)(2)	§ 6110.2
(a)(3)	§ 6117
(b)(1)	§ 6106(a)(1)
(b)(2)	§ 6110.1(c)
(b)(3)(i)	§ 6111(g)(2)

Subsection	Basis in 18 Pa.C.S.
(b)(3)(ii) & (iii)	§ 6111(g)(3)
(b)(3)(iv) & (v)	§ 6111(g)(3.1)
(b)(4)	§ 6111(g)(4)
(b)(5)	§ 6121(a) & (b)

Note

As originally enacted in Title 18 (Crimes Code) in 1972, persons convicted of “crimes of violence” were prohibited from gun ownership. “Crimes of violence” were then defined in former § 6102 and included a list of specific disqualifying crimes. The statute was amended in 1984 to add the provisions regarding armor piercing bullets, and the cross-reference was made to “crimes of violence” as defined in § 6102. However, the amendments to the Uniform Firearms Act made by the act of June 13, 1995 (Sp. Sess. No.1, P.L.1024, No.17) repealed the term “crimes of violence” and added the enumerated offenses now seen in § 6211(b). No conforming amendment was made to the armor piercing provisions at that time.

§ 6263. Misdemeanor violations.

(a) Misdemeanor of the first degree.--An individual who carries a handgun in a vehicle or concealed on or about the individual and who does not have a license to carry issued under section 6232 (relating to license to carry) commits a misdemeanor of the first degree, if both of the following apply:

- (1) The individual is otherwise eligible to apply for a license to carry.
- (2) The individual has not committed any other criminal violation.

(b) Misdemeanor of the second degree.--A person or seller who knowingly and intentionally sells, delivers or transfers a firearm in violation of section 6221 (relating to sale or transfer of firearms), 6222 (relating to sale or transfer of handguns) or 6223 (relating to sale or transfer of long-guns) commits a misdemeanor of the second degree.

Source for § 6263

Section 6263 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6106(a)(2)
(b)	§ 6111(g)(1)

§ 6264. Summary offenses.

The following offenses are summary offenses:

(1) Selling or attempting to sell a sportsman's firearm permit for a fee in excess of the amount fixed in section 6237 (relating to sportsman's firearm permit).

(2) Selling or attempting to sell a license to carry for a fee in excess of the amount fixed in section 6232 (relating to license to carry).

(3) Violating section 6234 (relating to revocation of license to carry).

(4) Carrying a loaded weapon other than a handgun in violation of section 6241(a) (relating to other firearms restrictions).

(5) Violating the requirements related to locking devices set forth in section 6222(f) (relating to sale or transfer of handguns).

Source for § 6264

Section 6264 is derived from the following:

Paragraph	Basis in 18 Pa.C.S.
(1)	§ 6106(c)(2)
(2)	§ 6109(h)(7)
(3)	§ 6109(i): last sentence
(4)	§ 6106.1(b)
(5)	§ 6142(c)

§ 6265. Other legal consequences.

(a) Forfeiture of handgun.--A handgun in the possession of an individual under 18 years of age in violation section 6241(d) (relating to other firearms restrictions) shall be

promptly seized by the arresting law enforcement officer. Upon conviction or adjudication of delinquency, the handgun shall be forfeited or, if the handgun had been stolen, returned to the lawful owner.

(b) License to sell firearms revoked.--A person or seller convicted under section 6262(b)(3)(i) (relating to felony violations) is be subject to revocation of the license to sell firearms for a period of three years.

(c) Confidentiality violations.--A person, licensed dealer, State or local governmental agency or department that violates section 6225(e) (relating to firearm background checks) shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.

(d) Retention of records.--A person who knowingly and intentionally maintains or fails to destroy any information submitted to the Pennsylvania State Police for a firearm background check related to the purchase of a long-gun in violation of section 6223(d)(6) or (7) (relating to sale or transfer of long-guns) or maintains a firearms registry in violation of section 6207(a) (relating to preservation of constitutional rights) is subject to a civil penalty of \$250 per violation, entry or failure to destroy.

(e) False information.--The furnishing of false information or offering false evidence of identity is a violation of section 4904 (relating to unsworn falsification to authorities).

(f) Sentencing for offenses involving armor piercing ammunition.--

(1) Subject to paragraph (2), in addition to punishment provided for an offense under section 6211(b) (relating to disqualification from possession or ownership), the following shall be sentenced to a term of imprisonment for not less than five years:

(i) A person who is convicted in any court of this Commonwealth of the crime and who uses or carries, in the commission of the crime, a firearm loaded with armor piercing ammunition.

(ii) A person who violates section 6262(b)(5).

(2) Notwithstanding any other provision of law:

(i) The court may not suspend the sentence of a person subject to this subsection nor place the person on probation.

(ii) The term of imprisonment of a person subject to this subsection may not run concurrently with another term of imprisonment, including that imposed for the crime in which the KTW ammunition was being used or carried.

(iii) A person sentenced under this subsection is ineligible for parole.

