



**PRO
ARMAS**
INFORMAÇÃO E AÇÃO PRÓ ARMAS

**COMENTÁRIOS ÀS NORMAS REGULADORAS DO
SISTEMA NACIONAL DE RASTREAMENTO E
DISPOSITIVOS DE MARCAÇÃO DE ARMAS DE FOGO**



Considerando as Consultas Públicas nº 02 e 03 de 2020 disponibilizada no site da Diretoria de Fiscalização de Produtos Controlados do Exército Brasileiro (www.dfpc.eb.mil.br), na data de 26 de junho de 2020, bem como a brevidade temporal destas, a Associação Nacional Movimento Pró Armas – AMPA, por meio de seu corpo técnico, apresenta o presente parecer acerca dos temas consultados, no caso: Normas Reguladoras do Sistema Nacional de Rastreamento de PCE (SisNaR); e Norma sobre dispositivo de segurança e marcação de armas de fogo e de munições fabricadas no País, Exportação ou Importação.

Extraí-se da referida consulta pública que o Comando Logístico do Exército promoverá a reedição dos temas outrora revogados, quais sejam, Portaria 46 de 18 de março de 2020; Portaria 60 de 15 de abril de 2020; e Portaria 61 de 15 de abril de 2020. Essas normativas visam aprimorar as Portarias 16 de 2004 e 07 de 2006.

As normativas retro foram revogadas recentemente pela Portaria 62 de 2020, ocasião que gerou um embate sobre a necessidade de aprimoramento legislativo acerca das normas incidentes sobre os Produtos Controlados.

Diante da abertura para consulta pública, a importância normativa em questão e a possibilidade de engrandecer o presente debate pelo viés técnico-econômico, a AMPA comparece neste ato para apresentar seus comentários e sugestões, conforme segue.

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1 – Lição da ONU sobre Registro e Rastreamento de Arma de Fogo

As discussões acerca da necessidade de registro, marcação e rastreamento de arma de fogo e munições rememoram os mais longínquos debates acerca do controle e desarmamento social, os quais sempre estão eivados ideologicamente e pouco fundamentados.

De forma a contribuir com o debate, primeiramente se faz necessário observar o viés econômico da normativa, haja vista que quanto maior o controle estatal, maior será o aparato necessário para suportar tais encargos.

Para tanto, neste trabalho levar-se-á em conta o custo-benefício que uma legislação poderá trazer à sociedade, imprescindível nos momentos atuais em que todo o mundo atravessa uma crise sem precedentes históricos.

A origem de maior controle e rastreamento das armas de fogo surgiu com uma iniciativa das Organizações das Nações Unidas, especialmente o Programa de Ações de Prevenção ao Combate e Erradicação do Tráfico Internacional de Armas¹, que visava a criação de novos modos de rastreio das armas curtas e leves.

Dentre as proposições normativas, a ONU deixou claro, no capítulo III, que a metodologia seria de escolha das Nações Soberanas, ou seja, cada Estado Membro deveria escolher a melhor forma que lhe aprouver.

Entretanto, a ONU ressaltou que as marcações deveriam ser identificadas *a primo ictu oculi* (à primeira vista), preferencialmente na superfície da arma, de modo que fosse facilmente reconhecíveis e legíveis. Veja-se que qualquer método tecnológico ou que

¹ ANEXO - International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, illicit Small Arms and Light Weapons.

dependa do auxílio de aparelhos de leitura não é recomendável (QR-Code, Código de Barras...).

Ainda, ressaltou a ONU que o essencial seria a marcação da arma em um componente estrutural, o qual, se removido, torna a arma inoperante. Em que pese a Organização encoraje a marcação de outras peças, de forma a tornar mais fácil o rastreamento da arma, se verificará no presente trabalho que o esforço é ineficiente.

2 – Experiência do Canadá sobre os Custos com a Política de Rastreamento

Em que pese a iniciativa criada pela ONU, além de outras organizações não governamentais, necessário rememorar a experiência de um País que criou um programa de maior controle e registro de armas e seu posterior fracasso, fazendo com que o projeto fosse abandonado.

Para isso, precisamos ressaltar o motivo pela qual o rastreamento e registro de armas de fogo em nada contribuem com a solução e redução da criminalidade.

No Brasil, nos últimos anos, apenas 10% dos homicídios foram solucionados pela Polícia, tendo como principal fator a falta de recursos humanos e investimentos². Aliado ao referido argumento, no caso da Polícia Civil do Rio de Janeiro, de janeiro de 2016 e julho de 2019, esta apreendeu 48.656 armas das quais apenas 0,17% tinham origem lícita³.

Voltando ao Canadá, de 2003 a 2009, apenas um terço dos 1.314

² <https://www.gazetadopovo.com.br/ideias/brasil-nao-soluciona-nem-10-dos-seus-homicidios-d726kw8ykpwh6xm41zakgzoue/>

³ <https://epoca.globo.com/giampaolo-morgado-braga/coluna-o-problema-da-posse-do-porte-de-armas-no-rio-tem-um-tamanho-11-23910470>

homicídios tiveram armas identificadas no local⁴. Dessas armas identificadas, apenas 25% eram registradas, sendo que metade delas estava registrada em nome de terceiros e não o acusado. Nesse período, apenas 62 casos de homicídios com armas de fogo obtiveram êxito em ligar a arma do crime ao investigado.

Em que pese o êxito de 4,7% na solução dos homicídios, o registro da arma não foi determinante para conclusão do inquérito. A Polícia Real Montada do Canadá registra as pistolas no País desde 1934, tendo um dos sistemas mais modernos do mundo.

O que aprender com eles?

Em 1995 o Canadá aprovou uma Lei que determinava a obtenção de uma licença para compra de armas e o consequente registro desta. Na ocasião, o governo canadense necessitou contratar 600 empregados, somente para este setor, ainda projetar um gasto de US\$ 85 mi (oitenta e cinco milhões de dólares). Já em 2000 os funcionários do setor chegaram a 1.700 empregados, bem como o Parlamento constatou que o custo havia sido subestimado, uma vez que fora novamente estimado entre US\$1 bi a 1,5 bi (um bilhão a um bilhão e meio de dólares).⁵

Conforme conclusão do referido estudo, os custos com o programa foram muito superiores aos benefícios obtidos.

Veja-se que o número de armas apreendidas de origem lícita é muito superior no Canadá (4,7%) que no Brasil (0,17%). Ainda se majorarmos a média nacional para os mesmos patamares do Canadá, em nada contribuiria para optar pelo maior rastreamento de armas de fogo, haja vista que o referido País abandonou o projeto em 2011.

Como já exposto no Estudo Técnico 23/2015 da Câmara dos Deputados,

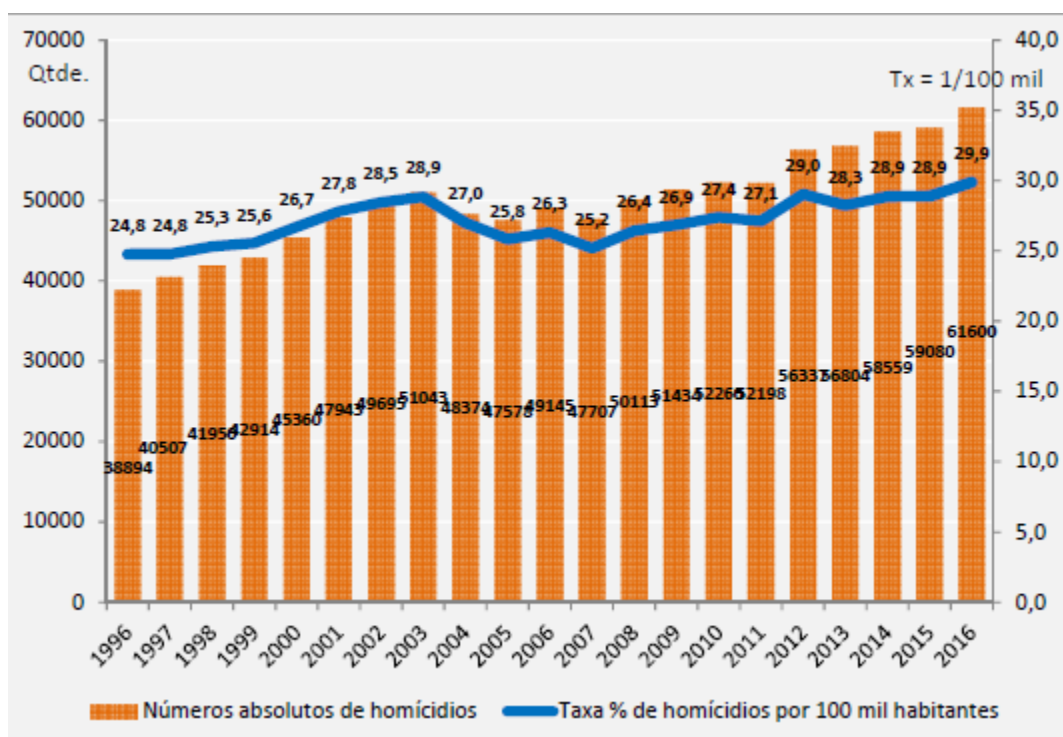
4 LOTT JR. John R. Guerra Contra as Armas. Campinas: Vide Editorial, 2019. p.65.

⁵ ANEXO - Misfire: Firearm Registration in Canada – PUBLIC POLICY SOURCES

os recursos econômicos, notadamente recursos públicos, são escassos e devem ser utilizados com eficiência, eficácia e efetividade. Assim, não é recomendável dispêndios em ações que tragam pouco ou nenhum resultado, ou ainda que tragam resultados opostos aos desejados. Caso haja ações mais eficazes, é recomendável que os recursos sejam direcionados para essas ações.

3 – O Legado das Portarias 16 de 2004 e 07 de 2006

Antes de se analisar o mérito da relação entre as portarias e sua influência na solução/mitigação da criminalidade, necessário rememorar, a evolução da taxa de homicídio de 1996-2016⁶, vejamos:



Especificamente, no período de 1996 até 2004, data da primeira portaria, o Brasil atravessava uma curva ascendente no número de homicídios por arma de fogo. Tal

⁶ <http://www.forumseguranca.org.br/wp-content/uploads/2017/10/infografico2017-vs8-FINAL-.pdf>

motivo decorre do aumento no tráfico de drogas nas décadas de 80 e 90.

Cabe esclarecer também que entre os anos de 2004 e 2007 houve uma pequena queda no número de homicídios no Brasil, mas sem que se observasse que isso tenha sido uma tendência nacional, mas sim em decorrência da evolução dos gastos per capita com Segurança Pública nos estados de São Paulo e Rio de Janeiro, segundo o Anuário do Fórum Brasileiro de Segurança Pública⁷, em São Paulo, passou de R\$ 47,00, em 1995, para R\$ 69,50, em 2000, e para R\$ 156,40, em 2005; enquanto isso, no Rio de Janeiro, as médias foram de R\$ 49,50, R\$ 121,70 e R\$ 240,10 respectivamente.

Vale também observar que a taxa de homicídios em São Paulo vem decrescendo desde 1999, quando atingiu 44 homicídios por 100 mil habitantes; já Rio de Janeiro atingiu pico em 1995, com taxa de 61,8, quando passou a apresentar declínio nos anos seguintes, muito antes das Portarias.

Mas qual a relação destas com a criminalidade e a solução de crimes?

Veja-se que um maior controle no acesso as armas, rastreabilidade de munições entre outro sempre foram o chamariz para mitigação das referidas condutas, especialmente o desvio de ativos das forças armadas para o crime organizado.

Em 2007 a Small Arms Survey⁸ publicou um estudo, de autoria de James Bevan e Pablo Dreyfus, onde relacionou a influência da marcação de munições como forma de evitar seus desvios e possibilitar a investigação da origem do abastecimento do crime organizado.

Tais estudos vinham em consonância com o disposto na Portaria 16 de 28

⁷ ANEXO - Estudo Técnico 23/2015 da Câmara dos Deputados – Setor de Consultoria de Orçamento e Fiscalização Financeira

⁸ <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/po/Small-Arms-Survey-2007-Chapter-09-PO.pdf>

de Dezembro de 2004 do COLOG, já que estabelecia em seu artigo 4º a marcação dos estojos como forma de rastreamento.

Entretanto, a marcação das referidas munições evitaram os respectivos desvios? Os crimes cometidos foram solucionados e identificados seu autor com base nas evidências e rastreabilidade das munições?

Diversamente das conclusões adotadas ao civil, em que pese possa se evidenciar um possível desvio de ativos dos Órgãos de Segurança Pública, em nenhum momento o estudo conclui pela efetividade do rastreio das munições para solução do tráfico ilícito de armas e munições, tampouco que este fora o fator decisivo na investigação.

Em que pese no caso do assassinato da Vereadora Marielle Franco tenha sido encontrado uma diversidade de cápsulas, o número do lote de nove das munições usadas seria o mesmo de outras utilizadas em uma chacina na região de Osasco-SP. Veja-se que, ainda que vigente a rastreabilidade das munições dos órgãos de segurança pública, diversos fatores poderiam contribuir com a inveracidade das informações de rastreio, como furtos de munições, troca amigáveis em operações conjuntas da PF e, inclusive, desvio no próprio fabricante.

Todos esses fatores são estranhos a qualquer metodologia possível e inimaginável de rastreamento de munições, haja vista que decorre de fatos estranhos ao destinatário final.

Ainda que se cogite pela implementação no país de um sistema de identificação dos estojos e ranhuras, por meio de análise balística, verificar-se-á nos próximos capítulos que tais esforços são utópicos, uma vez que os estojos podem ser desviados pelo próprio fabricante ou furtados, como a impressão das raias no cano das armas não se conservam pela eternidade, fazendo com que surjam alterações no decorrer do tempo.

No que tange ao legado da Portaria 07 de 28 de abril de 2006, esta seguiu

o padrão estabelecido na carta das Nações Unidas, uma vez que tornou obrigatória a identificação das armas fabricadas no país com Nome do Fabricante, Sigla do país, Calibre e Número de Série.

Em que pese se cogite pela alteração do referido padrão de marcação e possibilitar um maior rastreamento das armas de fogo no país, dever-se-á levar em conta que 99% das armas apreendidas pelas policias no país possuem origem ilícita, ocasião em que qualquer remanejamento nas normativas apenas influenciaria aqueles que tendenciosamente não praticam crimes, ou se praticaram, são facilmente identificados (e não pelo rastreio).

Conforme estudo já elaborado pela Consultoria de Orçamento e Fiscalização Financeira da Câmara dos Deputados⁹, a economia e as finanças públicas são afetadas pela política de controle de armas. Com redução burocrática na política armamentista, abertura de mercado e concorrência, é plausível esperar os seguintes efeitos econômicos:

1. Aumento de atividade econômica na produção e venda de armas, munições e acessórios;
2. Aumento de atividade econômica nos serviços associados a treinamento e prática esportiva associada;
3. Geração de empregos diretos e indiretos nos setores acima citados;
4. Aumento na arrecadação de impostos, contribuições e taxas;
5. Aumento no nível de investimentos e de outras atividades econômicas, em função da melhor percepção de segurança;
6. Redução da demanda por recursos públicos nas áreas de Segurança Pública, Saúde e Judiciária, em função da diminuição da criminalidade violenta;
7. Melhoria nos resultados dos programas públicos de segurança com o

⁹ ANEXO - Estudo Técnico 23/2015 da Câmara dos Deputados – Setor de Consultoria de Orçamento e Fiscalização Financeira

foco direcionado para as ameaças reais, ao invés de desperdiçar recursos com ameaças imaginárias.

Já na arrecadação de tributos, em um exercício simples de estimativa para ilustrar, considerando hipoteticamente que 1% dos cerca de 200.000.000 cidadãos brasileiros venham a adquirir uma arma, cujo preço é ao redor de R\$ 4.000,00, e considerando que aproximadamente 50% deste preço são relativos a tributos, o valor somente dos tributos seriam o resultado da equação (preço x carga tributária x quantidade); portanto R\$ 4.000,00 x 0,5 x 2.000.000, que daria um valor de tributos da ordem de R\$ 4,0 bilhões.

Considerando o estudo da Small Arms Survey, bem como toda a experiência ultrapassada nesses longos anos em que a rastreabilidade e sistema de informações vigentes contribuíram com a solução de crimes e identificação da autoria, é possível concluir, ainda que atores estatais e não-estatais têm fontes de munição muito semelhantes, a rastreabilidade possui pouca atratividade se comparada ao emprego financeiro de pessoal nas ruas, fonte essa imprescindível de investimento, já que alocar o trabalho administrativo para alimentar banco de dados em nada contribui para a solução da criminalidade, pois na grande maioria se trata ações exclusivas de terceiros.

4 – A Experiência da Austrália e Chicago na Solução de Crimes por meio do Rastreamento de Arma de Fogo e os Estudos Científicos

Conforme exposto acima, no caso Marielle Franco, muitos “especialistas” têm insistido na tese de que a balística automatizada poderia influenciar nas investigações criminais.

De forma a elucidar melhor a temática, compilou-se ao presente estudo

o artigo elaborado pelo Instituto Australiano de Criminologia¹⁰ sobre balística e sua influência nas investigações.

Tal sistema, cuja criação remonta aos anos 90, é um banco de dados que faz de forma autômata a comparação e combinação entre as marcas deixadas em projéteis de arma de fogo após o disparo. Permitindo, em teoria, uma análise mais rápida e ampla. Inclusive em casos fechados por autoria desconhecida.

Muitos países usam tal sistema para esclarecimento de crimes. Na Austrália, país do estudo, foi implementado no ano 2000, abrangendo todo país em 2014. Seu banco de dados conta com mais de 60.000 amostras, 70% destas vindas de cenas de crime. Em 2016 tal sistema confirmou 845 combinações, sendo 208 somente nos 22 meses anteriores a Julho 2014. Entretanto não há evidência de que tais informações trouxeram benefício às investigações.

Pesquisas anteriores, como feita em Boston em 2008, onde apenas 39% das combinações ajudaram de forma significativa a investigação, ainda assim evidenciaram os desafios em identificar os autores ou ligar tais evidências a suspeitos. Em muitos casos ou não se chega a imputar novos crimes ao suspeito ou não resultam em prisão através da informação levantada.

Pesquisa feita no sistema nacional de balística dos Estados Unidos, o NIBIN, em 2013, não foi tão otimista. O sistema, citado no estudo, não só não ajudou na maioria dos casos, eis que apenas 10% deles ajudou a identificar suspeitos e levou a apenas uma prisão, como em 50% das vezes o suspeito terminou condenado com base em outras provas. Em 34% dos casos o autor já estava preso antes do resultado da balística.

No estudo em tela, os pesquisadores concluíram que o sistema australiano teve nenhum impacto em 53% das ocorrências. E mesmo nas ocorrências que ajudou foi

¹⁰ ANEXO - Australian Institute of Criminology – Impact of Ballistic Evidence on Criminal Investigation

somente nos casos mais recentes, com 30 dias ou menos e não liga diretamente o suspeito ao crime na maioria das vezes, mesmo em casos ligados a crime organizado.

Sendo assim os autores do artigo concluíram que sistemas informatizados de informações balísticas, embora possam ajudar em certos casos, não superam os métodos tradicionais de investigação. Uma vez que tal tecnologia é inclinada a não prover informação adicional à investigação, uma vez que a balística por si não identifica autoria, e que esta é uma ciência de produção lenta de prova, sendo facilmente superada por outros métodos de ciência forense.

No caso de Chicago¹¹, o ponto primordial do estudo inclina-se a criação de um sistema onde conste o adquirente da arma de fogo e seu histórico, por meio da busca de antecedentes criminais.

Extrai-se das lições do estudo que a melhor forma de se combater o uso ilícito das armas de fogo e o consequente rastreamento, para fins de utilização nas perícias criminais, seria a criação de uma “Permissão de Adquirir”, com a consequente busca de antecedentes criminais; Registro das Armas Adquiridas; Registro das Armas Roubadas; Obrigatoriedade de Antecedentes Criminais nas Compras Privadas; e Licença Estadual para os Vendedores.

De todas as lições supra, verifica-se que o Brasil supera em muito os requisitos ideais estabelecidos no estudo, inclusive por se tratar de uma indicação da Polícia de Chicago como solução Federal do combate ao tráfico de armas.

Por demais, necessário ressaltar os aspectos científicos investigados pela Universidade de Harvard nos Estados Unidos¹² sobre controle de armas. O referido estudo é conclusivo ao afirmar que o maior controle de armas de fogo é ineficaz na prevenção de

¹¹ ANEXO - Gun Trace Report 2017 – City of Chicago – Chicago Police Department

¹² https://theacru.org/2007/05/08/harvard_study_gun_control_is_counterproductive/ - ANEXO

assassinatos, inclusive é uma medida contraproducente.

Ainda, a notícia vinculada no Jornal The Guardian,¹³ sobre controle de armas e aspectos científicos sobre a efetividade deste sobre a redução do número de homicídios, conclui pela ineficiência da balística forense, eis que se trata de uma ciência inexata.

Em que pese a criação de banco de dados com microestampagem e imagem balística sejam uma das três formas efetivas dos órgãos de investigação identificar as armas utilizadas em um crime, Daniel Webster, diretor do Johns Hopkins Center for Gun Policy and Research, ressaltou que inexiste qualquer efeito excepcional de tais medidas, inclusive afirma que a referida “ciência” é altamente questionável nos seus resultados.

Ao final, ressalta a reportagem que uma das formas efetivas de se reduzir a criminalidade e uso indevido das armas de fogo decorre da exigência de antecedentes criminais, o qual já é amplamente utilizado no Brasil.

5 – Das Portarias 46, 60 e 61 de 2020 e a Consulta Pública

Sem maiores delongas, a Portaria 46, e a novel normativa consultada sob nº 02, já se encontra maculada pela metodologia empregada na marcação dos PCE, pois a Identificação Única de Produtos – IUP utiliza códigos bidimensionais dinâmicos no padrão Quick Response Code (QR Code).

Veja que o artigo 5º do referido projeto de portaria expõe a necessidade de se utilizar os códigos bidimensionais para identificação de PCE, sem qualquer ressalva, além de assegurar a sua durabilidade e resistência às condições ambientais e operacionais de guarda e utilização do produto.

¹³ <https://www.theguardian.com/us-news/2016/mar/10/gun-control-study-flawed-researchers> - ANEXO Gun control study's dramatic results 'implausible', say leading researchers

Com o devido respeito, códigos bidimensionais não são legíveis a olho nu, eis que demandam instrumentos tecnológicos para tanto, bem como a utilização nas armas de fogo, munição, peças de reposição e demais componentes em nada corresponde com a metodologia aplicada em outros países do mundo.

Não somente, ao delegar ao importador, nos casos de armas de fogo, a impressão dos referidos códigos, estaria o órgão público terceirizando sua exclusiva competência de controle de armas e munições, incorrendo na premissa inaugural de criação do sistema, evitar a fraude e desvio.

Sem dizer que, estar-se-ia criando mecanismos para inviabilizar a polícia ostensiva, onerando os cofres públicos na obtenção de meios aptos a fiscalização dos produtos e reduzindo a competitividade dos bens de consumo no mercado nacional.

Quanto a Consulta Pública nº 03, semelhante a Portaria 60 de 2020, qual o critério utilizado na norma de profundidade que deveria ter um mínimo de 0,07mm e a largura mínima de 1,6 mm? Na portaria 07 de 2006, era utilizada a profundidade de 0,10mm mais ou menos 0,02mm. O novo valor atende qual critério? Durabilidade? Leitura?

Ainda que se cogite pela aplicação analógica de outras legislações, a utilização do termo “largura mínima” causa interpretação dúbia, já que a ATF - Bureau of Alcohol, Tobacco, Firearms, and Explosives, utiliza o termo tamanho de impressão.

Passando-se a necessidade de marcação com o nome do importador, qual outro local do mundo se identifica armas com o nome do importador? Como um fabricante conseguiria atender, na sua linha de produção, realizar marcações de todos seus importadores espalhados pelo mundo (caso seja uma demanda mundial)?

A identificação do importador pode ser feita quando do cadastro da arma de fogo nos registros nacionais, sendo desnecessária sua indicação no corpo da arma (como disposto no anexo da minuta), haja vista que o número de série e modelo são suficientes

para identificar a procedência documental.

Veja-se que diante de todos os estudos apresentados e inclusive a vigência das portarias anteriores, a referida marcação e mecanismo de rastreabilidade em nada contribuíram, tampouco acelerou as investigações e indicação e autoria dos delitos.

6 – Contribuições

De plano, conforme já exposto pela ONU, toda e qualquer marcações devem ser identificadas a *primo ictu oculi* (à primeira vista), preferencialmente na superfície da arma, de modo legível. Veja-se que qualquer método tecnológico ou que dependa do auxílio de aparelhos de leitura não é recomendável (QR-Code, Código de Barras...).

Partindo dessa premissa, as armas devem possuir, especialmente, número de série e identificação do fabricante, com respectivo país de origem, conforme dispõe o Capítulo III, artigo 8^a, da ONU¹⁴. Ressalta-se que não se deve ser utilizado qualquer medida ou parâmetro métrico, apenas que as marcações possuam duração razoável. No caso das minutas apresentadas, a profundidade estabelecida possui parâmetro em outras legislações, entretanto a largura causa interpretação dúbia.

Acerca da marcação dos estojos, inclusive aquelas destinadas às forças policiais, é natural que se identifique o fabricante e o calibre. Entretanto, nada impede que a marcação das caixas, no caso das forças armadas e policiais, sejam identificadas para tanto, conforme a necessidade do órgão adquirente ou controle interno.

Como exemplo, A Organização do Tratado do Atlântico Norte exige que as munições adquiridas sejam gravadas com uma informação adicional, de forma a ser mais bem identificadas. Contudo, necessário ressaltar que tal gravação não colaborará com

14 https://unoda-web.s3.amazonaws.com/wp-content/uploads/2020/02/ITI_English.pdf

qualquer solução de crime ou redução da criminalidade, inclusive tais artefatos gravados, caso sejam utilizados em operações policiais, poderão ser recolhidos por criminosos e deixados em locais diversos dos utilizados, induzindo os investigadores a procurarem pistas que sequer possuem lastro fático ao acontecido.

Uma forma de facilitar a identificação e rastreamento das armas de fogo, é a sincronização de ambos os sistemas existentes, uma vez que órgãos diversos são cadastrados tanto no SIGMA quanto SINARM.

A polaridade existente atualmente, inclusive diferenciando os CACs dos Civis nada contribui com a melhor identificação e controle, pois ambas são pessoas físicas alheias às instituições permanentes e possuem direitos e obrigações diferentes.

A união de ambos os sistemas reduziria o número de pessoal necessário para controle de ambos, otimizando a máquina estatal, inclusive facilitaria no controle de uso e aquisição de produtos controlados. Mas isso pode ser explanado em outro momento!

7 – Conclusão e Sugestão Legislativa

De todo o exposto e antes da promulgação de qualquer legislação, é necessário averiguar em quais países se utilizam a metodologia pretendida e quais os custos-benefícios para a sociedade.

Ainda, considerando todas as disposições e experiências de países avançados na legislação armamentista, inclusive na total ausência de benefício no incremento de práticas burocráticas, é necessário observar os custos de oportunidade financeira ao Brasil, eis que qualquer alteração ou criação de normas não usuais internacionalmente fará com que a arrecadação tributária sobre o bem de consumo reduza, inviabilizando as importações e concorrência pública em licitações.

A marcação de armas e munições, inclusive seu rastreamento, deve envolver amplo estudo prático, como os anexados ao presente parecer, de forma a comprovar de forma veemente seus benefícios.

Lembrando que, todos os estudos anexados são de países com ampla abertura de comercio de armas e munições, ocasião em que seus regramentos em nada influenciariam na concorrência local, diversamente do Brasil.

Para tanto apresentamos as seguintes sugestões à Consulta Pública nº 003-DFPC das Normas Reguladoras Dos Procedimentos Para Marcação De Armas De Fogo, Peças, De Embalagens E Cartuchos De Munição E Definição Dos Dispositivos De Segurança De Arma De Fogo:

<u>Artigo na Minuta</u>	<u>Sugestão</u>
<p>XI- MODELO: é a designação ou referência dada a um produto que o distingue dos demais quanto às suas especificações técnicas, ou seja, um determinado modelo deve estar associado a um único projeto construtivo (inclusive em termos de dimensões, desenhos, matérias-primas e funcionalidades), por meio do qual torna inequívoca sua identificação por clientes, peritos, ou quaisquer outros usuários e interessados.</p>	<p><u>Redação Sugerida:</u> XI- MODELO: é a designação ou referência dada a um produto que o distingue dos demais quanto às suas especificações técnicas, ou seja, um determinado modelo deve estar associado a um único projeto construtivo (inclusive em termos de dimensões, desenhos, matérias-primas e funcionalidades), por meio do qual torna inequívoca sua identificação por clientes, peritos, ou quaisquer outros usuários e interessados, independente da sua cor ou personalização.</p>
<p>Art. 3º, §1º As marcações previstas nesta norma deverão ter profundidade mínima de 0,07 mm e a largura mínima de 1,6 mm. §2º O número de série deverá ser impresso nos componentes metálicos por meio de deformação mecânica, com profundidade mínima de 0,07 mm e a largura mínima de</p>	<p><u>Redação Sugerida:</u> Art. 3º, §1º As marcações previstas nesta norma deverão ter profundidade mínima de 0,07 mm e o tamanho de impressão mínimo de 1,6 mm; §2º O número de série deverá ser impresso nos componentes metálicos por meio de deformação mecânica, com profundidade</p>

1,6 mm.	mínima de 0,07 mm e o tamanho de impressão mínimo de 1,6 mm.
Art. 3º, §3º Cano e ferrolho provenientes de kits de conversão devem possuir a mesma numeração da arma, e só podem ser adquiridos do mesmo fabricante da arma.	<p><u>Redação Sugerida:</u> Art. 3º, §3º Cano e ferrolho provenientes de kits de conversão devem possuir a mesma numeração da arma.</p> <p><u>Justificativa:</u> Não limitar ao mesmo fabricante, eis que é possível a personalização.</p>
Art. 9º, exclusão dos parágrafos.	<p><u>Redação sugerida:</u> Art. 9º. As armas de fogo importadas por pessoa jurídica deverão constar no banco de dados nos moldes do art. 16 desta portaria.</p> <p><u>Justificativa:</u> É inviável marcar o importador, eis que não revela qualquer benefício ao rastreamento e identificação da arma de fogo.</p>
Art. 12, §3º Para a autorização de aquisição de peças sobressalentes, o interessado deverá ser caçador ou atirador e deverá apresentar exposição de motivos que justifiquem a liberação, diretamente, à Região Militar de vinculação.	<p><u>Redação sugerida:</u> Art. 12, §3º. Para a autorização de aquisição de peças sobressalentes, o interessado deverá ser caçador ou atirador, sendo as peças de reposição apostiladas no respectivo acervo com numeração própria, dispensada a forma prevista no <i>caput</i>.</p>
Art. 12, §4º INCLUIR	<p><u>Redação sugerida:</u> Art. 12, §4º. É assegurado ao caçador e atirador a aquisição de até 05 (cinco) peças sobressalentes de cada tipo para cada arma de fogo constante em seu acervo, de modo a viabilizar a pronta reposição.</p>
Art. 12, §5º INCLUIR	<p><u>Redação sugerida:</u> Art. 12, §5º. Carregadores não serão considerados peças de reposição e poderão ser adquiridos independentemente da marca e capacidade de munição, desde que compatíveis com os</p>

	modelos das armas constantes no acervo do adquirente.
Art. 13, Parágrafo único, INCLUIR	<u>Redação sugerida:</u> Art. 13, Parágrafo único. A disposição do <i>caput</i> não se aplica ao disposto no §3º e 4º do Art. 12.
Art. 14, §1º A solicitação de remarcação deverá ser acompanhada de laudo pericial emitido por órgão de criminalística que recupere os dados da marcação original.	<u>Redação sugerida:</u> Art. 14, §1º. A solicitação de remarcação deverá ser acompanhada de laudo pericial emitido por órgão de criminalística que recupere os dados da marcação original, em caso de impossibilidade de recuperação da marcação original será atribuído nova numeração precedida da letra “X”. <u>Justificativa:</u> Em que pese a referência se remete ao art. 5º do Decreto 9847/2019, a ressalva somente se aplica as armas sem numeração ou numeração raspada. Inclusive o próprio Art. 15 desta Minuta autorizara a renumeração.
Art. 14 §2º A remarcação será feita no fabricante, para armas fabricadas no país, ou em empresa especializada autorizada pelo Exército, para armas importadas, com a mesma marcação original.	<u>Redação sugerida:</u> Art. 14 §2º. A remarcação será feita pelo fabricante ou empresa especializada autorizada pelo Exército.
Art. 15, §5º INCLUIR.	<u>Redação sugerida:</u> Art. 15, §5º. As armas que não forem objeto de doação poderão ser leiloadas a atiradores, caçadores e colecionadores, sendo previamente marcadas nos moldes do art. 3º precedidas da letra ”L” (Leilão).
Art. 16, §3º EXCLUIR	<u>Justificativa:</u> As características de raiamento sofrem alteração conforme o tempo, não se mantendo incólumes para fins de identificação. Diversos são os estudos comprovando que a perícia

	balística por meio do rastreamento do projétil e cano da arma não contribuem para solução do crime.
Art. 17ª ALTERAR	<u>Alterar 18.</u> Com fundamento na Lei Complementar 9.598/98
<u>RENUMERAR A PORTARIA</u>	
Art. 25, Parágrafo único	<u>Redação sugerida:</u> Art. 25, Parágrafo único. Os registros de que trata o <i>caput</i> deverão ser mantidos por um período mínimo de 5 (cinco) anos à disposição da Administração Militar, competindo exclusivamente as pessoas jurídicas importadoras e os comerciantes informar a aquisição de munições por atiradores e caçadores.
<u>INCLUIR EXPRESSAMENTE A REVOGAÇÃO DAS DISPOSIÇÕES EM CONTRÁRIO.</u>	

Apresentamos as seguintes sugestões à Consulta Pública nº 003-DFPC das Normas Reguladoras Do Sistema Nacional De Rastreamento De Produtos Controlados Pelo Exército –SISNaR

Art. 2º §3º Para o cadastramento de eventos de que trata o inciso III do <i>caput</i> , será disponibilizada uma interface que permitirá a integração do SisNaR com os sistemas de TI dos seus usuários.	<u>Redação Sugerida:</u> Art. 2º §3º. Para o cadastramento de eventos de que trata o inciso III do <i>caput</i> , será disponibilizada uma interface que permitirá a integração do SisNaR com os sistemas de TI dos seus usuários, bem como o acesso direto para inserção de danos para os casos de inexistência de sistema de TI dos usuários pessoas físicas.
Art. 5º O processo de Cadastramento de Produtos no SisNaR compreende os seguintes procedimentos: I – criação de Identificador Único de	<u>Redação Sugerida:</u> Art. 5º: I – criação de Identificador Único de Produto (IUP) para cada PCE por fabricante ou pessoa jurídica importadora, de acordo com o padrão estabelecido no Anexo e complementado

<p>Produto (IUP) para cada PCE por fabricante ou pessoa jurídica importadora, de acordo com o padrão estabelecido no Anexo e complementado em normas específicas; e</p> <p>INCLUIR Parágrafo Único</p>	<p>em normas específicas, exceto para armas de fogo, munições e peças de reposição que utilizarão os meios de identificação próprios; e</p> <p>Parágrafo único: Em se tratando de armas de fogo, munições, peças de reposição e demais componentes de armas de fogo o Cadastramento de Produtos no SisNaR observará exclusivamente os critérios estabelecidos nas Normas Reguladoras Dos Procedimentos Para Marcação De Armas De Fogo, Peças, De Embalagens E Cartuchos De Munição E Definição Dos Dispositivos De Segurança De Arma De Fogo.</p>
<p>Art. 6º, inciso IV EXCLUIR</p>	
<p>Art. 7º, INCLUIR Parágrafo único</p>	<p><u>Redação Sugerida:</u> Art. 7º, Parágrafo único. Não é obrigatória a impressão do código bidimensional dinâmico nas armas de fogo, seus componentes e munições, podendo constar nas respectivas embalagens.</p>
<p>Art. 8º, INCLUIR Parágrafo e Renumerar</p>	<p><u>Redação Sugerida:</u> Art. 8º. Parágrafo Primeiro. Compete aos fabricantes de PCE e pessoas jurídicas importadoras definir as soluções tecnológicas a serem empregadas e que atendam aos requisitos dos incisos do <i>caput</i></p> <p>Parágrafo Segundo: Em se tratando em armas de fogo, munições, peças de reposição e demais componentes de armas de fogo os agentes intrínsecos de identificação serão aqueles estabelecidos nas Normas Reguladoras Dos Procedimentos Para Marcação De Armas De Fogo, Peças, De Embalagens E Cartuchos De Munição E Definição Dos</p>

	Dispositivos De Segurança De Arma De Fogo.
Art. 9º, INCLUIR Parágrafo Único	Redação Sugerida: Art. 9º, Parágrafo Único: Em se tratando em armas de fogo, munições, peças de reposição e demais componentes de armas de fogo os agentes intrínsecos de identificação serão aqueles estabelecidos nas Normas Reguladoras Dos Procedimentos Para Marcação De Armas De Fogo, Peças, De Embalagens E Cartuchos De Munição E Definição Dos Dispositivos De Segurança De Arma De Fogo.
Art. 12, INCLUIR Parágrafo Terceiro	Redação Sugerida: Art. 12, Parágrafo Terceiro: Quando se tratar de arma de fogo, peças de reposição, demais componentes e munições o cadastramento de eventos se dará por meio da captura do código bidimensional dinâmico ou código unidimensional, ou informações dos dados de identificação no sistema nos moldes das Normas Reguladoras Dos Procedimentos Para Marcação De Armas De Fogo, Peças, De Embalagens E Cartuchos De Munição E Definição Dos Dispositivos De Segurança De Arma De Fogo.



