

**TESTIMONY BEFORE THE
JUDICIARY COMMITTEE OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES
ON PROPOSED
FIREARMS LEGISLATION**

HOUSE BILL No. 1744, 41 & 21



**PRESENTED ON SEPTEMBER 19, 2007 BY
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Good afternoon, Chairman Caltagirone, Chairman Marsico, and the distinguished members of the House Judiciary Committee. I am Lynne Abraham, the District Attorney of Philadelphia and Legislative Chair of the Pennsylvania District Attorneys Association. Thank you for this opportunity to offer testimony on behalf of the PDAA concerning House Bills 1744, 41 and 21, which amend Pennsylvania's firearm laws. PDAA supports the intent of all of these bills but we offer several suggestions to House Bills 1744 and 41 that we believe will improve them and help to protect our communities. However, we oppose, as does the Attorney General, to expand the Attorney General's jurisdiction as it pertains to firearms violations.

We in the law enforcement community appreciate the opportunity to give input on these bills and we also appreciate all of your past support of measures that help law enforcement, the criminal justice system and victims of crime.

Pennsylvania is currently in the midst of an escalation of deadly illegal handgun violence that is sweeping cities and rural communities alike throughout the country. The effect of handgun violence upon our communities is devastating. Too many families are living with the reality of daily handgun violence in their neighborhoods that deprives them of their fundamental right to feel and be safe. We had 280 homicides in

Philadelphia in 2002. Last year, that number rose to 406 homicides, and we have already had 299 homicides so far this year. Eighty-five percent of these homicides were committed with firearms. The rate of non-homicide shootings is also high. Last year, there were 1,384 shootings in Philadelphia and as of last week; there were 1,266 shootings in Philadelphia. We are asking the General Assembly for two things today: (1) additional effective legislation to combat the deadly tide of illegal handguns, and (2) additional resources to enforce the law.

House Bill 1744

This bill contains a comprehensive package of provisions designed to help law enforcement battle the wave of illegal handgun trafficking and ensuing violent crime that has taken grip throughout Pennsylvania, and we applaud Chairman Caltagirone, who sponsored this bill, as well as all of the bill's co-sponsors, for taking the initiative in this area. The Executive Committee of the Pennsylvania District Attorneys Association supports this bill and suggests several amendments.

One of the main sources of illegal firearms is the "straw purchase," which is a transaction in which a person who is legally permitted to purchase a firearm (the "straw purchaser") buys one or more handguns from a

licensed firearms dealer on behalf of someone else. Usually, the person for whom the guns are being purchased (the “principal”) is legally barred from buying guns because of a criminal record; however, this is not always the case. Occasionally, the principal simply wishes to obtain guns without leaving a paper trail. Often, the straw purchaser falsely reports the firearm stolen after she has turned it over to the principal. On other occasions, the police recover the firearm as a crime gun, trace it back to the straw purchaser and the straw purchaser then claims that the gun has been stolen from her and she had not reported the theft, or had not noticed that the gun was missing.

Inspection of Gun Dealers’ Records and Attorney General

Jurisdiction – Current law requires licensed dealers, manufacturers, and importers to maintain records of their sales, however, as the law stands now, only the United States Department of Justice is permitted to inspect for compliance with record keeping requirements or in criminal investigations. State law enforcement officials can only view the records with the use of a search warrant pursuant to a criminal investigation. We need a mechanism to enable law enforcement to examine those records, as well as the dealer’s inventory, to ensure that they are complying with the law, and to assist into

investigations of handgun crimes and illegal trafficking of firearms. House Bill 1744 provides us with such a mechanism to examine those records.

The unfortunate truth is that some gun dealers' names show up again and again as the source of handguns used in violent crimes. Whenever this happens, we need fast access to those records, especially when investigating crimes such as unsolved homicides.

The amendments we suggest to this section of the bill would open these records to state law enforcement officers that need to see them. As currently drafted, the bill confers the power to inspect these records only upon the Attorney General. We ask that the list be expanded to include District Attorneys, State Police, and local police departments to have the authority to inspect because so many of these cases involve particularly local crimes and local investigations and prosecutions.