Source for § 6265

Section 6265 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6110.1(d)
(b)	§ 6111(g)(2)
(c)	§ 6111(i): 2 nd sentence
(d)	§ 6111(b)(1.3)
(e)	§ 6116
(f)	§ 6121(c)

§ 6266. Civil liability.

(a) Sale of firearm used in commission of crime.--A person or seller who knowingly and intentionally sells or delivers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used in the commission of a crime or attempt to commit a crime shall be liable in the amount of the civil judgment for injuries suffered by a person so injured by the crime or attempted crime.

(b) Sale of locking devices.--

(1) A seller who in good faith complies with the provisions of subsection 6222(g) (relating to sale or transfer of handguns) is not civilly liable as a result of compliance with that subsection, except for an act or omission intentionally designed to harm or for a grossly negligent act or omission that results in harm.

(2) An individual's purchase of a locking device in conjunction with the purchase of a handgun under subsection 6222(g) is inadmissible as evidence in a civil action brought against the purchaser.

Source for § 6266

Section 6266 is derived from the following:

Subsection	Basis in 18 Pa.C.S.
(a)	§ 6111(g)(6)
(b)(1)	§ 6142(d)
(b)(2)	§ 6142(e)

§ 6267. Second and subsequent violations of sale or transfer of firearms provisions.

(a) Ramifications.--A second or subsequent violation of section 6221 (relating to sale or transfer of firearms), 6222 (relating to sale or transfer of handguns) or 6223 (relating to sale or transfer of long-guns) is subject to the following:

(1) The violation shall be a felony of the second degree.

(2) An individual who at the time of sentencing has been convicted of another offense under sections 6221, 6222 or 6223 shall be sentenced to a mandatory minimum sentence of imprisonment of five years.

(3) A second or subsequent offense shall also result in permanent revocation of a license to sell, import or manufacture a firearm.

(b) Notice.--Notice of the applicability of this section to the defendant and reasonable notice of the Commonwealth's intention to proceed under this section shall be provided prior to trial.

(c) Applicability.--The applicability of this section shall be determined at sentencing.

(d) Evidence.--The court shall consider evidence presented at trial, afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and determine by a preponderance of the evidence if this section is applicable.

(e) Restrictions on sentencing.--A court may not impose on a defendant to which this section is applicable a lesser sentence than provided for in subsection (a), place the defendant on probation or suspend the defendant's sentence. Nothing in this section prevents the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing do not supersede the mandatory sentences provided in this section.

(f) Appeals.--If a sentencing court refuses to apply this section where applicable, the Commonwealth has the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(g) Determination of multiple offenses.--For the purposes of this section, a person shall be deemed to have been convicted of another offense under this section whether or not judgment of sentence has been imposed for that violation.

Source for § 6267

Section 6267 is derived from 18 Pa.C.S. § 6111(h).

CONFORMING AMENDMENTS

Title 23 of the Pennsylvania Consolidated Statutes (Domestic Relations) is amended as follows:

Section 6102(a) is amended to read:

§ 6102. Definitions.

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Firearm.” Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon as defined by 18 Pa.C.S. [§ 6105(i) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms)] 6202 (relating to definitions).

* * *

Section 6105(e)(4) is amended to read:

§ 6105. Responsibilities of law enforcement agencies.

* * *

(e) Statewide registry.--

* * *

(4) When an order granting relief under section 6108(a)(7) has been entered by a court, such information shall be available to the Pennsylvania State Police for the purpose of conducting a criminal history records check in compliance with the

applicable provisions of 18 Pa.C.S. [Ch. 61 Subch. A (relating to Uniform Firearms Act)] Ch. 62 (relating to firearms and other dangerous articles).

* * *

Section 6108 is amended to read:

§ 6108. Relief.

(a) General rule.--The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:

* * *

(7) Ordering the defendant to temporarily relinquish to the sheriff the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and the defendant's firearms and prohibiting the defendant from acquiring or possessing any firearm for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license issued under section 6108.3 (relating to relinquishment to third party for safekeeping) or 18 Pa.C.S. § [6106 (relating to firearms not to be carried without a license) or 6109 (relating to licenses)] 6232 (relating to license to carry) the defendant may possess. A copy of the court's order shall be transmitted to the chief or head of the police force or police department of the municipality and to the sheriff of the county of which the defendant is a resident. When relinquishment is ordered, the following shall apply:

* * *

(ii) The court's order shall contain a list of any firearm, other weapon or ammunition ordered relinquished. Upon the entry of a final order, the defendant shall inform the court in what manner the defendant is going to relinquish any firearm, other weapon or ammunition ordered relinquished. Relinquishment may occur pursuant to section 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 or to the sheriff pursuant to this paragraph. Where the sheriff is designated, the sheriff shall secure custody of the defendant's firearms, other weapons or ammunition and any firearm license listed in the court's order for the duration of the order or until otherwise directed by court order. In securing custody of the defendant's relinquished firearms, the sheriff shall comply with 18 Pa.C.S. § [6105(f)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms)] 6213(e) (relating to relinquishment of firearms upon disqualification) and 6215 (disposition of firearms in law enforcement custody). In securing custody of the defendant's other weapons and ammunition, the sheriff shall provide the defendant with a signed and dated written receipt which shall include a detailed description of the other weapon or ammunition and its condition.