8 – ANEXO – ONU – International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, illicit Small Arms and Light Weapons

International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons

Preamble

States,

Noting that in the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,¹ States identified the tracing of illicit small arms and light weapons as a key mechanism for national, regional and/or international efforts to prevent, combat and eradicate illicit small arms and light weapons and committed themselves to strengthening the ability of States to cooperate in identifying and tracing in a timely and reliable manner illicit small arms and light weapons,

Noting also that the tracing of illicit small arms and light weapons, including but not limited to those manufactured to military specifications, may be required in the context of all forms of crime and conflict situations,

Recalling the report on the feasibility of developing an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons,² prepared by the Group of Governmental Experts established pursuant to General Assembly resolution 56/24 V of 24 December 2001,

Recalling also General Assembly resolution 58/241 of 23 December 2003, in which the Assembly, pursuant to the recommendation of the Group of Governmental Experts, decided to establish an open-ended working group to negotiate such an instrument,

Noting that, pursuant to resolution 58/241, this instrument is complementary to, and not inconsistent with, the existing commitments of States under relevant international instruments, including the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime,³

Noting also that, pursuant to resolution 58/241, this instrument takes into account the national security and legal interests of States,

Convinced of the need for an effective international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons,

Stressing that all aspects relating to illicit small arms and light weapons should be addressed in a coordinated and comprehensive manner,

¹ See *Report of the United Nations Conference on Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, New York, 9-20 July 2001 (A/CONF.192/15), para. 24.

² A/58/138.

³ General Assembly resolution 55/255, annex.

Stressing also the urgent necessity for international cooperation and assistance, including financial and technical assistance, as appropriate, to support and facilitate efforts to effectively implement this instrument,

Have agreed henceforth as follows:

I. General provisions

1. The purpose of this instrument is to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons.
2. The purpose of this instrument is also to promote and facilitate international cooperation and assistance in marking and tracing and to enhance the effectiveness of, and complement, existing bilateral, regional and international agreements to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects.
3. This instrument does not restrict the right of States to acquire, manufacture, transfer and retain small arms and light weapons for their self-defence and security needs, as well as for their capacity to participate in peacekeeping operations, in a manner consistent with the Charter of the United Nations.

II. Definitions

4. For the purposes of this instrument, “small arms and light weapons” will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899:

(a) “Small arms” are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;

(b) “Light weapons” are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.

5. For the purposes of this instrument, “tracing” is the systematic tracking of illicit small arms and light weapons found or seized on the territory of a State from the point of manufacture or the point of importation through the lines of supply to the point at which they became illicit.

6. For the purposes of this instrument, small arms and light weapons are “illicit” if:
- (a) They are considered illicit under the law of the State within whose territorial jurisdiction the small arm or light weapon is found;
 - (b) They are transferred in violation of arms embargoes decided by the Security Council in accordance with the Charter of the United Nations;
 - (c) They are not marked in accordance with the provisions of this instrument;
 - (d) They are manufactured or assembled without a licence or authorization from the competent authority of the State where the manufacture or assembly takes place; or
 - (e) They are transferred without a licence or authorization by a competent national authority.

III. Marking

7. The choice of methods for marking small arms and light weapons is a national prerogative. States will ensure that, whatever method is used, all marks required under this instrument are on an exposed surface, conspicuous without technical aids or tools, easily recognizable, readable, durable and, as far as technically possible, recoverable.
8. For the purpose of identifying and tracing illicit small arms and light weapons, States will:
- (a) At the time of manufacture of each small arm or light weapon under their jurisdiction or control, either require unique marking providing the name of the manufacturer, the country of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture; and encourage the marking of such additional information as the year of manufacture, weapon type/model and calibre;
 - (b) Taking into account that import marking is a requirement for the States parties to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, require to the extent possible appropriate simple marking on each imported small arm or light weapon, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the small arm or light weapon; and require a unique marking, if the small arm or light weapon does not already bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of small arms and light weapons for verifiable, lawful purposes, nor for the permanent import of museum artefacts;
 - (c) Ensure, at the time of transfer from government stocks to permanent civilian use of a small arm or light weapon that is not marked in a manner that allows tracing, the appropriate

marking permitting identification of the country from whose stocks the transfer of the small arm or light weapon is made;

(d) Take all necessary measures to ensure that all small arms and light weapons in the possession of government armed and security forces for their own use at the time of adoption of this instrument are duly marked. Markings on these small arms and light weapons do not necessarily have to meet the requirements of subparagraph 8 (a) above;

(e) Encourage manufacturers of small arms and light weapons to develop measures against the removal or alteration of markings.

9. States will ensure that all illicit small arms and light weapons that are found on their territory are uniquely marked and recorded, or destroyed, as soon as possible. Pending such marking, and recording in accordance with section IV of this instrument, or destruction, these small arms and light weapons will be securely stored.

10. States will ensure that every small arm or light weapon always receives the unique markings prescribed in subparagraph 8 (a) above. A unique marking should be applied to an essential or structural component of the weapon where the component's destruction would render the weapon permanently inoperable and incapable of reactivation, such as the frame and/or receiver, in compliance with paragraph 7 above. States are encouraged, where appropriate to the type of weapon, also to apply the marking prescribed in subparagraph 8 (a) above or other markings to other parts of the weapon such as the barrel and/or slide or cylinder of the weapon, in order to aid in the accurate identification of these parts or of a given weapon.

IV. Record-keeping

11. The choice of methods for record-keeping is a national prerogative. States will ensure that accurate and comprehensive records are established for all marked small arms and light weapons within their territory and maintained in accordance with paragraph 12 below in order to enable their competent national authorities to trace illicit small arms and light weapons in a timely and reliable manner.

12. From the time of the adoption of this instrument, records pertaining to marked small arms and light weapons will, to the extent possible, be kept indefinitely, but in any case a State will ensure the maintenance of:

(a) Manufacturing records for at least 30 years; and

(b) All other records, including records of import and export, for at least 20 years.

13. States will require that records pertaining to small arms and light weapons held by companies that go out of business be forwarded to the State in accordance with its national legislation.

V. Cooperation in tracing

General

14. While the choice of tracing systems will remain a national prerogative, States will ensure that they are capable of undertaking traces and responding to tracing requests in accordance with the requirements of this instrument.

15. States receiving information related to tracing illicit small arms and light weapons in accordance with the provisions of this instrument and in the context of a tracing request will respect all restrictions placed on its use. Furthermore, States will guarantee the confidentiality of such information. Restrictions on use may include, inter alia:

(a) The information exchanged will be released only to competent authorities designated by the requesting State and/or authorized personnel, to the extent necessary for the effective implementation of this instrument;

(b) The information exchanged will be used only for purposes consistent with this instrument; or

(c) The information exchanged may not be released to anyone else without the prior consent of the State providing that information.

Where for legal, constitutional or administrative reasons, the confidentiality of the information cannot be guaranteed or the restrictions placed on its use in accordance with the present paragraph cannot be maintained by the requesting State, the requested State will be so informed at the time the tracing request is made.

Tracing requests

16. A State may initiate a tracing request in relation to small arms and light weapons found within its territorial jurisdiction that it considers to be illicit under the provisions of paragraph 6 above.

17. To ensure smooth and effective cooperation in tracing, requests for assistance in tracing illicit small arms or light weapons will contain sufficient information, including, inter alia:

(a) Information describing the illicit nature of the small arm or light weapon, including the legal justification therefor and, to the extent possible, the circumstances under which the small arm or light weapon was found;

(b) Markings, type, calibre and other relevant information to the extent possible;

(c) Intended use of the information being sought.

Responses to tracing requests

18. States will provide prompt, timely and reliable responses to tracing requests made by other States.

19. States receiving a tracing request will acknowledge receipt within a reasonable time.
20. In responding to a tracing request, the requested State will provide, subject to paragraph 22 below, all available information sought by the requesting State that is relevant for the purpose of tracing illicit small arms and light weapons.
21. The requested State may seek additional information from the requesting State where a tracing request does not contain the information required in paragraph 17 above.
22. States may delay or restrict the content of their response to a tracing request, or refuse to provide the information sought, where releasing the information would compromise ongoing criminal investigations or violate legislation providing for the protection of confidential information, where the requesting State cannot guarantee the confidentiality of the information, or for reasons of national security consistent with the Charter of the United Nations.
23. If a State delays or provides a restricted response to a tracing request, or refuses to provide the information sought, on the grounds identified in paragraph 22 above, it will inform the requesting State of the reasons for this. The requesting State may subsequently seek clarification of this explanation.

VI. Implementation

General

24. In accordance with their constitutional processes, States will put in place, where they do not exist, the laws, regulations and administrative procedures needed to ensure the effective implementation of this instrument.
25. States will designate one or more national points of contact to exchange information and act as a liaison on all matters relating to the implementation of this instrument.
26. States will cooperate on a bilateral and, where appropriate, on a regional and international basis to support the effective implementation of this instrument.

International cooperation and assistance

27. States in a position to do so will, upon request, seriously consider rendering technical, financial and other assistance, both bilaterally and multilaterally, in building national capacity in the areas of marking, record-keeping and tracing, in order to support the effective implementation of this instrument by States.
28. States in a position to do so are also encouraged to seriously consider international cooperation and assistance to examine technologies that would improve the tracing and detection of illicit small arms and light weapons, as well as measures to facilitate the transfer of such technologies.

29. States will encourage initiatives, within the framework of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,¹ that mobilize the resources and expertise of, and where appropriate cooperation with, relevant regional and international organizations to promote the implementation of this instrument by States.

United Nations

30. States will cooperate, as appropriate, with the United Nations to support the effective implementation of this instrument.

31. States will, as soon as possible after the adoption of this instrument, provide the Secretary-General, through the Department for Disarmament Affairs of the Secretariat, with the following information, updating it when necessary:

(a) Name and contact information for the national point(s) of contact;

(b) National marking practices related to markings used to indicate country of manufacture and/or country of import as applicable.

32. States hereby request the Secretary-General to collate the information provided by States pursuant to paragraph 31 above and to issue it to States Members of the United Nations, providing the assistance requested for the implementation of the instrument by States, as well as assisting States to interact on a bilateral basis.

International Criminal Police Organization

33. States, where appropriate, will cooperate with the International Criminal Police Organization (Interpol) to support the effective implementation of this instrument.

34. States that are members of Interpol will promote the implementation of this instrument when participating in Interpol's organs.

35. States, where appropriate, in accordance with Interpol's statutory rules, are encouraged to make full use of Interpol's mechanisms and facilities in implementing this instrument. Interpol may, at the request of the concerned State, assist in the following areas:

(a) Facilitation of tracing operations conducted within the framework of this instrument;

(b) Investigations to identify and trace illicit small arms and light weapons;

(c) Wherever possible, building national capacity to initiate and respond to tracing requests.

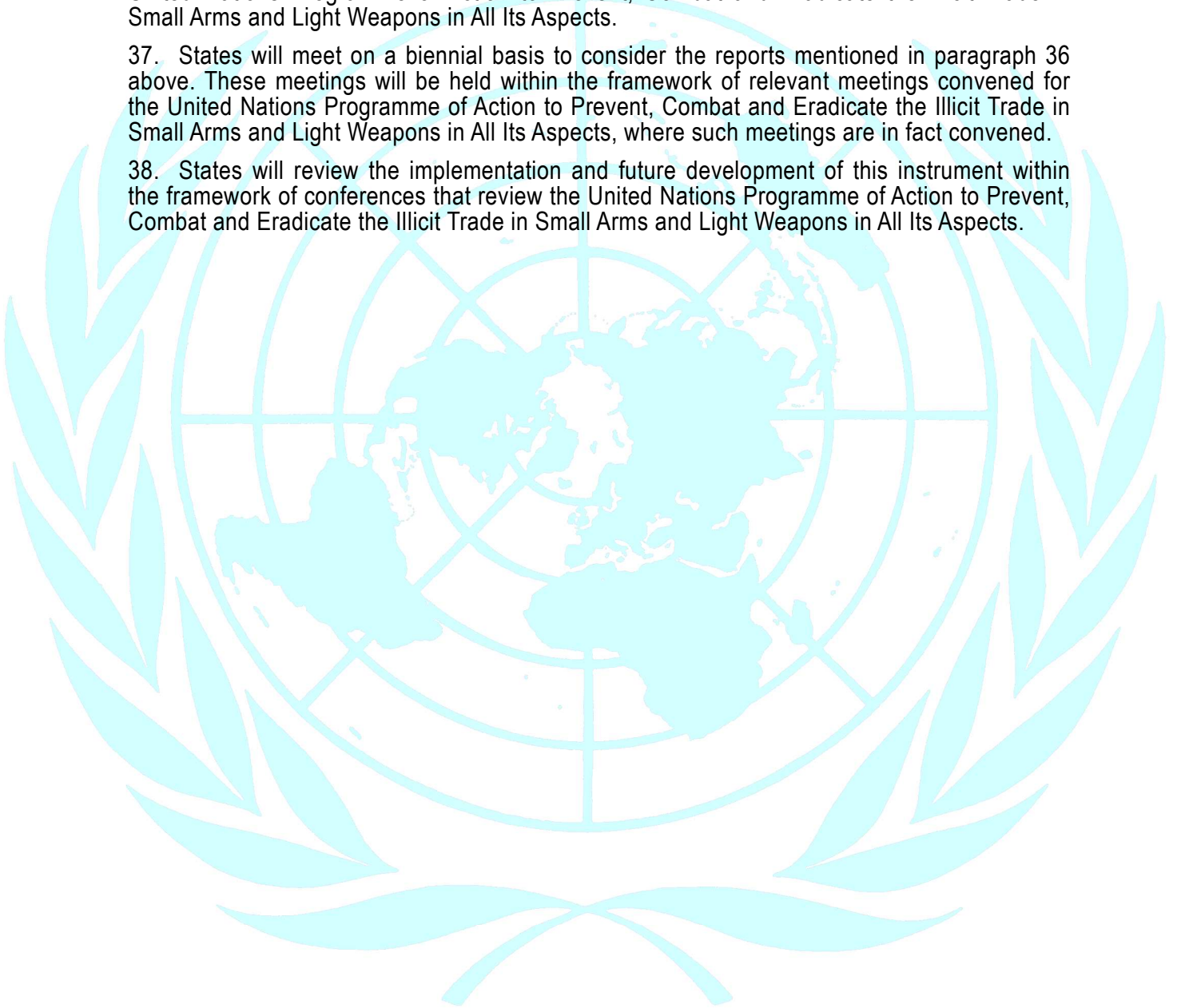
VII. Follow-up

36. States will report on a biennial basis to the Secretary-General on their implementation of this instrument including, where appropriate, national experiences in tracing illicit small arms

and light weapons as well as measures taken in the field of international cooperation and assistance. This report may form part of a State's national report on its implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

37. States will meet on a biennial basis to consider the reports mentioned in paragraph 36 above. These meetings will be held within the framework of relevant meetings convened for the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, where such meetings are in fact convened.

38. States will review the implementation and future development of this instrument within the framework of conferences that review the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.





**9 – ANEXO – Misfire: Firearm Registration in Canada –
PUBLIC POLICY SOURCES**

PUBLIC POLICY SOURCES

Number 48

Misfire: Firearm Registration in Canada

by Gary Mauser
Simon Fraser University

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Executive Summary

In 1995, the Canadian government introduced universal firearm registration. The plan is to license all gun owners by January 1, 2001, and then register all firearms by January 1, 2003. It was claimed that firearm registration would cost no more than \$85 million over five years. Freedom of Information requests have uncovered that firearm registration has cost at least \$600 million over the past three years. In addition to concerns about mismanagement, the firearm registration has been criticized for its abuse of individual privacy and property rights. Few believe that forcing hunters and target shooters to register their firearms will actually reduce criminal violence.

The “demonization” of ordinary people who happen to own a gun lays the foundation for a massive increase in governmental intrusiveness in the lives of ordinary citizens. Firearm registration violates the basic principles of policing set forth by Sir Robert Peel, the father of the English “Bobbies.” Passive resistance to firearm registration is expected to be widespread as it has been in other countries. The history of gun control in both Canada and the United Kingdom demonstrates the “slippery slope” toward eroding personal liberties, a process that begins with even the most benign appearing gun control measures.

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Firearm Registration in Canada

Proponents of firearm registration say it will improve public safety. It is supposed to encourage greater responsibility among owners and also provide police with greater methods of tracing lost or stolen firearms. Opponents argue that such a scheme is unworkable and just creates another costly federal bureaucracy. The recent introduction of a licensing scheme for *gun owners* has already provided a taste of the costs and pitfalls that will accompany full registration of *firearms*. The government has proceeded in two steps towards this. Existing gun owners must have applied and received a license by 1 January 2001. By January 2003, the firearms themselves must be registered.

In 1995, the Canadian federal government passed the Firearms Act (Bill C-68). This act, among other things, mandated the licensing of all firearm owners and introduced universal firearm registration. This legislation is all the more remarkable because Canada already had a firearm regime that was quite strict: handguns had been registered since 1934; police scrutiny had been required for all firearm purchasers since 1977; a wide range of weapons were prohibited in 1977; and in 1991, a large number of military-style semi-automatic rifles and large-capacity magazines were also prohibited or restricted.

Universal firearm registration and owner licensing sounds reasonable to many people. Unfortunately, a number of practical problems have emerged in the past few years since the federal government has begun to implement it. First, costs are escalating, second, firearm registration violates basic principles of policing, and third, public support appears to be evaporating for registering firearms. This is not just a problem in fiscal mismanagement; firearm registration is another step along a slippery slope that could damage individual freedom for all Canadians.

This paper will examine the disturbing increase in police power that existing gun legislation has already created.

The program's costs have escalated, seemingly out of control

When firearm registration was introduced, it was claimed by the federal government that it would cost \$85 million over 5 years to introduce (Department of Justice, 1995). At the time this was announced, these estimates were subject to strong doubt, as registration involves the cooperation of several federal ministries (e.g., Customs, the RCMP, Justice, and Indian Affairs), all 10 provincial governments, as well as all three territorial governments.

The Canadian Firearm Centre (CFC) was set up in 1996 to administer firearm registration. Although firearm owners will have until January 1, 2003 to register their firearms, the cost of the CFC passed \$500 million in early 2000, and the total is expected to reach \$1 billion within another year. While Bill C-68 was before Parliament, I estimated that the final cost would be between \$1 billion and \$1.5 billion (Mauser, 1995a, b). I may have underestimated the true costs.

Despite the difficult fiscal situation facing the Canadian government during the 1990s, the budget for the CFC has grown rapidly, even exponentially. At the same time the total number of RCMP officers has declined, the number of employees working on firearm registration at the Canadian Firearms Centre, and associated government agencies, grew from a handful to at least 600 employees in mid-1999 and to over 1,700 by July 2000 (Breitkreuz, 20 May 1999; 19 July 2000). Despite this impressive growth, there is a backlog of more than a million applications. This situation has prompted the CFC to process incoming appli-

cations faster (reportedly one every five minutes), and declare a six month “grace period” for owners before they may be charged for not having a firearm license (Levant, 2001, p. A15).

More importantly in a time of tight fiscal constraints, this growth has meant that other governmental priorities have languished while costs have skyrocketed for firearms licensing and registration. The RCMP budget was virtually frozen between 1993 and 1999, and spending on justice services overall has been decreasing (Statistics Canada, 1999, p. 11). RCMP salaries were frozen for seven years, and recruiting and training were severely curtailed. Despite their declining numbers, a large number of RCMP officers have been seconded to provincial liaison jobs where they assist in the screening of license and registration applications. Although the number of police officers has increased slightly in the last couple years, the absolute number of officers declined between 1990 and 1998 (Besserer and Tufts, 1999). The statistics look even worse when considered as a ratio of the number of police officers to population. This ratio is at its lowest point since 1972 (Statistics Canada, 1996, p. 1). In 1998, there were 181 police officers for every 100,000 population, but back in 1975, there were 206 police officers per 100,000. This means there is a shortfall of over 500 RCMP officers in BC alone (Besserer and Tufts, 1999; Statistics Canada, 1999).

These costs might be worth it if the benefits were substantial enough. But what are the benefits? It is true that gun deaths continue to decline, but this decrease does not appear to be linked to the gun laws. Firearm accidents started to decline in the mid-1960s, before the federal gun laws were changed. Similarly, homicide rates have declined over the past few decades, but no solid evidence can be found linking this fortuitous change to the new gun laws (Dandurand 1998; Mauser and Holmes, 1992). Over three-quarters of all deaths associated with firearms in both Canada and the United States are due to suicides. Unfortunately,

there is no convincing evidence showing that stricter gun laws can help reduce suicide rates (Dandurand, 1998). Despite the lower rates of firearm ownership in Canada than in the United States, Canada has a higher suicide rate than the United States.

The supporters of firearm registration argue that its benefits are that it controls violence by increasing the difficulty of obtaining firearms and by helping police solve crimes. There is no evidence that merely increasing the difficulty of obtaining a firearm through stricter gun regulations has any important effect on crime rates (Kleck, 1991). The conditions under which registration records might help solve a gun crime are quite narrow (Kleck, 1997). Despite there being a requirement to register handguns since 1934, eighty percent of all reported gun robberies are committed with handguns (Canadian Centre for Justice Statistics, 1999, p. 54). Department of Justice officials admitted that they could not identify a single instance where handgun registration helped solved a crime (Hansard, 1995, p. 12,259). The RCMP has repeatedly (e.g., in 1945, 1977, 1990) recommended against attempting to register long guns such as rifles and shotguns (Smithies, 1998). The benefits of firearm registration appear elusive.

Universal Firearms Registration violates the basic principles set forth by Sir Robert Peel

According to Sir Robert Peel, the father of modern policing, the police must have the support of “the policed” for laws to be enforced effectively (Reith, 1948). His principles were announced in 1822 when he founded the London “Bobbies.” However, many firearm owners do not accept the legitimacy of firearm registration. This rejection by the policed necessarily means that registration violates Peel’s basic principles of policing and accelerates the tendency towards an increasing militarization of police forces. As Peel warned, “the extent to which the cooperation of the public

**Table 1: PEEL'S NINE PRINCIPLES OF POLICING:
Sir Robert Peel, England (1822)**

1. To prevent crime and disorder, as an alternative to their repression by military force and by severity of legal punishment.
2. To recognize always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.
3. To recognize always that to secure and maintain the respect and approval of the public means also the securing of willing cooperation of the public in the task of securing observance of laws.
4. To recognize always that the extent to which the cooperation of the public can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving police objectives.
5. To seek and to preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustices of the substance of individual laws; by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing; by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life.
6. To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public cooperation to an extent necessary to secure observance of law or to restore order; and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.
7. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interests of community welfare and existence.
8. To recognize always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the state, and of authoritatively judging guilt and punishing the guilty.
9. To recognize always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

Source: Charles Reith, *A Short History of the British Police*, London: Oxford University Press, 1948.

can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving police objectives." The increasing use of physical force by the police to impose unpopular laws will divide the police from the policed even further.

In order to be useful to the police, firearm registration requires near total compliance. However,

experience in other countries shows that passive resistance to firearm registration is widespread (Kopel, 1992). Many normal Canadians who happen to own firearms are disaffected by the 1995 firearm legislation. Surveys show that in Canada a high percentage of gun owners will refuse to register their firearms. Willingness to comply may even have decreased. In 1995, 72 percent said they would comply (Mauser and Buckner, 1997).

More recently, a 1997 Environics poll found that only 58 percent said they would comply (Breitkreuz, 1999c). Press reports of problems with the registry and growing public dissatisfaction suggest that percentage has shrunk since 1997. Many gun owners will sell all their guns; others will just register a few, or they may not register any. In addition to the gun owners forthright enough to say in a telephone survey they will violate the law, there are undoubtedly others who haven't heard about the requirement, or who resent the invasion of their privacy and who may not answer questions or answer them honestly, or who just won't get around to complying with the law. Experience in other countries shows that passive resistance to firearm registration is widespread among otherwise law-abiding citizens.

Although the chiefs of police support this legislation, surveys of serving police officers show that most other ranks do not. The Canadian Police Association has even voted to reconsider its support for firearm registration. Surveys of serving police officers show a high percentage of officers who do not support this legislation (Breitkreuz, 1999c).

Without resorting to military force, it is difficult to enforce laws that are not supported by the public. This can be seen by the Canadian and U.S. experiences with Prohibition during the early part of the Twentieth Century. More recently, it may also be seen in the effort to prohibit marijuana and other narcotics. Such laws are futile because they are exercises in morality. If Prohibition was an attempt to impose rural values upon urban residents, firearm registration may be seen as an effort to inflict urban values upon rural Canadians.

If Prohibition was an attempt to impose rural values upon urban residents, firearm registration may be seen as an effort to inflict urban values upon rural Canadians.

Although many existing gun owners will not comply with registration legislation, it is already having an adverse impact on gun purchases and it is damaging the Canadian hunting and shooting culture. Many gun owners are abandoning hunting or owning firearms in the face of the increasing arbitrariness of firearm legislation. Parents are finding it increasingly difficult to pass on the values of their rural hunting culture to the next generation. The past two decades of arbitrary and punitive Liberal government gun control measures have devastated Canadian firearm businesses: three-quarters

of all retailers selling firearms have gone out of business; over half of all retailers selling ammunition have disappeared (RCMP, 1999). Hunter numbers have declined during the same time period. Mandatory registration will accelerate this trend by turning many rural Canadians into scofflaws, and it will encourage hunting illegally.

Will gun owners register their firearms, drop out of firearm ownership, or continue to own and use firearms without bothering to register them? In assessing the reaction of Canadian gun owners to firearm registration, there are two important questions that need to be answered: first, how many people owned one or more firearms in 1995, and second, what are gun owners doing in the face of this legislation? Without solid answers to these questions, we are unable to evaluate the effectiveness of firearm registration.

How many gun owners are there? In 1995, Department of Justice (DOJ) Canada estimated that about 3.5 million people in Canada owned firearms. I believe 3.5 million is too low. Based on my re-analysis of the DOJ Canada's survey, and my own representative surveys, I estimated that

there were about 5 million gun owners in Canada in 1995, not 3.5 million (Mauser, 1995a, b).

What will Canadian gun owners do when they are faced with increasingly onerous ownership requirements? The latest DOJ Canada estimate is that there are only 2.4 million gun owners (Canadian Firearms Centre, 2001). The DOJ assumes that this drop is entirely due to former firearm owners who have sold or turned all their firearms in to the police, thus removing them from the category, “gun owner.” Certainly, many have. However, it seems excessively naïve to assume that respondents will admit they own a firearm even when they fear it might be illegal. Many if not most gun owners would be expected to be uncertain about their compliance with the gun laws, after government advertising over the past few years has stressed the draconian penalties for violating the complex new law. The new estimate by the DOJ implies that almost one million people got rid of all of their guns. Since each Canadian gun owner has slightly more than two guns on average, this means that about two million guns have been sold or turned in to the RCMP. However, there are no records that show that this many firearms were sold or turned in for destruction over the past few years. Apparently, many gun owners have quietly kept their guns without getting the necessary license. They are now subject to a criminal penalty of ten years in jail if they “knowingly” refuse to comply with this law.

Many Canadians, particularly rural families, may decide to ignore the law.¹ For cost reasons, some people may choose to become gun “users” rather than gun owners. All that is needed is that there be one “official gun owner” per household. Many Canadians will not see the necessity to pay \$10 or

even \$80 per person (see table 6). If only one person in a household signs up as a “government licensed” gun owner, all family members could have access to ammunition and to a gun for protection. These Canadians will be acting illegally of course, but, given the low level of enforcement, many nevertheless will decide that there is no immediate need for them to conform to the law.² The RCMP has unofficially said they will not make any effort to locate such people, but if they encounter an unregistered firearm, they may have to lay charges. Hunting is more problematic. It is easy to see that having a hunting licence typically implies firearm ownership. Thus, I predict this law will contribute to an increase in poaching.

Public support is declining

Voting patterns throw an important light on gun legislation in relation to Peel’s policing principles and public acceptance of law. Politicians are discovering, in both the United States and Canada, that calling for more gun control does not contribute to winning elections. For example, even though former Vice-President Gore is a strong supporter of stricter gun control measures, he found it expedient to play this down in the presidential elections last year. Hunters are an important voting block in key states like Michigan, Pennsylvania, Missouri and Florida, states that were “must win” states if he were to become president (Palm, 2000).

It is easy to see why politicians get seduced into believing that calling for more gun control would be politically popular. Between elections, politicians can only gauge public support from public opinion polls. Polls are difficult to conduct, and even more difficult to interpret. Perhaps an illus-

1 Canadians have long decided to ignore the 1934 law requiring them to register their handguns. The RCMP unofficially estimates that there are at least as many unregistered handguns in the hands of “ordinary” Canadians as there are registered handguns. A former BC Provincial Firearm Officer told me that he estimates there are 2 or 3 times as many unregistered handguns in Canadian households as registered handguns (Newson, 1992).

2 Firearm owners may be charged for “unsafe storage” if unauthorized persons have access to their firearms. Charges are still possible even if the firearms have trigger locks and have been locked in a safe.

**Table 2: “Do you agree or disagree that all firearms should be registered?”
(1,505 responses)**

Responses	Atlantic (%)	Quebec (%)	Ontario (%)	Prairies (%)	BC (%)	Canada (%)
Agree	84	94	86	73	82	84
Disagree	13	5	12	22	17	14
Don't Know	3	1	2	5	1	2

Source: Mauser and Buckner, 1997.

tration will be helpful. In 1995, Professor Taylor Buckner of Concordia University and I asked 1,500 Canadians directly about universal firearm registration (Mauser and Buckner, 1997). Our results mirrored those of other polls that have asked this same question (see table 2). We found 84 percent of respondents supported requiring firearms to be registered, which is approximately what Angus Reid found in a survey conducted for the Coalition for Gun Control (Reid, 1993). More recent polls have found that this percentage has declined to approximately 76 percent. But this still does not tell the full story.

In public opinion research, a distinction must be made between mass opinion and public judgment. Many respondents will readily volunteer opinions without thinking very deeply about the question; for example, it is easy to agree that poverty should be reduced. They may even agree to pay higher taxes hypothetically. But if people are asked to take money out of their own paycheques to do it, their “support” for eliminating poverty quickly diminishes. This illustrates that public issues involve making difficult tradeoffs. This is also true with firearm registration. Registration sounds like a good idea so long as it does not involve any cost or inconvenience. However, public opinion begins to shift on firearm registration as soon as people realize that it will inconvenience them personally, or cost them—as taxpayers—a fair amount of money, or divert governmental resources from other desired programs (Wade and Tennuci, 1994).

Table 3 shows that support for firearm registration drops over thirty points (to 50%), when respondents are told that it might cost \$500 million to register all firearms in Canada. Support for registration drops even further, to only 43 percent, when the tradeoff is a reduction in the number of constables on the street. Canadians were particularly opposed to diverting police officers from dealing with violent crime to handling the paperwork required by registering hunters and target shooters. This appears to be actually the case. It is not known how much support would drop if respondents knew that the costs are now even higher than \$500 million.

But how does this analysis translate into votes? Many people who support additional gun control measures appear to do so on the basis of disinterested faith and lack of knowledge. A high percentage of supporters are unaware of what gun laws already exist, and, because they have no personal stake in the issue, gun control is not an issue that could be expected to motivate them to vote. The costs—albeit hypothetical governmental expenditures—are not real. However, hunters, target shooters, and other gun owners are not disinterested. Gun laws directly affect them. Their costs are not hypothetical—they are real and immediate. The personal cost of further gun control motivates them to vote.

Opposition to firearm registration is deep. Six of the ten provinces, having a majority of Canada’s population among them, mounted a constitu-

Table 3: Support for firearm registration drops when respondents are informed of the probable costs (1,505 responses)

Question: "If it would cost \$500 million, would you still agree [strongly or somewhat] that all firearms should be registered?" (Only asked of those respondents who answered they "agree strongly or somewhat.")

