



Statement of
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President
on behalf of the
AMERICAN BAR ASSOCIATION
for the record of the hearing on
WHAT SHOULD AMERICA DO ABOUT GUN VIOLENCE?
before the
Committee on the Judiciary
of the
U.S. SENATE
January 30, 2013



Chairman Leahy, Ranking Member Grassley, and Members of the Committee:

I am Laurel Bellows, President of the American Bar Association (ABA). I am submitting this statement on behalf of the ABA for the Committee's consideration for its January 30, 2013 hearing on "What Should America Do About Gun Violence?"

The ABA, with nearly 400,000 members, commends the Committee for holding this hearing and its early scheduling. We also commend President Obama and Vice-President Biden for their leadership. They have acted responsibly in instituting and conducting the Administration's recently concluded comprehensive review of recommendations to end gun violence in America, resulting in the issuing of the far-reaching report, "Now Is The Time: The President's Plan to Protect Our Children and Our Communities by Reducing Gun Violence."

America is paying attention. The unthinkable slaughter of 20 young children and six adult staff members of Sandy Hook Elementary School in Newtown, Connecticut shortly before Christmas has shaken our nation's confidence that we can protect our nation's children and ourselves from senseless gun violence. It has also caused all of us to pause and take stock of how such horrors seem to occur with increasing frequency in our country. This mass killing event – following months after a mass killing at a movie opening in a theater in Aurora, Colorado, and the mass killings in Tucson, Arizona, that also resulted in severe injuries to former Representative Gabby Giffords – has led the nation to more fully recognize the dangers posed to the public when the common components of these shootings come together.

These incidents have in common military firearms, high-capacity clips and their use by mentally disturbed persons who easily amassed the firepower capable of quickly killing many innocent citizens involved in everyday activities and settings. As many have commented and is noted by the President's report, however, the shooting and killing of individuals on a daily basis takes place in America at a level far beyond that of other nations. We have become too inured and perhaps numb regarding this reality. We have begun to wake up to our responsibilities to confront and to end this violence.

The ABA has been concerned with the human toll and impact of gun violence upon our society and has advocated for stronger regulation of firearms for a long time. Shortly after the assassination of President Kennedy, we first called for more careful regulation of firearms sales in interstate commerce. Since then, through our the House of Delegates, a policy making body that includes representatives from state and local bar associations around the country, the ABA has approved more than a dozen policy resolutions directed toward reducing gun violence.

The ABA continues to believe that our nation's laws can be significantly strengthened by taking reasonable, common-sense steps that do not violate the constitutional right to bear arms as articulated by the U.S. Supreme Court in the landmark decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), or that would unreasonably impinge on gun owner traditions and ordinary uses of firearms. We recognize, however, that there is no simple solution to gun violence. We know that steps are needed to address school violence, mental health services, and juvenile crime prevention, in addition to gun safety and greater enforcement of firearm violations. A synopsis of

these policy recommendations is at:

http://www.americanbar.org/groups/committees/gun_violence/policy/related_aba_policy.html.

In the wake of Newtown and the focus on proposed legislative action, the ABA wants to clearly state its strong support for the major recommendations of the President. We further believe there is now a remarkable consensus among the American public regarding the urgency for lawmakers to take responsible and prompt action to prevent future incidents as those we have recently witnessed. We urge the Committee to speed action to:

Strengthen Background Check Requirements and the National Instant Check System. The current operational status of the National Instant Check System for background checks of prospective purchasers of firearms is deeply flawed; it must be strengthened by Congress on an emergency basis. Since 1968 federal law has limited gun sales through licensed firearms dealers to legally qualified purchasers, and since 1993 the law has required a background check, prior to completion of the sale of a firearm, of federal and state records through the National Instant Check System (NICS). However, federal law continues to exempt an estimated 25-40 percent of all gun sales in the United States from this requirement. Unlicensed sellers are permitted by law to sell firearms with no background check whatsoever. Convicted felons, domestic violence abusers, persons who are dangerously mentally ill and potential terrorists can walk into any gun show or flea market, or click on their internet browser, and buy any weapon and unlimited supplies of ammunition with no background check and no questions asked.

Recent public polling suggests that for the first time there is broad recognition by the American public, including gun owners, that the background check system for gun sales is in reality two systems that allow easy, unchecked access to guns by criminals and the mentally ill. The public has reached a high level of consensus seen on few public issues, as evidenced in several recent polls showing that more than 90 percent of responders support a “universal background check.” Pollsters often note that most of the public assumes that the law already requires a background check for *all* sales of firearms, including sales at gun shows and for private sales. Regarding this question, there is remarkably little difference in support for this reform between gun owners, NRA members, non-gun owners, men and women, Republicans and Democrats: all agree in overwhelming majorities seldom seen on national policy issues that requiring a background check prior to all sales of firearms is a necessary step that Congress should take with great dispatch to better protect our children and all citizens from gun violence.