* * *

Section 6108.2 is amended to read:

§ 6108.2. Relinquishment for consignment sale, lawful transfer or safekeeping.

(a) General rule.--Notwithstanding any other provision of law, a defendant who is the subject of a final protection from abuse order, which order provides for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect,

may, within the time frame specified in the order and in lieu of relinquishment to the sheriff, relinquish to a dealer licensed pursuant to 18 Pa.C.S. § [6113 (relating to licensing of dealers)] 6231 (relating to licensure of firearms dealers) any firearms, other weapons or ammunition for consignment sale, lawful transfer or safekeeping.

(b) Affidavit.--A defendant relinquishing firearms, other weapons or ammunition to a dealer pursuant to subsection (a) shall obtain an affidavit from the dealer on a form prescribed by the Pennsylvania State Police which shall include, at a minimum, the following:

- (1) The caption of the case in which the protection from abuse order was issued.
- (2) The name, address, date of birth and Social Security number of the defendant.
- (3) A list of the firearms, other weapons or ammunition, including, if applicable, the manufacturer, model and serial number.
- (4) The name and license number of the dealer licensed pursuant to 18 Pa.C.S. § [6113] 6231 and the address of the licensed premises.
- (5) An acknowledgment that the firearms, other weapons or ammunition will not be returned to the defendant or sold or transferred to a person the dealer knows is a member of the defendant's household, while the defendant is the subject of an active protection from abuse order pursuant to section 6108, which order provides for the relinquishment of the firearm, other weapon or ammunition being returned, sold or transferred.
- (6) An acknowledgment that the firearms, other weapons or ammunition, if sold or transferred, will be sold or lawfully transferred in compliance with 18 Pa.C.S. Ch. [61] 62 (relating to firearms and other dangerous articles).

* * *

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

“Safekeeping.” The secure custody of firearms, other weapons or ammunition ordered relinquished by an active protection from abuse order.

“Sale or lawful transfer.” Any sale or transfer to a person other than the defendant or a member of the defendant’s household which is conducted in accordance with 18 Pa.C.S. Ch. [61] 62 (relating to firearms and other dangerous articles).

Section 6108.3 is amended to read:

§ 6108.3. Relinquishment to third party for safekeeping.

* * *

(b) Transfer to third party.--

* * *

(3) (i) A defendant wishing to relinquish firearms, other weapons or ammunition to a third party pursuant to subsection (a) shall, in the presence of the sheriff or the sheriff’s designee, execute an affidavit on a form prescribed by the Pennsylvania State Police which shall include, at a minimum, the following:

(A) The caption of the case in which the protection from abuse order was issued.

(B) The name, address, date of birth and the Social Security number of the defendant.

(C) The name, address and date of birth of the third party.

(D) A list of the firearms, other weapons and ammunition which will be relinquished to the third party, including, if applicable, the manufacturer, model and serial number.

(E) An acknowledgment that the defendant will not take possession of any firearm, other weapon or ammunition relinquished to the third party until the sheriff accepts return of the safekeeping permit pursuant to subsection (d).

(F) A plain-language summary of 18 Pa.C.S. §[6105(a.1)(2) and (c)(6) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms)] 6211(c)(7) (relating to disqualification form possession or ownership) and 6212(b) (relating to disqualification based on protection from abuse order).

(G) A plain-language summary of 18 U.S.C. § 922(g)(8) (relating to unlawful acts).

(ii) A third party who will be accepting possession of firearms, other weapons and ammunition pursuant to subsection (a) shall, in the presence of the sheriff or the sheriff's designee, execute an affidavit on a form prescribed by the Pennsylvania State Police which shall include, at a minimum, the following:

(A) The caption of the case in which the protection from abuse order was issued.

(B) The name, address and date of birth of the defendant.

(C) The name, address, date of birth and the Social Security number of the third party.

(D) A list of the firearms, other weapons and ammunition which will be relinquished to the third party, including, if applicable, the manufacturer, model and serial number.

(E) An acknowledgment that no firearm, other weapon or ammunition relinquished to the third party will be returned to the defendant until the sheriff accepts return of the safekeeping permit pursuant to subsection (d).

(F) A plain-language summary of 18 Pa.C.S. §§ [6105(a.1)(5) and (c)(6), 6111(c) (relating to sale or transfer of firearms) and 6115 (relating to loans on, or lending or giving firearms prohibited)] 6211(c)(7) (relating to disqualification from possession or ownership), 6212(b) (relating to disqualification based on protection from abuse order) and 6222 (relating to sale or transfer of handguns).

(G) A plain-language summary of this section.

(H) An acknowledgment that the third party is not prohibited from possessing firearms, other weapons or ammunition pursuant to any Federal or State law.

(I) An acknowledgment that the third party is not subject to an active protection from abuse order.

(J) An acknowledgment that the defendant has never been the subject of a protection from abuse order issued on behalf of the third party.

