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Mandatory Reporting and the Victimization of the Law-Abiding

Failure to stop crime, victimization of citizenry, jeopardy, and Constitutional muster.

Mandatory reporting of the loss or theft of firearms is being dubbed with the anti-gun monicker of “common sense gun law.” But is it really common sense? Or sensible at all? Let us examine some of the issues that come with mandatory reporting of lost or stolen firearms, the push for legislation, and the true impact it will have on both the law-abiding and the criminal.

When discussing these proposals for legislature, you will frequently hear proponents argue that people who have firearms stolen from them can stop crime by reporting these guns stolen. That somehow police will begin investigating the theft of the firearm and recover it before someone can harm others with it. But the reality of it is that that notion is mythical at best. Let us use the anti-Constitution organization Everytown for Gun Safety’s stats to ensure we are being more than fair. They report on their website that 380,000 guns are stolen annually in the United States. They also report that between 2010 and 2016, the majority of 23,000 stolen firearms recovered by police were recovered at in connection with crimes.¹ Using their numbers, in the time of seven years (2010-2016), 2.66 million firearms would have been stolen, and of those 2.66 million, 23,000 were recovered in connection with a crime. Just to be clear here... that means 0.86% (less than 1%) of all guns stolen in a seven-year period are being recovered after being used in connection with a crime.

Why does that matter? What happens when a law-abiding citizen is victimized by the theft of their property? Most report it to local law enforcement, because in all honesty, most of the law-abiding citizens of our Commonwealth do report their firearms stolen when they discover the theft. The reports are needed for their insurance claims and more importantly, law-abiding citizens are responsible gun owners who both want the firearm reported for the safety of other citizens, in the hopes that they may retrieve their personal property, and to alleviate any liability they may have should the firearm turn up at a crime scene. But what about that smaller portion of the firearms owning community that may not report it?

Now we get to the cons of these proposed bills as they impact the citizenry. A citizen has been victimized. Perhaps by a relative who knew the combination to their gun vault fueling a drug addiction, or by a stranger who saw the manufacturer’s sticker on their car window and broke in overnight to steal. Regardless of the cause, a law-abiding citizen of the Commonwealth is out their money, property, commemorative, or family heirloom. Or even more importantly they may have been deprived of a valuable tool whose righteous purpose was to defend their family against violent criminals. The sense of violation, the feeling they are no longer safe, loss of control, anger and frustration, embarrassment, fear, loss of trust, and guilt the victims of these crimes feel can be bad enough that across the Commonwealth we have agencies dedicated to supporting victims of crime and advocating for them. Many victims of these crimes no longer feel safe in their own homes and absorb the costs of moving and uprooting their families just to feel secure once more.

Complicate that now and say they must answer to a law that requires they have to report the firearm stolen within 72 hours. A law they may or may not be aware of. A law that does not care that they did not know the theft occurred until three weeks, three months, or even three years later. Are they guilty of a misdemeanor crime for not being aware their property was stolen?

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Some legislation is slightly smarter than that, and they like to include the term “discovery”, as in “shall within twenty-four hours of the discovery of the loss or theft report the facts and circumstances of the loss or theft to a police department or sheriff’s office”, or similar language. This sounds good to the average citizen striving to meet the anti-Constitution movement’s concept of “common sense”. Except this is the very phrase that takes all power away from the statute to do what many proponents are claiming these laws can do. Reduce or prosecute unlawful weapons sales. And if that is truly the goal, the phrase “upon discovery” means the criminal will be asked “when did you first become aware that your firearm was stolen?”, and we should expect them to be honest about the day they illegally sold it? This makes this proposed legislation moot to every criminal and still a threat to every law-abiding citizen being honest with their local police department.

It's this very concept of stopping illegal sales that I heard a police commissioner testify to the PA. House Judiciary Committee that when one of his detectives “break you” and you admit to an illegal sale of a firearm, there’s nothing he can charge you with without passing a mandatory reporting law.ⁱⁱ He goes on to claim there is no penalty at all. That is not only ridiculous but frightening that a commissioner for a third-class city police department is unaware that illegal sales of firearms are covered by the Pennsylvania Crimes Code.ⁱⁱⁱ Bear in mind this was sworn testimony. He emphasized the investigations of straw purchases and the remarkable success his agency had investigating these crimes. I would encourage funding those investigations rather than re-victimizing the victims of theft. Increase sentencing for those crimes if warranted and pursue them.

Another aspect of mandatory reporting that is often overlooked is the jeopardy this may put the victim in. Many victims of crime are victimized by relatives or associates they know. Not total strangers but people they see routinely or even reside with. What happens to the victim of the theft whose violent associate openly steals their firearm and then threatens great harm to them if they report it to law enforcement? They’re put in an untenable position of deciding whether to risk their life reporting a family member who has easy access to them or risk going to jail for failing to report BEING A VICTIM. Our legal system should be here to defend and support the victims of violent crime, not create them.

After all this discussion on the victims of these crimes, what about the offenders? So here we have statistically shown that we are realistically going to see less than 1% of these guns turn up in a crime every seven years. That is based upon statistics provided by people that want these infringements of the Constitution to be law. If we give credence to their argument that it is worth it to go after that 1%, let us discuss the impact it will have on the perpetrators caught with those firearms.