Responses	Atlantic (%)	Quebec (%)	Ontario (%)	Prairies (%)	BC (%)	Canada (%)
Agree	45	56	52	38	50	50
Disagree	46	40	40	51	43	45
Don't Know	9	4	8	11	7	5

Question: "If registration would force the police to pull constables off the street to deal with the paperwork involved, would you still agree [strongly or somewhat] that all firearms should be registered?" (Only asked of those respondents who answered they "agree strongly or somewhat.")

Responses	Atlantic (%)	Quebec (%)	Ontario (%)	Prairies (%)	BC (%)	Canada (%)
Agree	42	52	43	31	43	43
Disagree	48	43	48	57	49	50
Don't Know	10	5	9	12	6	7

Source: Mauser and Buckner, 1997.

tional challenge of the 1995 Firearms Act.³ They lost their challenge, but perhaps that should have been expected, given that the Prime Minister unilaterally appoints all of the judges on the Supreme Court of Canada. Despite this, another constitutional challenge has since been launched, based this time of violations of charter rights by Professor Ted Morton at the University of Calgary.

Despite the absence of any national organization as powerful as the NRA in Canada, the gun issue has had an impact on Canadian politics. Five provinces have held general elections since the Canadian Parliament passed the Firearms Act of 1995 (Bill C-68): Ontario, New Brunswick, Nova Scotia, Saskatchewan, and Manitoba. Bill C-68 was an issue in every one of them; no party supporting firearm registration was elected. In two of

these provincial elections (New Brunswick and Nova Scotia), parties favouring the legislation were defeated and replaced by parties that oppose it. In another two (Saskatchewan and Manitoba), both major parties opposed the legislation, and in the last province (Ontario), the party opposing the legislation won reelection in the face of strong challenge from parties supporting additional legislation (Gunter, 1999b). Of course, many factors influence voting patterns, but at the very least it is clear that support of gun legislation is not an electoral plus and is likely a negative.

Firearm registration also had a powerful if subtle impact on the federal election last year. Opposition to firearm registration was an important reason that the Liberals were all but shut out in Western Canada by the Canadian Alliance. De-

³ Alberta challenged the legislation on the basis that the federal scheme violated the constitutional distribution of powers. According to the Canadian constitution, the provinces are responsible for regulating normal usage of private property. Three other provinces joined Alberta: Saskatchewan, Manitoba, and Ontario. New Brunswick, and Nova Scotia joined the challenge later after provincial elections changed their government. In addition, all three territories joined the challenge.

spite a poor campaign, the Alliance gained both votes and seats in BC as well as throughout the West. Opposition to firearm registration even contributed to the Alliance gaining votes and seats in the urbanized Lower Mainland. Although firearm registration was not that important in Central Canada, opposition to firearm registration did help the Alliance to win two seats in rural Ontario, and contributed to the Conservatives holding on in Atlantic Canada.

Canadian gun control illustrates the “slippery slope”

The history of gun control in Canada, as in the United Kingdom, demonstrates the “slippery slope” of accepting even the most benign appearing gun control measures. At each stage, the government either restricted access to firearms, or prohibited and confiscated arbitrary types of ordinary firearms. Firearms served as a convenient target as the public was frightened of them. Government claimed it needed more intrusive violations of basic rights and freedoms to protect the public. But after several increasingly restrictive laws, there is no evidence that these firearm laws actually reduced violent crime (Mauser and Maki, 1998, 1999). The government is unfazed. But the rights and liberties of all Canadians have been reduced.

Gun laws are passed during periods of fear and political instability. After the threat recedes, the government’s police powers have increased, and individual rights and freedoms have been diminished. The question seems never to be asked:

where is the appropriate level of control for firearms? Politicians continually call for more gun laws, and the bureaucracy continues to grow.

The Great Depression of the 1930s was a period where the Canadian government feared labour unrest as well as American “rum runners.” As a result, in 1934 the government of Canada passed firearms legislation that mandated handgun registration. There were separate permits for “British subjects” and for “aliens.”⁴ The RCMP was authorized to issue and to monitor these permits, which were handled at the level of the local detachment. Unsurprisingly, very few “aliens” qualified for the permit.

World War II was a difficult period that saw another round of gun control laws introduced.⁵ In 1940, alien firearm permits were revoked, and firearms were prohibited and confiscated from “dangerous aliens” (including Japanese Canadians—even though Canada was not yet at war with Japan). In 1941 Asians were forbidden to own firearms in BC, including Chinese Canadians, even though China was officially our ally throughout the war. This was the unilateral decision of the BC Attorney General. All firearms (including long guns) were registered during the war years. Registration ended in 1945 at the request of the RCMP who did not think it was useful.

Further firearm legislation was introduced during the “red scare” that followed the war. In 1951 the government established the registration of automatic firearms.⁶ In addition, a new offense, “possessing and carrying” an offensive weapon

4 Up until the law was changed in 1950, Canadian law defined an alien as any person who was not a British subject. Early in the twentieth century, few Asians or Blacks qualified as British subjects, nor, of course, did many of the Americans then living in Canada.

5 For Canada, World War II started on September 10, 1939, when Canada declared war against Germany. Canada didn’t declare war on Japan until after Pearl Harbour.

6 An automatic—or fully automatic—firearm continues to shoot as long as the trigger is held down—or until the magazine is empty. The RCMP were concerned about their potential for misuse, even though automatic firearms are rarely involved in criminal activity.

**Table 4: The 1977 Canadian Firearms Legislation
Proclaimed in Aug 1977, came into force in 1978 and 1979**

- required a police permit to purchase a firearm, the Firearms Acquisition Certificate,
- used Orders-in-Council to ban a large variety of weapons, including fully automatic firearms
- centralized the registration requirements for “restricted weapons,” (e.g., handguns, which have been registered since 1934)
- eliminated protection of property as a legitimate reason for registering handguns,
- introduced penalty for “unsafe storage” of firearms,
- introduced requirements for firearms and ammunition business permits
- introduced additional penalties for the criminal misuse of a firearm during the course of committing another crime (this section has rarely been applied)

for “purposes dangerous to the public peace” carried a maximum penalty of 5 years in jail. The 1951 firearm legislation gave the police the authority to search without warrant “a person or vehicle or premises other than a dwelling house” if they had “reasonable grounds” to believe they would find a weapon that would or had been used for a criminal offense. They were also given authority to seize such weapons. This somewhat narrowed the authority police had been given during the war to search without warrant any “premises or person” where it is “reasonably suspected” there were firearms or explosives present.

The FLQ crisis in Quebec dominated the late 1960s through the first few years of the 1970s. In 1969, another firearm law was introduced. This legislation created the categories of “restricted weapon” and “prohibited weapon” for the first time. “Restricted weapons” (e.g., handguns) had to be registered and their use was subject to strict conditions—including the requirement that a permit must be obtained by the owner to transport it outside of the place where it is registered. However, citizens were allowed to purchase restricted weapons if they applied for the proper permits.

“Prohibited weapons” (e.g., fully automatic firearms, silencers, switchblades, rifles and shotguns shorter than 66 cm), were made subject to even more stringent conditions than restricted weapons. It became illegal to purchase or to sell a prohibited weapon, with the exception of those individuals who happened to own them before the introduction of the legislation. Despite this exception, pre-existing owners could keep only certain types of prohibited weapons; other categories—such as switchblades—were confiscated. Severe restrictions were put in place on transporting the excepted prohibited weapons outside the place where they are registered. As well, pre-existing owners were not allowed to buy or sell the remaining prohibited weapons amongst themselves. However, until new legislation was introduced in 1978, non-restricted firearms (ordinary rifles and shotguns) could be bought without a police permit.

The 1969 legislation, although passed in a period of crisis, set the pattern for all future firearm legislation in that the wording and conditions attached to restricted weapons permits were no longer established by legislation. The police were given the powers to administratively set the conditions for all firearms permits. Every permit

from 1969 onwards must now be “in a form prescribed by the Commissioner [of the RCMP].” As well, the legislation allowed weapons to be designated as “prohibited” or “restricted” by Order-in-Council.

Police search and seizure powers were increased. The type of warrantless search and seizure allowed under the 1951 Act remained largely unchanged, but the grounds justifying such search and seizure was broadened. Under the 1951 Act, police had to have reasonable grounds to suspect the weapon was used for criminal activity. Under the 1969 Act, police could utilize such powers on grounds “related to prohibited or restricted weapons” rather than on the grounds that “it is being used to commit a criminal offense.” Mere ownership of a type of firearm for the first time provides grounds for a police search, even when no offense had been committed.

The current registration system, requiring a separate registration certificate for each restricted weapon, also took effect in 1969. The position of “firearm registrar” within the RCMP was created and given the authority to attach any “reasonable conditions” to the “use, carriage or possession of the [restricted] weapon ... or ammunition, as he deems desirable in the interests of the safety of other persons.”

For the first time in Canadian history the government gave itself the authority to restrict or prohibit, through Order-in-Council, any firearm “... not commonly used in Canada for hunting or sporting purposes.”⁷ Even these measures were too weak, for in 1970 the Canadian govern-

ment declared the War Measures Act and, with the acquiescence of Quebec’s premier, occupied Quebec with the Canadian armed forces. The War Measures Act was rescinded in 1971, but not before over 4,000 warrantless searches took place in the province; the Canadian Army arrested and detained without warrant or access to legal counsel more than 500 people, 95 percent of whom were released 2 months later without charges. The War Measures Act, like the firearm legislation of 1969, were acts of a desperate government struggling with a situation in Quebec that it did not understand. Both measures seriously threatened long-standing Canadian liberties and freedoms.

New firearms legislation was introduced in 1977 as part of a log-rolling exercise with MPs in order to form a majority for abolishing capital punishment. In this new legislation, automatic firearms, which had to be registered under the 1951 legislation, were reclassified as “prohibited weapons.” Owners of automatic firearms were “grandfathered,” in that they were allowed to keep them, but they were faced with confiscation without compensation when they died. For the first time since World War I, a police-issued permit was required to obtain “ordinary” rifles and shotguns (the Firearms Acquisition Certificate or FAC).⁸ A provision for a mandatory firearm safety course was abandoned because the provinces and the federal government couldn’t agree who would pay for it.

A new crime was introduced for “unsafe storage of firearms,” although no definition of safe storage was provided.⁹ The protection of property

7 Orders-in-Council are decisions made at the Cabinet level and therefore undergo no parliamentary review and are secret. Neither the public nor the Parliament (outside of the members of Cabinet) are aware of them until they are issued in the name of the Canadian government.

8 The certificate cost \$10.

9 Accidental firearm deaths are rare, and in any case, firearm storage is already covered under provincial hunting regulations. Firearm accidents declined dramatically in the 1960s with the introduction of mandatory hunter safety courses (Mauser, 1995a).

was eliminated as a suitable reason for acquiring a restricted firearm, and owners could no longer register handguns at their business address. The police, in practice, began—and continue—to refuse an FAC to anyone who indicates the desire to acquire a firearm for self-protection. A variety of weapons—including firearms—were prohibited over the next few years by Order-in-Council.

In 1991, significant changes were made in the firearm law in response to a horrific shooting that shocked the country. In 1989, Marc Lepine, a deranged loner, massacred 14 women at the University of Montreal and then committed suicide. The Montreal Police did not enter the building until 30 minutes after Lepine began his rampage. After a lengthy investigation, the Quebec Coroner concluded that poor police response time was primarily responsible for the high number of deaths, not the particular weapon used. Lepine's use of a semi-automatic mini-14 Ruger Ranch Rifle with several high-capacity magazines sparked calls for banning semi-automatic military style firearms as well as high capacity magazines.¹⁰

Kim Campbell, then Justice Minister, decided there should be new firearm legislation. The 1991 legislation, among other things, expanded the list of prohibited weapons to include "converted full automatics" and a large number of semi-automatic military style rifles and shotguns. Owners of the newly prohibited firearms were faced with confiscation without compensation.¹¹ In addition, the government further centralized the handgun registration system.

Bill C-17 passed in the House of Commons on November 7, received Senate approval and Royal Assent on December 5, 1991, then came into force between 1992 and 1994. This legislation made

sweeping changes to the FAC system, including requiring applicants to provide a photograph, and imposing a mandatory 28-day waiting period for an FAC, plus a mandatory requirement for safety training. At the same time, the application form was expanded to provide more background information. Answering "yes" to any of a number of personal questions initiated a deeper investigation. The new application grew to 4 pages with 35 questions. For the first time, applicants had to provide the names of two people who would act as references for them, in a manner similar to a passport application. If married or divorced one of the references was required to be a spouse or former spouse.

Some of the questions in the application were quite personal, including queries about personal health, finance, and intimate relationships. For example, "During the last five years, ...

Q31. Have you been treated for threatened or attempted suicide, depression, behavioral problems or emotional problems, or are you currently under treatment or taking medication for such?"

Q32. Have you been treated for alcohol or drug abuse or are you currently under treatment or taking medication for such?"

Q34. Do you know if you have been reported to the police or social services for violence, threatened or attempted violence, or other conflict in your home or elsewhere?"

Q35. "During the last two years,...

A. Have you experienced: divorce, separation, or relationship breakdown?"

10 Semi-automatic firearms are self-loading. A separate trigger squeeze is required for each shot. Many common sporting firearms are semi-automatic.

11 No empirical studies had been conducted to determine which, if any, types of firearms pose a threat to public security.

**Table 5: The 1991 Canadian Firearms Legislation
Proclaimed in Dec 1991, came into force between 1992 and 1994**

October 1992	Registration of semi-automatic military-style rifles; ban of converted automatic military-style rifles; ban of high-capacity magazines; ban of "non-sporting" ammunition
January 1993	Increase in the Firearm Acquisition Certificate fee from \$10 to \$25/\$50
June 1993	New FAC requirements: applicants have to: <ul style="list-style-type: none"> • complete the firearm safety course, • fill out the long application form (35 questions; including questions about personal health, finance, and intimate relationships), • provide a passport-type photograph • obtain two references (one required to be a wife or spouse, for those who are married or in a common-law relationship) • mandatory 28-day waiting period for an FAC • increased regulations for firearms dealers • specific regulations for safe storage, handling and transportation of firearms
January to April 1994	Introduction of the requirement that applicants had to complete the firearm safety course for an FAC

B. Have you experienced failure in school, loss of job or bankruptcy?"

Bill C-17 required more thorough police screening of FAC applicants, which often involved telephone checks with neighbours and spouses or ex-spouses. Some other major changes included: increased penalties for firearm-related crimes; new Criminal Code offenses; new definitions for prohibited and restricted weapons; new regulations for firearms dealers; clearly defined regulations for the safe storage, handling and transportation of firearms; and a requirement that firearm regulations be drafted for review by Parliamentary committee before being made by Governor-in-Council.

A major focus of the new legislation was control of semi-automatic military-style guns. It also expanded the class of prohibited weapons to include semi-automatic firearms that had been

converted from full-automatic. Owners of the newly prohibited firearms were faced with eventual confiscation without compensation. The legislation also prohibited high-capacity cartridge magazines for automatic and semi-automatic firearms. A series of Orders-in-Council prohibiting or restricting most semi-automatic, military-style rifles and some types of non-sporting ammunition.

The Bill C-17 requirement for FAC applicants to show knowledge of the safe handling of firearms came into force in 1994. To demonstrate knowledge, applicants had to pass a test or a firearm safety course approved by a provincial Attorney General, or a firearm officer had to certify that the applicant was competent in handling firearms safely. Bill C-17 added a requirement that safety courses had to cover firearm laws as well as firearms safety.

In late 1994, then Justice Minister Alan Rock announced his proposed gun laws. A few months later, Bill C-68 was introduced into parliament. At the time Bill C-68 was introduced, the government announced without any discussion in Parliament, that over half of all registered handguns in Canada would be prohibited and eventually confiscated. These handguns had not been misused, nor had any empirical study ever been conducted showing that the banned handguns posed a public threat. The bill was rushed through Parliament and Royal Assent was granted on December 5, 1995. Prior to this legislation being tabled in the House of Commons, the Auditor General of Canada reported that no evaluation of the 1991 firearm legislation had been undertaken (Report of the Auditor General, 1993, pp. 647-655). Bill C-17 had not yet been fully phased in when radical changes in the firearm legislation were being considered.

Major changes included in Bill C68, the Firearms Act of 1995:

- Criminal Code amendments providing harsher penalties for certain serious crimes where firearms are used, for example, kidnapping, murder;¹²
- the creation of the Firearms Act, to take the administrative and regulatory aspects of the licensing and registration system out of the Criminal Code;
- the broadening of police powers of “search and seizure” and expanding the types of officials who can make use of such powers;
- the weakening of formerly constitutionally protected rights and freedom against being required to testify against oneself;

- a new licensing system to replace the FAC system, e.g. licenses required to possess and acquire firearms, and to buy ammunition;
- stricter requirements for obtaining a firearms licence (the application has now grown to six pages with 45 questions, retaining the personal questions included in the previous application);
- registration of all firearms, including shotguns and rifles.

In October 1998, the Minister of Justice Anne McLellan tabled additional amendments to the 1996 regulations. These did not need to be debated in Parliament. All she needed to do was to announce them. At that time, she also tabled over 1,000 pages of additional regulations, dealing with

- firearms registration certificates;
- exportation and importation of firearms;
- the operation of shooting clubs and shooting ranges;
- gun shows;
- special authority to possess; and
- public agents.

The regulations were proclaimed in March 1998. The Firearms Act and regulations are being phased in starting December 1, 1998. The following dates are important for Canadian hunters and target shooters.

- By January 1, 2001, all firearm owners must have obtained a license to continue legally owning their firearms, and

¹² Similar penalties have been included in each of the firearm amendments since the 1960s, but they have rarely been enforced (Meredith et al., 1994).

**Table 6: The 1995 Canadian Firearms Legislation
Proclaimed in December 1995, comes into force between 1996 and 2003**

February 1995	Prohibition and confiscation of over half of all registered handguns (so-called "Saturday Night Specials"); Introduction of two new firearms owners licences, (if owner accidentally allows license to lapse, he is subject to criminal prosecution for illegal firearm ownership): <ul style="list-style-type: none"> • POL—Possession Only License • PAL—Possession and Acquisition License
1996	Stricter requirements for PAL. Applicants have to: <ul style="list-style-type: none"> • take separate safety courses for rifle and handgun (at \$100-\$150 per course); • fill out the long application form (35 questions); • provide a passport-type photograph; • obtain two references, neither of whom can now be a spouse; • spouse or former spouse now asked in addition to two references. <p>New stricter regulations for safe storage, handling and transportation of firearms</p>
1998	New regulations for shooting clubs, shooting ranges, and gun shows, New regulations (and fees) for export and import of firearms, Expansion of police powers of "search and seizure," Some suspects of Firearms Act required to testify against themselves;
January 2000	Licensing of firearm owners begun
July 2000	Possession Only License fee "temporarily" reduced to \$10 from \$45; Possession and Acquisition License fees remain at \$60 to \$80
January 1, 2001	All firearm owners required to be licensed

- By January 1, 2003, all firearms must be registered.

According to Canadian law, the police need to go to court to obtain a warrant to search your home. In general, this still is true for people who own firearms. However, there are some frightening exceptions. Section 102 of the Firearms Act allows a "peace officer" to make "periodic inspections" of the home of anyone suspected of having more than ten firearms, or anyone certified as a "gun

collector." These firearms need not be found; all that is necessary is that the peace officer have "reasonable grounds" for believing that the firearms were there.

Section 103 of the Firearms Act states that firearms may be seized without a warrant, if a peace officer has "reasonable grounds" for believing "that it is not desirable in the interests of safety of that person, or of any other person, that that person possess or have custody or control of fire-

arms, ammunition or explosives.” A peace officer may believe such a condition exists if a neighbour or a former spouse has laid a complaint. Obviously, complaints may be laid maliciously by angry neighbours, spouses, or former spouses.

The Firearms Act relaxes the conditions under which a warrant is required. Under Section 102, a police officer can seize a restricted firearm (e.g., handgun) if the person in possession cannot “then and there” produce a registration certificate. For example, if the only licensed firearm owner in a household is away at work, and if the spouse or children cannot immediately produce permits allowing them to possess the firearm in question, then that firearm can legally be seized and the family members charged.

Section 102 goes further. It permits a “firearms inspector” (anyone designated by the Registrar to carry out duties under the Firearms Act) to “inspect and sample” whatever he or she believes on “reasonable grounds” to be subject to the Firearms Act. This includes computer records, books, and documents, as well as firearms. Section 103 requires “every person found in the place ... that is being inspected by an inspector under section 102” to (a) “give the inspector all reasonable assistance,” and to (b) “provide the inspector with any information relevant to the enforcement of this Act or the regulations that he or she may reasonably require.” In English, this means that anyone

suspected of owning ten or more firearms is required to testify against him or herself.¹³

Immediately after the federal election in 2000, the government decided to classify many popular airguns as firearms; some even became restricted or prohibited weapons. No public announcements of these changes were ever made, so many Canadians are now subject to criminal penalties of up to 10 years in jail without knowing it for failure for registering a firearm or for even possessing a prohibited weapon (Breitkreuz, 2001).

The highly personal questions asked of applicants for a firearm license have recently prompted the Federal Privacy Commissioner George Radwanski to consider launching an official review of the process to license firearms owners (Elliott, 2001). He is concerned that the invasive questions may violate the privacy of gun owners and jeopardize their right to a fair trial. He was also concerned that the efforts by the Department of Justice to privatize the gun registry would erode existing Privacy Act rights (Gillis, 2001a, p. A4). He was particularly concerned about the appropriateness of placing personal information gathered by the registry in the hands of a private company rather than police or justice officials. Critics say that privatizing the registry would make it less accountable to Parliament and to taxpayers.

¹³ These are only a few of the onerous provisions in the Firearms Act. Edward Burlew, a lawyer, provides a more thorough treatment of the implications of this legislation in his book (Burlew, 2000).

Conclusions

Universal firearm registration and owner licensing may appear reasonable in theory, but in practice the approach manifests a number of serious defects. In addition to concerns about mismanagement, the firearm registration has been criticized for its abuse of individual privacy and property rights.

No country in the English Commonwealth has managed to introduce or manage firearm registration successfully. For example, in Canada, a number of problems have emerged in the past few years since the federal government has begun to implement firearm registration. First, the costs have escalated far beyond the original estimates and are seemingly out of control. Costs for owner licensing have already passed the costs of BC's fast ferry fiasco (\$400 million) and they continue to mount. And for what? Few believe that forcing hunters and target shooters to register their firearms will actually reduce criminal violence. This confirms my predictions that firearm registration is unworkable (Mauser, 1995a). There is no criminological evidence that imposing strict controls on normal people using firearms has any effect on criminal violence (Kleck 1997, p. 383). Second, the groups that are the most closely involved with firearms, both gun owners and the police, are deeply disaffected by the legislation. As a result of these problems, public support for firearm registration is declining. Despite initially favourable public opinion polls, the Canadian government faces increasing political and legal challenges to firearm registration.

The recent reports that Justice Minister Anne McLellan is trying to privatize the firearm registry suggest that she is trying to distance herself from a poorly administered bureaucratic nightmare that has wasted millions of taxpayer's dollars (Gillis, 2001b, p. A1). Privatization might be commendable if such a step could create a cost-

effective, user-friendly system. But many observers wonder if privatization is appropriate given that the registry is based upon criminal law. Failure to comply with it can result in criminal charges. It is difficult to believe that the first government agency to be privatized would be the gun registry. Why not CBC or Canada Post? It appears more likely that the government is simply trying to distance itself from a financial morass that is increasingly apparent to the Canadian public. Many gun owners worry about the eventual costs of firearm licenses if the registry is privatized. Given the high costs inherent in firearm registration, how high will the price of firearm licenses go?

In this paper, I have argued that firearm registration is ineffective, impractical, and horrendously expensive. More importantly, the history of gun control in both Canada and the United Kingdom demonstrates the "slippery slope" of accepting even the most benign appearing gun control measures. At each stage, the government either restricted access to firearms or prohibited and confiscated arbitrary types of ordinary firearms. In Canada, registration has been shown to mean eventual confiscation. As well, police search powers have been increased. The expansion of the state's search and seizure powers should be taken very seriously by all civil libertarians concerned about the erosion of Canadian's individual rights. Canada's democratic institutions may also have been damaged by the transfer of what many would consider legislative powers to both the police and cabinet under firearm legislation.

Firearm registration violates the basic rules of policing set forth in the 1820s by Sir Robert Peel, the founder of the first professional police force, the British Bobbies. In order for laws to be enforced effectively, the police must have the support of "the policed." However, experience in other

countries shows that passive resistance to firearm registration is widespread. Instead of seeing gun control as a policy response to violent crime, it is more useful to view it as the product of conflict between urban and rural cultures (Kleck, 1996). Much like the temperance movement was an attempt to impose rural values upon urban residents, firearm registration may be seen as an attempt by urbanites to impose their cultural values upon rural Canadians.

The “demonization” of average people who happen to own a gun lays the foundation for a mas-

sive increase in governmental intrusiveness in the lives of ordinary citizens. Firearm registration and gun owner licensing threatens long-standing Canadian liberties and freedoms. The type of gun control legislation Canada has enacted is not consistent with many democratic principles and the protection of civil liberties. Nevertheless, Canada is spearheading a move in the United Nations to impose a similar regime of strict restrictions around the world.

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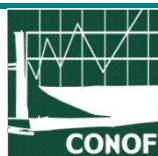
His interest in firearms and “gun control” grew out of his research in political marketing. He has published two books, *Political Marketing*, and *Ma-*

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He purchased his first firearm after moving to Canada and conducting research into firearm legislation. He is a member of the Board of Directors of British Columbia Wildlife Federation and the President of Barnet Rifle Club.



10 – ANEXO – Estudo Técnico 23/2015 da Câmara dos Deputados – Setor de Consultoria de Orçamento e Fiscalização Financeira



CÂMARA DOS DEPUTADOS

Consultoria de Orçamento e Fiscalização Financeira

SUBSÍDIOS À ANÁLISE DO PL nº 3.722/2012 - “Disciplina as normas sobre aquisição, posse, porte e circulação de armas de fogo e munições, cominando penalidades e dando providências correlatas.”

Estudo Técnico
nº 23/2015

Justiça e Defesa

Fidelis Antonio Fantin Júnior

Versão atualizada em
11/dezembro/2017

RESUMO: Este estudo analisou diversos aspectos relacionados com o Projeto de Lei nº 3722/2012, especialmente a partir de pesquisas, estudos, livros, artigos, dados estatísticos e outras publicações sobre as políticas de controle de armas de fogo. A análise focou especialmente nos resultados esperados para as políticas públicas e demandas orçamentárias decorrentes das políticas de controle de armas de fogo. Ao final, apresenta algumas conclusões baseadas nas evidências encontradas.

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Consultoria de Orçamento e Fiscalização Financeira – CONOF

Estudo Técnico nº 23/2015 – Subsídios à análise do PL nº 3.722/2012 – Armas de Fogo

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I – OBJETIVO

O presente Estudo visa a apresentar subsídios para análise do Projeto de Lei nº 3722/2012, que “Disciplina as normas sobre aquisição, posse, porte e circulação de armas de fogo e munições, cominando penalidades e dando providências correlatas”. Também apresenta algumas informações e conclusões quanto aos resultados de políticas de controle de armas.

O Estudo foca principalmente os resultados que podem ser esperados no âmbito das políticas públicas da área de Segurança Pública, em especial quanto à eficiência, eficácia e efetividade dos programas associados à questão da violência. Demandas por mais programas e recursos orçamentários poderão crescer ou diminuir, de acordo com os

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maus ou bons resultados advindos de política mais ou menos restritiva em relação ao acesso a armas de fogo.

Alguns aspectos tratados no PL 3722/2012 têm provocado intensas discussões, dúvidas e busca por informações, como dados estatísticos, notícias, publicações em geral e resultados de pesquisas científicas. Diante do grande volume disponível de informação associada ao tema, procura-se apresentar aqui, de forma sucinta, o que de mais relevante pudemos ter acesso em termos de pesquisas, estudos, livros, artigos, dados estatísticos e outras publicações.

Procura-se colaborar no esclarecimento de alguns desses aspectos, embora, em relação a muitos deles, não há pesquisa científica conclusiva para que se afirme sobre o efeito de cada dispositivo. Não é intenção deste trabalho tomar a forma de pesquisa científica, mas atuar principalmente como uma espécie de resumo informativo, compilando informações úteis para a análise.

Importante consignar que as manifestações aqui apresentadas são fruto das conclusões do autor, não representando posicionamento institucional.

II – ANÁLISE

PREÂMBULO SOBRE O CONTROLE DE ARMAS DE FOGO

O PL 3722/2012 torna mais objetivos os critérios para aquisição e porte de arma de fogo, principalmente evitando discricionariedade por parte de agentes públicos, que possam inviabilizar o exercício de tais direitos.

Preocupações acerca da possibilidade de mau uso das armas de fogo têm sido frequentemente expressadas. Há, sem dúvida, possibilidade de uso indevido desse meio, mas veremos adiante que a probabilidade de, por exemplo, um homicídio ocorrer por parte de um cidadão comum que porte uma arma, ainda que ilegalmente, é bastante reduzido se comparado ao número de homicídios cometidos por criminosos habituais.

Há, por outro lado, a probabilidade de um cidadão armado se defender de um criminoso, em invasão a residência, em tentativa de estupro, em assalto, em tentativa de homicídio, em ataques de qualquer natureza.

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Digamos que, para aquisição de uma arma, se exija prova de bons antecedentes criminais. Óbvio que permitir que alguém que foi condenado criminalmente tenha uma arma legalizada não soa muito bem. Mas é necessário avaliar as probabilidades.

Nesse sentido, houve manifestações de expositores, durante as audiências públicas, sugerindo que os requisitos para aquisição ou porte em relação a antecedentes criminais fossem mais específicos, detalhando quais crimes inviabilizam o direito, de forma a evitar a negativa a qualquer pessoa que tenha sido condenado a um crime doloso. Isso segue o entendimento de que não é qualquer cometimento de algum crime que torna um cidadão um provável assassino.

Há basicamente duas teses em relação ao exercício do direito de posse e porte de arma pelos cidadãos. Uma tese defende que, com mais armas nas mãos dos cidadãos, é de se esperar aumento da violência, especialmente por uma suposta predisposição dos cidadãos em geral de cometer crimes quando têm armas à disposição. A outra tese advoga que, quando os cidadãos em geral podem portar armas, eles têm maior probabilidade de repelir um ataque criminoso, como tentativas de assalto, de estupro ou de sequestro.

Resumidamente, portanto, uma tese defende que mais armas causariam mais homicídios e a outra defende que mais armas reduziriam o número de homicídios. As duas teses têm, cada uma sua fundamentação, mas somente pesquisas empíricas, conforme veremos, é que poderão comprovar, ou não, cada uma delas.

Estudos¹ revistos pela *National Academy of Sciences* (Academia Nacional de Ciências) e pelo *Centers of Disease Control* (Centro de Controle de Doenças/Epidemias), nos Estados Unidos, após analisar centenas de livros, jornais e publicações governamentais, que avaliavam políticas de desarmamento, como banimento de tipos de munição, restrições de aquisição, períodos de espera, necessidade de registro e licenciamento, restrição de acesso a crianças e políticas de tolerância zero em relação a armas, não conseguiram identificar nenhuma ação desse tipo que tenha evidenciado resultado positivo na redução da violência relacionada a armas.

O texto original do Cato Institute, de autoria de Robert A. Levy, é escrito da seguinte forma:

In 2004, the National Academy of Sciences reviewed 253 journal articles, 99 books and 43 government publications evaluating 80 gun-control measures. Researchers could not identify a single regulation that reduced violent crime, suicide or accidents. A year earlier, the Centers for Disease Control reported on ammunition bans, restrictions on acquisition, waiting periods, registration, licensing, child access prevention and zero tolerance laws. CDC's conclusion: There was no conclusive evidence that the laws reduced gun violence.

¹ <http://www.cato.org/publications/commentary/gun-control-measures-dont-stop-violence>

O que se poderia depreender disso é que, em geral, restrições e burocracias relacionadas a armas de fogo não demonstram efeito prático positivo. Mesmo que tenham boas intenções, cada restrição à compra e ao porte provoca limitação do direito de defesa para todos aqueles que são afetados pela restrição. Da mesma forma como pode haver um número maior de acidentes se um portador não fizer um curso para manuseio, também pode haver (de acordo com pesquisas aqui citadas) um número maior de vítimas que não puderam se defender por não possuir uma arma que lhe foi negada por uma dessas restrições.

As propostas quanto à autorização de porte também são objeto de discussão. Ainda que desejável e compreensível, a exigência de avaliações psicológicas e de conclusão de cursos, têm pouca comprovação de eficácia. Essas imposições, muitas vezes, soam como uma satisfação a ser dada às pessoas que querem impedir a todo custo que os cidadãos exerçam tal direito ou às pessoas que têm exacerbado medo de arma de fogo.

Considerando uma média de 18,1 homicídios por arma de fogo para cada 100.000 habitantes, no Brasil, publicada pelo Small Arms Survey (SAS), em 2007, e analisando 19 países que têm um número de armas de fogo superior a 20% dos habitantes, observa-se que nenhum deles tem taxas de homicídio superior à do Brasil, onde o número de armas é de cerca de 8,1 para cada 100 habitantes; comparativamente muito menor.

Na realidade de alta criminalidade como no Brasil, a grande maioria dos assassinatos é perpetrada por criminosos habituais; ou seja, homicídios tipificados como “relacionados a outros crimes”, sendo que os homicídios provocados por impulsividade, descontrole momentâneo, crimes passionais, etc, são casos mais raros. Os criminosos habituais, vale lembrar, não visam autorização para o uso de suas armas, que ocorrem independentemente de autorização legal.

MAIS ARMAS, MENOS CRIMES

Como já citado, análises feitas pela *National Academy of Sciences* e pelo *Centers of Disease Control*, nos Estados Unidos, acerca de centenas de estudos, livros e outras publicações governamentais, tendem a questionar quaisquer benefícios de leis mais restritivas em relação à posse e porte de armas pelo cidadão.

Exemplo dessas publicações é o estudo² de Don B. Kates e Gary Mauser, Ph.D, da Universidade de Harvard, que concluem o trabalho criticando a “mantra” de que mais arma significam mais mortes, afirmando que a alegada correlação entre número de armas e crimes violentos (ou suicídios) não é observada quando se analisa de forma ampla os números de diversos países.

A observação dos autores em relação à amplitude da análise é importante, visto que análises de casos isolados podem levar a números

² http://www.law.harvard.edu/students/orgs/jlpp/Vol30_No2_KatesMauseronline.pdf

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que apoiariam a tese, mas poderiam estar comprometidos por fatores específicos e circunstanciais que influenciariam as taxas de crimes violentos independentemente do número de armas. Pesquisas utilizando universos muito limitados tendem a ser afetadas por outros fatores circunstanciais, que distorcem os resultados.