(K) An acknowledgment that any firearms, other weapons and ammunition relinquished to the third party will be stored using a locking device as defined in paragraph (1) of the definition of “locking device” in 18 Pa.C.S. § [6142(f)

(relating to locking device for firearms)] relating to definitions or in a secure location to which the defendant does not have access.

(L) A detailed description of the third party liability pursuant to this section relating to civil liability.

(M) An acknowledgment that the third party shall inform the sheriff of any change of address for the third party within seven days of the change of address.

* * *

(c) Revocation of safekeeping permit.--

(1) The sheriff shall revoke a third party's safekeeping permit and require the third party to relinquish to the sheriff any firearms, other weapons or ammunition which were relinquished to the third party by a defendant pursuant to subsection (a) upon determining or being notified that any of the following apply:

(i) A protection from abuse order has been entered against the third party.

(ii) The third party is prohibited from possessing firearms, other weapons or ammunition pursuant to any Federal or State law.

(iii) The defendant has been convicted of a violation of 18 Pa.C.S. Ch. [61] 62 (relating to firearms and other dangerous articles) or any other offense involving the use of a firearm.

(iv) The defendant has been held in indirect criminal contempt for violating a provision of the protection from abuse order consistent with section 6108(a)(1), (2), (6), (7) or (9) (relating to relief).

* * *

(d) Return of safekeeping permit.--

* * *

(2) Upon issuance of a court order pursuant to 18 Pa.C.S. §[6105(f)(2)] 6216(d) (relating to relief from disability) or 6108.1(b) (relating to return of relinquished firearms, other weapons and ammunition and additional relief) or which modifies a valid protection from abuse order by allowing the defendant to take possession of a firearm, other weapon or ammunition that had previously been ordered relinquished, the defendant and the third party shall report to the sheriff's office to return the safekeeping permit. The sheriff shall proceed as directed by the court order.

* * *

(e) Civil liability.--A third party who intentionally or knowingly violates any of the provisions of this section shall, in addition to any other penalty prescribed in this chapter or 18 Pa.C.S. Ch. [61] 62, be civilly liable to any person for any damages caused thereby and, in addition, shall be liable to any person for punitive damages in an amount not to exceed \$5,000, and the court shall award a prevailing plaintiff a reasonable attorney fee as part of the costs.

Section 6119(b) is amended to read:

§ 6119. Immunity.

* * *

(b) Exception.--Law enforcement agencies and their employees, including police officers and sheriffs, shall be liable to the lawful owner of confiscated, seized or relinquished firearms in accordance with 18 Pa.C.S. § [6105(f) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms)] 6215 (relating to disposition of firearms in law enforcement custody) and 6216 (relating to relief from disability) and

shall be liable to the lawful owner of confiscated, seized or relinquished other weapons or ammunition for any loss, damage or substantial decrease in the value of the other weapons or ammunition that is a direct result of a lack of reasonable care by the law enforcement agency or its employees.

Title 34 of the Pennsylvania Consolidated Statutes (Game) is amended as follows:

Section 2325(a.1) is amended to read:

§ 2325. Cooperation after lawfully killing big game.

* * *

(a.1) Exception.--Nothing in this section shall prohibit any person from carrying a loaded handgun in the field provided that person is in compliance with 18 Pa.C.S. § [6109 (relating to licenses)] 6232 (relating to license to carry).

* * *

Section 2503(b)(3) is amended to read:

§ 2503. Loaded firearms in vehicles.

* * *

(b) Exceptions.--This section shall not be construed to apply to:

(1) A police officer engaged in the performance of his official duty.

(2) A commission officer engaged in the performance of his duty.

(3) A person carrying a loaded pistol or revolver when in possession of a valid firearms license issued by the chief or head of any police force or the sheriff of a county when the license is issued for protection under 18 Pa.C.S. Ch. [61 Subch. A (relating to Uniform Firearms Act)] 62 (relating to firearms and other dangerous articles).

(4) Any person as defined in section 2121(c) (relating to killing game or wildlife to protect property) while on lands they control and when not hunting or trapping for game or wildlife.

(5) Any motorboat or other craft having a motor attached or any sailboat if the motor has been completely shut off or the sail furled and its progress therefrom has ceased.

(6) Any political subdivision, its employees or agents, which has a valid deer control permit issued under section 2902(c) (relating to general categories of permits). The exceptions in paragraphs (1) through (5) do not apply when attempting to locate game or wildlife with an artificial light or when exercising any privileges granted by this title which may be exercised only when not in the possession of a firearm.

* * *

Section 2525 is amended to read:

§ 2525. Possession of [firearm] handgun for protection of self or others.

(a) General rule.--It is lawful for a law enforcement officer or any person who possesses a valid license to carry a [firearm] handgun issued under 18 Pa.C.S. § [6109 (relating to licenses)] 6232 (relating to license to carry) to be in possession of a loaded or unloaded [firearm] handgun while engaged in any activity regulated by this title.

(b) Construction.--

(1) This section shall supersede any prohibition on the possession of a [firearm] handgun or ammunition contained in any other provision of this title.

(2) This subsection shall not be construed to permit the hunting or harvesting of any wildlife with a [firearm] handgun or ammunition not otherwise permitted by this title.