In 1968, the United States Supreme Court heard a case known as *Haynes v. United States*, 390 U.S. 85. The case was about a convicted felon who was charged for failing to register a firearm under the National Firearms Act of 1934. “The National Firearms Act of 1934 (NFA) requires the registration, with the federal government, of fully automatic firearms (termed “machineguns”), rifles and shotguns that have an overall length under 26 inches, rifles with a barrel under 16 inches, shotguns with a barrel under 18 inches, and firearm sound suppressors (termed “silencers”).”^{iv} The Supreme Court held that since Haynes could not legally possess a firearm (convicted felon), any statute compelling him to register a firearm in his possession required he incriminate himself for the crime of possessing the firearm. That was deemed by the Court to be impermissible, and hence, any statement acknowledging failure to abide by a mandatory reporting statute in Pennsylvania will also be a requirement to incriminate oneself and will not pass Constitutional muster.

Making matters worse is the frequent practice of coupling these infringements of Article I, Section 21 with mandatory storage laws, further complicating the reporting party’s concerns of being arrested by local police asking not only when they discovered the theft of the gun, but why it wasn’t locked in a maximum-security vault they may or may not be able to afford. Or the fact that laws like this have a much greater impact on those in lower economic standing or what many would consider low-income housing, where self-defense becomes an even

more critical role for residents, and law enforcement resources may already be strained past the point of efficient protection for the law-abiding residents. Or the occasional rogue sheriff who feels having a firearm stolen from you makes you a person of dubious character posing a risk to public safety, and they revoke your license to carry a firearm, forever hamstringing your ability to defend yourself and your loved ones.

Historically what has mandatory reporting done to stop crime? New York State passed a mandatory reporting law in 2018. By 2020, shootings in New York City were up 97%, and homicide was up 44%.^v In fact, New York State passed a slew of 2nd Amendment infringements in 2018 and 2019 that have yielded the exact opposite of what the anti-Constitution crowd was hoping for. In 2020, there was a substantial increase in homicides statewide, driven by a 21.2 percent increase in firearm-related homicides. There were 836 homicides reported, a 46.7 percent increase when compared to 2019. Of those 836 homicides, 543 were firearm-related, the highest number reported in the 10-year period. Violent crime rose across the board with a per capita rate of 57.4 per 100k up from 40.7 per 100k in 2019. Reversing a trend where violent crime had decreased by 3.1 percent from 2017 to 2018, and violent firearms crime had steadily declined from 2014 thru 2018.^{vi} New York State's homicides still rose an average of 30%, their biggest one year jump since the FBI began keeping records.^{vii} And violent crime rose 5.6% while all other major crimes categories declined. Is there a direct correlation between further restricting of law-abiding gun owners and increases in violent crime?

Even RAND Corporation's research has stated they have found no conclusive evidence that mandatory reporting laws have any impact on crime in eight distinct categories, one of which is violent crime.^{viii}

In summary, the opposition to Mandatory Reporting Laws is based upon:

- The statistics show the target of the proposal is less than 1% of all stolen firearms.
- Most law-abiding residents already report lost or stolen firearms for personal reasons no law required.
- Re-victimization of the person most impacted by the crime who is already in a vulnerable state.
- The proposal will have zero impact on criminals as it allows "upon discovery" requiring honesty criminals do not possess.
- Increased jeopardy for victims of crime, often putting them between the criminals and police and potentially putting their lives at risk.
- *Haynes v. United States* shows an extremely high likelihood of the law being unconstitutional if challenged, by the SCOTUS.
- Coupled with other proposed legislation this can be extremely harmful to otherwise law-abiding citizens.
- These laws often cause greater harm to low-income citizens who are often more in need of their right to bear arms in defense of themselves and their loved ones.
- These laws create criminals out of law-abiding citizens who then lose their ability to subjective decisions made by officials abusing their positions in their interpretation of other statutes.
- Historical data from other states with these laws already enacted show not only do they have no positive effect in fighting crime or saving lives, but they may also actually cost lives.
- RAND Corporation research also shows no conclusive evidence of these laws doing anything to reduce violence.
- A clear violation of Article I, Section 21, which is already being violated by the current background check system (PICS) as it stands.

For the reasons above and more, the idea of mandatory reporting laws being an acceptable infringement upon the law-abiding citizens of this Commonwealth in a fruitless effort to combat the less than 1% of all stolen guns we know are being used in crime with no data supporting any such capability, is problematic, unsupportable, and an inexcusable infringement of Article I, Section 21...

“The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.”

If you should have any further questions or need clarification on the legality of the issues raised in this ILLEA White Paper, please feel free to e-mail us at info@foac-illea.org.

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Respectfully,



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Endnotes

ⁱ <https://www.everytown.org/solutions/report-lost-and-stolen-guns/>

ⁱⁱ <https://www.legis.state.pa.us/cfdocs/legis/CMS/ArchiveDetails.cfm?SessYear=2023&MeetingId=2681&Code=60&Chamber=H> (1:58:00 mark of the video)

ⁱⁱⁱ <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.061.011.000..HTM>

^{iv} <https://www.nraila.org/get-the-facts/national-firearms-act-nfa/#:~:text=The%20National%20Firearms%20Act%20of,inches%2C%20and%20firearm%20sound%20suppressors>

^v <https://www.rallyforourrights.com/the-problem-with-mandatory-reporting-of-lost-stolen-guns-laws/>

^{vi} <https://www.criminaljustice.ny.gov/crimnet/ojsa/stats.htm>

^{vii} <https://www.news10.com/news/homicides-up-nearly-30-in-2020-biggest-1-year-jump-ever-fbi-says/>

^{viii} <https://www.rand.org/research/gun-policy/analysis/lost-or-stolen-firearms.html>