Estatísticas apontadas³ por John Lott⁴ dão conta de que menos de 1% das vezes em que se usa arma para defesa resulta em ferimento ou morte. Também segundo o pesquisador, todos os países que implementaram políticas de desarmamento tiveram aumento de homicídios.

Ele também é autor do livro “Mais Armas, Menos Crimes”, em que evidencia, a partir de pesquisas científicas, que a tendência onde os cidadãos possuem mais armas, especialmente em consequência de legislações mais permissivas, é de redução da criminalidade.

Importante salientar que uma crítica que o autor desse livro faz em relação a muitas das argumentações desarmamentistas é de que grande parte delas se baseia em fatos isolados, ou em dados escolhidos previamente, relacionados com situações específicas favoráveis a tese do desarmamento, mas que têm sua validade científica questionada. O comprometimento quanto a validade científica repousa no fato de que os autores escolhem apenas dados favoráveis às suas teses, excluindo um grande número de dados desfavoráveis, que provavelmente contrariariam suas afirmações.

Estudo de Tom G. Palmer mostra que a tendência em estados americanos que passaram a permitir o porte velado de arma de fogo foi de redução dos crimes violentos, incluindo homicídios. Cita o caso inverso de Washington, DC, onde a implementação de legislação mais restritiva foi seguida de aumento dos índices de homicídios, na contramão da tendência americana. A cidade chegou a ser conhecida como a “capital de homicídios” dos Estados Unidos (“*murder capital*” of the United States).

Na América Latina, destacam-se os casos de Brasil e Venezuela, que implementaram rigorosas políticas de desarmamento. Resultado: ambos têm atingido recordes de homicídios. Segundo o Small Arms Survey de 2007 (SAS-2007), somente por arma de fogo, no Brasil matam-se 18,1 por 100.000 habitantes, enquanto que na Venezuela o índice atingia 38,97 por 100.000 habitantes. Enquanto isso, muitos países que têm políticas mais liberais em relação ao assunto apresentam baixas taxas de homicídios. Tabela⁵ da Organização Mundial da Saúde, referente a 2012, indica que a taxa de homicídios (arma de fogo ou não) foram de 32,4 (homens=60,0; mulheres=5,6)⁶ para o Brasil e 57,6 para a Venezuela.

³ In The Dana Show (em inglês). Disponível em: <https://www.youtube.com/watch?v=98Mjgri5E8Q>

⁴ John R. Lott Jr é Presidente do Crime Prevention Research Center

⁵ Disponível em:

http://www.who.int/violence_injury_prevention/violence/status_report/2014/data/Table_A3_Homicides.pdf?ua=1

⁶ Achado: tais números indicam que os homens estão muito mais expostos à violência do que as mulheres.

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A título de ilustração, ainda sobre o SAS-2007, considerando os países com maior índice de posse de arma de fogo, os dezenove países que têm mais de 20 armas por 100 habitantes e que apresentam ambos os índices, temos os seguintes números de mortes por arma de fogo:

País (homicídios/100.000 hab.)	Armas por 100 habitantes:
Áustria: 0,22	30,4
Canadá: 0,51	30,8
Chipre: 0,46	36,4
Croácia: 0,39	21,7
Finlândia: 0,45	45,3
França: 0,06	31,2
Alemanha: 0,19	30,3
Grécia: 0,26	22,5
Islândia: 0,00	30,3
Macedônia: 1,21	24,1
Nova Zelândia: 0,16	22,6
Irlanda do Norte: 0,16	21,9
Noruega: 0,05	31,3
Panamá: 16,18	21,7
Sérvia: 0,46	37,8
Suécia: 0,41	31,6
Suíça: 0,77	45,7
EUA: 2,97	88,8
Uruguai: 2,8	31,8

Interessante notar que todos os dezenove países com mais de 20 armas por 100 habitantes (conforme a publicação) têm índices de homicídios por arma de fogo inferiores ao do Brasil – que apresenta 18,1 homicídios por 100.000, tendo apenas 8 armas por 100 habitantes.

Concentrando a atenção nos países da América do Sul, que em termos socioeconômicos e culturais mais se assemelham com o Brasil, temos vários exemplos, como do Paraguai (17/100) e do Peru (18,8/100), que têm maior número de armas por habitante do que o Brasil (8/100), mas com índices gerais de homicídios bem menores (Paraguai 9,7; Peru 11; Brasil 32,4)⁷.

Outra comparação interessante é com o México, que também enfrenta problemas sérios parecidos com o Brasil, especialmente com cartéis de drogas, crime organizado, etc., e consegue um índice de homicídios totais (OMS-2012) da ordem de 20 (contra 32,4 do Brasil), tendo uma média de 15 armas de fogo por 100 habitantes (SAS-2007), contra 8 do Brasil.

Esses exemplos dão força ao argumento de que países (com características e situações similares) com população mais armada (e, portanto, mais protegida) tendem a ter menos crimes. Também é notório que os países mais armados estão entre os mais democráticos, enquanto

⁷ Homicídios totais por 100.000 habitantes (OMS-2012), disponível em:
<http://apps.who.int/gho/data/node.main.VIOLENCEHOMICIDE?lang=en>

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que os países onde predominam regimes ditatoriais a regra é o desarmamento.

É sabido que nas últimas décadas as leis de diversos estados americanos, em resposta à falta de resultados positivos do controle de armas (juntamente com resultados negativos, como em Illinois e Washington, DC), têm sido cada vez mais flexíveis em relação ao porte de armas, enquanto que as taxas de crimes violentos, notadamente homicídios têm declinado consistentemente. Contudo, muitas vezes, surgem estudos como o publicado pelo American Journal of Public Health a respeito das taxas de homicídios por arma de fogo em Connecticut após 1995, fruto, segundo eles, de leis mais restritivas em relação ao porte de armas.

A metodologia do estudo é fortemente criticada por John Lott, que evidencia que, ao mostrar uma redução significativa dos homicídios por arma de fogo entre 1995 e 2005 (3,13 para 1,88 por 100.000) de 40%, superior à redução no conjunto dos EUA (27% de redução), os autores deixam de considerar (sem motivo especificado) que, se considerado o ano de 2006, a queda seria de apenas 16%. Os autores também não consideram o período imediatamente anterior, no próprio estado, entre 1993 e 1995, em que a redução, em apenas dois anos e sem restrição à compra e ao porte de arma, foi da ordem de 16%, enquanto que, se considerar o estado sob a lei mais restritiva – entre 1995 e 2010 –, a queda é de apenas 12,5%. No mesmo período (1995-2010), a redução de homicídios nos EUA, que teve em geral um afrouxamento nas regras de porte, fora da ordem de 39%. John Lott ressalta que, para excluir da análise algum dado que seja relevante, o pesquisador precisa ter um bom motivo para isso. Assim, fica seriamente comprometida a confiabilidade quanto aos resultados apontados por aquele estudo.

Esse é um exemplo de estudo que aparenta ser feito para comprovar uma tese escolhendo o período e os dados que sejam favoráveis; excluindo do espectro de análise períodos e dados que contrariem a tese.

Em sentido contrário ao que tem ocorrido no Brasil, os EUA tem aumentado a quantidade de armas em poder da população, inclusive com legislações cada vez mais permissivas em relação ao porte discreto de arma de fogo, tendo reduzido o índice⁸ de homicídios de 1980 a 2011, de 10,2 para 4,7.

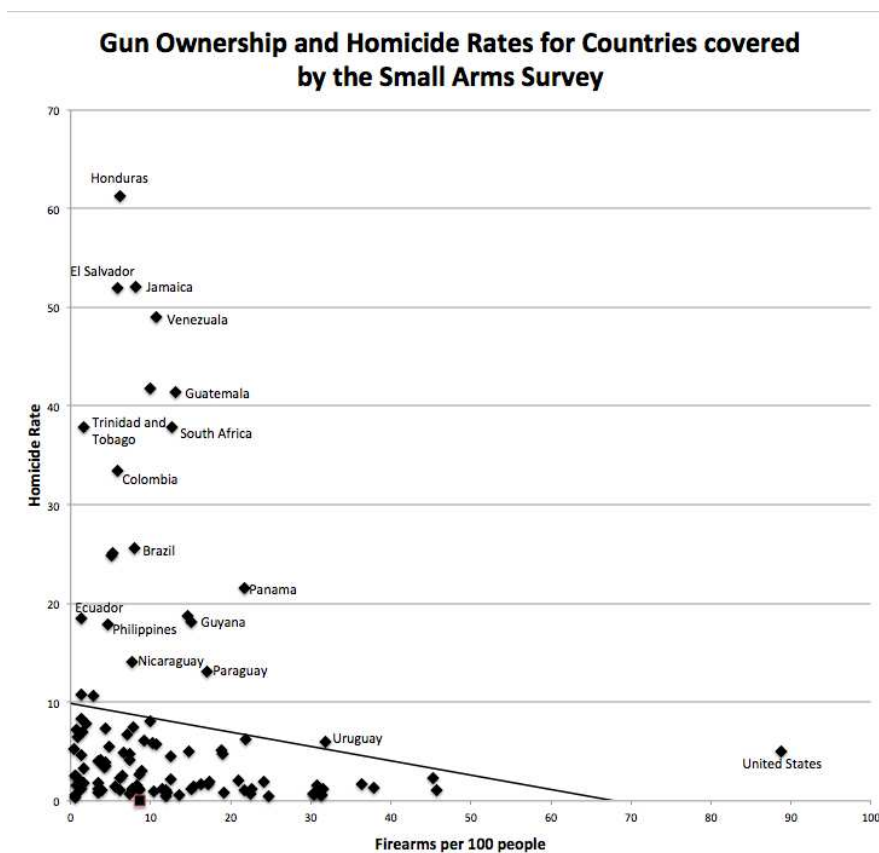
Por parte dos autores pesquisados, fica claro, inclusive expressado por eles próprios, que não há evidência de correlação entre número de armas e de homicídios. Malcolm (p. 19), ao citar uma série de estudos, é enfática: “...*investigações de estudiosos na Inglaterra raramente consideram a posse de armas como um fator no nível de violência interpessoal*”.

Estudo⁹ do Crime Prevention Research Center (CPRC), que apresenta o gráfico ilustrativo reproduzido a seguir, conclui por uma

⁸ Dados disponíveis em: <http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state#MRalpha>

⁹ Estudo disponível em: <http://crimepreventionresearchcenter.org/2014/03/comparing-murder-rates-across-countries/>

correlação negativa entre o número de armas de fogo (*Firearms*) que um país tem e os seus índices de homicídios (*Homicide*).



Fonte: Crime Prevention Research Center (CPRC)

Esse estudo aponta claramente que os países que têm mais armas entre a população tendem a ter os menores índices de homicídios.

Outro estudo¹⁰ recente, também publicado pela CPRC, evidencia uma correlação negativa entre o percentual de aumento de autorização de porte discreto de arma de fogo, em estados americanos, com as respectivas taxas de homicídios.

O efeito dissuasório de uma arma está no cerce do benefício de se possuir e portar uma. Exemplo quanto à capacidade de dissuasão da criminalidade, é muito conhecido o caso da cidade de Kennesaw, no estado americano da Geórgia, que em 1982 aprovou uma lei obrigando toda a residência a possuir uma arma de fogo. Mesmo com a lei não sendo rigorosamente fiscalizada, seus efeitos foram visíveis, com significativa redução dos crimes violentos. A taxa de criminalidade anteriormente à lei era de aproximadamente 4.332 por 100.000 habitantes, enquanto que a taxa americana era de 3.899 por 100.000. Em 2005, a taxa de criminalidade de Kennesaw tinha caído para 2.027 por 100.000.

¹⁰ Disponível em: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2629704

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Segundo o site CityRating.com¹¹, as taxas de criminalidade em Kennesaw, em 2012, para crimes violentos era 74,59% inferior às taxas dos Estados Unidos e 74,06% inferior aos da Georgia. Em relação ao crimes contra a propriedade, eram 42,81% inferiores aos dos EUA e 52,06% inferiores aos do estado da Georgia.

Com o sucesso desse tipo de política, muitos estados americanos, a partir de 1986, passaram a mudar sua legislação, sendo mais permissivos, por exemplo, quanto ao porte discreto de armas curtas (*concealed carry*¹² ou *right to carry*). As taxas de homicídios, bem como os demais crimes violentos, têm mostrado declínio nas últimas décadas nos EUA.

Malcolm (p. 240), ao comentar sobre os efeitos das leis que liberaram o porte discreto de armas de fogo nos EUA, afirma: “Isso fornece uma evidência clara de que cidadãos armados não aumentam o crime”.

Além disso, dados de diversas pesquisas¹³ convergem para algo entre 760.000 e 3.600.000 de vezes que armas de fogo são utilizadas anualmente somente nos EUA para autodefesa. Em boa parte das vezes nem a própria polícia entende que deva haver registro¹⁴ do ocorrido. Certamente um fator de economia para os órgãos policiais, que não precisam ser chamados a cada tentativa de furto, assalto ou estupro, por exemplo.

A partir dos dados do National Crime Victimization Survey (Pesquisa sobre vitimização nacional de crimes), do Departamento de Justiça dos EUA, John Lott (p. 3) descobriu que:

“a probabilidade de ferimentos sérios provenientes de um ataque é 2,5 vezes maior para mulheres que não oferecem nenhuma resistência que para mulheres que resistem com uma arma de fogo. Contrastando com isso, a probabilidade de mulheres serem feridas seriamente foi quase quatro vezes maior quando resistiram sem uma arma que quando utilizaram uma arma. Em outras palavras, o melhor conselho é resistir com uma arma de fogo, mas se não houver nenhuma arma disponível, é melhor não oferecer nenhuma resistência do que lutar.”

Quanto à situação em que um homem sofre uma abordagem criminosa, a conclusão do pesquisador é a seguinte:

“O homem também se sai melhor com armas de fogo, mas os benefícios são significativamente menores. Comportar-se passivamente gera uma probabilidade 1,4 vez maior de sofrer ferimentos do que resistir com uma arma de fogo. As vítimas masculinas, assim como as femininas, também

¹¹ Disponível em: <http://www.cityrating.com/crime-statistics/georgia/kennesaw.html#UggeoD8pgw6>

¹² https://en.wikipedia.org/wiki/Concealed_carry_in_the_United_States

¹³ Lott Jr, página 10.

¹⁴ Ver artigo citando tal fato em: <http://veja.abril.com.br/blog/rodrigo-constantino/legislacao/legitima-defesa-com-armas-nao-e-um-mito/>

correm o maior risco quando resistem sem uma arma de fogo, e a diferença é, novamente, muito menor: a resistência sem uma arma de fogo representa uma possibilidade de 1,5 vezes de resultar em ferimento sério do que a resistência com uma arma. A diferença muito menor para os homens reflete o fato de que uma arma de fogo produz uma mudança menor na habilidade do homem de defender-se do que ocorre para a mulher.”

Infere-se disso que, dependendo das circunstâncias obviamente, o melhor para a vítima normalmente seria reagir com uma arma de fogo, seja ela homem ou mulher. Vale lembrar, contudo, que isso é fruto de análise de uma média, e só uma situação específica e a percepção que a vítima pode ter das probabilidades é que poderia permitir a ela avaliar suas reais chances de se sair melhor reagindo ou não.

Tanto as pesquisas de John Lott, quanto às análises da *National Academy of Sciences*¹⁵, parecem convergir na ideia de que o direito ao porte de armas pela população provoca a uma migração dos crimes mais violentos, como roubo/assalto (com violência) para crimes menos violentos, como o furto. Isso decorreria do medo por parte do criminoso em relação à possibilidade de confronto com uma vítima armada.

CULTURA DO MEDO E A QUESTÃO DAS ESTATÍSTICAS

Em geral, muitas manifestações contra o uso de armas de fogo demonstram sentimento de medo irracional. Isso é facilmente percebido em afirmações do tipo: - *mas se alguém brigar no trânsito*; - *mas se alguém discutir com o vizinho*; - *mas se um adolescente de 17 ou 18 anos estiver armado*; - *mas se acontecer um acidente?* Veremos, mais à frente, que esse tipo de crime interpessoal e por impulso é mais raro do que algumas pessoas costumam propalar.

Não se pode proibir tacos de basebol porque alguém pode ficar irritado e dar uma tacada na cabeça de outra pessoa. Ainda que isso seja materialmente possível, é improvável; ou seja, crimes interpessoais por impulso não são tão comuns assim. Em um churrasco, onde as pessoas bebem, seria necessário uma licença ou dispositivos de segurança para as facas (que podem matar facilmente), mas ocorrências nessas situações também são muito raras. Esse medo irracional é similar ao das pessoas que têm medo de viajar de avião, ainda que as estatísticas contrariem essa sensação de medo.

Certamente, todos já ouviram casos de alguém – não criminoso habitual – que cometeu um homicídio ou suicídio. Mas o cerne da questão repousa na probabilidade de casos assim ocorrerem. Qual a probabilidade? E qual provável diferença faria ter ou não uma arma de fogo por perto? Vale lembrar que, por exemplo, o ator Robin Williams se

¹⁵ Disponível em: http://www.nap.edu/download.php?record_id=10881

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suicidou nos EUA, país com maior abundância de armas de fogo, por enforcamento.

Analisando as estatísticas, temos que o cometimento de homicídio, por exemplo, por pessoas comuns (não criminosos habituais), é baixo. Certamente muito menor em frequência do que o número de vezes¹⁶ que cidadãos utilizariam armas para autodefesa.

Em que pese o fato de que somente algo em torno de dez por cento dos homicídios sejam esclarecidos e a parca disponibilização de informações claras sobre as motivações, observa-se que o cometimento de crimes dessa natureza por cidadãos comuns é baixo. Normalmente, assassinatos são cometidos por criminosos habituais, sejam homicidas originalmente ou que têm relação com outros crimes, como tráfico de drogas, roubo, etc.

Estudo do pesquisador em segurança pública, Fabrício Rebelo, baseado nos dados do Mapa da Violência, demonstra que, nos 10 anos anteriores ao Estatuto do Desarmamento, a taxa média anual de homicídios por 100.000 habitantes no Brasil foi 26,44. Por sua vez, a taxa média nos dez anos posteriores foi de 26,80.

Importante lembrar que a política de desarmamento já havia começado uns 6 anos antes, quando em 1997 foi promulgada a Lei nº 9.437, que criou o SINARM e a exigência em nível nacional de registro¹⁷ das armas, instituía duríssima penalização da posse e porte de arma de fogo sem autorização e iniciava um processo de burocratização maior para concessão desse mesmo porte.

Se compararmos os índices de homicídios antes e depois de 1997, veremos que os índices após 1997 são mais altos do que aqueles dos anos anteriores a 1997, e os números se mantêm altos, com alguma variação ao longo dos anos, mas em 2012 atingindo recorde, superando inclusive os números de 2003. Lembrando que os números de homicídios da década de 1980 eram ainda menores.

Se observarmos o gráfico a seguir, veremos que não há como dizer que haja tendência de redução do número de homicídios no Brasil, seja em números absolutos, seja em termos de taxa média por 100.000 habitantes. Se comparados com o ano de 1996 – ano imediatamente anterior à Lei 9.437/1997, pode-se afirmar que todos os anos a partir de 1997 apontam tanto em números absolutos, quanto em números relativos, maiores níveis de homicídios. Fica evidente uma tendência de aumento no número de homicídios.

¹⁶ Ver John R. Lott Jr (p.10): Pesquisas variam entre 760.000 e 3.600.000 vezes em que americanos utilizam armas de fogo para autodefesa.

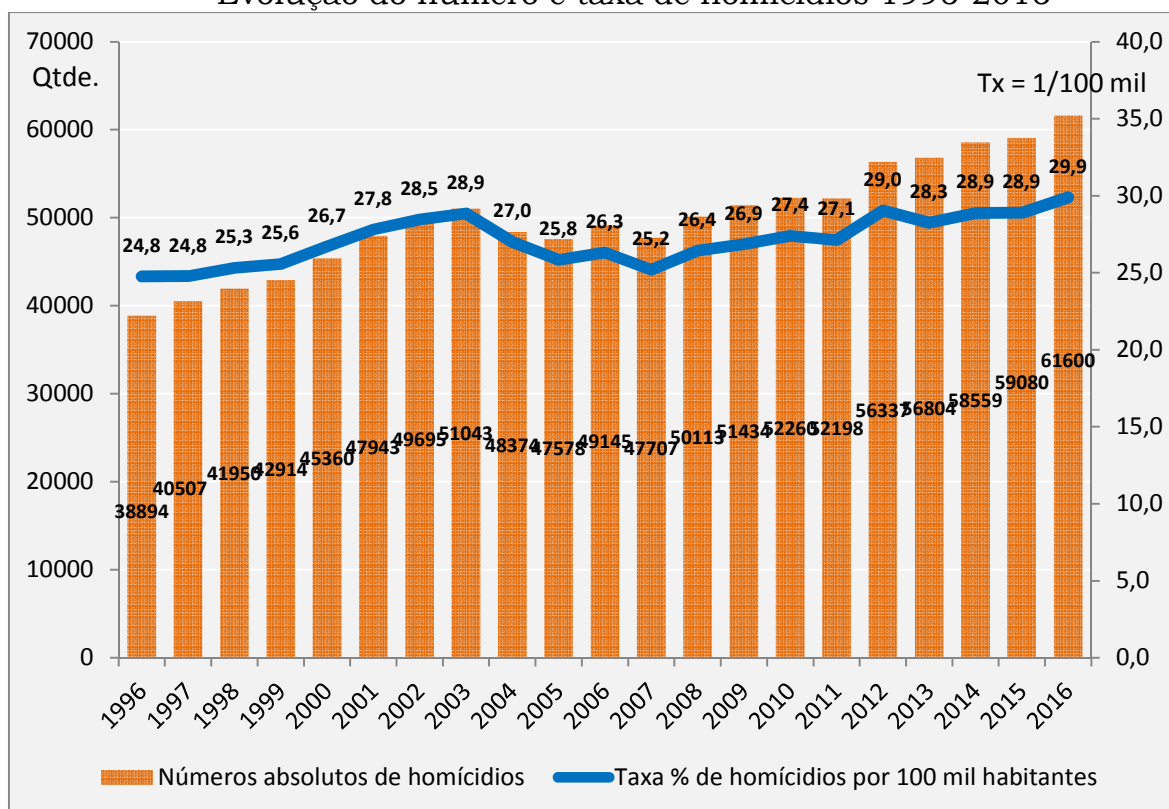
¹⁷ Procedimento bastante questionado quanto aos efeitos práticos e custos envolvidos.

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Evolução do número e taxa de homicídios 1996-2016



Fontes: Datasus/IBGE e Fórum Nacional de Segurança Pública (homicídios 2016¹⁸)

Há alegações especialmente de órgãos governamentais e de outras instituições que têm o apoio do governo e de organizações estrangeiras de que o Estatuto teria evitado mortes. Contudo, conforme mostrado aqui, os índices médios de homicídios dos dez anos posteriores à instituição do Estatuto são superiores aos dos dez anos imediatamente anteriores. Destaque-se que os números anteriores ao Estatuto incluem o período 1997-2003, em que já se vivia o *momentum* brasileiro da política desarmamentista.

As alegações a respeito se baseiam muito em uma análise de tendência, visto que entre os anos 1980 até 2003 havia uma curva ascendente do número de homicídios, que alguns atribuem à legislação menos restritiva que havia antes de 1997 e 2003. Mas é importante ter em mente que até 1997 não houve significativa mudança na legislação correlata, o que indica que eventual aumento da violência não estaria relacionada à legislação sobre armas. Ademais, quanto mais se avança no tempo passado, em que não havia significativas restrições à posse e porte de armas por parte da população, menores são os índices de homicídios. Os índices pós-1997 corroboram as afirmações de que um país com população mais desarmada é mais violento e com mais homicídios.

Tudo leva a uma necessidade de investigação mais ampla para verificar se as crises econômicas ou o aumento no tráfico de drogas das décadas de 1980 e 1990 não teriam relação com o aumento dos

¹⁸ <http://www.forumseguranca.org.br/wp-content/uploads/2017/10/infografico2017-vs8-FINAL-.pdf> e

<http://agenciabrasil.etc.com.br/geral/noticia/2017-10/com-mais-de-61-mil-assassinatos-brasil-tem-recorde-de-homicidios-em-2016>

índices de violência daquele período, já que a política de armas não teve alteração até 1997.

Com base nos próprios números do Mapa da Violência¹⁹ de 2015, observa-se que o número de homicídios por arma de fogo ordem de 17.000 em 1993 e de 21.300 em 1996; já em 1998 (após a Lei 9.437/97), sobe para 24.800; e em 2012 (cerca de 9 anos após o Estatuto do Desarmamento), teria sido de 40.100. Não parece que as leis de desarmamento tenham reduzido homicídios, especialmente homicídios cometidos por criminosos habituais com arma de fogo.

Cabe esclarecer também que entre os anos de 2004 e 2007 houve uma pequena queda no número de homicídios no Brasil, mas sem que se observasse que isso tenha sido uma tendência nacional. Especialistas afirmam que isso se deu especialmente por conta de políticas de forte repressão da criminalidade por parte de órgãos de segurança pública nos Estados de São Paulo e Rio de Janeiro, fato que não evidencia relação direta com a política de desarmamento generalizado nacionalmente em decorrência do Estatuto. No caso dos dois estados, trata-se de políticas especialmente focadas no enfrentamento ao criminoso habitual e de reocupação de territórios dominados pela criminalidade.

A pequena diminuição do número de homicídios em ternos nacionais não pode ser considerada fruto da política de desarmamento, que ocorreu em nível nacional, pois a maioria dos estados brasileiros apresentou tendência de elevação no número de homicídios após o Estatuto. Ou seja, não ficou evidenciada tendência de redução de homicídios, que deveria ter ocorrido de forma generalizada em todos os estados, ou pelo menos em uma parcela considerável deles, para que se pudesse comprovar que fora o Estatuto o responsável pela redução da média geral.

Tendo as reduções de homicídios se concentrado especialmente em dois estados – que têm grande peso proporcional, pode-se depreender que fatores locais foram os determinantes para isso.

Vale observar a evolução dos gastos nas Funções Defesa Nacional e Segurança Pública nos estados de São Paulo e Rio de Janeiro, segundo o Anuário do Fórum Brasileiro de Segurança Pública (p. 70). O gasto per capita, em São Paulo, passou de R\$ 47,00, em 1995, para R\$ 69,50, em 2000, e para R\$ 156,40, em 2005; enquanto isso, no Rio de Janeiro, as médias foram de R\$ 49,50, 121,70 e 240,10, respectivamente. Houve um significativo aumento de gastos nesses estados, mesmo considerando a inflação do período.

Vale também observar que a taxa de homicídios em São Paulo vem decrescendo desde 1999, quando atingiu 44 homicídios por 100 mil habitantes; já Rio de Janeiro atingiu pico em 1995, com taxa de 61,8, quando passou a apresentar declínio nos anos seguintes, muito antes do Estatuto.

¹⁹ Disponível em: <http://www.mapadaviolencia.org.br/>

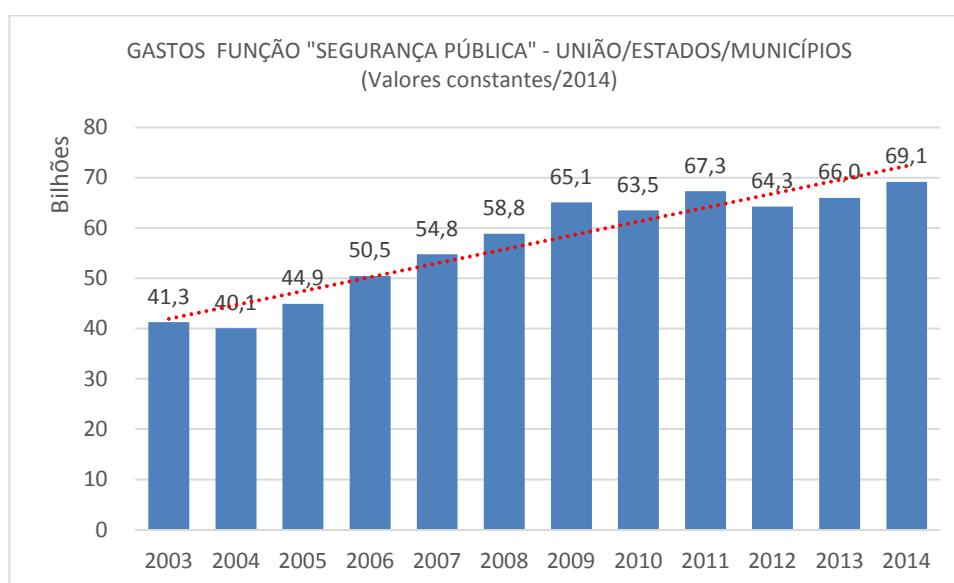
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A evolução dos gastos com segurança pública desde 2003 mostra que houve grande aumento de investimentos na área, sugerindo que eventual melhora seja fruto de mais gastos públicos.

O gráfico a seguir mostra os gastos orçamentários da função Segurança Pública, em valores deflacionados, ou seja, mostrando o crescimento desses gastos em termos reais.



Fonte: CONOF/STN

Esses dados sugerem que, se não tivesse havido forte aumento de gastos em segurança pública, os números totais e as taxas de homicídios teriam crescido ainda mais.

Casos típicos que mostram como estados com população menos armada tendem a ter maiores índices de homicídios ocorrem no Nordeste do País. O estado de Alagoas é um dos que menos tem armas nas mãos do cidadão e que apresenta recorde de homicídios por 100.000 habitantes. Corroborando o contrassenso entre desarmamento e índices de homicídios, fica a emblemática divulgação de notícia por parte do governo alagoano, com a seguinte manchete²⁰ da Secretaria de Estado da Articulação Social: “Pesquisa comprova o sucesso do desarmamento em Alagoas”.

A publicação demonstrava que o estado de Alagoas foi um dos que mais conseguiu que o cidadão se desarmasse nos primeiros três meses de 2013. Segundo o Mapa da Violência, Alagoas fechou aquele ano em primeiro lugar nas estatísticas de homicídios, com 64,3 homicídios por 100.000 habitantes.

O Mapa da Violência de 2014 mostra que a taxa de homicídios subiu de 25,9/100.000, em 1998, para 29,0/100.000, em 2012.

O Mapa da Violência de 2014 mostra que os homicídios totais no Brasil subiram de 49.695, em 2002, para 56.337, em 2012;

²⁰ Disponível em: <http://www.articulacaosocial.al.gov.br/sala-de-imprensa/noticias/pesquisa-comprova-o-sucesso-do-desarmamento-em-alagoas>

afirmando “Como síntese, podemos indicar que em 22 UFs os homicídios crescem, mas quedas nessas cinco Unidades compensaram, equilibrando os resultados numéricos nos extremos na década.” Observa-se, na Tabela 3.1.1, do Mapa, que em 22 estados o número de homicídios aumentou, e em apenas 5 houve queda.

O Datasus²¹ também nos mostra uma comparação entre os anos de 1990 e 2004, onde se observa um índice nacional de homicídios da ordem de 22,2, em 1990, e de 26,9, em 2004. É importante dizer que as únicas grandes mudanças em termos de legislação de armas de fogo foram a Lei 9.437/1997 e a Lei 10.826/2003 (Estatuto do Desarmamento).

Na comparação dos números de homicídios antes de depois do período 1997-2003, fica bastante evidente o aumento tanto dos números absolutos, quanto dos índices relativos de homicídios.

Com relação a experiências de outros países, o CPRC publicou artigo²² em 2013 (*Murder and homicide rates before and after gun bans*) mostrando a tendência de aumento de crimes violentos, notadamente homicídios, nos anos que se seguem à adoção de restrições de acesso a armas de fogo pela população.

CRIMES INTERPESSOAIS OU POR IMPULSO

Outra alegação muito utilizada contrariamente ao Projeto é de que “se mata por impulso” ou pelo simples fato de ter uma arma à disposição. Seria uma referência aos crimes ditos interpessoais, ocorridos por impulso e que somente se concretizariam, segundo tal narrativa, com a existência de uma arma de fogo disponível no momento.

O primeiro problema com esse tipo de afirmação é que os índices de esclarecimentos de crimes no Brasil giram em torno de 10% dos casos. As estatísticas e estimativas conflitam, e não permitem uma afirmação de realmente quantos casos são associados a cada tipologia definida pela ONU: “relacionado a outros crimes”, “interpessoal” ou “político-social”.

Analisando o GLOBAL HOMICIDE BOOK-2013 (p. 41), publicado pela ONU, temos que, dos países citados – Jamaica, Costa Rica, Índia, Holanda, Suécia e Finlândia –, os percentuais de crimes homicídios interpessoais, em relação ao total, varia de 5% a 40%. Notando-se que nos países em que os índices de homicídios são mais elevados (Jamaica e Costa Rica), o percentual de homicídios interpessoais é bem mais baixo (5% e 11%), ao passo que nos países em que os índices de homicídios são muito baixos, o percentual de homicídios interpessoais é maior (27%, 30%, 40% e 34%).

Embora sem dados suficientes para uma análise conclusiva, isso sugere que países que têm índices mais elevados de homicídios

²¹ Dados disponíveis em: <http://tabnet.datasus.gov.br/tabdata/LivroIDB/2edrev/c09.pdf>

²² Estudo disponível em: <http://crimepreventionresearchcenter.org/2013/12/murder-and-homicide-rates-before-and-after-gun-bans/>

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teriam tais homicídios relacionados com outros crimes, como crime organizado, roubos, gangues, tráfico, etc. Já nos países em que os índices de homicídios são muito baixos (inferiores a 1,0/100.000), o percentual dos crimes interpessoais é maior. Os dados sugerem, portanto, que o número absoluto de homicídios por razões interpessoais seria baixo em qualquer dos casos, pois os percentuais desse tipo somente são altos onde há muito pouco homicídio.

Considerando um índice de homicídios para a Suécia da ordem de 0,9 por 100.000 habitantes, teríamos um índice por crimes interpessoais da ordem de 0,3; já no caso da Jamaica, com um índice de homicídios totais 48 (considerado altíssimo), teríamos um índice por crimes interpessoais da ordem de 2,4; e os crimes com arma de fogo por impulso seriam uma parcela desse número.

Como os crimes por impulso são apenas uma parte dos crimes interpessoais e que dos crimes por impulso apenas uma parte é cometida com arma de fogo, é de se esperar que um percentual muito pequeno de homicídios seja cometido por impulso e com arma de fogo.

Além do que, a não existência de uma arma de fogo disponível no momento desse tipo de crime não significa que o perpetrante não cometeria o crime da mesma forma, só que se utilizando de outro instrumento.

A partir do relatório da ONU é plausível afirmar que a grande maioria dos homicídios é cometida por criminosos habituais, normalmente relacionada a outros crimes ou a questões sócio-políticas.