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

[“Firearm.”] “Handgun.” As defined in 18 Pa.C.S. § [6102] 6202 (relating to definitions).

“Law enforcement officer.” As defined in 18 Pa.C.S. § [6102] 6202 (relating to definitions).

Title 42 of the Pennsylvania Consolidated Statutes (Judiciary and Judicial Procedure) is amended as follows:

Section 5552 is amended to read:

§ 5552. Other offenses.

* * *

(b) Major offenses.--A prosecution for any of the following offenses must be commenced within five years after it is committed:

(1) Under the following provisions of Title 18 (relating to crimes and offenses):

Section 901 (relating to criminal attempt) involving attempt to commit murder where no murder occurs.

Section 902 (relating to criminal solicitation) involving solicitation to commit murder where no murder occurs.

Section 903 (relating to criminal conspiracy) involving conspiracy to commit murder where no murder occurs.

Section 911 (relating to corrupt organizations).

Section 2702 (relating to aggravated assault).

Section 2706 (relating to terroristic threats).

Section 2713 (relating to neglect of care-dependent person).

Section 2901 (relating to kidnapping).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

Section 3921 (relating to theft by unlawful taking or disposition) through section 3933 (relating to unlawful use of computer).

Section 4101 (relating to forgery).

Section 4107 (relating to deceptive or fraudulent business practices).

Section 4108 (relating to commercial bribery and breach of duty to act disinterestedly).

Section 4109 (relating to rigging publicly exhibited contest).

Section 4117 (relating to insurance fraud).

Section 4701 (relating to bribery in official and political matters) through section 4703 (relating to retaliation for past official action).

Section 4902 (relating to perjury) through section 4912 (relating to impersonating a public servant).

Section 4952 (relating to intimidation of witnesses or victims).

Section 4953 (relating to retaliation against witness, victim or party).

Section 5101 (relating to obstructing administration of law or other governmental function).

Section 5111 (relating to dealing in proceeds of unlawful activities).

Section 5512 (relating to lotteries, etc.) through section 5514 (relating to pool selling and bookmaking).

Section 5902(b) (relating to prostitution and related offenses).

Section [6111(g)(2) and (4) (relating to sale or transfer of firearms)]
6262(b)(3)(i) and (b)(4) (relating to felony violations).

Section 6265(b) (relating to other legal consequences).

* * *

(c) Exceptions.--If the period prescribed in subsection (a), (b) or (b.1) has expired, a prosecution may nevertheless be commenced for:

* * *

(4) An offense in violation of 18 Pa.C.S. [§ 6111(c) or (g)] §§ 6222(i) (relating to sale or transfer of handguns), 6261(c) (relating to violations in general), 6262(b)(3) and (b)(4), 6263(b) (relating to misdemeanor violations) and 6265(b) within one year of its discovery by State or local law enforcement, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than eight years.

* * *

Section 6308(d) is amended to read:

§ 6308. Law enforcement records.

* * *

(d) Pennsylvania State Police registry.--

(1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public except if the child is 14 years of age or older at the time of the alleged conduct and if any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of any offense enumerated in 18 Pa.C.S. § [6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms)] 6211 (relating to disqualification from possession or ownership).

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed any offense enumerated in 18 Pa.C.S. § [6105]

6211 and the child previously has been adjudicated delinquent by a court as a result of an act or acts which included the elements of one of such crimes.

Title 61 of the Pennsylvania Consolidated Statutes (Prisons and Parole) is amended as follows:

Section 4503 is amended to read:

§ 4503. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Eligible offender.” A defendant or inmate convicted of a criminal offense who will be committed to the custody of the department and who meets all of the following eligibility requirements:

* * *

(2) Has not been subject to a sentence the calculation of which includes an enhancement for the use of a deadly weapon as defined under law or the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing or the attorney for the Commonwealth has not demonstrated that the defendant has been found guilty of or was convicted of an offense involving a deadly weapon or offense under 18 Pa.C.S. Ch. [61] 62 (relating to firearms and other dangerous articles) or the equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation.

* * *

TRANSITIONAL LANGUAGE

Repeals

The following apply:

(1) The General Assembly declares that the repeal of 18 Pa.C.S. Ch. 61 is necessary to effectuate the addition of 18 Pa.C.S. Ch. 62.

(2) All other acts or parts of acts are repealed insofar as they are inconsistent with this act.

Applicability

This act shall apply as follows:

(1) The addition of 18 Pa.C.S. Ch. 62 shall apply to any activity initiated on or after the effective date of that chapter, subject to the following:

(i) If the activity was initiated under 18 Pa.C.S. Ch. 61 but not yet completed by the effective date of 18 Pa.C.S. Ch. 62, the appropriate provision of 18 Pa.C.S. Ch. 61 shall govern.

(ii) If the activity is initiated on or after the effective date of 18 Pa.C.S. Ch. 62 and a related activity was initiated under 18 Pa.C.S. Ch. 61, 18 Pa.C.S. Ch. 62 shall govern the activity initiated on or after the effective date of 18 Pa.C.S. Ch. 62.