In addition, we believe that it is ill-advised to confer upon the Attorney General concurrent jurisdiction to investigate all violations of the Uniform Firearms Act contained in Chapter 61 of the Crimes Code. Each District Attorney has devised systems and practices that work in his or her county's unique situation. In Philadelphia, we prosecute thousands of handgun possession offenses and other offenses committed with guns. In busy counties such as Philadelphia, we operate twenty-four hour charging

units to handle the large volume of crime, including firearms offenses that occur in our city throughout the night. Allowing the Attorney General's Office to have concurrent jurisdiction over peculiarly local crime would cause tremendous disruption, intrusion, and confusion over jurisdictional disputes, all of which are unnecessary. Just think of the difficulties in counties with many different police departments.

The relationship between the Office of the Attorney General and Pennsylvania's sixty-seven District Attorneys is complex, but it is designed to protect the public safety of all citizens by vesting with the local prosecutor the sole discretion to investigate and prosecute local crimes, while giving the Attorney General's Office the power to tackle issues that affect the entire state or large regions of the state. For that reason, the Commonwealth Attorneys Act allows the Attorney General to investigate and prosecute cases that affect multiple counties or affect Pennsylvania and another state. In addition, a local prosecutor can ask the Attorney General's Office to take over a case where the District Attorney has a conflict of interest or where the local prosecutor lacks sufficient resources to investigate and prosecute a case, which many prosecutors including I have done. The relationship between the county District Attorney and the state Attorney General as it is

now strikes the proper balance between local and statewide law enforcement authorities.

This jurisdictional scheme between local District Attorneys and the Attorney General's office has served Pennsylvania well for decades. Some prosecutors have partnered with the Attorney General's Office for the benefit of their communities and have had great success. For example, in Philadelphia, we have collaborated with the Attorney General's Office to form a Gun Violence Task Force, which was created in December of 2006 with funding from the General Assembly. I have brought copies of our Memorandum of Understanding and have attached them to my written testimony. This is the way to go, not the proposed legislation that would unduly expand the power of the Attorney General.

This mission of the Task force is to investigate and prosecute those responsible for illegally putting guns on the street and into the hands of criminals. It is composed of veteran investigators and seasoned prosecutors, and working in close coordination with the Philadelphia Police Department, the Task Force began operations in Southwest Philadelphia and has since expanded into all six of the city's police divisions. The Task Force has opened 280 investigations, made 73 arrests involving the illegal sale of 131 firearms, and seized 129 firearms including five AK-47s. Task Force

investigators were instrumental in cracking a burglary ring operating in Montgomery County in which stolen firearms were brought to Philadelphia for sale on the street. They have also arrested several individuals involved in a scheme to illegally purchase and ship handguns overseas. In addition, the Task Force has assisted Philadelphia police in solving numerous shootings and at least one homicide.

With the assistance of this same state funding, the Philadelphia Police Department has begun to expand its cadre of trained Firearms Examiners and to modernize its Firearms Identification Unit facilities. The funding has not only allowed the Department to purchase much needed equipment, but also to institute 6-month, 12-month, and 18-month training programs which when completed next summer, will more than quadruple the number of fully qualified examiners available to investigate firearms offenses in our City.

When it comes to combating illegal firearms trafficking, we do not need to change the law to expand the Attorney General's Office's jurisdiction. What we really need to combat gun violence is enhanced revenue from the state to combat illegal firearms with Task Forces and other collaborative efforts like the one we have in Philadelphia.

Notice of Limits on Transferring Handguns – House Bill 1744 contains an important provision that would require sellers of firearms to

provide a written notice to the buyer that he must comply with legal obligations regarding lending or giving the firearm to other people, and that any transfers must occur at a licensed gun dealer or at the office of the county sheriff. Violations of this provision are punishable by up to five years in prison and a \$10,000 fine. We support this amendment. This notice section and the corresponding penalties for violating its terms will help us reduce straw purchasing of firearms by making it clear that all purchasers of firearms in Pennsylvania are aware of our strict rules governing the transfer of firearms and that violating those rules carry severe consequences.