John Lott (p. 11), em seus comentários, indica que a probabilidade de crimes interpessoais com arma de fogo é extremamente baixa.

Essas constatações indicam absoluta falta de consistência das afirmações de que o grande número de homicídios no Brasil seria causado por crimes interpessoais, por impulso, e que somente ocorrem por causa da disponibilidade de arma de fogo, até porque, para a grande maioria dos cidadãos brasileiros, não há disponibilidade de arma de fogo.

CASO DA INGLATERRA E OUTROS

Outro *momentum* da política desarmamentista mundial, ocorreu na Inglaterra começando entre as décadas de 1950(53) e 1960(67), tendo como resultado aumento nos índices de crimes violentos, principalmente homicídios, que saltaram da casa dos 0,7/100.000 ao final da década de 1940, para atingir 1,06/100.000 em 1974, e seguindo em ascensão até os anos 2000.

Mais recentemente, a Inglaterra impôs lei de desarmamento em 1997 e teve seu índice²³ de homicídio passando de 1,12 em 1996 para 1,45 em 1999. O Reino Unido, aliás, viu seu índice de homicídios aumentando até 2002, quando atingiu 2,1 homicídios por 100.000 habitantes; somente a partir de 2003 o Reino Unido viu seus índices de

²³ Ver em: https://en.wikipedia.org/wiki/List_of_countries_by_intentional_homicide_rate_by_decade

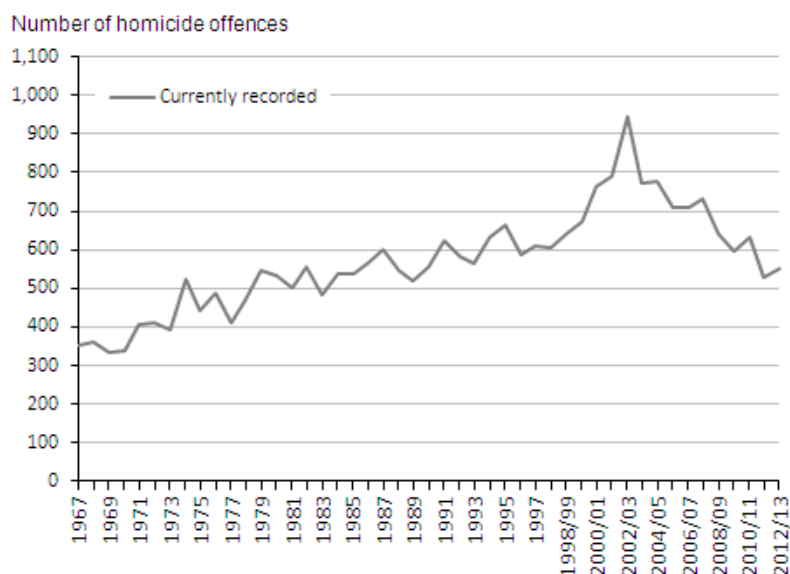
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homicídios começar a cair, seguindo a tendência dos países desenvolvidos de queda nos homicídios; como de resto os EUA têm apresentado números decrescentes de criminalidade, com aumento das permissões de posse e porte de armas de fogo pela população americana.

O gráfico do Escritório Nacional para Estatísticas, do Reino Unido (reproduzido a seguir), mostra a tendência de aumento dos homicídios que se segue após a implementação das políticas desarmamentistas inglesas. Isso é verdadeiro tanto para o período pós 1967, quanto para o período pós 1997.



Fonte: Office for National Statistics/Reino Unido²⁴

Estudos²⁵ da Crime Prevention Research Center (CPRC) mostram duas evidências importantes sobre o assunto: 1) após as restrições impostas em 1997, houve grande aumento nos índices de homicídios nos anos seguintes, só começando a voltar aos patamares anteriores cerca de seis anos após; e 2) a provável causa da diminuição dos homicídios por volta do ano de 2004 é o grande aumento nos efetivos policiais. Com a intensificação das ações policiais, a Inglaterra viu, após cerca de sete anos, os níveis de homicídios começarem a cair.

A cidade de Londres²⁶, nos últimos anos, tem conseguido significativa redução de homicídios, mas não demonstra relação com a legislação imposta em 1997. Segundo as autoridades, os resultados têm especialmente motivação na retirada de armas das ruas, com trabalho de polícia focado nas gangues, a partir de informações de inteligência e abordagens policiais.

Tudo indica, no caso Inglês, que as taxas de homicídios tiveram décadas de crescimento como resultado de políticas desarmamentistas, e o declínio dessas taxas, para voltar aos patamares

²⁴ Disponível em: <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/focus-on-violent-crime-and-sexual-offences--2012-13/rpt---chapter-2---homicide.html#tab-Trends-in-Homicides>

²⁵ Ver publicação em: <http://crimepreventionresearchcenter.org/2013/12/murder-and-homicide-rates-before-and-after-gun-bans/>

²⁶ Ver artigo em: <http://www.bbc.com/news/uk-england-london-30577385>

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da década de 1980 só ocorreu devido à forte repressão policial à criminalidade.

Conforme demonstrado por Malcolm (2014), nas épocas mais antigas da Inglaterra, as pessoas tinham mais liberdade de ter e portar armas, como forma de garantir a sua segurança e da sociedade, evitando crimes violentos. Mas as políticas desarmamentistas, especialmente ao longo do século XX, acabaram tornando a sociedade e os cidadãos em particular dependentes da intervenção dos “especialistas” – a polícia – para sua proteção.

Depender exclusivamente da ação de “especialistas” para a proteção individual já se mostrou tanto ineficiente, quanto caro. Ademais, assim como qualquer instituição, a polícia também está sujeita a ineficiências, imperfeições e vícios, próprios da ação humana. Além de eventualmente não atender ao que o cidadão espera, pode também ser um meio para pessoas inescrupulosas utilizarem indevidamente o poder.

Estudo²⁷ de Gius (2014)²⁸, conclui (em pesquisa que compara estados com leis mais restritivas e mais permissivas) que estados com leis mais restritivas sobre o porte discreto de armas de fogo (*concealed carry*) tendem a apresentar índices de homicídios 10,3% mais altos. Já em relação às armas como fuzis semi-automáticos (*assault weapons*), os estados que adotaram seu banimento tiveram índices de homicídios cerca de 19,3% maiores durante o período em que o banimento estava vigorando, em comparação com as taxas de quando não havia tal banimento.

Ao que se pode depreender dessas experiências, tanto o uso de armas pela população quanto ações eficientes da política ajudam na redução de crimes; mas deveriam ser vistas como complementares – não concorrentes nem opostas.

As conclusões de Gius sugerem que até mesmo as armas longas mais pesadas, como espingardas e fuzis, quando na mão de pessoas responsáveis são mais benéficas do que maléficas em termos de segurança pública.

Recentemente, relatório²⁹ do CPRC, que avaliam os resultados do aumento do número de pessoas que obtêm autorização para porte discreto de armas de fogo, observa queda nos índices de homicídios. Reproduzimos a seguir o gráfico, extraído do relatório citado, que mostra a variação nos últimos anos das taxas de homicídios e as compara com as taxas de obtenção de autorização de porte.

²⁷ Ver publicação em: <http://www.tandfonline.com/doi/pdf/10.1080/13504851.2013.854294>

²⁸ Ver vídeo em: https://www.youtube.com/watch?v=igJUNqnLi_w

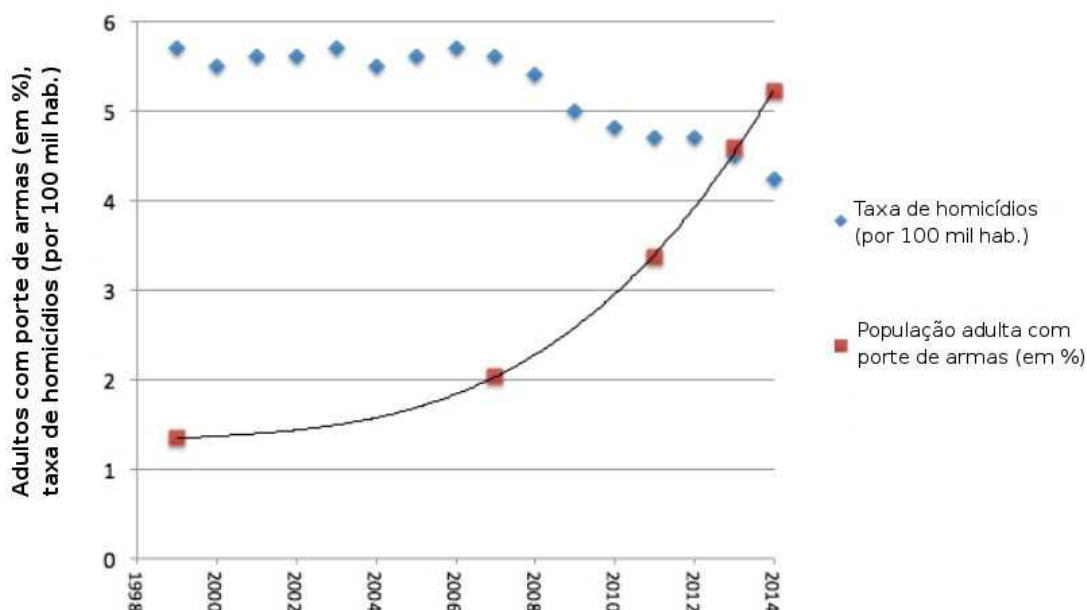
²⁹ Disponível para download, em: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2629704

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Adultos com porte de arma vs. Taxa de homicídios – nos Estados Unidos.



Fonte: Crime Prevention Research Center (*Concealed Carry Permit Holders Across the United States*) e <http://spotniks.com/apos-crescimento-de-178-de-porte-de-armas-criminalidade-despenca-nos-estados-unidos/>

Esses números contrastam com o aumento da violência no Brasil após os programas de desarmamento. Quando os cidadãos ordeiros que anteriormente podiam portar armas passam a ser proibidos, os criminosos ganham mais liberdade. Isso provoca uma externalidade negativa em toda a sociedade, pois aumenta o risco de ações criminosas para toda a sociedade, pois os criminosos deixam de ter medo de agir.

No sentido inverso, quando os cidadãos ordeiros recebem permissão para portar armas, os criminosos ficam mais temerosos de encontrar uma vítima armada e evitam crimes violentos. Isso provoca uma externalidade positiva, pois se verifica uma redução desse tipo de crime, e toda sociedade se beneficia disso.

DESARMAMENTO, DITADURAS E GENOCÍDIOS

Inegavelmente, políticas de desarmamento têm demonstrado significativo efeito no enfraquecimento de um povo em relação à tirania.

A história mundial é repleta de exemplos que demonstram a situação de vulnerabilidade da população em geral e do indivíduo em particular quando são implementadas amplas campanhas de desarmamento e de como o desarmamento foi utilizado para garantia da manutenção no poder de governantes; principalmente daqueles que mantinham o poder mais com base em força, medo e violência, do que representando legitimamente o povo.

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Alguns exemplos³⁰ de genocídios precedidos de desarmamento e o número estimado de mortos (somente no Século XX):

- 1) Turquia – 1915 (morte de armênios);
- 2) Stalin/Rússia – 1930 ;
- 3) Mao Tse-Tung/China – 1949-1976;
- 4) Hitler/Nazismo – 1938 –1945;
- 5) Uganda – 1971–1979;
- 6) Camboja – 1975 –1979;
- 7) Ruanda – 1994;
- 8) Kosovo – 1997–1999;
- 9) Sudão (Darfur) – 2003 –.

A contagem exata de mortos é praticamente impossível, mas as estimativas tendem a convergir para números igualmente assustadores, sendo que a soma somente dos exemplos citados ultrapassa a casa dos 100.000.000 de assassinados. Os mais (se assim poderiam ser chamados) brandos, como no caso de Uganda e do Kosovo têm estimativas de cerca de 300.000 assassinados. Confiar demasiadamente na proteção do governo se mostrou terrível para esses povos.

Com relação aos genocídios, que majoritariamente são perpetrados por governos, ou com sua colaboração, o professor de ciências políticas da Universidade do Havaí, Rudolph Joseph Rummel, criou o termo *democídio* para definir "o assassinato de qualquer pessoa ou pessoas por um governo, incluindo genocídio, politicídio e assassinato em massa". Há quem afirme que os maiores assassinos de todos os tempos foram governos.

Ainda atualmente surgem, com uma frequência incômoda, casos de massacres de dezenas ou centenas de pessoas, perpetrados por grupos armados que buscam o poder e impõem castigos cruéis, escravidão e execuções sobre cidadãos desarmados e indefesos. Muitas das execuções são na forma de imolação, enforcamento, afogamento, degola, decapitação ou crucificação; sugerindo que a falta de armas de fogo não evitaria tais assassinatos. Com certeza, pode-se afirmar que a falta de armas para essas vítimas ajudou na perpetração dos crimes contra elas.

Recentemente, casos isolados de tiroteios em massa (*mass shooting*) perpetrados por indivíduos armados contra grupos desarmados, nos EUA, têm sido justificativas para propostas de restrição ao uso de armas por parte da sociedade em geral. Muitos desses casos ocorreram nas chamadas áreas livres de armas (*gun-free zones*), onde os cidadãos não podem portar armas para autodefesa.

É importante considerar, de antemão, que atualmente os maiores índices de assassinatos têm se concentrado notadamente em países que poderíamos considerar desarmados, ou seja, em que os cidadãos ordeiros praticamente não têm ou não exercem o direito de portar armas para autodefesa.

³⁰ Mais detalhes podem ser vistos no vídeo: <https://www.youtube.com/watch?v=SIFQwr4x6yU>

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Vale citar os exemplos³¹ de Venezuela, com 54 homicídios por 100.000, Belize, 45; Honduras, 90; El Salvador, 41. As mais altas taxas de homicídios do mundo estão em países que têm uma população que se pode considerar desarmada, com índices de posse de armas de 10,7; 10; 6,2; 5,8. Lembrando que o Brasil é líder mundial em número total de assassinatos e tem, pelos números do Banco Mundial (2010-2012), um índice de 25 assassinatos por 100.000 habitantes, com uma média de apenas oito armas por 100 habitantes.

Recentemente, noticiou-se mais uma vez um massacre em ação terrorista, desta vez na Tunísia³², onde o SAS-2007 reporta uma média de 0,1 arma de fogo por 100 habitantes. A contagem de mortos chega a 38, em uma praia de um país no qual os cidadãos praticamente não têm armas.

Outro fato similar foi o massacre de Universidade de Garissa, onde morreram 148 pessoas, no Quênia, que tem um índice percentual de arma de fogo da ordem de 6,4; podendo ser considerado um país onde a posse de arma pelos cidadãos é baixíssima. No mesmo país, um ataque ao Shopping Westgate, em Naibóri, em setembro de 2013, matou pelo menos 67 pessoas. Recentemente, na Nigéria, bombas e tiroteios contra cidadãos indefesos em zonas livres de armas (*gun-free zones* – locais preferidos pelos assassinos) também foram noticiadas com certa frequência. Lembrando que também a Nigéria é um país com baixíssimo número de armas nas mãos dos cidadãos (próximo de 1,5 por 100).

No Sudão, de onde se tem os registros mais recentes dentre os maiores assassinatos em massa citados, o percentual de cidadãos armados é também muito pequeno: cerca de 5,5.

Em relação específica ao terrorismo, o Secretário Geral da Interpol, Ronald Noble³³, sugere que cidadãos armados são importantes contra ataques terroristas. Assim evitando que terroristas tenham à sua disposição os chamados “*soft targets*”, ou “alvos macios”, ou então um alvo frágil ou fácil de atacar, sem risco de defesa ou contra-ataque. Também é utilizada comumente a expressão em inglês “*sitting duck*”, que poderia ser traduzida como “pato sentado”, ou seja, um alvo fácil para terroristas ou bandidos em geral.

Eventuais notícias sobre mortes nos EUA tendem a sugerir que mortes teriam correlação com o número de armas em poder da população, mas uma comparação mais ampla entre os países mais armados – citados anteriormente – e os casos específicos aqui citados de massacres, bem como das estatísticas gerais de homicídios, não confirmam a tese de que países mais armados têm mais violência. A ideia de que o índice de mortes nos EUA é maior é passada pela mídia, mas

³¹ Dados de homicídios do Banco Mundial, em: <http://data.worldbank.org/indicador/VC.IHR.PSRC.P5>

³² Artigo disponível em: <http://www1.folha.uol.com.br/mundo/2015/06/1648106-atiradores-deixam-mortos-em-praia-da-tunisia.shtml>

³³ Reportagem de abc News, em <http://abcnews.go.com/Blotter/exclusive-westgate-interpol-chief-ponders-armed-citizenry/story?id=20637341>

ocorre que nos demais países esses casos não tem a mesma cobertura jornalística.

A tragédia de Sandy Hook, nos EUA, onde morreram 28 pessoas é ainda muito comentada quase três anos após; mas massacres como de centenas de milhares de pessoas em Darfur (onde a população é desarmada) costumam ser esquecidos, pois não têm a cobertura jornalística dos EUA.

Outro exemplo³⁴ digno de nota, neste caso demonstrando a capacidade de uma comunidade se defender, ocorreu na cidade de Pareo, no México, onde os cidadãos sofriam frequentemente roubos, assassinatos, estupros, entre outros crimes, perpetrados por membros de grupos criminosos, especialmente ligados ao narcotráfico. Aguardavam solução por parte das autoridades; solução que nunca chegou. Após adquirirem o armamento necessário, passaram a se defender, e a situação melhorou muito em termos de segurança pública.

Diante desses fatos, é razoável presumir que genocídios, massacres ou chacinas, como de resto execuções em geral, são mais fáceis de ocorrer contra pessoas desarmadas. Em geral, nesses casos, as pessoas somente têm chance de sobrevivência quando possuem armas para se defender.

Também é notório que os países mais armados (ver dados da página 7) estão entre os mais democráticos, enquanto que os países onde predominam regimes ditatoriais e nos que foram palco de genocídios a regra é o desarmamento. Torna-se comezinho concluir o porquê dessa tendência: é muito mais fácil subjugar e assassinar cidadãos desarmados.

O EXEMPLO EQUIVOCADO DO JAPÃO

O Japão, dentre os países desenvolvidos, é muitas vezes citados pelos que advogam que um país desarmado tende a ser menos violento, especialmente com menos homicídios, mas é um país com diferenças fundamentais em relação ao Brasil.

Primeiramente, é importante lembrar que o Japão tem uma cultura bastante diversa da maioria dos países ocidentais, em especial em relação à cultura latino-americana e do Brasil. Salienta-se a característica da rigorosa disciplina e do autocontrole do povo japonês, que vem de séculos; além de uma situação socioeconômica e cultural muito diferente da do Brasil.

O sistema judicial do país asiático é fortemente repressivo, e o país adota inclusive a pena de morte. Em passado não tão distante, o Japão adotava inclusive meios crueis de execução, e a cultura daquele país envolve a imputação de vergonha a quem comete delitos, de forma que repressão moral também contribui como fator de dissuasão ao cometimento de crimes.

³⁴ Ver artigo em:

<http://operamundi.uol.com.br/conteudo/reportagens/33176/terra+sem+lei+municipio+mexicano+pega+em+armas+para+expulsar+cavaleiros+templarios.shtml>

Ademais, o desarmamento do povo japonês reputa-se como tendo ocorrido por questões associadas a disputas de poder – não uma questão de segurança pública propriamente –, especialmente de forma que não se ameaçasse o poder dominante.

O povo japonês, assim como ocorreu na China, supriu, de certa forma, a falta de uma arma de fogo para autodefesa especialmente pelas artes marciais (karatê, Kung Fu, Jiu Jitsu, Judô, etc.), em que as partes do próprio corpo (mãos, cotovelos, pés) são utilizadas como arma, além de outros instrumentos como o bastão, o nunchaku, a espada, etc.

A par das comparações estatísticas dos pares internacionais, conforme demonstrado anteriormente, seria inapropriado afirmar que o Japão tem uma taxa baixa de homicídios porque há pouca arma de fogo. Eritreia, Burquina Faso, Haiti, Serra Leoa e Níger têm pouquíssimas armas de fogo, mas altos índices de homicídios. Ao mesmo tempo, países com elevado número de armas de fogo como proporção da população têm níveis de homicídios muito próximos aos do Japão, como Luxemburgo, Alemanha, Suécia, Suíça e Islândia.

Já quando o assunto é suicídio, e muitos alegam que armas de fogo estimulariam o suicídio, interessante observar que o Japão tem uma das taxas mais elevadas de suicídio (19,4/100.000), e a Coreia, que também é um país desarmado, tem uma taxa de suicídio de (24,7/100.000).

Ao analisar alguns estudos a respeito, as indicações são de que a disponibilidade de uma arma de fogo pode interferir no método utilizado para o suicídio, não tanto na incidência. Assim, um eventual suicida preferiria uma arma de fogo a, por exemplo, enforcamento, intoxicação ou degola simplesmente por ser um meio provavelmente menos doloroso.

PROIBIÇÕES, RESTRIÇÕES E NECESSIDADE DE AUTODEFESA

Quando surgem leis (ou projetos de lei) que limitam direitos e liberdades, uma pergunta extraída da obra de Immanuel Kant vem logo à mente de quem a conhece: “Poderia um povo impor tal lei a si mesmo?”.

A utilidade de possuir e portar armas para a própria defesa, da família ou até mesmo de terceiros é evidente, seja pelas experiências ao longo de toda a história, seja pelas pesquisas recentes. Portanto, tais direitos são vitais para muitas pessoas.

Não são tão raros casos em que pessoas são ameaçadas – como mulheres, por parte de ex-namorados ou maridos; jornalistas investigativos ou mesmo cidadãos comuns que se deparam com criminosos – que, necessitando de rapidamente obter uma arma de fogo para se proteger e tendo negado esse direito, foram assassinados por não terem tido o direito de adquirir e portar uma arma garantido no tempo necessário.

Vale lembrar o exemplo de um agente de instituição de segurança que, ao ser reconhecido na rua por criminosos, foi

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sequestrado, já que não tinha meios para se defender, e levado para um local dominado por bandidos, onde fora iniciada uma sessão para torturá-lo até a morte. Particularmente nesse caso, houve muita sorte por parte do agente, que acabou sendo resgatado pela polícia antes da morte.

É importante ter em mente que esse tipo de situação se repete frequentemente por todo o Brasil e pelo mundo. O desfecho mais comum, infelizmente pode-se dizer, é que a polícia não chegue a tempo para salvar a pessoa ou nem mesmo tome conhecimento do ocorrido, e a vítima passa a entrar para as estatísticas de “desaparecidos”.

Parece evidente que servidores públicos e empregados de diversas categorias são mais suscetíveis de serem alvo da ação de criminosos, e o exercício do direito a autodefesa é uma necessidade inegável. Negar o direito ao opor questões burocráticas pode ser prejudicial quando a preocupação é de salvar inocentes.

Ao que tudo indica, especialmente pelas pesquisas aqui citadas, maiores restrições levam a aumento da violência. Como poderíamos explicar isso? Simples: restrições afetam muito mais o cidadão honesto e pacífico, que usa a arma para se defender do que o criminoso. Uma regra que dificulte a posse ou porte de arma de fogo provavelmente evitará uns poucos casos de criminosos acessando armas, ao passo que evitará a milhares de cidadãos honestos o acesso a armas. Assim, beneficiando geralmente mais os criminosos, por não enfrentar resistência.

Em relação à idade mínima para porte, vale tomar como referência os EUA, onde a idade predominante na maioria dos estados para autorização de porte é de 21 anos, com alguns estados tendo a idade de 18, outros poucos, de 23. De fato, seria de se questionar: faltaria o devido discernimento a uma pessoa de 21 para exercer tal direito de autodefesa? Se com menos idade que essa, já pode dirigir, pode trabalhar, pode ser soldado portando um fuzil automático leve (FAL) 7.62, pode ser servidor público, pode ser policial; por que não teria condições de portar uma arma cujo manuseio e regras de segurança, convenhamos, são relativamente simples?

Talvez melhor do que imaginar abstratamente uma pessoa com 21 anos, seja conhecer alguém com 21, 22, 23 anos, para podermos avaliar se uma pessoa com essa idade seria apta a utilizar uma arma de fogo. Tomemos como exemplo o jogador Neymar (23 anos, atualmente) ou o Piloto de Fórmula 1 Felipe Nasr (22 anos, atualmente). Será que seria plausível afirmar que, pela idade, eles não teriam equilíbrio emocional, discernimento ou habilidade para utilizar uma arma de fogo adequadamente, da mesma forma que um soldado de 18 ou 19 anos o faz?

Diante disso, parecem pouco consistentes as alegações que fazem com que, por exemplo, trabalhadores e estudantes que muitas vezes se encontram em situações de perigo, no trajeto de casa para o trabalho, escola ou atividade esportiva – especialmente à noite ou madrugada –, tenham seu direito de defesa negado por ter “apenas” 21, 22 ou 23 anos. Isso prejudica ainda mais as mulheres jovens, mais

vulneráveis a assaltos e estupros, já que são mais frágeis fisicamente e visadas e dependem mais de uma arma para defesa.

DEFESA NACIONAL

Países que têm posse quase que irrestrita de armas de fogo, inclusive armas como fuzis, como é o caso de Estados Unidos e Suíça, já tiveram o benefício de ter planos de invasão de seu território abandonados preliminarmente, pelo fato de que boa parcela das residências desses países possuem armas de fogo. Especulações por parte da Alemanha, especificamente, em relação à Suíça e do Império Japonês, em relação aos Estados Unidos, durante a Segunda Guerra Mundial, tiveram como contra-argumento o fato de que uma invasão enfrentaria pessoas armadas de fuzil em cada residência.

No caso do Brasil, a vulnerabilidade geral da população em relação à criminalidade se mostra ainda mais exacerbada na faixa de fronteira, onde os residentes não demonstram a mínima capacidade de resistência a invasões ou atentados. Até mesmo os servidores públicos e suas famílias têm fortes limitações quanto ao exercício de autodefesa. Fato inclusive já manifestado em audiência pública da Comissão.

Várias reportagens recentes mostram membros de comunidades que, armados, conseguiram fazer a diferença salvando vidas ao combater grupos terroristas – na Nigéria³⁵ – e grupos criminosos – no México³⁶. Já no Paquistão, professoras se armaram para defender suas escolas após massacre³⁷ de 150 meninos e professores, perpetrado por terroristas na cidade de Peshawar.

Além disso, são inúmeros os relatos de atrocidades cometidas por tropas invasoras contra civis, em diversas guerras, mesmo que não tenha havido resistência.

Residentes armados podem ser um importante fator para a segurança de comunidades e um país, especialmente em faixa de fronteira, tanto no caso de uma invasão estrangeira, quanto em relação à atuação de criminosos em geral.

A ARMA COMO DIFERENCIAL DO CRIMINOSO

A assimetria causada pelo fato de que as armas de fogo são negadas ao cidadão lhe impõe desvantagem em uma confrontação com um criminoso. Mas não é só esse efeito mais visível que colabora com a criminalidade. A arma é um instrumento de poder, especialmente quando

³⁵ Ver artigo em: <http://veja.abril.com.br/noticia/mundo/cacadores-libertam-cidade-e-matam-80-membros-do-boko-haram/>

³⁶ Ver artigo em:

<http://operamundi.uol.com.br/conteudo/reportagens/33176/terra+sem+lei+municipio+mexicano+pega+em+armas+para+expulsar+cavaleiros+templarios.shtml>

³⁷ Ver artigo em: <http://internacional.estadao.com.br/noticias/geral,professoras-paquistanesas-se-armam-apos-o-massacre-de-peshawar,1628535>

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a maioria dos cidadãos não pode ter, e por esse motivo pode sentir-se ou ser percebido como menos importante ou inferior.

Não somente o dinheiro e as festas, mas também a possibilidade real (embora não legal) de ter e portar armas, exclusivamente para bandidos indubitavelmente atrai muitos jovens para a criminalidade.

Em muitas comunidades, o bandido que ostenta uma pistola ou um fuzil é visto como superior, e isso provoca em muitas pessoas, especialmente crianças e adolescentes, certa admiração, que acaba por atrair essa criança ou esse adolescente para o crime, onde ele pode ter uma pistola, um fuzil, e os cidadãos o respeitam, visto que o temem e não teriam como se defender.

As pessoas respeitam os criminosos mais do que deveriam, especialmente por conta da assimetria de poder que a posse exclusivamente na mão do bandido, no caso de um confronto direto, deixa o cidadão extremamente vulnerável. Assim, pouco ou nada procura fazer o cidadão, visto que desagradar um bandido pode provocar uma reação violenta da qual o cidadão não tem condições de se defender.

Assim como carros, motos, animais, lugares, obras de arte são objetos de admiração, as armas também. Isso é normal. Com o direito de ter e portar armas restabelecido ao cidadão, a pessoa honesta vai poder possuir, portar, praticar o esporte de tiro, de caça, etc. e até ostentar o objeto de seus desejos, sem a necessidade de ser ou se aliar a um bandido. No caso do jovem (especialmente estimulado pela impunidade), isso evitaria que ele seja compelido ao crime e à associação a gangues e quadrilhas.

Sendo a arma de fogo permitida para o cidadão honesto, isso não só lhe dará vantagem no confronto com os bandidos, como lhe incentivará também a manter bons antecedentes, que lhe favorecerão na obtenção de uma arma legalizada, sem lhe trazer complicações. Empurrar as pessoas para a ilegalidade não parece ser uma política pública produtiva quando o objetivo é uma sociedade mais livre, segura e próspera.

Além disso, é comprovado que os criminosos temem abordar ou atacar pessoas que podem estar armadas. Conforme já mostrado aqui, a tendência quando se passa a autorizar o porte de arma pela população (especialmente o porte discreto) é de diminuição dos crimes violentos, pois os criminosos temem o confronto com cidadão armado, mas não sabe antecipadamente quem está ou não armado. Pode haver algum reflexo no aumento dos crimes não violentos, pois há uma espécie de migração de crime violento para não violento, já que no crime não violento é menos provável um confronto do criminoso com uma vítima armada.

Estudo³⁸ de Wright e Rossi, que envolveu entrevistas³⁹ com centenas de criminosos encarcerados nos EUA, aponta uma série de conclusões consistentes com a ideia de que cidadãos armados detêm a

³⁸ Estudo encomendado pelo Departamento de Justiça dos EUA/Instituto Nacional de Justiça, disponível em: <https://www.ncjrs.gov/pdffiles1/Digitization/104293NCJRS.pdf>

³⁹ Ver especialmente os resultados nas páginas 109 a 111.

criminalidade. Pelas respostas obtidas, pode-se concluir que um criminoso tende a evitar o cometimento de um crime quando crê na probabilidade de se deparar com uma vítima armada, inclusive com a maioria dos entrevistados afirmando que tem medo maior de uma vítima armada do que da polícia.

Permitir que os cidadãos portem armas provoca um reequilíbrio de forças. O cidadão passa a ter um poder que o criminoso teme, e isso tem um forte poder de dissuasão.

CUSTOS, POLÍTICAS PÚBLICAS E EFEITOS ECONÔMICOS

No exemplo do Canadá, quando se implantou a política de controle de armas, com necessidade de registro, estimavam que o custo desse controle seria da ordem de \$2 milhões; contudo, atualmente, os custos já são reestimados para algo entre \$1 bilhão e \$3 bilhões.

Um simples exercício mental, mesmo sem estimativas dos supostos benefícios, já permitiria supor que, ainda que existente, o fator benefício-custo seria extremamente baixo.

Ademais, a comparação entre as taxas de criminalidade no Canadá após a implementação do controle de armas e as taxas de criminalidade dos Estados Unidos, com uma legislação menos restritiva, demonstra o fracasso desse tipo de controle de armas.

Além dos custos do controle em si, têm-se que considerar os custos dos processos e prisões associados à simples posse ou ao porte de arma não autorizados.

A exemplo do que ocorre com a lei seca no Brasil, a punição drástica (criminal) de uma ação que não resulta em dano a quem quer que seja provoca custos, sejam financeiros, materiais, morais, sociais, etc.

Poderíamos, por exemplo, comparar uma situação em que um motorista tenha ingerido alguma bebida e ainda reste um percentual baixo de álcool no sangue, algo como 0,04% (0,4 “decigrama por litro”), que já seria considerado crime, mesmo que ninguém tivesse sido prejudicado, nem ameaçado pela condução desse motorista. Em outra situação, teríamos um motorista que tenha 0,1% (1,0 decigrama por litro) de álcool no sangue e que dirija de forma perigosa por causa disso.

Seria de se comparar, no primeiro caso, com uma pessoa que porta pacificamente sua arma, sem demonstrar ser ameaça a quem quer que seja. Comparar-se-ia o segundo caso (embriagado que ameaça) a alguém que esteja prestes a cometer algum crime portando uma arma de fogo (independente de ser porte autorizado ou não; não importa).

Caso se pretenda criminalizar um suposto risco de que um dano a terceiro ocorra, seria importante considerar qual seria o grau desse risco. Uma pessoa que porta um objeto feito de vidro pode, em caso de confronto, quebrar o vidro e utilizá-lo como arma, como numa briga de bar em que alguém quebra o fundo de uma garrafa para utilizar como objeto cortante. Pode-se utilizar uma barra de ferro, um machado, uma faca, ou uma série de outros objetos como arma.

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Os recursos econômicos, notadamente recursos públicos, são escassos e devem ser utilizados com eficiência, eficácia e efetividade. Assim, não é recomendável dispêndios em ações que tragam pouco ou nenhum resultado, ou ainda que tragam resultados opostos ao desejados. Caso haja ações mais eficazes, é recomendável que os recursos sejam direcionados para essas ações.

A se considerar o exemplo do Reino Unido, citado anteriormente, pode-se supor que a redução dos números de homicídios nos últimos anos está mais relacionada com a eficiência policial do que em mudanças da legislação. Pelas manifestações observadas, seria razoável inferir que uma atuação mais intensa e mais focada nos efetivos comportamentos criminosos tende a apresentar melhores resultados, do que dispender recursos em políticas de criminalização de comportamentos inofensivos e corriqueiros, sob a alegação de que potencialmente poderiam vir a representar alguma ameaça.

A economia e as finanças públicas são afetadas pela política de controle de armas. Com a recuperação do direito de ter e portar armas por parte da população, é plausível esperar os seguintes efeitos econômicos:

1. Aumento de atividade econômica na produção e venda de armas, munições e acessórios;
2. Aumento de atividade econômica nos serviços associados a treinamento e prática esportiva associada;
3. Geração de empregos diretos e indiretos nos setores acima citados;
4. Aumento na arrecadação de impostos, contribuições e taxas;
5. Aumento no nível de investimentos e de outras atividades econômicas, em função da melhor percepção de segurança;
6. Redução da demanda por recursos públicos nas áreas de Segurança Pública, Saúde e Judiciária, em função da diminuição da criminalidade violenta;
7. Melhoria nos resultados dos programas públicos de segurança com o foco direcionado para as ameaças reais, ao invés de desperdiçar recursos com ameaças imaginárias.