(2) An activity initiated under 18 Pa.C.S. Ch. 61 shall continue and remain in full force and effect. Resolutions, orders, regulations, rules and decisions that were made under 18 Pa.C.S. Ch. 61 and that were in effect on the effective date of 18 Pa.C.S. Ch. 62 shall remain in full force and effect until revoked, vacated or modified under 18

Pa.C.S. Ch. 62. Contracts, obligations and agreements entered into under 18 Pa.C.S. Ch. 61 are not affected nor impaired by the repeal of 18 Pa.C.S. Ch. 61.

Effective Dates

This act shall take effect as follows:

- (1) The repeal of 18 Pa.C.S. Ch. 61 and the addition of 18 Pa.C.S. Ch. 62 shall take effect in six months.
- (2) The amendment of 18 Pa.C.S. § 908 shall take effect immediately.

DISPOSITION TABLE

Current Section in 18 Pa.C.S. Ch. 61	Specific Current Subsection or Provision	Comparable Section in 18 Pa.C.S. Ch. 62
6101		6201
6102	Definition of commissioner	6202: definition of commissioner
	Definition of Commonwealth Photo Imaging Network	6202: definition of Commonwealth Photo Imaging Network
	Definition of conviction	6202: definition of conviction
	Definition of county treasurer	6202: definition of county treasurer
	Definition of crime punishable by imprisonment exceeding one year	6202: definition of crime punishable by imprisonment exceeding one year
	Definition of firearm: 1 st sentence	6202: definition of handgun
	Definition of firearm: 2 nd sentence	6202: definition of barrel length
	Definition of fund	
	Definition of law enforcement officer	6202: definition of law enforcement officer (paragraph (1))
	Definition of loaded	6202: definition of loaded
	Definition of Pennsylvania Sheriff's Association	
	Definition of safekeeping permit	6202: definition of safekeeping permit
	Definition of sheriff	6202: definition of sheriff
Definition of state	6202: definition of state	
6103		6261(a)
6104		6261(b)
6105	(a)(1)	6211(a)
	(a)(2)(i)	6213(a)
	(a)(2)(ii)	6212(a)
	(a.1)(1)	6262(a)(1)
	(a.1)(2)	6212(b)
	(a.1)(3)	6212(c)
	(a.1)(4)	6212(d)
	(a.1)(5)	6212(e)
	(b)	6211(b)(1)-(38) & (40)
	(c)	6211(c) (except paragraph (8)(iii))
	(d): 1 st sentence	6216(b)(1) & (2)
	(d): 2 nd sentence	6216(b)(5)
	(e)(1): 1 st sentence	6216(b)(3)
	(e)(1): 2 nd sentence	6216(b)(4)
	(e)(2)	6216(b)(5)
(f)(1)	6216(c)(4)(i)	

Current Section in 18 Pa.C.S. Ch. 61	Specific Current Subsection or Provision	Comparable Section in 18 Pa.C.S. Ch. 62
6105 (cont.)	(f)(2)	See 6216(d)
	(f)(3)	6216(c)(3)
	(f)(4)(i): 1 st & 2 nd sentences	6213(e); <i>also see</i> 6216(d)
	(f)(4)(i): 3 rd sentence	6215(a)
	(f)(4)(ii)	6215(b)(1), (2) & (3)
	(f)(4)(iii)	6215(b)(4)
	(g)	6216(e)
	(h)	6211(d)
	(i)	6202: definition of firearm
	(j)	6216(f)
6105.1		6218
6106	(a)(1)	6232(a); 6262(b)(1)
	(a)(2)	6232(a); 6263(a)
	(b)	6236(a)
	(c)(1)	6237(a), (b) & (c)
	(c)(2)	6264(1)
	(d)	6237(d)
	(e)(1)	6202: definition of firearm
	(e)(2)	6237(e)
6106.1	(a)	6241(a)
	(b)	6264(4)
6107	(a)	6241(b)
	(b)	6207(c)
	(c)	6202: definition of firearm; 6207(d)
6108		6241(c)
6109	(a)	6232(a)
	(b)	6232(b)
	(c)	6232(c)
	(d)	6232(d)
	(e)(1): 1 st sentence	6232(e)
	(e)(1): 2 nd sentence & (i)-(xiv)	6235
	(e)(2)	<i>Not part of § 6109</i>
	(e)(3)	6232(f)(1)-(6)
	(e)(4)	6232(f)(7)
	(e)(5)	6232(g)
	(f)	6232(h)
	(g)	6232(e)
	(h)(1)-(6)	6232(k)
	(h)(7)	6264(2)
	(i) (except the last sentence)	6234
	(i): last sentence	6264(3)
	(i.1)	6214
(j)	6232(l)	
(k)	6244(b)(1) & (2)	