Receiving Stolen Firearms - We currently have an anomaly in Pennsylvania law, because our theft statute punishes theft of a firearm severely by grading theft by unlawful taking of a firearm as a felony of the second degree. However, our receiving stolen property statute does not impose that higher grading for firearms unless the offender is “in the business of buying or selling stolen property.” In other words, under current law, it is a felony of the second degree to steal a firearm, but only a misdemeanor to receive, retain, or dispose of a stolen firearm. This type of leniency for those offenders who commit the offense of theft by receiving stolen firearms must be corrected. This bill seeks to correct that problem by deleting subsection (a)(3) of Section 3903 of the Crimes Code. To ensure

that theft by receiving a stolen firearm is treated with sufficient seriousness and to make certain that people in the business of selling stolen firearms are punished severely, we suggest some amendments which I have attached to the end of the written testimony that I submitted.

Study by the Joint State Government Commission - This bill would also direct the Joint State Government Commission to conduct a study to determine the effect of multiple firearm purchases on criminal activity in our state. We believe that such a study would be worthwhile and would identify the scope of the problem.

House Bill 41

House Bill 41 would create the Bureau of Illegal Firearms Trafficking within the Attorney General's Office. According to the bill, the Bureau would investigate and prosecute illegal firearms trafficking. The Attorney General does not want this authority, which is nothing but a thinly veiled attempt to co-opt and usurp the power of local prosecutors and impose a centralized authority like an "über-governor." You can not create a new bureau just to investigate and prosecute local firearms trafficking. As I said before, what we do need is additional resources to continue to fund

Philadelphia's Gun Violence Task Force and replicate its success in other areas of the state.

House Bill 21

House Bill 21 would create a presumption that bail should be set at not less than \$50,000 for any offense committed while the defendant displayed a firearm during the commission of the offense. The bill provides for exceptions when "special circumstances are presented." We appreciate any attempt to find innovative solutions to this problem. But we see two problems with this bill. First, it appears to run afoul of the Separation of Powers doctrine, because the courts have rules and procedures that govern the setting of bail. In addition, this bill appears to contravene federal and state court precedent that states that each case must be considered individually when setting an appropriate amount of bail.

Of course, prosecutors generally support high bail amounts for violent offenders such as those that commit crimes with handguns. But many of our counties are facing prison overcrowding in our local jails, and an influx of pre-trial detainees would further exacerbate that problem.

Other proposals

I would like to take a few moments to reiterate some of the proposals that my office requested in its testimony before this Committee in Philadelphia on April 20, 2007.

- Permit the disclosure and examination of mental health records for individuals seeking to purchase firearms (the Virginia Tech case illustrates the dire need for this change to the law).
- Strengthen Section 6105 to prevent people previously convicted of any violation of the Uniform Firearms Act from buying another gun.
- Amend Section 6105 so that people awaiting trial on firearms offenses can not possess firearms.
- Require the owner of a lost or stolen firearm to report the theft or loss within 24 hours of discovering it, and punish the failure to report as a misdemeanor of the first degree.
- Treat adult violations for convicted felons who possess firearms the same, regardless of whether the prior disabling offense was an adult conviction or a juvenile adjudication.
- Make sure that people convicted of illegally transferring a firearm cannot legally possess more guns in the future.

- Make sure that defendants convicted of lying on state or federal firearms forms are disqualified from owning a firearm.
- Prevent defendants convicted of filing false police reports for theft of a firearm from possessing firearms.

Conclusion

Thank you for allowing me to speak to you today on the very important issue of firearms laws. I appreciate that you are taking the time to gather information about the way that existing laws and regulations are implemented and enforced. I commend your efforts to ensure that gun laws in our state are not only well written, but well enforced. We can now move forward with crucial legislation that will provide law enforcement with better tools to investigate, arrest, and prosecute the most dangerous criminals in our communities, those armed with deadly handguns.