Apenas em relação à arrecadação de tributos, em um exercício simples de estimativa para ilustrar, considerando hipoteticamente que 1% dos cerca de 200.000.000 cidadãos brasileiros venham a adquirir uma arma, cujo preço é ao redor de R\$ 4.000,00, e considerando que aproximadamente 50% deste preço são relativos a tributos, o valor somente dos tributos seriam o resultado da equação (preço x carga tributária x quantidade); portanto R\$ 4.000,00 x 0,5 x 2.000.000, que daria um valor de tributos da ordem de R\$ 4,0 bilhões.

Os diversos estudos, pesquisas, dados estatísticos e artigos observados sugerem que políticas de desarmamento generalizado da

população representam desperdício de recursos públicos, quando não acabam por provocar aumento de crimes violentos, especialmente homicídios.

REGISTRO PERMANENTE

Se há fundada dúvida quanto à eficácia da exigência de registro para arma de fogo, valendo observar os números da violência, especialmente de homicídios no Brasil, após a Lei 9.437/97, ainda mais temerária é a regra de exigir que o registro seja refeito periodicamente.

A criminalização atribuída pelo Estatuto do Desarmamento ao indivíduo que não faça a renovação do registro de uma arma a cada três anos é algo como determinar que um cidadão que nenhum mal fez a quem quer que seja se torne criminoso de um dia para o outro.

O jurista Adilson Dallari, em audiência pública, fez fundamentada crítica à necessidade de recadastramento periódico, como sendo uma inovação que, além de não ter resultados práticos, criminaliza injustamente o cidadão. Tal dispositivo torna cidadãos de bem em criminosos, sem fundamentação consistente. Dallari, em artigo⁴⁰ publicado em 2007, faz o seguinte comentário sobre a obrigatoriedade de renovação do registro: “Trata-se do mais abominável terrorismo oficial, destinado a fazer com que os cidadãos, por medo, se submetam à violação de seus direitos constitucionalmente assegurados”.

Entendendo-se que seja realmente útil o cadastro (como o SINARM), os registros deveriam ter caráter permanente.

A eficácia do registro para evitar ou solucionar crimes já foi objeto de questionamento no âmbito das audiências públicas que discutem o Projeto. Até o momento persiste a dúvida quanto ao número de casos que tenham sido esclarecidos ou supostamente evitados com a utilização dos dados de registro.

No quesito custo, também é altamente questionável se vale a pena na prevenção ou esclarecimento de crimes, não só o registro (que muitos governos em outros países já desistiram de fazer, por concluírem ser praticamente inútil e custoso demais), mas também o adicional de renovação desse registro em termos de gastos.

Se fizermos um breve exercício mental, facilmente teríamos uma estimativa de custo desses controles, em nível nacional, na casa de centenas de milhões de reais, senão atingindo a casa de aproximadamente R\$ 1,0 bilhão, a exemplo das estimativas de custos verificadas no Canadá, onde os efetivos custos dos registros de armas ultrapassaram em muito as estimativas iniciais.

Esse custo poderia, a primeira vista, ser utilizado como justificativa para que os controles fossem centralizados; contudo, a centralização não necessariamente reduziria os custos totais para a sociedade visto que as pessoas teriam que arcar com custos de

⁴⁰ Disponível em: <http://www.migalhas.com.br/dePeso/16,MI40623,51045-Renovacao+do+registro+de+armas+de+fogo>

deslocamento, que poderiam ser muito maiores do que pagariam de taxas para a cobertura dos serviços prestados localmente.

Com base em constatações dessa natureza, administrações como no Texas e no Canadá⁴¹ (em relação a armas longas) simplesmente desistiram do registro de alguns tipos de armas de fogo, entendendo que não ficaram evidenciados benefícios associados a essa exigência. Os registros considerados inúteis pelo governo canadense foram destruídos⁴². Nem com isso houve aumento da criminalidade nesses locais. Aliás, é o Distrito de Columbia (Washington, DC) que, com leis fortemente restritivas quanto ao porte de armas, tem visto seu índice de homicídios em consistente crescimento nas últimas décadas, ao contrário do que vem ocorrendo com os demais estados que adotaram leis autorizando o porte discreto de armas.

Se há fundamentados questionamentos sobre a utilidade *vis a vis* dos custos de um cadastro de todas as armas, ainda mais questionável seria a necessidade de refazimento periódico de cada registro.

RECARGA DE MUNIÇÃO

Outro ponto de discussão, especialmente por ter sido proibida no substitutivo apresentado em 2014, a questão da recarga merece análise específica, mas contextualizada.

É inegável que atiradores, caçadores, colecionadores, como de resto cidadãos em geral necessitam treinamento. Isso está inclusive manifestado por aqueles que desejam exigir cursos e treinamentos específicos como requisito para autorização de porte.

Há alegação de que a posse ou porte de arma de fogo só traria segurança se a pessoa for capacitada e treinada, etc. Assim sendo, é importante considerar o custo para o cidadão manter-se treinado.

Considerando um custo de aproximadamente R\$ 5,00 por munição, caso um atirador em geral pretendesse treinar participando de uma sessão de tiro em que utilizasse 100 munições, teria um gasto somente com a munição da ordem de R\$ 500,00.

Tal custo inviabiliza para muitas pessoas o exercício do direito e consistiria em uma imposição injusta. Assim, os clubes de tiros, academias, etc. fazem recarga de munição, o que barateia enormemente a atividade de treinamento.

Há, por outro lado, uma bem intencionada preocupação de que pessoas façam a recarga para venda ilegal. Contudo, sendo a fabricação e venda ilegais de munição consideradas crime, essa venda já seria coibida.

Além disso, seria possível estabelecer que os clubes e academias, devidamente cadastrados, seriam proibidos de vender a munição recarregada, mas poderiam vender, isso sim, o serviço de

⁴¹ Ver: <http://www.forbes.com/sites/danielfisher/2013/01/22/canada-tried-registering-long-guns-and-gave-up/>

⁴² Ver observações em: http://www.rcmp-grc.gc.ca/cfp-pcaf/online_en-ligne/reg_enr-eng.htm

recarga, de maneira que o praticante poderia utilizar a munição recarregada, no local. Assim, o praticante utiliza para seu treinamento no local, pagando pelo serviço, mas não leva consigo os projéteis como se fossem uma mercadoria que ele poderia utilizar para outros fins.

PENAS

Atualmente, a punição por mero porte de arma de fogo é extremamente rigorosa, coloca-se pessoas na prisão apenas por trafegar com uma arma dentro do carro para defesa própria, mesmo que não tenham feito nada que pudesse, de fato, ameaçar quem quer que seja. Algumas penas podem ser consideradas muito rigorosas em comparação com o dano efetivamente causado à sociedade, sugerindo que o senso de justiça é colocado de lado para favorecer a garantia de respeito à lei.

Comparando, por exemplo, o crime de “constrangimento ilegal”, previsto no art. 146 do Código Penal, em que há “violência” e “grave ameaça”, é punido com pena entre três meses e um ano ou multa, a que pena deveria estar sujeito alguém que apenas porta um instrumento que, eventual e potencialmente poderia resultar em “violência” ou “grave ameaça”? Soa desproporcional punir tal pessoa de forma muito mais drástica apenas por uma suposta possibilidade de violência.

Certamente, a ideia de que alguém possa portar uma arma com a intenção do cometimento de um crime é possível; mas é uma situação muito distinta. Caso seja caracterizado que alguém está portando uma arma para, por exemplo, o cometimento de um assalto, obviamente há uma ameaça concreta, que seria justificativa para uma pena apropriada. Mas não é razoável assumir que qualquer um que porte uma arma tenha essa intenção. Aliás, penas mais rigorosas já são aplicadas em decorrência da “grave ameaça” que as armas de fogo representam quando utilizadas em crimes.

Fica uma impressão, apoiada por muitos comentários, inclusive no âmbito das audiências públicas e seminários da Comissão, de que criminalizar o porte de arma facilita a ação da polícia, que implicitamente consideraria que alguém que porte uma arma sem autorização estaria com intenção de cometer um crime. Isso não pode ser considerado totalmente verdadeiro, pois mesmo o cidadão que não tenha índole criminoso, nem intenção de cometer um crime, pode sentir a necessidade de portar ou transportar uma arma em algumas situações.

Algumas vezes fica explícito que se quer penas muito altas para suprir a falta de eficiência da polícia em prender assaltantes, e ao prender alguém por porte ilegal de arma poderia estar prendendo um provável assaltante. Assim, se deseja para esses casos penas muito altas a fim de garantir que o “provável” assaltante fosse encarcerado por longo período, mesmo que não se prove que ele é realmente um assaltante.

Mas, então, o que seria o correto? Embora não haja aqui presunção de dizer o que é certo e o que é errado, seria razoável afirmar

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que se a questão é punir, por exemplo, um assaltante, cabe ao poder público demonstrar que o indivíduo é um assaltante; que cometeu ou tentou cometer um assalto; não punir pelo simples fato de ter um meio que eventualmente possibilitasse um assalto.

É bastante factível que as autoridades consigam distinguir, diante das circunstâncias e dos antecedentes do cidadão, que ele não é um assaltante ou assassino, e que em outra situação possam identificar que um grupo de pessoas armadas está prestes a cometer um crime. De toda forma, mesmo que num caso remoto a pessoa tivesse a intenção de cometer um crime, o próprio ordenamento jurídico brasileiro não considera essa intenção ou os atos preparatórios um crime em si. Então é razoável respeitar isso ou, por coerência, modificar a legislação penal.

O bom senso sugere que a pena por mero porte de um instrumento deveria ser menor à de uma efetiva ameaça. Essa pena parece mais razoável, pois pode ser eventualmente imposta a um cidadão honesto que não tenha causado, nem ameaçado causar, dano a quem quer que seja. Punir drasticamente cidadãos honestos é um pouco perturbador para muitas pessoas. Por que não considerar, por exemplo, que apreender, com imposição de multa, a arma de quem se suspeite, já não poderia ser uma atitude positiva na prevenção de crimes? Investigações mais aprofundadas poderiam ser feitas posteriormente.

É fato que nos diversos países (com diferenças entre estados em alguns) a amplitude das penas associadas à questão varia bastante. A imposição de penalidades quanto à posse e porte de armas certamente depende muito do senso de eficiência e de justiça da sociedade, bem como do que se conclui quanto ao custo-benefício da utilização de uma pena maior ou menor.

Até a mídia simpática ao desarmamento parece noticiar com certa surpresa quando um cidadão trabalhador, honesto, sem antecedentes e muitas vezes de idade avançada é preso por “posse” ou “porte ilegal de arma de fogo” por simplesmente a ter utilizado em legítima defesa. Parece prevalecer entre a população em geral certa desaprovação em relação ao excessivo rigor da lei para esses casos.

É bom lembrar do drama, especialmente para pessoas de boa índole e de comportamento social ilibado, quando é submetido a pena de prisão ou simplesmente é preso antes mesmo de julgamento. Há danos morais e materiais quando isso ocorre, não só diretamente para a pessoa, mas também para as famílias; além de custos para o setor público com tal processo. Assim, há que se considerar se realmente alguém que porte uma arma de fogo tenha feito algo tão danoso à sociedade que mereça ser preso.

Por fim, é importante considerar que o porte de arma de fogo muitas vezes se dá por uma necessidade momentânea, como uma ameaça específica que se abate sobre alguém, ou por uma situação atípica, como viagem, deslocamento noturno ou a locais mais perigosos, e a burocracia para obter a autorização pode levar vários dias. Assim, pessoas sem nenhuma intenção criminal ou de violência qualquer, podem ver-se na necessidade de portar uma arma exclusivamente para autodefesa.

QUESTÃO CONSTITUCIONAL

Na audiência pública do dia 13 de maio de 2015, o jurista Adilson Dallari cita o art. 5º da Constituição Federal, que estatui o seguinte:

“Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do **direito à vida**, à **liberdade**, à igualdade, à **segurança** e à **propriedade**, nos termos seguintes:
(...)”

Defende o jurista que, para se atender tais fins, há necessidade de acesso aos meios para isso. Visível que sem a possibilidade de defesa não há garantia principalmente quanto ao direito à vida. Até a “dignidade da pessoa humana”, apregoada no art. 1º, fica comprometida se não há meios de defesa contra agressões.

Também foi comentado no âmbito das audiências que a atual lei transforma em criminosa uma pessoa que tenha uma arma registrada e, seja por que motivo for, não passe pela burocracia de renovar o respectivo registro periodicamente. “Crime sem vítima”, “crime com hora marcada”, “crime sem que o cidadão nada faça”, seja que nome se dê a isso, parece que o atual projeto procura corrigir tal inovação.

Se ao menos houvesse comprovação de que desarmar a população em geral gerasse maior segurança e redução da criminalidade, seria plausível limitar o direito de autodefesa, que em última instância é a garantia dos direitos grifados do texto constitucional. Mas, diante de todas as evidências de tantos estudos e pesquisas, não há como afirmar sequer que o desarmamento mantenha os mesmos níveis de segurança, se comparado com o exercício do pleno direito pelas pessoas.

A par do fato de que muitas vezes direitos importantes são suprimidos pela legislação sem maiores comprovações de que isso é indubitavelmente necessário, não há como afastar a conclusão de que, quando uma sociedade é desarmada, não só tem comprometidos aqueles direitos constitucionais citados, como fica mais insegura e suscetível a vários tipos de abusos e atrocidades.

O QUE ESPERAR COM A PERMISSÃO DO USO DE ARMAS?

Com base nas experiências de outros países, conforme citado aqui, considerando uma mudança na legislação que permita aos cidadãos portarem armas para autodefesa, pode-se esperar os seguintes resultados em termos de segurança pública, com aprovação do PL 3.722/2012:

1. Tendência de redução, de forma contínua, nos números de crimes violentos, notadamente roubo (assalto) e estupro;
2. Ferimentos e homicídios associados a outros crimes poderiam apresentar algum aumento no curto prazo (um ou dois anos) e tendência de forte queda nos anos seguintes;
3. Algum aumento nos crimes patrimoniais não violentos.

Nos primeiros anos, é possível que se verifique algum aumento de ferimentos e homicídios (especialmente decorrentes de ações em legítima defesa) devido a confrontos mais frequentes entre bandido e vítima, mas a tendência futura é de queda, com a mudança de comportamento dos criminosos, evitando crimes violentos e preferindo crimes patrimoniais não violentos, como furtos, devido ao maior risco de ferimentos, morte ou prisão e menor probabilidade de sucesso.

Em termos econômicos, conforme já comentado, a liberação da compra e do porte de armas de fogo certamente trará efeitos positivos, tanto no setor diretamente envolvido e para a arrecadação de tributos, como em outros setores, indiretamente, por conta da maior sensação de segurança.

III – CONCLUSÕES

Certamente muita pesquisa ainda resta por ser feita sobre o assunto, especialmente no Brasil; mas os trabalhos relativos a experiências de diversos países, bem como a tendência verificada no Brasil de aumento nos crimes violentos com a política desarmamentista, nos permitem algumas conclusões.

Não foram encontradas quaisquer evidências que alguma política de desarmamento generalizado da população tenha reduzido a criminalidade violenta em qualquer país. Fica, também, evidente que o desarmamento tem um forte conteúdo ideológico, mas é desprovido de fundamentação técnico-científica.

Quando há maior equilíbrio de forças, eventual investida criminosa, como ameaça ou ataque efetivo contra um cidadão, o risco para o agressor se torna maior quando a vítima possui uma arma. O efetivo risco para o agressor gera o efeito psicológico chamado “percepção de risco”, e essa percepção de risco inibe o cometimento especialmente de crimes violentos.

Para evitar crimes cometidos com armas de fogo, o que parece mais efetivo é promover a retirada das armas que estejam em poder de criminosos habituais ou de pessoas em situações de provável cometimento de crime. Atuação policial, especialmente com o uso de

ações de inteligência e equipamentos adequados, parece estar associada a bons resultados nesse aspecto.

A dinâmica dos dados de diversos países e estados, em variados períodos indica que não há um resultado que associe armas em poder dos cidadãos e violência. Contudo, a maioria dos estudos converge em suas conclusões em indicar uma tendência na redução de crimes violentos, notadamente homicídios, estupros e assaltos, quando os cidadãos possuem e podem portar armas.

Por fim, as informações coletadas indicam que:

1. Não há evidências de que maior facilidade para compra ou porte legal de arma de fogo aumente os índices de crimes violentos;
2. *A contrario sensu*, políticas de maior liberdade de possuir e portar armas tendem a apresentar reduções nos índices de crimes violentos, incluindo homicídios;
3. As taxas relativas e os números totais de homicídios após 1997 (início da política desarmamentista no Brasil) mostram tendência de alta, a exceção de breve período (2004-2007), que teve as taxas reduzidas puxadas especialmente pelos estados de SP, RJ e PE, com volta da elevação a partir de 2008;
4. Penas muito rigorosas para situações cotidianas, em que não há ameaça a inocentes, nos casos de posse ou porte uma arma especialmente quando há uso em legítima defesa, têm sido vistas com certo ceticismo por condenar pessoas honestas e pacíficas que apenas visam se defender;
5. Treinamento em uso de arma de fogo é altamente recomendável, mas negar o direito de uso a quem não tenha treinamento prévio pode inviabilizar o direito de defesa e também dificultar o desenvolvimento das habilidades desejadas por parte do usuário;
6. A tese de que restrições ao direito de autodefesa beneficiam e estimulam a criminalidade violenta, por facilitar a ação de criminosos, parece comprovada;
7. O percentual de vezes em que ocorrem ferimentos sérios ou mortes quando armas são usadas para autodefesa é muito baixo;
8. A história mundial tende a demonstrar que um país mais armado é um país mais protegido e pacífico, normalmente também mais livre, democrático e próspero;
9. A posse de armas pela população pode ser um importante fator para a defesa nacional e também contra a possibilidade de instalação de um governo tirano;
10. Os custos do controle de armas, aos moldes do SINARM, é elevado e seus benefícios questionáveis;

11. O efeito dissuasório associado à percepção de risco para o criminoso ao atacar um cidadão que pode estar armado (porte discreto) tem mostrado bons resultados na redução da criminalidade violenta, notadamente em relação aos crimes de estupro, roubo (assalto) e homicídio;
12. Áreas livres de arma (*gun-free zones*), em diversos países, são locais preferidos por terroristas, que procuram evitar locais em que as pessoas provavelmente portem armas;
13. Autoridades públicas (policiais) não garantem a proteção individual do cidadão em todas as situações;
14. Algumas categorias de servidores públicos, como também trabalhadores de algumas categorias profissionais de maior risco, necessitam de tratamento mais facilitado no acesso do direito de uso de armas de fogo;
15. Em geral, quando uma vítima reage a um ataque criminoso, utilizando arma de fogo, as chances de ferimento graves para ela é menor do que quando ela age passivamente, não reagindo;
16. Quando uma vítima reage a um ataque criminoso sem utilizar-se de uma arma de fogo, o risco de ferimentos graves é bem maior do que quando reage com uma arma;
17. Mulheres tendem a se beneficiar mais da utilização de arma de fogo para autodefesa do que homens, quando em comparação com uma atitude passiva ou a uma reação desarmada;
18. As evidências sugerem que o desarmamento é mais efetivo sobre criminosos habituais e de pessoas com conduta temerária ou na eminência de cometimento de crime;
19. Há pouca evidência que justifique distinção entre uso “permitido” e “restrito” dentre os armamentos para uso civil;
20. A efetiva liberação do comércio, posse e porte de armas de fogo tende a beneficiar a economia, tanto em relação à atividade econômica em geral, quanto em relação à geração de empregos e à arrecadação de tributos;
21. Em relação às políticas públicas, com a maior concessão de porte de armas aos cidadãos, espera-se uma redução dos crimes violentos, com reflexos positivos nas áreas de Segurança Pública, Saúde e Justiça.

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11 – ANEXO – Australian Institute of Criminology – Impact of Ballistic Evidence on Criminal Investigation



Australian Government

Australian Institute of Criminology

Trends & issues in crime and criminal justice

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Abstract | The challenges associated with investigating serious crime, particularly organised crime, are well known. Increasingly, police are turning to new information technologies to support traditional investigative techniques.

Automated ballistic information technology allows police to link cases that would otherwise not be known to be related. By linking investigations, police can identify new leads and suspects.

The current study used interviews with investigators in two states to understand what impact ballistic evidence has on criminal investigations into firearm crime. The results revealed a significant number of cases benefited from linked investigations—including cold cases and cases involving organised crime groups.

This research helps to demonstrate the potential value of technology to law enforcement, and the circumstances in which it is most effective.

Impact of ballistic evidence on criminal investigations

Anthony Morgan and Penny Jorna

There has been a long-term downward trend in firearm-related homicides and non-fatal shootings in Australia (Bryant & Cussen 2015; Fitzgerald 2013). However, firearms are still used in around one in six homicide incidents (16%; Bryant & Cussen 2015), and there have been spikes in drive-by and non-fatal shootings, concentrated in a relatively small number of New South Wales (NSW) communities (Bureau of Crime Statistics and Research 2015; Fitzgerald 2013). These incidents attract significant media interest and contribute to community concern about the involvement of firearms in crime. Further, while firearms may be less commonly used in crime than other weapons, there is evidence that they increase the risk of lethal injury (Mouzos 2003).

Research based on data on seized firearms has demonstrated a high concentration of firearms among serious and organised crime groups (Bricknell 2012). Firearms are used by organised crime groups as part of territorial disputes, to obtain protection money, to promote their image and reputation and for conflict or revenge purposes (ACIC 2016). According to research by the NSW Bureau of Crime Statistics and Research (BOCSAR), at least one-third of 'shoot with intent' and 'discharge firearm into premises' incidents are related to gangs, drugs or organised crime, while this information was unknown in nearly half of all incidents (Fitzgerald 2013).

This can pose significant challenges for the investigation of firearm-related crime by police. In many incidents of non-fatal shootings, victims and offenders are known to one another and have a criminal relationship, which means that victims are often unwilling to cooperate with police, even when they have been shot by the offender (BOCSAR 2015). Mouzos and Muller (2001) found that unsolved homicides were significantly more likely than resolved cases to involve a firearm. Similarly, Canadian research has shown that homicides involving firearms are three times more likely to be unsolved when compared to homicides involving other weapon types, and the involvement of other criminal activities (eg gangs, drugs) significantly increases the likelihood a homicide will remain unsolved (Dauvergne & Li 2006). Further, simply increasing the amount of resources given to an investigation has been found to have a limited impact on whether or not a case will be solved (Worrall 2016).

Police have therefore looked to new methods to aid in criminal investigations into firearm crimes as part of a wider trend towards the use of technology in law enforcement (Koper, Lum & Willis 2014). Some of these technologies—such as closed-circuit television, body-worn videos and DNA evidence—have been subjected to more empirical study than others. This paper examines the impact of ballistic evidence, obtained through a national automated ballistic information network, on criminal investigations into firearm crime.

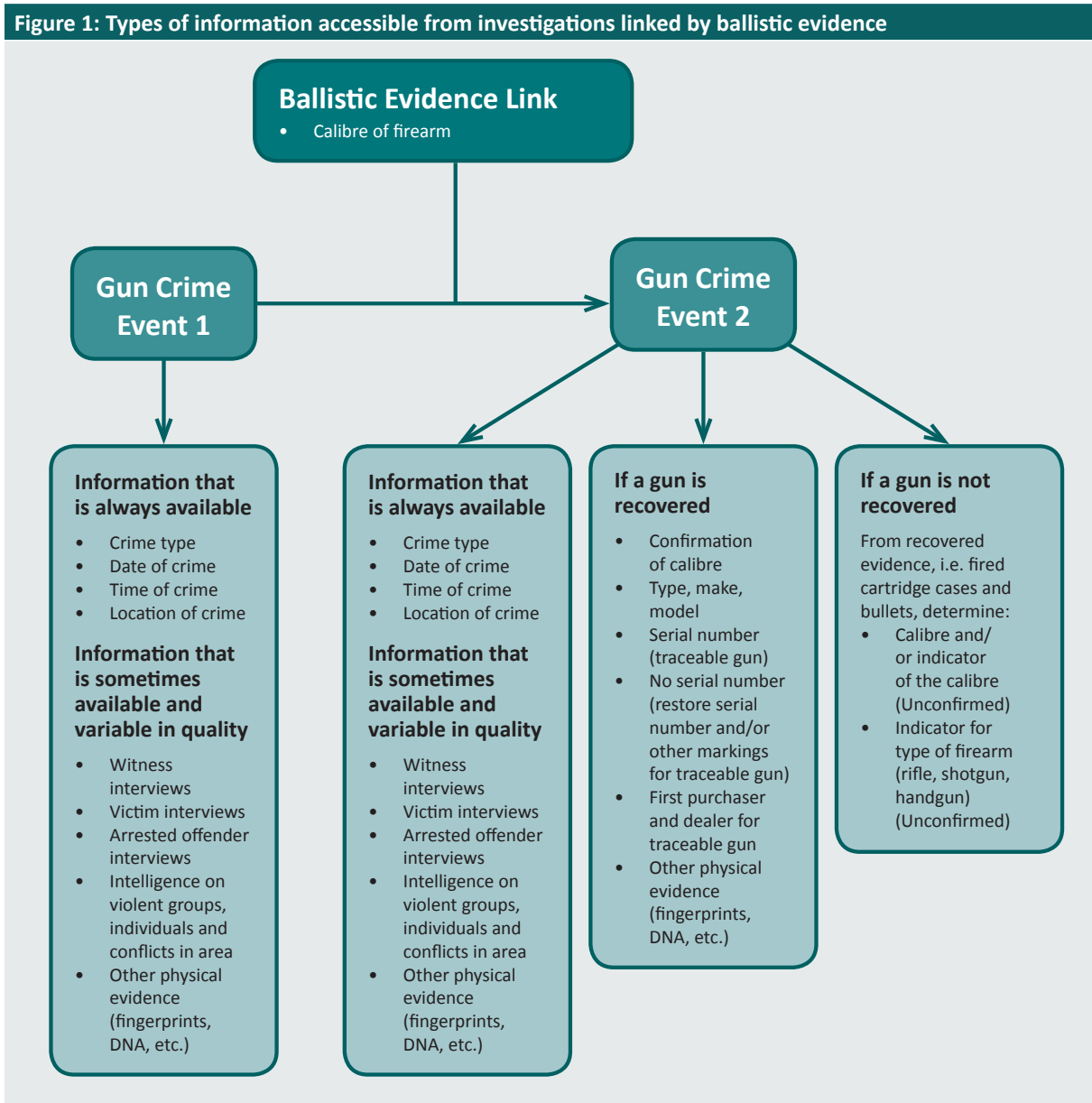
Ballistic evidence, ballistic information systems and criminal investigations

When a firearm is discharged it leaves unique microscopic markings on the surface of fired projectiles (commonly referred to as bullets) and cartridge cases. Forensic firearm examiners compare these markings to link cartridge cases and projectiles to crime scenes and recovered firearms. As part of a routine criminal investigation into a crime involving a firearm, police may recover cartridge cases and/or projectiles from the crime scene and then seize a firearm from a suspected offender. These two (or more) exhibits will then be compared to confirm whether the firearm was used in the commission of the alleged offence.

Forensic firearm examiners will also attempt to identify matches between two separate case exhibits—fired projectiles or cartridges from crime scenes or recovered firearms—for cases that were not previously known to be related. A match is known as a cold hit. Importantly, a cold hit does not link a firearm or crime scene to an individual and automatically result in the identification of an offender—the match is between the fired projectile or cartridge case and a test-fired projectile or cartridge case from a seized firearm involved in another incident or recovered from another crime scene. However, when two separate cases are found to have involved the same firearm, investigators are able to access additional evidence besides ballistic information from the linked investigation. This evidence could include interviews with witnesses, victims, or persons of interest, intelligence on violent groups or individuals and past incidents, and other physical evidence, such as DNA (Braga 2008).

The type of information that may be accessible from two linked investigations is described in Figure 1. Both the quality and quantity of additional evidence available will influence whether a cold hit will benefit a criminal investigation. If the linked investigation was unable to obtain much in the way of additional evidence—because victims or witnesses were unwilling to cooperate or because a firearm was not recovered, for example—then the likelihood that the cold hit will benefit investigators is likely to be much lower.

Figure 1: Types of information accessible from investigations linked by ballistic evidence



Source: Adapted from Braga 2008: 296; with contributions from NSWPF.

Automated ballistic systems

The advent of automated ballistic imaging and analysis systems in the 1990s significantly improved the capacity of law enforcement to identify links between investigations into firearm crime (Braga & Pierce 2004). In the past, the time required to manually compare two specimens under a microscope to identify and compare markings between two or more exhibits, and the volume of exhibits held by law enforcement organisations, meant that comparisons were typically limited to those situations in which there was intelligence suggesting two cases were linked (Cork et al. 2008).

A ballistic information system is a computerised database that stores digital images of bullets and cartridge cases and automatically compares these with new images acquired from crime scenes or test fires and uploaded to the database (King et al. 2013). Automated systems reduce the amount of time spent manually searching through potential matches to fired projectiles and cartridge cases by providing a small number of correlations within minutes for manual verification by a trained ballistic expert (Braga & Pierce 2004; Yang et al. 2014). This increases the probability of obtaining a match because the volume of exhibits that can be compared is increased.

The development of national and international collections of ballistic information enable police to electronically capture, match and correlate bullet and cartridge case images against other images locally (ie within the same jurisdiction), nationally (across state and territory borders) and internationally. This has the potential to increase the effectiveness of the police response to firearm-related crime where firearms are used in multiple crimes across more than one police jurisdiction.

Many countries have now established networks to enable national and international access to the images stored in automated ballistic systems. Since 2009, INTERPOL has managed the world's first international cross-border ballistic system, known as the INTERPOL Ballistics Information Network (IBIN). More than 19 countries and territories use IBIN (INTERPOL 2016). In the United States, the National Integrated Ballistic Identification Network (NIBIN) was established in 1999, although other systems have been in operation since the early 1990s. NIBIN is available to all police jurisdictions at both federal and state levels and uses the Integrated Ballistics Identification System (IBIS) technology (King et al. 2013). Finally, the United Kingdom established a national electronic ballistic information system, the National Ballistic Intelligence Service, in 2008.

The first automated ballistic system to be used in Australia was introduced in NSW in 2000. The NSW Police Force (NSWPF) adopted the IBIS technology in 2000 in response to increasing levels of firearm-related crime throughout the 1990s. A number of other jurisdictions then adopted the technology between 2007 and 2013. The first was the Australian Federal Police, followed by South Australia Police in 2012 and the Queensland Police Service in 2013. While these jurisdictions had access to automated ballistic identification systems, they were not linked. In July 2014, the Australian Ballistics Information Network (ABIN) became fully operational as a national system. The ABIN is managed by the Australian Criminal Intelligence Commission and uses the IBIS technology to provide a national automated ballistic information system to Australian police agencies, thereby enabling both local and national cold hits.

There are more than 60,000 exhibits—projectiles and cartridge cases—currently stored within the ABIN, of which 70 percent relate to criminal matters. As at the end of October 2016, there have been 845 cold hits obtained since automated ballistic systems were first introduced in Australia (by the NSWPF in 2000). In the 22 months following July 2014, when the ABIN was first implemented, there were 208 cold hits—equivalent to 1.7 cold hits per week. This includes 15 national hits (ie hits between cases in at least two police jurisdictions), which is reportedly more than occurred in the entire decade prior to the ABIN being available. However, what is not clear from these data is whether these cold hits have benefited investigators by increasing the amount of evidence available from linked investigations.

Prior research into the impact of automated ballistic systems

Consistent with patterns in research into police investigative techniques more broadly (Higginson, Eggins & Mazerolle 2017), only a small number of studies have examined the impact of ballistic evidence from automated ballistic systems. Evidence from an evaluation of the use of IBIS technology in Boston showed that IBIS cold hits generated significant investigative leads in 39 percent of the 44 hits analysed, including three in four homicide matches (Braga 2008). While this may have contributed to improved investigation outcomes (ie arrest, prosecution and conviction of an offender), the experience in Boston highlighted the challenges associated with confirming the identity of an offender or, where the identity of a person of interest was known, linking that individual to a particular incident (Braga 2008). For example, in 15 cases an arrest was made for the current offence, but there was no potential for additional charges for the linked investigation. Similarly, in 12 cases there were no arrests and no immediate charges based on the linked information.

Findings from the most recent evaluation of the US ballistic information system, NIBIN (King et al. 2013) were not as positive as the Braga (2008) study. Based on interviews with 65 investigators (from a sample of 104 cases), the research found that NIBIN hits did not assist investigators in the majority of cases reviewed. In 50 percent of the cases reviewed a suspect had been identified prior to receiving details about the linked investigation, and in 34 percent of cases the suspect had been arrested prior to the NIBIN hit notification (Table 2). The NIBIN hit report did help to identify a suspect in 10 percent of cases (n=6), led to an arrest in one case, helped in charging a suspect or obtaining a plea in three cases, and helped with sentencing in one case. In addition, some investigators reported using hit reports to eliminate a suspect from consideration or to confirm suspicions about suspects who may be involved with the crime (King et al. 2013).

Importantly, the evaluation found that the delay in notifying investigators of a hit severely limited the impact of the NIBIN. There were substantial differences in the way that labs processed ballistics information and the time it took for ballistic evidence to be uploaded to NIBIN (King et al. 2013). The length of time between the receipt of evidence and input into NIBIN ranged from zero days to 730 days (King et al. 2013). The amount of information contained within hit reports also varied—some contained the bare minimum, while others included additional information for the benefit of investigators.

Further, there was evidence that the NIBIN was not being used by the different jurisdictions to the full extent of its ability. Linking firearms involved in three or more criminal incidents may indicate the involvement of gangs, criminal enterprises or serial criminals. Only 11 percent of labs reported that they routinely provided information on three or more linked firearm incidents to different areas of law enforcement, such as organised crime units or gang task forces, or to crime analysis units. King et al. (2013) argued that this limited the potential strategic intelligence derived from the NIBIN.

Aims and method

In light of the findings from the United States, and given the significant investment in the ABIN by Australian police agencies, the aim of the current study was to determine the impact of ballistic evidence on criminal investigations into firearm crime in an Australian context. Specifically, the current study sought to answer the following research questions:

- What impact do cold hits obtained via the ABIN have on criminal investigations into firearm crime?
- To what extent do investigators use the information obtained through a cold hit to help inform their own investigations?
- Are certain investigations, such as those involving organised crime groups, more likely to benefit from a cold hit?
- Are there any implementation factors that have limited the benefits of cold hits for investigators?