Current Section in 18 Pa.C.S. Ch. 61	Specific Current Subsection or Provision	Comparable Section in 18 Pa.C.S. Ch. 62
6109 (cont.)	(l)	6233
	(m)	6244(b)(3) & (4)
	(m.1)	<i>See</i> 6232(j)
	(m.2)	6236(b)
	(m.3)	6232(m)
	(n)	<i>Omitted as unnecessary</i>
6110		<i>Previously repealed</i>
6110.1	(a) & (b)	6241(d)
	(c)	6262(b)(2)
	(d)	6265(a)
6110.2		6262(a)(2)
6111	(a)(1)	6222(b)
	(a)(2)	<i>See</i> 6222
	(b): introductory language	6221(a)(1) & (3)
	(b)(1)	6222(c) & (d) (except subsection (c)(5))
	(b)(1.1)(i)	6223(d)(1) & (5)
	(b)(1.1)(ii)	6223(d)(2)
	(b)(1.1)(iii)	6223(d)(3)
	(b)(1.1)(iv)	6223(d)(4)
	(b)(1.1)(v)	6223(d)(6) & (7)
	(b)(1.2)	6221(h)
	(b)(1.3)	6265(d)
	(b)(1.4)	6223(a), (b) & (c)
	(b)(2)	6221(b)
	(b)(3)	6221(c)
	(b)(4)	6221(d)
	(b)(5)	6221(e)
	(b)(6)	6221(f)
	(b)(7)	6221(g)
	(c)	6222(i)
	(d)	6221(a)(6)
	(e)	6221(a)(4)
	(f)(1)	6221(a)(1); 6222(a)(1)
	(f)(2)	6222(a)(1)
	(f)(3)	6222(a)(2)
	(f)(4)	6222(a)(3)
	(g)(1)	6263(b)
	(g)(2)	6262(b)(3)(i); 6265(b)
	(g)(3)	6262(b)(3)(ii) & (iii)
	(g)(3.1)	6262(b)(3)(iv) & (v)
	(g)(4)	6262(b)(4)
	(g)(5)	6261(c)
	(g)(6)	6266(a)
(h)	6267	

Current Section in 18 Pa.C.S. Ch. 61	Specific Current Subsection or Provision	Comparable Section in 18 Pa.C.S. Ch. 62
6111 (cont.)	(i): 1 st sentence	6225(e)
	(i): 2 nd sentence	6265(c)
	(j)	6221(a)(5)
6111.1	(a)	6203(a)
	(b)(1)	6225(a)
	(b)(2)	6225(b)
	(b)(3)	<i>Omitted as fully executed</i>
	(b)(4)	6215(c)
	(c)	6225(c)
	(d)	6243(c)
	(e)(1)	6228(a)
	(e)(2)	6228(b) & (c)
	(e)(3)	6228(d)
	(e)(4)	6228(e)
	(f)(1)(i)	6226(a)
	(f)(1)(ii)	6226(b)
	(f)(2)	6226(c)
	(f)(3)	6226(d)
	(g)(1)	6226(e)(2)
	(g)(2)	6226(e)(1)
	(g)(3)	6226(f)
	(h)	6227
	(i)	6206
(j)	6225(d)	
(j.1) & (j.2)	<i>Omitted as fully executed</i>	
(j.3)	6203(c)	
(k)	<i>Replaced by 6226(g)</i>	
6111.2	(a)	6224(a)
	(b)	6224(b)
	(c)	<i>Omitted</i> ³¹²

³¹² The firearms sales surcharge established in 18 Pa.C.S. § 6111.2(c) and the background check fee established in 18 Pa.C.S. § 6111(c)(3) are to be estimated and certified by the Secretary of Revenue and deposited within five days of the end of each quarter into the Firearms Records Check Fund. Under 18 Pa.C.S. § 6111.3(b), the source of the Firearms Records Check Fund is the firearms sales surcharge and the background check fee. However, 18 Pa.C.S. § 6111(b)(1.2) requires both of these fees to be transmitted to the Pennsylvania State Police within 14 days of collection. The amendments that added the firearms sales surcharge, the Firearms Records Check Fund and the background check fee were all part of an omnibus package of amendments to Title 18 made by the act of June 13, 1995 (Sp. Sess. No.1, P.L.1024, No.17), effective October 11, 1995 (120 days). Later that year, by the act of November 22, 1995 (P.L.621, No.66), an additional amendment to Title 18 was enacted, effective immediately, adding the language that the fees should be paid within 14 days to the State Police. This amendment did not acknowledge the June amendment, but under normal statutory construction rules, the later enacted amendment governs. The regulations found at 37 Pa.Code §33.111(h) and (i) support that interpretation, in that they also require transmittal of both fees within 14 days to the State Police. As part of the recodification of Chapter 61 into Chapter 62, the conflicting provisions are eliminated. *Also see* 18 Pa.C.S. § 6111.3(b).