The ABA believes that Congress should quickly legislate on this issue. Gun shows can continue to flourish with a background check requirement, while ending their role as a too easy source of guns for dangerous persons who should not have them. A number of states have required background checks at gun shows without serious harm to sales or the trade. We believe that those who have concerns regarding the means of instituting background checks at gun shows and in protecting narrow exceptions for background checks for private sales should come to the table: these issues can be resolved responsibly and in short order with responsible cooperation.

Stronger laws and enforcement are needed to prevent gun trafficking.

In 2004, the ABA called for stronger enforcement and prosecution of federal gun laws. Under this policy, the ABA supports provision of adequate federal investigative and prosecutorial

resources targeted not only to prosecuting crimes committed with guns, but also to prosecuting illegal gun trafficking, illegal sales by firearms dealers, stolen firearms offenses, and false statements by prospective buyers.

We support legislation that is expected to move forward shortly on a strongly bipartisan basis to address “straw purchases” of firearms. Straw purchases of firearms are one of the most common ways criminals obtain guns. Straw purchases occur whenever persons who may not legally acquire a firearm, or who wish to do so anonymously, have a companion or colleague buy it on their behalf. The Bureau of Alcohol, Tobacco and Firearms (ATF) has identified straw purchases as the single most significant factor in illegal gun trafficking, accounting for nearly a third of all firearms involved in federal trafficking investigations.

In many places, criminals are more likely to obtain their weapons through straw purchases than at gun shows. Such straw purchases are regularly used by criminals, criminal gangs and persons disqualified by age, such as the individuals involved in the mass killings at Columbine High School. Numerous investigations of illegal gun trafficking, including undercover investigations conducted by federal, state and local officials, have found that the current prohibition on false statements regarding the purchase of a gun for the purpose of transfer to an ineligible buyer is widely disregarded by dealers and the persons involved in straw purchases.

These criminal violations are also not regularly prosecuted, as the current law is ambiguous, often difficult to prove in court, and accompanied by modest criminal penalties that result in these violations’ being deferred to prosecution of other crimes. We believe thoughtful legislation can close this gap in current law and help prevent the current widespread evasion of background checks through straw purchasing.

The availability of assault weapons and high-capacity clips should be limited to the U.S. military, the National Guard and law enforcement. The firearms used in these recent massacres are weapons of war. They are weapons designed to kill the maximum number of people in the shortest period of time. While we appreciate that there may be some recreational use of these firearms, and many of them are owned and handled safely and responsibly, we support legislation introduced by Senator Feinstein that would not take away or make the guns presently owned illegal, but would limit the future sale and transfer of assault weapons and ammunition devices that hold more than 10 bullets.

We urge the Committee to act swiftly to approve S. 150, the Assault Weapons Ban of 2013. The proposed act makes revisions to the 1994 Act that strengthens it in a number of important respects. The proposed act protects the rights of existing gun owners by carefully defining the characteristics of assault weapons to distinguish them from the more than 2,200 specifically named weapons used for hunting or sporting purposes. It grandfathers into legal status assault weapons currently owned rather than rendering them illegal, but requires more careful regulation of their transfer and sale by bringing them and large capacity ammunition devices under the provisions of the National Firearms Act, subject to the existing registration requirements long in effect for fully automatic firearms. We also strongly support the proposed act’s ban on future transfer of grandfathered ammunition clips, as well as the proposed voluntary buyback of these clips, as we believe the public safety of everyone in our country will be best served by eventually

eliminating these devices from civilian circulation. The purpose of the proposed act and its 1994-enacted predecessor is to narrow the availability of these weapons and dry up the supply over time.

The expired 1994 federal assault weapons ban clearly reduced the incidence of assault weapons used in crime. In the five-year period (1990-1994) before enactment of the ban, assault weapons constituted 4.82 percent of the crime gun traces that ATF conducted nationwide. When the ban was in effect, these assault weapons made up only 1.61 percent of the guns ATF traced to crime – a drop of 66 percent from the pre-ban rate. ATF data showed a year-by-year decline in the percentage of assault weapons, evidence that the longer the statute was in effect, the less available these weapons became for criminal misuse. A report by the Department of Justice documented these findings along with a decline in the absolute number of assault weapons traced to crime during this period. Every major law enforcement organization in the country has long supported a strong assault weapons ban.

The Police Executive Research Forum found that 37 percent of police departments reported seeing a noticeable increase in criminals' use of assault weapons since the ban expired. A study by the Violence Policy Center found that, between 1998 and 2001, one in five law enforcement officers slain in the line of duty was killed with an assault weapon. Virtually every major law national enforcement organization supports limiting the availability of assault weapons and high-capacity ammunition clips.