A similar methodology to the US evaluations of the IBIS technology and the NIBIN was used to determine the impact of ABIN cold hits on investigation outcomes. This involved conducting brief interviews with police officers involved in the investigation of firearm crimes to examine the benefits to the investigation of additional information obtained through ABIN cold hits. The interviews were structured and included both multiple choice and open-ended response items. Questions related to the type of firearm offence investigated, whether the case involved organised crime, the types of evidence available to investigators prior to the hit and the evidence available to them from the linked investigation. Investigators were also asked about how the hit and linked investigation assisted and influenced the direction of their investigation and, if not, why not.

The researchers obtained contact details of investigators who received cold hits through the NSWPF and Victoria Police between January 2014 and December 2015. From an initial sample of 121 cold hits involving 194 unique cases, the research team were given contact details of investigators involved in 133 criminal investigations. The research team conducted follow-up interviews with investigators from 60 criminal investigations involving a total of 49 cold hits. The research team attempted to contact investigators who worked on the remaining 73 cases. Six investigators declined to participate due to the sensitive nature of the investigations, and 67 investigators could not be contacted. This resulted in a response rate of 45 percent.

Limitations

There are some important limitations to the current study that must be acknowledged.

The overall response rate to the case file questionnaire was 45 percent, based on the total number of investigators whose contact information was available. However, this represents just 31 percent of all cases that resulted in a cold hit during the study period. Further, it was only possible to interview investigators for both the primary and secondary investigations for a small number of hits (n=10). The results may not be representative of the entire sample of cold hits and linked investigations.

The relatively small sample size also prohibited more detailed analysis. Specifically, while some attempt has been made to understand which cases benefited most from a cold hit, this additional analysis was limited somewhat by both the number of cases and also the information available about each investigation.

Importantly, the number of hits making up the sample size used for the current study (n=49) compares favourably with previous research in the United States (Braga 2008), which also relied on a similar sample size (n=44). Similarly, the number of interviews completed is similar to that used in the evaluation of the NIBIN (King et al. 2013), which was based on 65 interviews with investigators. The sample size, while relatively small, is therefore comparable with those used in international research into the impact of ballistic evidence on investigation outcomes.

A further limitation relates to the subjective nature of the assessments made by investigators regarding the impact of the ballistic evidence on their investigations. Some investigators found it difficult to separate the ballistic evidence from other developments in the investigation. Moreover, the assessments made by officers are likely to be influenced by the value they place on ballistic evidence—possibly based on past experience—relative to other investigative techniques. Some officers may have been unwilling to criticise the new system and therefore overstated the benefits of the ballistic evidence. Others may have placed greater weight on more traditional investigation methods for fear of downplaying the role of investigators. An attempt was made to overcome these limitations by asking officers to describe, in some detail, the impact of the ballistic evidence and then use this information to code response items following the interview.

Results

Sample characteristics

Offence characteristics for the sample are presented in Table 1. The most common principal offence type for the cases included in the sample was unlawful use of a firearm or discharge of a firearm at prohibited places, which accounted for almost two-thirds (62%) of the entire sample. The next most common principal offence types were murder (12%) and attempted murder (10%). Sixty-two percent (n=37) of investigations were active at the time of the hit being obtained.

Table 1: Characteristics of the linked investigations (n=60)

	n	%
Principal offence		
Unlawful use of a firearm/discharge of firearm at prohibited places	37	62
Murder	7	12
Attempted murder	6	10
Dispose firearm/ammunition to unlicensed person, sell without a dealer's licence	4	7
Assault	3	5
Robbery involving use of a weapon	3	5
Organised crime involvement		
Organised crime was involved	32	53
Investigator was unsure if organised crime was involved	18	30
Organised crime was not involved	10	17
Investigation status when hit occurred		
Active investigation	37	62
Inactive investigation	17	28
Finalised investigation	5	8
No longer in charge of case	1	2

Note: Principal offences based on Australian and New Zealand Standard Offence Classification. Percentages may not total 100 due to rounding

Source: Detailed case analysis 2016 [AIC data file]

Half of the investigations related to incidents that involved organised crime groups (53%; n=32), although it was unknown whether organised crime was involved in a further 30 percent (n=18) of investigations. This means that, among those cases where it could be confirmed, organised crime was involved in 76 percent of incidents investigated. An important aim of the ABIN was to help establish a national picture of the criminal use of firearms in Australia and the associated organised crime groups that use them. These findings suggest that organised crime groups play a significant role in cases of firearm-related crime in Australia where firearms are used in multiple incidents. Interviews with police representatives revealed that the cold hits provided useful intelligence and contributed to a general intelligence picture, particularly in relation to organised crime group activity and movements.

Evidence from linked investigations

One of the primary mechanisms through which the ABIN was expected to benefit investigators was through the improved evidence available resulting from investigations being linked. Investigators were asked what evidence was available to them prior to being advised of the linked investigation (Table 2). Evidence obtained from interviews with witnesses, victims and offenders was identified as the most common type of evidence available prior to a hit, available in 67 percent of investigations (n=40).

However, investigators also noted that often witnesses or victims did not wish to assist police, particularly in organised crime related incidents, and therefore only limited information was obtained from these interviews. The next most common type of evidence was intelligence (27% of investigations) and other forms of evidence (20%), followed by physical (13%) and surveillance evidence (13%). The types of evidence in the 'other' category included evidence gathered via search warrants, line-ups and covert operations. Investigators reported that there was no other evidence available prior to the hit in 27 percent of investigations.

Table 2: Evidence available pre-hit and additional evidence post-hit due to investigations being linked (n=60)

	Evidence available pre-hit		Additional evidence available as a result of linked investigation	
	n	%	n	%
Interviews (witness, victim and offender)	40	67	4	7
Intelligence (informants and intelligence on violent groups)	16	27	3	5
Physical evidence (DNA, fingerprints and post-mortem reports)	8	13	5	8
Surveillance (CCTV, electronic evidence, intercepted telephone conversations)	8	13	3	5
No evidence available	16	27	41	68
Other evidence	12	20	9	15

Note: Investigators could identify multiple types of evidence available for each case
Source: Detailed case analysis 2016 [AIC data file]

The types of additional evidence that were available to investigators post-hit are also presented in Table 2. The most frequently cited new evidence type was physical evidence—DNA evidence, fingerprints and post-mortem reports (n=5; 8%). Additional interview evidence was available in four cases (7%). There were nine cases where investigators reported that there was other evidence not easily categorised, including surveillance from unrelated investigations. Overall, investigators were able to identify additional evidence as a result of the linked investigation in 32 percent of all investigations. In the remaining 68 percent of investigations there was no new evidence available from the linked investigation. However, hits that did not result in additional evidence could still benefit an investigation, particularly where a linked investigation was well advanced (eg the offender had been charged or was before the court).

Impact on investigation process or outcomes

Overall, there were 26 cases (43%) where the hit provided direct assistance to investigators. In 12 cases (20%) investigators stated that the hit provided significant investigative leads, in seven cases (12%) the hit led to the arrest of a suspect and in another seven cases (12%) an offender was identified from the linked investigation but had not yet been apprehended. The impact in two cases was unknown. For the remaining 32 cases (53%), there was no direct impact on the investigation; however, the ABIN hit was frequently reported as having provided general intelligence. That is, while it may not have assisted with their specific investigation, it was felt that it provided additional contextual knowledge, ruled out alternative lines of investigation, or would be useful for future investigations (Table 3).

Table 3: Impact of cold hits on investigations (n=60)

	n	%
Provided significant investigative leads	12	20
Identified an offender (not yet apprehended)	7	12
Led to arrest	7	12
No direct impact on investigation (provided general intelligence)	32	53
Unknown	2	3
Total	60	100

Source: Detailed case analysis 2016 [AIC data file]

Further analysis examined a number of variables that were thought to influence the likelihood of a cold hit having an impact on an investigation. The bivariate relationships between these variables and a new variable—whether the hit had a direct impact on the investigation—are presented in Table 4. The relatively small sample meant that each variable could only be examined in isolation.

A cold hit was more likely to assist an investigation when the time between the offence and the investigator being notified of the hit was 30 days or less compared to when it took longer than 30 days (62% vs 39%), although this difference was not statistically significant based on a chi-square test of association ($\chi^2=1.84$, $p=0.18$). A smaller difference was also observed at two months (52% vs 39%) and at three months (48% vs 41%). The median number of days for hits that did assist an investigation was also lower than for those hits that did not have a direct impact on the investigation (51 days vs 66 days), although this difference was also not statistically significant based on a Wilcoxon-Mann-Whitney test ($z=0.72$, $p=0.47$). This finding was consistent with the view of investigators, both as part of the current study and also the King et al. (2013) evaluation of the NIBIN, which was that the length of time it took to receive a hit notification did influence whether the hit benefited the investigation. The results from this analysis, although based on a relatively small sample size, provide tentative support for this conclusion.

The time it takes from an offence date until an investigator is notified of a cold hit is determined by a number of factors. This includes whether it is the investigation that resulted in the hit (secondary investigation) or the investigation that provided the original evidence (primary investigation). It also depends on how long it takes an investigator to submit the evidence to the ballistics unit, and the priority level assigned to ballistic analysis processes. Finally, there is the time that a ballistics unit takes to process the information—while the initial match may be identified quickly, the (necessary) peer review processes required to confirm the hit and obtain a forensic certificate add additional time to the process.

Table 4: Relationship between investigation characteristics and impact of cold hit (n=59)

	Assisted		Did not assist	
	n	%	n	%
Time from offence to hit notification ^a				
30 days or less	8	62	5	38
More than 30 days	13	39	20	61
Median days	51		66	
Organised crime ^b				
Involved	14	45	17	55
Not involved	7	70	3	30
Investigation status when hit occurred ^c				
Active investigation	16	43	21	57
Inactive investigation	9	53	8	47

Note: Excludes 1 case where the impact of the investigation was unknown due to staff turnover
a: Excludes 14 cases with missing data on either the date of the offence or the date of the hit notification
b: Excludes 18 cases where it was unknown whether organised crime was involved
c: Excludes 5 cases in which the investigation was finalised prior to hit
Source: Detailed case analysis 2016 [AIC data file]

Importantly, feedback from investigators about the timeliness of the process was very positive—81 percent of investigators were satisfied or very satisfied with the process of obtaining a hit. Additional feedback from investigators praised the speed with which they were notified by ballistics units about the outcome of ballistic evidence analysis (typically by email in the first instance) and the quality of information provided.

The proportion of cases not involving organised crime that benefited from a cold hit was higher than for those cases that involved organised crime (70% vs 45%), although this difference was not statistically significant based on a Fisher’s exact test ($p=0.16$). This excluded cases where the involvement of organised crime was unknown. Importantly, the fact that the majority of cases did involve organised crime means that a higher number of organised crime investigations (n=14) were directly assisted by a cold hit.

Active and inactive investigations were also compared. Once again, the difference in whether the investigation benefited from the hit was not statistically significant ($\chi^2=0.44$, $p=0.51$). Inactive investigations were as likely, if not more likely, to benefit from a cold hit as investigations that were still active at the time of investigators being notified of a hit (53% vs 43%). This is an important finding, as it suggests that ballistic evidence has just as much potential to benefit investigations that have been suspended due to lack of evidence as investigations that are ongoing.

Finally, investigators who reported that the hit had no direct impact on their investigation (n=32) were also asked the reasons why they believed the linked investigation did not assist (Table 5). The most frequently cited reason was that the linked investigation did not provide new evidence that directly benefited the investigation—the hit was of general investigative or intelligence value only (n=11; 34%). The next most common reasons were that the hit linked the firearm but did not identify a suspect (n=7; 22%) and the hit details confirmed intelligence already known by police (n=7; 22%). In one case the suspect was identified prior to the hit information being received. Further, in two cases, the linked investigation identified a suspect; however, the suspects involved in those cases were deceased (included in the ‘other’ category).

Table 5: Reasons why the linked investigation had no direct impact on the investigation

	n	%
Linked investigation did not provide new or additional evidence that benefited the investigation (only general investigative and/or intelligence value)	11	34
The hit linked the firearm but did not identify a suspect	7	22
Hit details confirmed intelligence already known	7	22
Suspect identified, but charges were not filed due to lack of evidence	3	9
Suspect identified prior to hit information being received	1	3
Other	3	9
Total	32	100

Source: Detailed case analysis 2016 [AIC data file]

Discussion

The results of this study must be understood within the broader context of firearm crime in Australia. Compared with other international jurisdictions, firearm crime in Australia is a relatively rare event (Lemieux, Bricknell & Prenzler 2015). For multiple incidents to involve the same firearm is even rarer, and the pattern in cold hits obtained by the ABIN suggests these incidents are concentrated among organised crime groups operating on the east coast of Australia. Technology like the ABIN can therefore only ever assist a certain segment of criminal investigations into firearm crime.

Traditional law enforcement methods therefore remain vitally important. There are many other investigative tools and techniques available to investigators that contribute to improved clearance outcomes for serious and violent crime, including firearm crime (Higginson, Eggins & Mazerolle 2017).

Nevertheless, the results from the current study showed that ballistic evidence from the ABIN (and IBIS before that) provided direct assistance to investigators in almost half of the cases examined. These results compare favourably to the results of US evaluations of the IBIS technology in Boston and the NIBIN (Braga 2008; King et al. 2013). Given there have now been more than 800 cold hits since NSWPF first implemented the technology in 2000, and more than 200 hits since the network was expanded nationally, the actual number of cases that will have benefited from this technology is likely to be substantial.

Importantly, linking investigations on the basis of ballistic evidence was just as likely to benefit investigations that had been suspended due to lack of evidence (ie cold cases) as investigations that were ongoing. Research has previously shown that homicides involving a firearm are less likely to be cleared than homicides involving other causes of death, largely because of the limited physical contact that occurs between victim and offender and because there is less likely to be a relationship between the victim and offender (Alderden & Lavery 2007). Similar issues are likely to affect investigations into drive-by shootings, which were also common among the investigations in this study. Further, clearance rates for serious and violent crimes have either stabilised or declined in recent decades (Worrall 2016), highlighting the importance of new methods for solving cold cases.

Cases involving organised crime—which were common among the cases that obtained a cold hit—also appeared to benefit from ballistic evidence. This is important, given the annual cost of the law enforcement response to serious and organised crime, including criminal investigations, has been estimated at more than \$3 billion nationally (Australian Crime Commission 2015). The fact that they were less likely than cases not involving organised crime to benefit from a cold hit probably reflects the ongoing challenges of gathering evidence from reluctant victims and witnesses involved in organised crime groups (Regoeczi, Jarvis & Riedel 2008). Cases are more likely to be cleared when witnesses are willing to provide information (Baskin & Sommers 2010).

There were two main reasons that cases did not benefit from a cold hit. The most common reason was that the linked investigation provided no additional evidence to aid investigators. Ballistic evidence alone does not identify the perpetrator. If the evidence obtained from the initial investigation is insufficient for police to solve a case, then a cold hit will only add benefit if it results in new evidence from the linked investigation. This might include DNA evidence, other forms of physical evidence, or information on suspects obtained from computer databases and interviews, which have each been shown to benefit investigators, although the evidence is mixed in some cases (Higginson, Eggins & Mazerolle 2017).

The second reason was that significant progress had already been made with the investigation—a small proportion of cases had already been finalised prior to the hit being obtained, while in others the suspect had already been identified and there was little benefit to be gained from a linked investigation. Past research has shown that serious crimes are most likely to be solved soon after the incident, and that the probability of case clearance declines markedly over time (Worrall 2016). This may limit the need for ballistic evidence analysis or, more likely, result in it being used to confirm what is already known about the incident or suspect.

Consistent with this finding, the results showed that the timeliness of ballistic evidence analysis was important; however, there was little evidence of the same issues affecting the NIBIN in the United States (King et al. 2013). While the technology is new to several states and territories, NSWPF—one of the two police agencies included in the current study—has had the technology for 16 years. The area responsible for managing the system is well resourced and has highly qualified and experienced technicians responsible for handling forensic firearm evidence. Protocols exist for prioritising cases and providing information to investigators. It was evident from the current study, based on the feedback from investigators about the timeliness of evidence analysis and the quality of information provided when there was a hit, that the group responsible for ballistic evidence was responsive to the needs of investigators. Importantly, in rolling out the ABIN to other states and territories, other police agencies relied on NSWPF as a model to replicate (acknowledging the significant variation in demand and resourcing), with oversight from the CrimTrac agency (now the Australian Criminal Intelligence Commission), potentially avoiding some of the variability in implementation reported in the United States.

There is nonetheless still scope to improve the use of ballistic evidence by investigators. This is by no means unique to ballistic evidence. In fact, research has consistently shown that, while DNA evidence significantly increases the likelihood of conviction (Wilson, Weisburd & McClure 2011), there remains some resistance among investigators to relying on this and other forms of forensic evidence (Shroeder & White 2009). Similar issues have been detected with technological advancements in

policing more broadly, primarily because of technical constraints, real and perceived unintended consequences for officer productivity and organisational and cultural factors (Lum, Koper & Willis 2016). This research serves as an important reminder for police to integrate ballistic evidence collection and analysis as an important component of investigations into firearm crime. While it is still relatively early days in the national rollout of an automated ballistic information collection system, the majority of cold hits have been obtained in New South Wales and Victoria—it remains to be seen whether this pattern will change over time, and whether this reflects patterns in firearm crime or the level of support for ballistic evidence analysis in other jurisdictions.

Finally, while the results of this study are promising, future research could measure the impact of ballistic evidence and cold hits by relying on more objective indicators such as clearance rates (or time to clearance), and by employing a more rigorous research design. However, any such study would need to account for the breadth of investigative techniques employed by police investigating serious crime. If this can be achieved, it would be another important contribution to an area of policing research that remains significantly underdeveloped (Koper, Lum & Willis 2014).

Conclusion

Modern police agencies have embraced new technologies as a way of overcoming the limitations of traditional methods of policing and crime control. Research into the impact of these new technologies is important, particularly given the significant costs that are often associated with not just the infrastructure but also the police time required to use and manage the technology. Overall, this study has provided some promising evidence in support of using ballistic evidence obtained through a national automated ballistic information network in investigations into firearm crime. It makes an important contribution to an otherwise limited body of Australian research into the efficacy of investigative techniques. It also highlights the value that empirical research can offer to our understanding of how new technology supports police investigations, particularly in the area of serious and organised crime.

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URLs correct as at December 2017

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**12 – ANEXO – Gun Trace Report 2017 – City of Chicago –
Chicago Police Department**

GUN TRACE | REPORT



2017



CITY OF CHICAGO • OFFICE OF THE MAYOR
CHICAGO POLICE DEPARTMENT



GUN TRACE | REPORT



2017





INTRODUCTION


Since 2013, the Chicago Police Department has recovered nearly 7,000 “crime guns” each year. For the purposes of this report, a crime gun refers to a firearm recovered by CPD that was illegally possessed, used, or suspected to be used in furtherance of a crime.¹ The overwhelming majority of these firearms were originally purchased outside of the city limits and brought into Chicago. So far in 2017, CPD is already on pace to exceed last year’s gun recoveries. It is self-evident that the availability of illegally circulated firearms in Chicago is directly connected to its deadly street violence. Simply put, each conflict becomes potentially more lethal due to easy access to a gun.² In an unfortunate but persistent reality, certain retailers and jurisdictions disproportionately account for the guns trafficked into Chicago that sustain its illegal gun market and associated violent crime.

There is no greater priority for the City of Chicago than the safety and security of its residents. The City of Chicago and Chicago Police Department have partnered with the University of Chicago Crime Lab to examine available firearm trace data and identify the source of each crime gun recovered in order to develop more impactful solutions that address the root causes of gun violence. This is the second such report. In its 2014 report, CPD

compiled firearm trace data from 2009 to 2013.³ This report analyzes available firearm trace data over four years, from 2013 to 2016, spanning almost 15,000 firearms traced back to more than 5,000 federally licensed dealers. Using this data, law enforcement and policymakers have identified the regular sources of crime guns trafficked into Chicago with pinpoint accuracy. More importantly, they are now better equipped to develop policies that will help prevent these guns from getting into the hands of high-risk individuals.

Chicago is in many ways a microcosm of a national epidemic. The United States’ gun homicide rate is nearly 20 times higher than any other industrialized nation.⁴ Not surprisingly, its rate of gun ownership per capita far exceeds that of these nations as well.⁵ The Graduate Institute of International and Developmental Studies in Geneva estimates nearly half of all guns in circulation worldwide are in the United States, although it makes up just over four percent of the global population.⁶ As the trace data and illegal firearm recovery numbers demonstrate, Chicago faces a unique predicament in enforcement efforts against illegal gun trafficking. Illinois is surrounded by states that lack comprehensive firearms regulations, with particularly little oversight of secondary sales markets.⁷





In September of 2016, in the midst of an unacceptable spike in gun violence, Mayor Rahm Emanuel announced his comprehensive public safety strategy, with five main pillars⁸:

1. Strengthening law enforcement resources, including hiring 970 new officers, and providing training and technology to support CPD's crime fight;
2. Investments in violence prevention, including evidence-based mentoring, academic support programs, and restorative justice principles in CPS schools;
3. Legislation to address gun violence, including increased criminal penalties for high-risk gun offenders, and licensure requirements for necessary oversight over Illinois gun dealers;
4. Economic development and employment opportunities to treat the root causes of violence, including an expansion of job programming and support services, financial incentives in economically stagnant neighborhoods, and investment opportunities to attract jobs;
5. Building community trust and legitimacy between CPD and the communities that they serve, including sweeping police reform measures, accountability, transparency, and de-escalation training, as well as a new culture of community policing within the Department

All five pillars of the strategy are essential to address gun violence in Chicago. The Mayor and Superintendent continue to work with community leaders, advocates, researchers, and law enforcement partners to align resources and policies with the City's comprehensive plan. But it is long past time for urgent action on firearm policies that will have a meaningful impact on the illegal gun market. Chicago cannot stem the influx of firearms across its borders alone, particularly given recent limitations on its ability to regulate firearms under local ordinance.⁹ Policymakers, law enforcement, and community stakeholders must work together to build a comprehensive system that keeps firearms out of the hands of individuals who are at high-risk for violence. The Illinois legislature is now considering multiple effective proposals, including a pending gun dealer licensing framework that is due for a vote in the coming weeks.¹⁰ In order to be effective, data transparency and enforcement efforts must be regional, and the call for national solutions must persist.

The purpose of this report is to promote informed and intelligent discussion around long-term solutions to the ongoing tragedy that is gun violence in America. This report examines the licensed firearms dealers that are the source for crime guns recovered in Chicago. It further analyzes the amount of time between the original

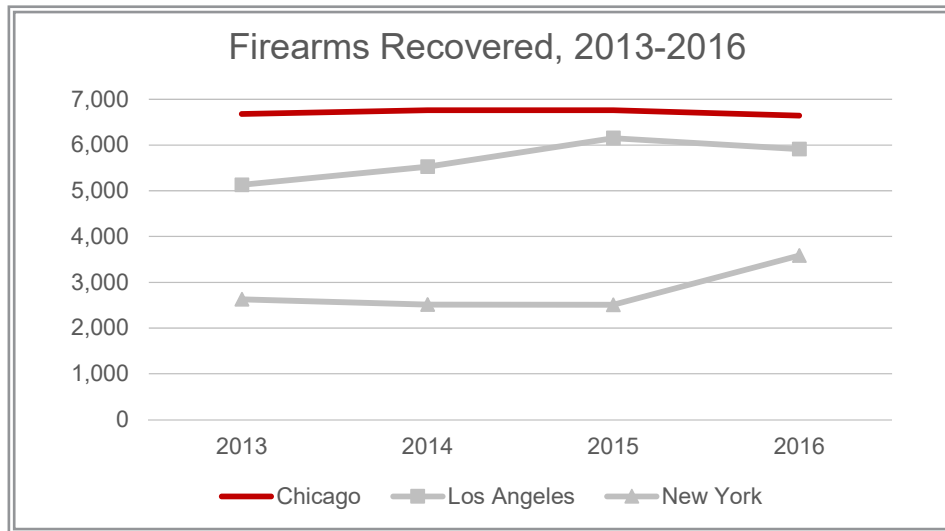
purchases of firearms from dealers to recovery by the Chicago Police Department. Unfortunately, a significant portion of guns bought at dealers surrounding Chicago are being recovered shortly afterwards. The report also looks at the states outside of Illinois that are contributing to crime guns recovered in Chicago. Not surprisingly, it is the very states with the least restrictive gun laws that are the sources of the guns coming into Chicago and being used to commit crimes.

Finally, recommended solutions are identified to address the clear problem of guns coming into Chicago from other communities and states. It will require effort at regional, state and federal levels, beginning with gun dealer licensing legislation in the state legislature; but there is no doubt that fewer guns in the illegal trafficking market will save lives.



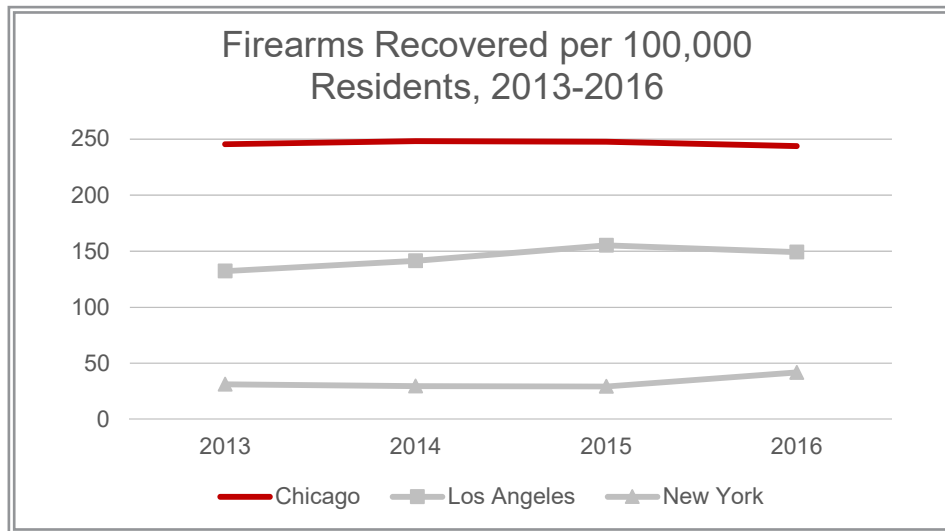
CHICAGO'S ILLEGAL GUN MARKET

Crime gun recovery totals in Chicago continue to outnumber its major metropolitan counterparts: From 2013 to 2016, without adjusting for population density, Chicago's total firearm recoveries outnumbered Los Angeles and New York City each year. For the last four years, CPD's firearm recovery rate has not wavered, with police in Chicago seizing just below 7,000 illegal guns per year.



Note: Excludes weapons obtained through turn-in and buy-back programs.

In 2016, when adjusted for population, Chicago recovered 6 times as many guns per capita as New York and 1.5 times as many guns per capita as Los Angeles. ■



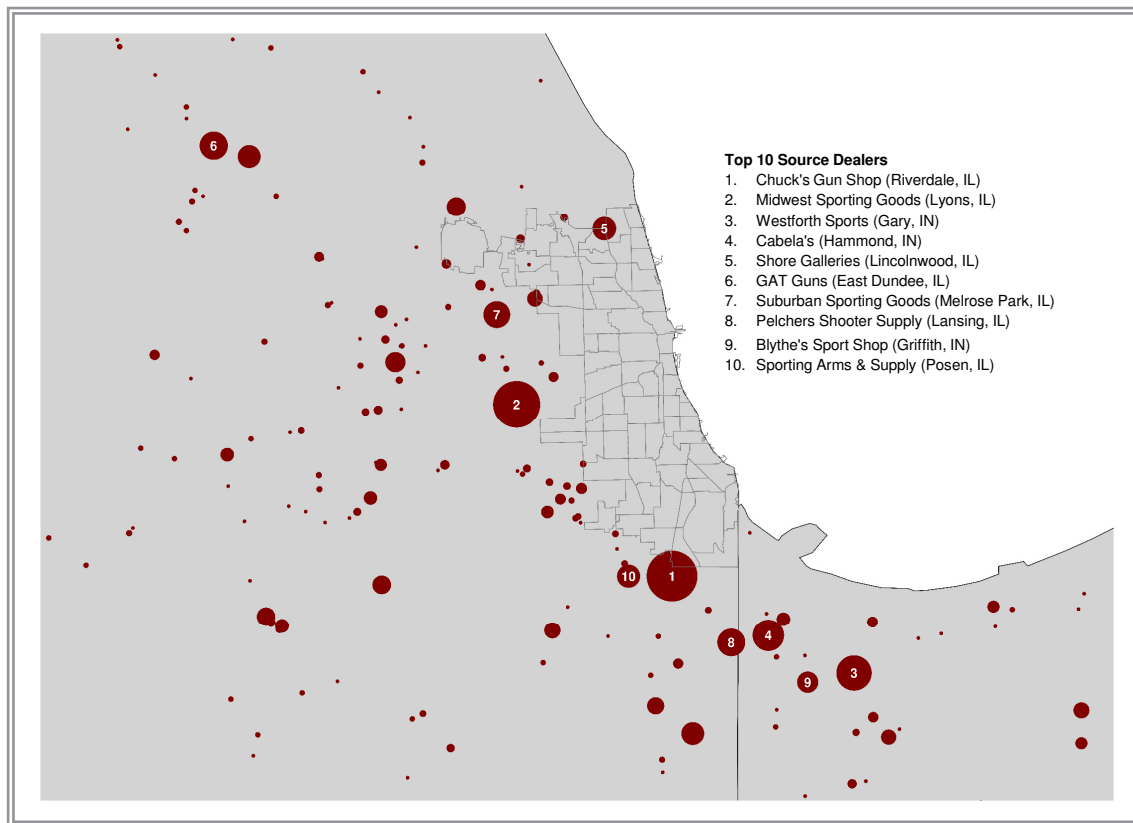
Note: Excludes weapons obtained through turn-in and buy-back programs.



SOURCE DEALERS FOR CRIME GUNS RECOVERED IN CHICAGO

Analyzing available gun traces between 2013 and 2016, federally licensed Illinois dealers primarily located in suburban Cook County were the original point of purchase for approximately two out of every five crime guns recovered in Chicago: This proportion is nearly identical to what was observed in previous trace data from 2009-2013.¹¹ Despite passing a model gun dealer ordinance in 2014, Chicago still has not licensed a retailer to sell firearms within city limits. Federally licensed firearms dealers (“FFL”) in suburban Cook County and Illinois collar counties, as well as several located just across the state border in Indiana, are the primary source of illegal guns seized in Chicago.

Source Dealers of Recovered Firearms Located near Chicago



Note: Map shows source dealers that sold guns purchased from 2007 through 2016 that were recovered by CPD from 2013 through 2016 and were successfully traced.

Seven of the top ten source dealers are within Illinois, and six of those seven fall within the Cook County suburbs that border Chicago. The remaining FFL source dealers within the top ten are located in northwest Indiana. Collectively, these ten source dealers make up almost a quarter of the crime guns recovered in Chicago, despite the existence of many other federally licensed dealers in Chicago's vicinity.

For the better part of a decade, Chuck's Gun Shop and Midwest Sporting Goods have consistently remained the top two FFL source dealers for crime guns recovered by police in Chicago. Chuck's Gun Shop and Midwest Sporting Goods continue to provide a strikingly large portion of the total number of traceable crime guns that includes more than 5,000 separate FFL dealers from all 50 states. These two dealers are the retail source of more than one in ten crime guns recovered in Chicago.

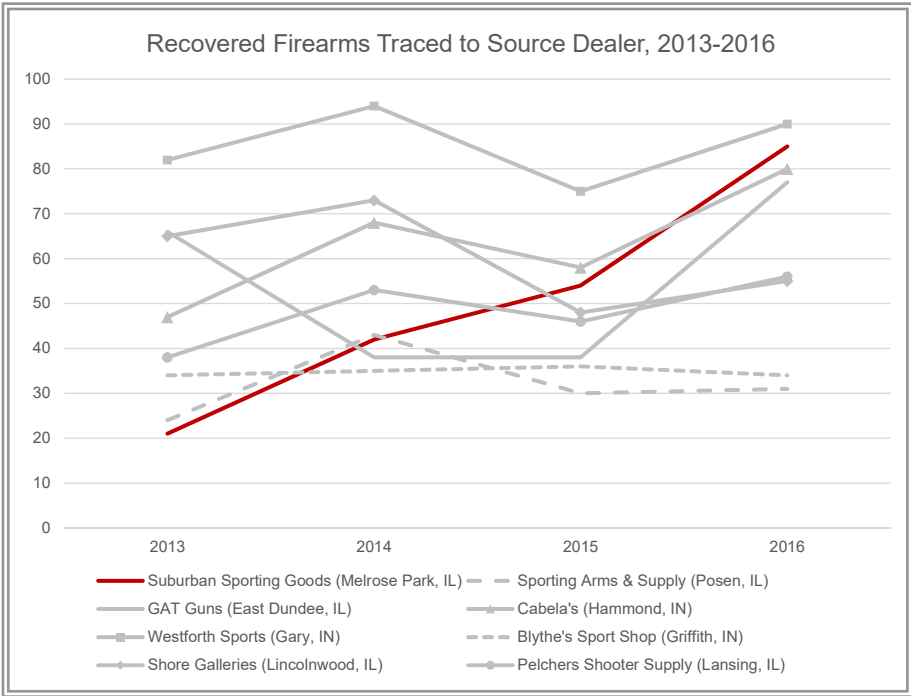
Top 10 Source Dealers of Recovered Firearms, 2013-2016



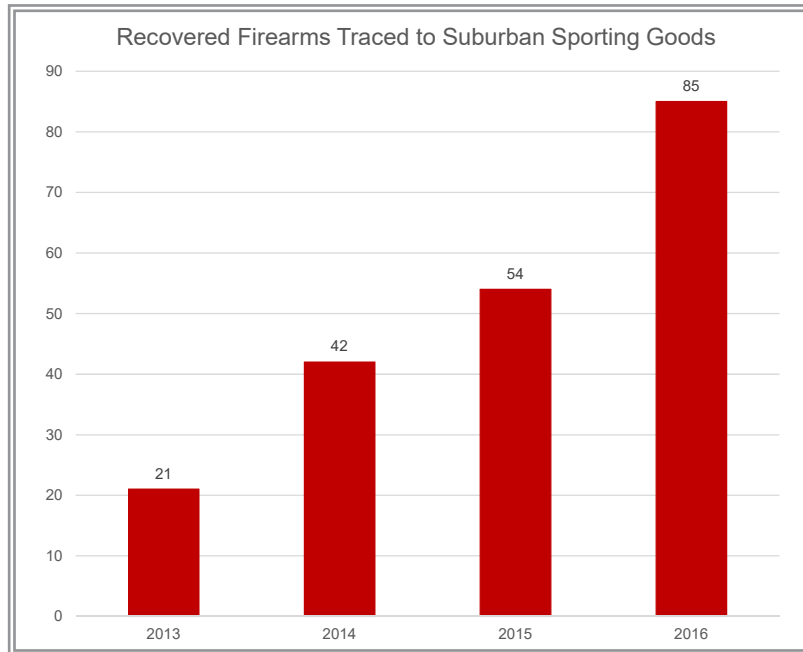
Westforth Sports in Gary, Indiana remains the third largest FFL supplier of crime guns into Chicago from 2013-2016. Cabela's in Hammond, Indiana has moved up to the fourth largest source dealer for crime guns over the past four years, just ahead of Shore Galleries in northern Cook County.