Current Section in 18 Pa.C.S. Ch. 61	Specific Current Subsection or Provision	Comparable Section in 18 Pa.C.S. Ch. 62
6111.2 (cont.)	(d)	6202: definition of firearm
6111.3	(a)	6224(c)
	(b)	<i>Omitted</i> ³¹³
6111.4		6207(a)
6111.5		6203(b)
6112		6231(a)
6113	(a): introductory language	6231(b)(1)-(3)
	(a)(1)-(7)	6231(c)
	(b)	6231(b)(4)
	(c)	6231(d)
	(d)	6202: definition of firearm
6114		6204
6115	(a)	6222(f)
	(b)(1)	6222(g)
	(b)(2)	6222(h)(1)
	(b)(3)	6222(h)(2)
	(b)(4)	6222(h)(3)
6116		6265(e)
6117		6262(a)(3)
6118	(a) & (b)	<i>See</i> 6202: definition of antique firearm
	(c)	6202: definition of antique firearm
6119		6261(d)
6120	(a)	6207(b)(1)
	(a.1)	6207(b)(2)
	(b)	6207(d)
6121	(a) & (b)	6262(b)(5)
	(c)	6265(f)
	(d)	<i>See instead</i> 6202: definition of armor piercing ammunition
6122		6232(i)
6123		6217
6124		6205
6125		6243(c)
6126		<i>Previously expired</i>
6127		6215(d)
6141		<i>Previously repealed</i>
6141.1		6244(a)
6142	(a) & (b)	6222(e)
	(c)	6264(5)
	(d)	6266(b)(1)
	(e)	6266(b)(2)

³¹³ See the previous note.

Current Section in 18 Pa.C.S. Ch. 61	Specific Current Subsection or Provision	Comparable Section in 18 Pa.C.S. Ch. 62
6142 (cont.)	(f)	6202: definition of locking device
6161		6245
6162		6246
6181		6251
6182		6252
6183		6253
6184		6254
6185		6255
6186		6256
6187		6257

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 6

Session of 2013

INTRODUCED BY GREENLEAF, TOMLINSON, TEPLITZ, FONTANA, SCHWANK, PILEGGI, WASHINGTON, MENSCH, ARGALL, RAFFERTY, FARNESE, BROWNE, TARTAGLIONE, ERICKSON, BREWSTER, McILHINNEY, WOZNIAK, STACK, VULAKOVICH, D. WHITE, BOSCOLA, COSTA, ALLOWAY, YUDICHAK, WILLIAMS, BLAKE AND HUGHES, JANUARY 18, 2013

AS AMENDED, JANUARY 29, 2013

A RESOLUTION

1 Directing the Joint State Government Commission to study the
2 issue of violence prevention, to establish an advisory
3 committee to conduct a thorough and comprehensive analysis of
4 the underlying causes of violent crime, including mass
5 shootings, and to report to the Senate with its findings and
6 recommendations.

7 WHEREAS, The terrible tragedy at Sandy Hook Elementary School
8 in Connecticut and other mass shootings in recent years require
9 additional review of the underlying causes of violent crime,
10 including mass shootings, in Pennsylvania and elsewhere in the
11 nation; and

12 WHEREAS, Violent crime affects all Pennsylvanians; and

13 WHEREAS, There are common themes in many of these violent
14 events which require us to examine our laws and procedures
15 relating to violent crime; and

16 WHEREAS, These common themes include mental illness and
17 mental health treatment, keeping firearms out of the hands of
18 criminals and the mentally ill, school security, bullying, gang-

1 related activity, educational issues and cultural influences,
2 including violent video games; and

3 WHEREAS, In recent sessions, members of the General Assembly
4 have recognized the need to address the issue of violent crime
5 and have introduced numerous bills with that goal in mind; and

6 WHEREAS, The Senate Judiciary Committee received
7 recommendations relating to dealing with violent crime at
8 hearings held across this Commonwealth; therefore be it

9 RESOLVED, That the Senate direct the Joint State Government
10 Commission to establish an advisory committee of approximately
11 25 members consisting of public officials and experts on the
12 issue of violent crime, which is balanced so that it encompasses
13 a wide range of backgrounds and viewpoints; and be it further

14 RESOLVED, That the Joint State Government Commission, working
15 with the advisory committee, conduct a thorough and
16 comprehensive analysis of violent crime, mass shootings, the
17 issues set forth in this resolution and other related issues as
18 determined by the commission; and be it further

19 RESOLVED, That the Joint State Government Commission, working
20 with the advisory committee, study the proposals made to the
21 Senate Judiciary Committee, review other proposals, including
22 best practices that address the issue of violent crime, and,
23 based on this study, develop recommendations best suited for
24 Pennsylvania; and be it further

25 RESOLVED, That the Joint State Government Commission
26 establish a process by which interested members of the public
27 can make suggestions and have input; and be it further

28 RESOLVED, That the final report include any recommendations
29 to change mental health laws and procedures, INCLUDING THE ACT <--
30 OF JULY 9, 1976 (P.L.817, NO.143), KNOWN AS THE MENTAL HEALTH

20130SR0006PN0241

- 2 -

1 PROCEDURES ACT, TO AMEND 18 PA.C.S. CH. 61 SUBCH. A (RELATING TO
2 UNIFORM FIREARMS ACT) OR to implement necessary changes in State
3 statutes and practices, policies and procedures relating to
4 violent crime, including measures to make our schools safer, and
5 to develop awareness, education and other strategies to address
6 issues relating to violent crime; and be it further
7 RESOLVED, That the Joint State Government Commission issue a
8 report to the Senate with its findings and recommendations not
9 later than December 31, 2013.