While some maintain that the Second Amendment should apply to prevent any regulation of assault weapons and high-capacity clips, the ABA believes that the individual right to bear arms under the Second Amendment must be understood to have some limits, just as does the First Amendment and every individual right under our Constitution. As it is often noted regarding the right to free speech that there is no right to falsely cry “fire” in a crowded theater, likewise there are limits to Second Amendment rights, They must be balanced against other rights in serving the common welfare, including protecting the safety of children and all citizens from especially dangerous weapons. It is on this basis that fully automatic “machine guns” have been carefully regulated since the 1930s. As Justice Scalia stated in his majority opinion in the *Heller* case:

We also recognize another important limitation on the right to keep and carry arms. [*United States v.*] *Miller* said, as we have explained, that the sorts of weapons protected were those “in common use at the time.” We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of “dangerous and unusual weapons.”

The muskets of the 18th Century and other single-shot weapons have little in common with the military-style assault weapons today and the 100-round ammunition drum that was used at a movie theater in Aurora, Colorado. These are unusually dangerous weapons, which the government may regulate under the Second Amendment and the *Heller* decision. We believe the government has a duty to do so to protect the common good – specifically, the safety of American citizens.

Strengthen and fully implement the National Instant Criminal Background Check System (NICS). As we have noted, Congress must act to close the current significant gaps in the

requirement for a background check prior to all purchase of firearms. Congress should also act to strengthen the system that is set up to insure that background checks will be thorough and complete. Federal support, authorized under current law to assist states, territories, and Tribal governments in establishing or upgrading technology used for determining firearm purchaser eligibility, must be adequately funded and supplemented even in a difficult budget environment to achieve a more complete check system. Federal grant support is needed to improve the automation and transmittal to federal and state record repositories of felony criminal history dispositions, records relevant to determining whether a person has been convicted of a misdemeanor crime of domestic violence, court orders, and mental health adjudications or commitments.

Only a portion of state mental health records are presently provided and integrated into the NICS system. Although the number of mental health records available to the system has increased significantly in recent years, a recent report by the Government Accountability Office found that 17 states still have made fewer than 10 percent of their mental health records available. Other record categories are provided to the NICS at a higher rate than mental health records, but state records for felony convictions and domestic violence offenses are still incomplete and should be improved to make sure dangerous people are stopped by the NICS background check.

We applaud the President's action to issue a Presidential Memorandum requiring federal agencies to fully cooperate and share relevant records with the background check system. Congress should act as well and address how to provide incentives to states to examine and overcome barriers to provision of mental health records, in particular. We also urge the Committee to reexamine the provisions of current federal law to better assure that its provisions regarding disqualification of purchasers on the basis of mental health status adequately protect the public against dangerous persons. The ABA also supports amending the law to expand disqualification for gun purchase of persons convicted not only of domestic violence misdemeanor offenses, but also for other misdemeanor violence offenses against a person.

Further, the ABA called for the enactment of legislation to require retention of gun sales background-check records for 90 days and to authorize sharing federal data regarding the point of sale of guns traced to crime with state and other law enforcement entities.

Strengthen regulation of gun sales and transfers. In addition to our support for the President's recommendations for these key proposals, the ABA has called for a number of amendments to federal law necessary to strengthen regulation of gun sales and transfers in order to better protect public safety. These amendments would:

- Prohibit sales, transfers, and possession of firearms by persons convicted of violent misdemeanors, including persons convicted of domestic violence and child abuse offenses or subject to a protective order.
- Prohibit interstate sales by unlicensed persons of ammunition and firearm components.
- Upgrade standards of eligibility for licensing of dealers; require stringent background checks of dealer applicants and employees, and make issuance of dealer licenses discretionary rather than mandatory.

- Require dealers, manufacturers, transporters, and importers of firearms and ammunition to provide adequate and secure storage facilities to reduce theft, and require dealer cooperation with criminal investigations and reporting of all gun thefts to ATF and local police.
- Provide ATF sufficient resources and authority to conduct periodic audits of all firearms dealers.
- Require licensed dealers to comply with state and local laws and maintain adequate business insurance.

I appreciate the opportunity to share the views of the American Bar Association on this pressing subject. We look forward to working with the Committee in support of its expeditious action on legislation to prevent and reduce gun violence in America.

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For additional information on these issues, or to tap into our membership expertise on these subjects, please contact Thomas Susman (202-626-3920; Thomas.Susman@americanbar.org), Director of the ABA's Governmental Affairs Office, or Bruce Nicholson (202-662-1769; Bruce.Nicholson@americanbar.org), Senior Counsel, ABA GAO.

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