Suburban Sporting Goods in Melrose Park, which as of 2013 was not even among the top ten source dealers, has continuously climbed each year to become the seventh largest source dealer of crime guns over the four-year period from 2013 to 2016.

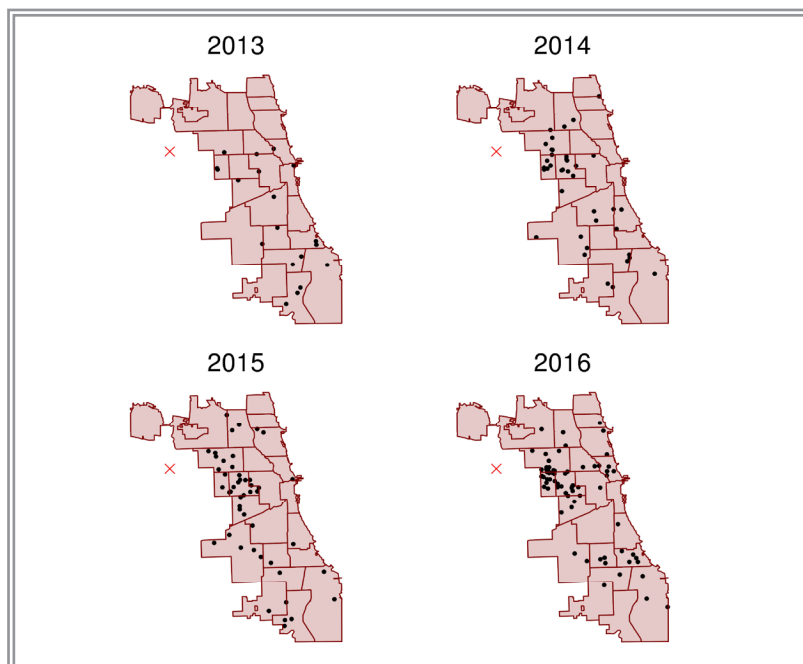
In the City of Chicago's 2014 gun trace analysis, Shore Galleries in Lincolnwood was the fourth largest FFL contributor of crime guns in Chicago.¹² Since that report there has been a notable decrease in the recovery of crime guns traced back to Shore Galleries.



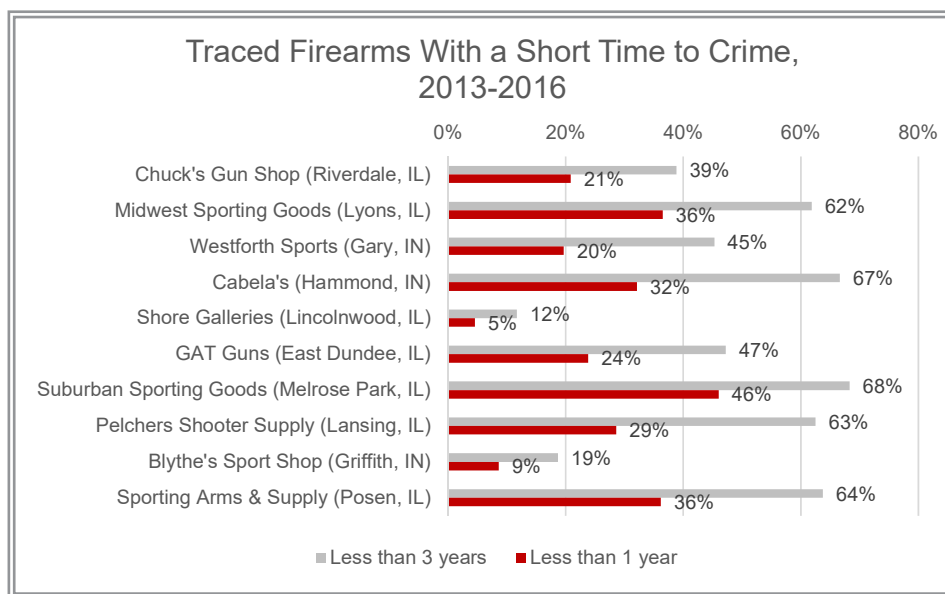
Notably, looking to trace data in 2016 alone, Suburban Sporting Goods was fourth overall in the total number of crime guns traced last year. The number of crime guns traced back to Suburban Sporting Goods increased over 300 percent through the four-year period. As discussed in more detail below, Suburban Sporting Goods also had the lowest average time to crime of any top ten source dealer, suggesting that a portion of direct sales went to straw purchasers and firearm traffickers.



Each black dot below represents the crime gun recoveries that were traced back to Suburban Sporting Goods over the four-year dataset, and the red "X" denotes Suburban Sporting Goods' location in Melrose Park.



Both three-year and one-year “time to crime” analyses were conducted for crime guns traced back to the top ten source dealers. A firearm’s “time to crime” refers to *the amount of time that lapsed between the initial retail sale and the subsequent recovery of that firearm by law enforcement.*¹³ A shorter time to crime serves as an indicator than illegal trafficking or transfer activity took place before the firearm came into the hands of law enforcement.¹⁴ In addition to the time to crime, law enforcement also look to other factors that indicate a firearm has been illegally trafficked, such as whether the firearm was originally purchased by someone other than the illegal possessor, originally purchased in another state, originally purchased among multiple firearms by the same purchaser, reported lost or stolen, or has an altered or defaced serial number.¹⁵ The more of these factors present, the greater the likelihood that the crime gun involved a straw purchase or other illegal sale before it was seized by police.



The figure above illustrates the percentage of total crime guns traced back to each dealer with a short time to crime. Notably, Suburban Sporting Goods had both the highest three-year and one-year time to crime of any top ten FFL, with almost half of its Chicago crime guns having been recovered within one year of initial sale.

Midwest Sporting Goods continued to surpass Chuck’s Gun Shop in short time to crime recoveries. Following the previous release of Chicago Police firearm trace data, in late October of 2015 the Village of Lyons passed an ordinance to regulate gun dealers within its jurisdiction, which includes Midwest Sporting Goods.¹⁶ From 2015 to 2016, Midwest Sporting Goods’ shortest time to crime gun recoveries – those of less than one year from point of sale to recovery in a crime – dropped by almost 10 percentage points.¹⁷ While more time and analysis are needed to evaluate the impact of the new ordinance in Lyons, the early results are promising.

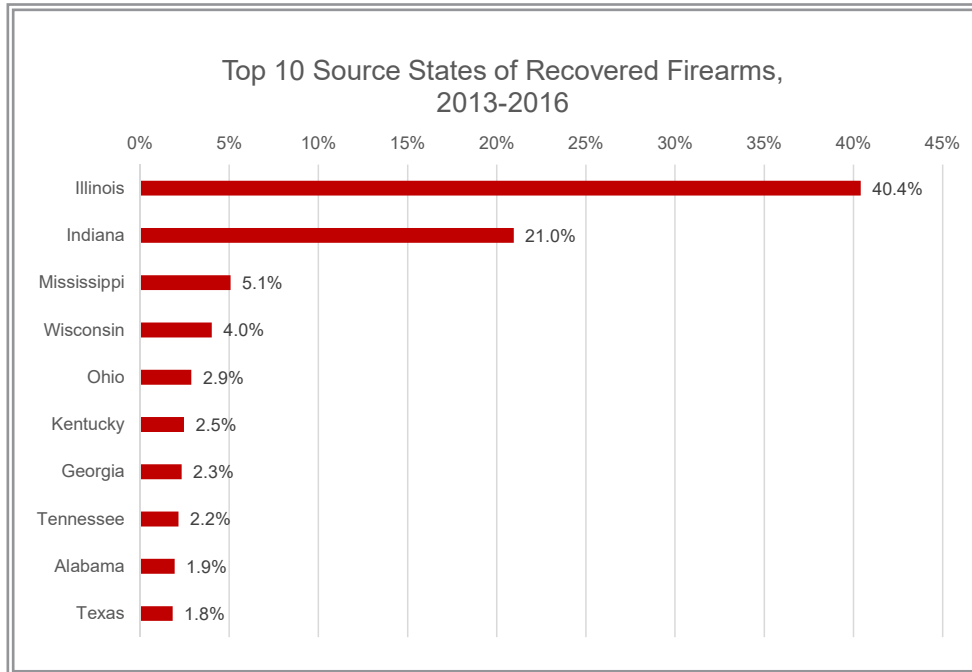
Conversely, in Chicago’s 2014 gun trace analysis, 19 percent of crime guns traced to Shore Galleries had a time to crime of less than three years.¹⁸ In the current dataset, the number of guns traced to Shore Galleries with a short time to crime has fallen even further, down to an average of 12 percent over the four-year analysis.

Intervention is necessary for those source dealers that consistently sell guns with a short time to crime, as this serves as an indicator that they are routinely dealing firearms to straw purchasers and traffickers. The continued high prevalence of recovered crime guns of recent vintage underscores the need for improved policies to reduce the number of guns that are initially purchased at an FFL, only to quickly enter the illegal market for use in a crime. ■



SOURCE STATES THAT SUPPLY CRIME GUNS RECOVERED IN CHICAGO

With consistent data trends now going back almost a decade, the majority of illegally used or possessed firearms recovered in Chicago are traced back to states with less regulation over firearms, such as Indiana and Mississippi: More than two of every five traceable crime guns recovered in Chicago originate with their first point of sale at an Illinois dealer. The remaining 60 percent of firearms come from out of state, with Indiana as the primary source for approximately one out of every five crime guns.



These statistics align closely with those in the prior crime trace analysis that spanned from 2009-2013, demonstrating the consistency with which firearms enter Chicago from states with little or no regulation over FFL dealer sales and secondary sale markets.¹⁹

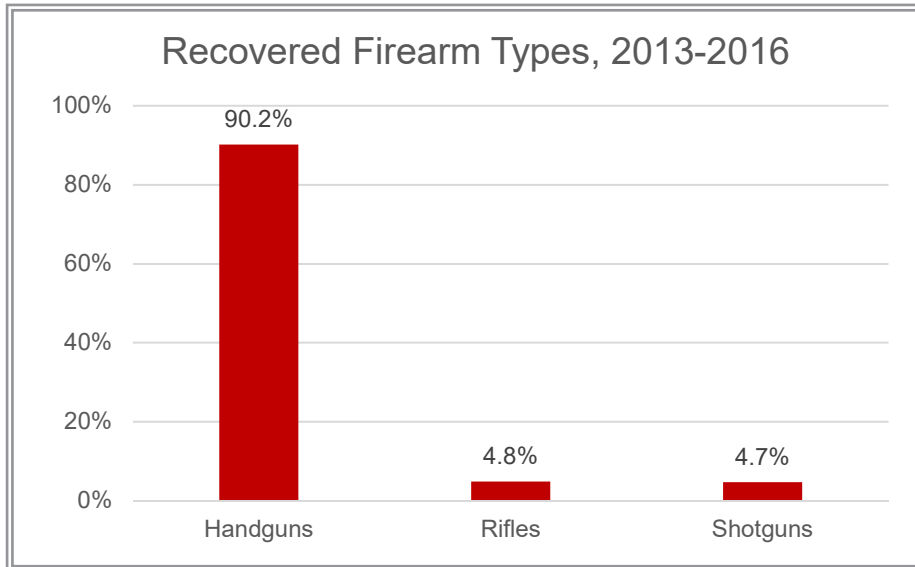
This pattern also highlights Chicago's challenge to address illegal guns within a loosely-regulated national gun market. Yet approximately two of every five traceable crime guns recovered in Chicago had its first point of sale at an Illinois dealer. State policies play a correspondingly important role in reducing gun violence. ■



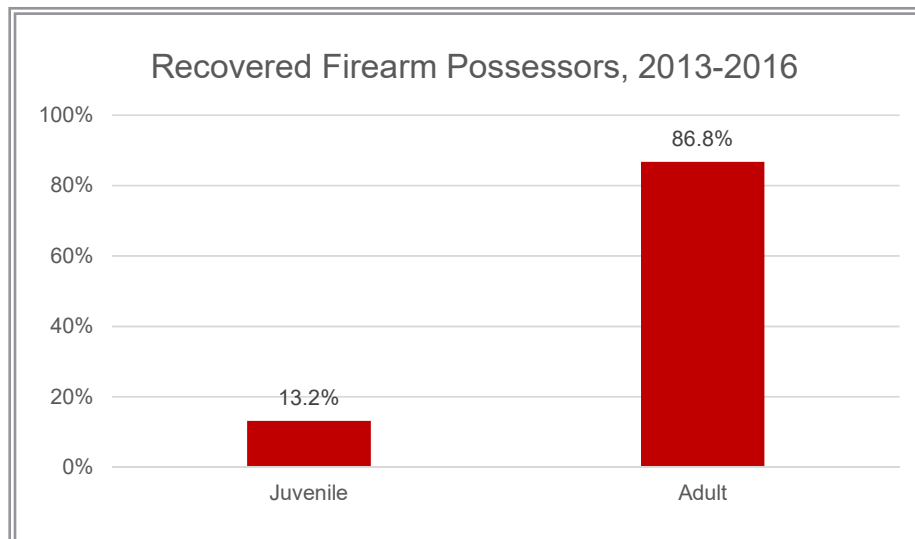
CHICAGO CRIME GUN PROFILE

The vast majority of crime guns were handguns possessed by adults who were not the original purchaser of the firearm, and if arrested, were charged with illegal firearm possession. When analyzing the gun trace data from 2013-2016, some statistical patterns stood out, most of which reinforce commonly held beliefs about the illegal gun market:

- Handguns are overwhelmingly the weapon of choice for committing a gun-related crime in Chicago. More than 90 percent of crime gun recoveries were handguns;



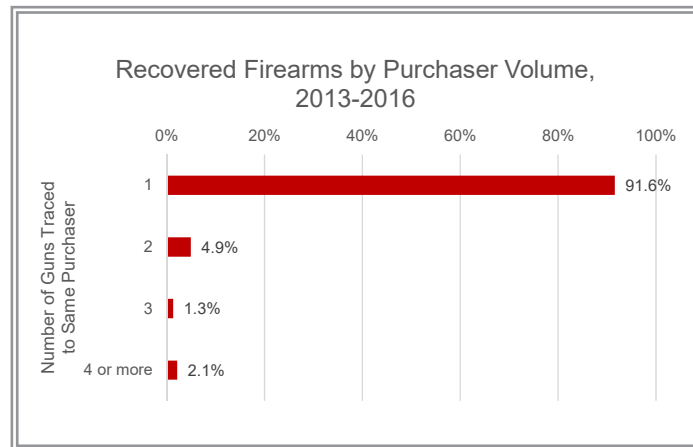
- Roughly 87 percent of the guns were recovered from adults. The average age of a criminal possessor was 29 years old. Over the four-year dataset, the number of juvenile possessors has been trending upwards from approximately 9 percent of those arrested in possession of a firearm, to nearly 13 percent in 2016.



Note: Percentages are for weapons with a known possessor.

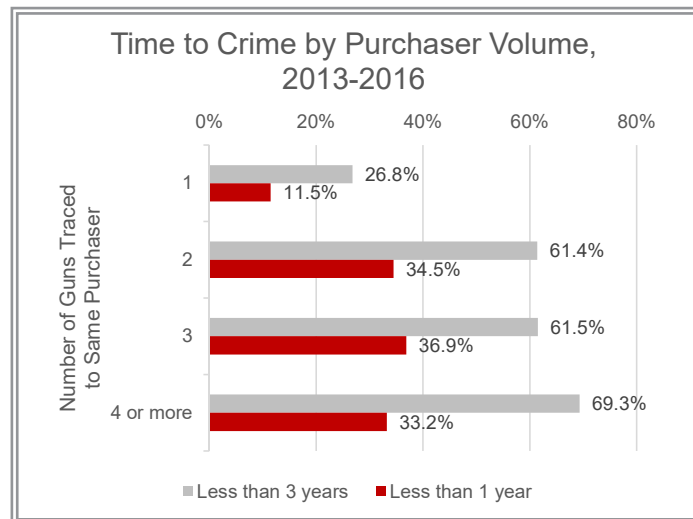


- The vast majority (91.6 percent) of Chicago's crime guns that are successfully traced back to an FFL involve someone who has only one crime gun traced back to their name as the original buyer. Approximately eight percent of recovered crime guns traced to a purchaser who had purchased more than one crime gun at an FFL over the four year analysis.



“Recovered Firearms by Purchaser Volume,” shows the percentage of crime guns that traced back to individuals who purchased multiple recovered crime guns over the four-year dataset. The figure includes percentages of total recovered crime guns traced to individuals who purchased two, three, or four or more recovered crime guns.

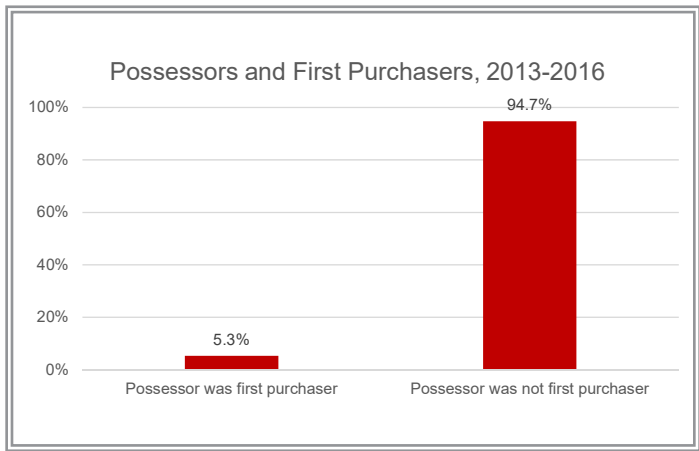
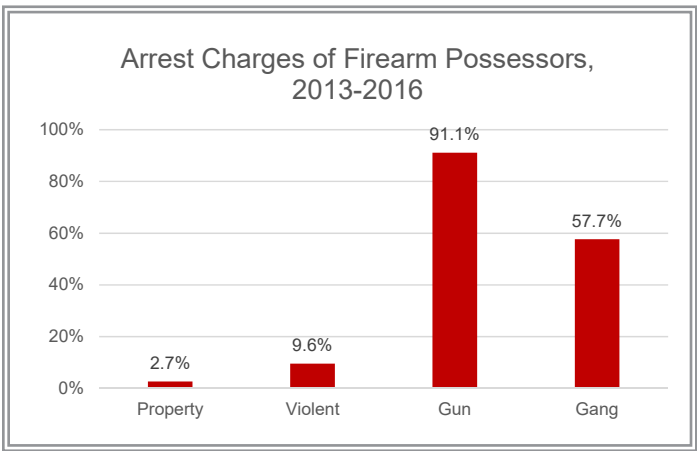
- Notably, within this small population of multiple trace buyers, the overall number of short time to crime guns increased significantly. This is a strong indicator that these buyers may be involved in illegal firearm trafficking.²⁰



“Time to Crime by Purchaser Volume,” shows the percentage of those crime guns that had a short time to crime, less than three years from initial purchase (grey), and less than one year from initial purchase (red).



- If charges were brought against the criminal possessor, in 91 percent of cases the offender was charged for illegally possessing a firearm; more than half of those arrests were categorized as gang-involved by CPD. Finally, in 95 percent of cases where CPD was able to identify the possessor of the crime gun, that individual was not the original, lawful purchaser of the firearm based upon the ATF record at the initial point of purchase.



Note: Arrest charges reflect the presence of any charge in the indicated category during the arrest of a firearm possessor, only for recovered firearms where a possessor was known and arrested. Gang affiliation is determined by the arresting officer.

The data above serves as a reminder of the vast networks involved in the illegal firearm trade. To address the complexities of the illegal gun market, a comprehensive strategy is necessary that focuses upon continued enforcement and oversight on illegal transfers, straw purchasers, and thieves from the initial point of purchase all the way to the secondary illegal market.

Below several state, regional, and national policy solutions are recommended to aid law enforcement investigations into gun trafficking and provide oversight over the primary and secondary markets for firearm sales. ■





POLICY SOLUTIONS

I. STATE LEVEL SOLUTIONS

Since 2013, when the gun trace data analyzed in this report began, the landscape of firearm regulation in Illinois has shifted significantly. In the midst of a series of court opinions interpreting the scope and extent of the Second Amendment of the United States Constitution,²¹ the Illinois General Assembly enacted landmark legislation that created a regulatory framework for the public carry of concealed handguns.²² The law included broad state preemption over a local government's ability to regulate firearms in many circumstances.²³ The statewide preemption invalidated some important provisions that aided law enforcement investigations, such as the City of Chicago's requirement for registration of firearms.²⁴ Chicago did maintain its ability to regulate some areas of local firearm law, such as firearm sales and shooting ranges.²⁵

Due to the current preemption structure, the Illinois legislature now holds the pen to provide meaningful oversight to stem the flow of illegally trafficked intrastate firearms into Chicago and other local jurisdictions in Illinois. ■

A. Illinois Gun Dealer Licensing, Audits, and Local Law Enforcement Oversight

Trace data going back almost a decade demonstrates that roughly two out of every five of Chicago's crime guns come into the city from Illinois source dealers, making Illinois the single largest source state for Chicago's illegal guns. Passage of the statewide Gun Dealer Licensing Act would provide a critical tool to help deter straw purchasing, implement anti-theft measures, and aid local law enforcement in firearm trafficking investigations. A substantial body of research indicates that state level licensure requirements for firearms dealers lower the number of illegally trafficked firearms within state borders.²⁶ Due to the difficulty in policing the tens of thousands of secretive transactions that make up the illegal gun market in Chicago, researchers have determined that an effective approach is to focus upon the initial transfer of firearms from the legal to illegal market.²⁷

According to ATF data, thefts from gun dealers also contribute to the illegal gun market, and have a direct

impact on violent crime.²⁸ From 2013 to 2016, over 72,000 firearms were reported lost or stolen from FFL dealers nationally.²⁹ Through that same period, over 1,200 guns were reported lost or stolen from FFL dealers within Illinois.³⁰ These numbers include burglaries and robberies of FFL dealers, which have increased in recent years. In Illinois, burglaries at FFLs located outside of Chicago almost tripled from 2015 to 2016.³¹ From investigative experience, the ATF discerned that guns stolen from FFLs are "almost assuredly destined for criminal use in the immediate area of the theft."³² To deter and mitigate FFL thefts, ATF issues recommendations to dealers such as installation of alarm and video recording systems, regular inventory and reporting requirements, and properly securing firearms.³³ Without complementary legislation, these recommendations and other safeguards to keep illegally obtained and possessed firearms off the street are completely voluntary.

A 2014 analysis determined that a state licensure requirement over gun dealers had an independent impact on lowering firearm homicide rates.³⁴ Additionally, the research concluded that permitting audits of gun dealer inventory lowered gun-related homicides.³⁵ When coupled together, adoption of these two provisions is associated with significantly reduced firearm homicide rates.³⁶ Among other regulatory and investigatory benefits, both of these provisions are encompassed in the pending Gun Dealer Licensing bill.³⁷

It is important to note that all retailers engaged in the business of selling firearms in the United States are required to obtain a federal firearms license.³⁸ Although one might presume that existing federal regulations render the additional layer of oversight at the state level futile, adding in state and local law enforcement could greatly enhance regulatory enforcement over gun dealers. Since 1986, absent a warrant, Congress has limited ATF's ability to conduct gun dealer inspections to a single annual compliance audit.³⁹ Citing a lack of resources, the U.S. Office of the Inspector General found that ATF actually inspects a surprisingly small portion, or roughly 5 percent of the more than 50,000 FFLs in the U.S. each year. Finally, federal law also prohibits ATF from requiring FFLs to submit to regular firearm inventory inspections.⁴⁰



Federal law enforcement partners in Illinois could substantially benefit from additional state and local law enforcement assistance and added oversight over firearms dealers. Under the framework proposed in the Gun Dealer Licensing Act, local law enforcement could simply step in and assist where ATF cannot due to manpower or other federal restrictions. This is an especially important tool to address the small subgroup of FFLs that contribute a disproportionate number of guns to the illegal market. ATF's national data demonstrates how significant certain FFLs can be in contributing to the illegal market of firearms, where less than 10 percent of dealers were associated with nearly half of trafficked firearms in a two-year study.⁴¹ CPD data certainly reflects a similar trend, with just 10 dealers making up almost a quarter of all successfully traced crime guns recovered in Chicago.

A joint local and federal effort to oversee Illinois gun dealers can have a demonstrable impact on a very sizeable portion of the firearms recovered from illegal possessors in Chicago. As a result, Mayor Emanuel led the passage of a model gun dealer ordinance in 2014 at the Chicago City Council.⁴² Many of the very practical provisions from the Chicago gun dealer ordinance mirror that of the proposed Gun Dealer Licensing Act, such as background checks and training of employees at gun shops, inventory recordkeeping and audit requirements to aid law enforcement, and video camera recording of gun sales and inventory areas to deter straw purchasers and thefts.⁴³ Given the data trends and research findings, along with the number of lives potentially at stake, there remains a vital need in Illinois for proper oversight over FFL dealers. ■

B. Comprehensive Background Checks on Private Sales in Illinois

Given that roughly 95 percent of crime guns in Chicago are traced back to someone other than the original purchaser, and 91 percent of those crime guns are associated with an arrest against the illegal possessor, CPD's trace data demonstrates the overwhelming rate at which illegal firearms are being exchanged on the secondary illegal market. Taking into account the approximately 7,000 guns that are taken off the street by CPD each year, policy focus must remain on the secondary exchange of firearms,

and efforts to prevent those guns from getting into the hands of individuals with a propensity for violence.


Recent research has identified comprehensive background check laws coupled with firearm permit requirements as having an independent impact on lowering illegal firearm transfers.⁴⁴ Additionally, in a comprehensive state-to-state study examining a broad range of firearm regulations and their relationship to homicide rates, states with stronger background check requirements had lower firearm fatalities.⁴⁵ Finally, the strongest policies shown to lower homicide rates came from states with permit requirements to purchase handguns, coupled with comprehensive background check laws.⁴⁶ Illinois already has a statewide permit system, requiring all gun owners to pass a background check and obtain a Firearm Owner's Identification ("FOID") card in order to lawfully purchase and possess a firearm.⁴⁷ A FOID card is valid for 10 years before a gun owner must reapply and renew the permit.⁴⁸

Currently, both federal and Illinois law require background checks at all firearm sales that are sold by an FFL dealer.⁴⁹ Illinois further requires a state background check on all firearm sales that take place at a gun show.⁵⁰ Illinois also mandates that all sellers check a person's FOID card prior to completing the sale or transfer of a firearm, regardless of where the firearm is sold.⁵¹ This removes an important regulatory gap, since it applies to private sales as well.

The Illinois State Police created a system to allow a private seller to call in or electronically check a potential buyer's FOID information to quickly determine whether the buyer can legally purchase a firearm.⁵³ Upon verification that the buyer is lawfully able to purchase and possess a firearm, the State Police issue the seller a unique approval number, which he or she is required to keep a record of for at least 10 years. The verification system is used to ensure that a buyer's FOID card has not been suspended or revoked.

Failure to conduct a background check through the verification system is a criminal penalty, but only for FFL dealers and gun show vendors.⁵⁴ Private sellers are exempt from any criminal penalty for failure to verify that a potential buyer's FOID card is valid before transferring a firearm.⁵⁵ Illinois law merely provides what amounts to an incentive for a private seller verifying a potential buyer's FOID validity, granting civil immunity to a person who





does take the step to call in a potential gun buyer's FOID to the State Police.⁵⁶ The law should instead reflect the importance of ensuring that a gun buyer in a private sale can in fact legally purchase and possess the firearm, and have the appropriate consequence to deter and enforce against illegal transfers on the secondary market.

For example, an estimated 22 percent of national firearm sales take place without any background check.⁵⁷ Additional evidence indicates that the secondary sales market is shifting to include greater numbers of online firearm sales. Since 2011, the number of online guns available at armslist.com, an online marketplace, has increased more than twelve-fold, from roughly 12,000 to 148,000 firearms.⁵⁸

Further, a 2012 audit estimated that a mere 30 percent of revoked FOID cards are actually returned to the Illinois State Police.⁵⁹ While the State Police has gone great lengths to improve the revocation process in coordination with local law enforcement, this audit finding indicates that many individuals with an ostensibly valid FOID card are actually ineligible to own a firearm. The only way to verify whether a person's FOID card is currently valid at the point of sale is to mandate a simple check with the State Police before all firearm sales, in the same manner that FFLs and gun show vendors already are required to do.

A simple legislative step forward to ensure the legality of secondary private sales in Illinois would be to tie a criminal penalty for failure to verify that a person's FOID card is in fact valid at the time of purchase. Additionally, Illinois already has legislation in place allowing for private transfers to take place on the premises of an FFL dealer, where the FFL dealer verifies the legality of the sale on behalf of the seller with the State Police.⁶⁰ Private sale firearm transfers on site at an FFL dealer are not simply permitted, but are legally required in states like California and New York.⁶¹ These states attach a criminal penalty not only on the seller's failure to verify the buyer's legal status to purchase a firearm, but the failure to conduct the sale through a licensed FFL dealer.⁶² Based on the recovery rate of firearms by Los Angeles and New York City's respective police departments, this regulation on private sales may help limit the number of firearms illegally circulated in each of these major cities.

By requiring all firearm transfers to be processed at an FFL dealer and creating an enforceable criminal penalty for failure to do so, Illinois can close the private sale loophole and enact a robust, comprehensive background check system that will limit criminal access to firearms on the secondary market. ■

C. Effective Enforcement of Illinois Lost and Stolen Reporting Law

Although data transparency is lacking to fully understand the vast illegal networks involved in the chain of custody of crime guns, combining surveys of convicted gun offenders with the type of trace data included in this report provides an important perspective on the illegal gun markets in and around Chicago.⁶³ Again, with 95 percent of traces coming back to someone other than the criminal possessor, it is clear that intermediaries involved in secondary market sales play a significant role in placing firearms into the illegal marketplace.

A recent survey of adult offenders in Cook County Jail indicates that the vast majority of illegally used or possessed firearms are obtained through an offender's social network, family, or other personal connections.⁶⁴ Only 60 percent of those firearms were actually purchased for cash, the remaining 40 percent were traded, shared, or temporarily loaned to the offender, sometimes due to the fact that the gun was previously used in a crime.⁶⁵ It is difficult to track the chain of custody as guns travel through illegal markets, and it is common for investigators to hear a suspected straw purchaser or trafficker assert that the gun was lost or stolen from them – often used as an excuse intended to cut off further investigation.

In 2013, a coalition of law enforcement agencies and anti-violence advocates successfully passed a “lost and stolen reporting” law in Illinois.⁶⁶ Lost and stolen reporting laws are designed to mitigate a straw purchaser or illegal firearm trafficker's ability to make false claims to law enforcement when the paper trail or other information can successfully trace a crime gun back to the unlawful seller. The current Illinois law requires a person to report to law enforcement “within 72 hours of obtaining knowledge” of a firearm's loss or theft.⁶⁷ Failure to do so is a petty offense, punishable by a ticket only, and a Class A misdemeanor for a second or subsequent violation.



The Illinois General Assembly could take simple steps to more effectively enforce and implement the lost and stolen reporting law. First, a violation should result in a criminal offense eligible for arrest, not simply a ticket, and any person who fails to report the loss or theft of multiple firearms should have his or her FOID card suspended or revoked. The current penalty structure allows a gun trafficker to receive multiple violations, keep his or her FOID card, and continue to legally buy guns for dissemination in the illegal market.

Second, as current law stands, there is ample room for straw purchasers and firearm traffickers to skirt law enforcement without citation or conviction. Because law enforcement is required to establish that the person had “knowledge” of the loss or theft, an offender can still misrepresent that he or she did not know the firearm went missing and avoid sanction, even after an outlandish amount of time has passed. A rebuttable presumption should be written into the law that presumes knowledge of a firearm’s loss or theft after a reasonable period of time after the firearm goes missing. With this change, if law enforcement can demonstrate that a gun has long been in the illegal stream of commerce, or recovered at a crime scene months or years prior, the person cannot claim ignorance and avoid accountability. Such a measure protects responsible gun owners who are already likely to immediately report a lost or stolen gun.

The above enhancements to the lost and stolen reporting law will ensure that individuals who recklessly or knowingly contribute to the illegal gun market cannot avoid responsibility entirely for the associated violence that occurs, and more importantly, are unable to continue selling firearms to criminals. ■

D. Registration of Firearms to Aid Criminal Investigations

Firearm trace data and accompanying survey studies from convicted gun offenders provide important insight into the illegal gun market in Chicago. One significant finding is the high turnover rate of guns among networks of individuals seeking to avoid accountability for possessing a particular firearm.⁶⁸ Crime guns often change hands multiple times, both legally and illegally, in many cases


leaving law enforcement in a conundrum to determine the actual chain of custody leading up to a particular crime.⁶⁹ A system to track lawful firearm transfers leading up to the illegal sale into the secondary market would greatly improve firearm investigations and help identify violent criminals. It would further protect lawful gun owners who never intended for their firearms to enter into the illegal gun market from unwarranted inquiry or investigation.

Currently, federal law requires an FFL dealer to record the initial gun purchaser’s information in a firearms transaction record, along with the make, model, and unique serial number of the gun.⁷⁰ ATF then maintains a record of the initial sale information.⁷¹ As discussed above in Section (B), Illinois law requires any subsequent private seller to check the buyer’s FOID card and maintain an internal record of the sale for at least 10 years.⁷² When a firearm is recovered at a crime scene, however, law enforcement only has access to that initial record of sale at the FFL. In order for the investigation to proceed from the initial buyer, if he or she can be identified and contacted, multiple cooperative witnesses and a great deal of luck are likely required to determine at what point an illegal transfer took place during the life of the crime gun, and who in fact used it to commit the underlying crime.

A firearm registration system to track firearm transfers from one lawful owner to the next would provide an invaluable tool to investigators attempting to trace crime guns back to criminals. Importantly, it would take those who lawfully purchase guns at FFLs and sell them to legitimate buyers on the secondary market out of the investigation. If multiple transactions did in fact take place from the initial point of sale, law enforcement could proceed from the last lawfully recorded transfer. This would provide a substantial benefit to not only crime investigators, but also responsible gun owners who properly assess potential buyers before selling off a firearm on the secondary market. Further, it would aid in readily identifying straw purchasers whose firearms are purchased at an FFL for immediate sale into the illegal market, thus diminishing the flow of guns to violent criminals who use them in furtherance of senseless gun crimes.

When discussing gun policy, a familiar saying is often repeated: “guns don’t kill people, people kill people.”





While the statement is primarily used to argue against gun regulations, it ironically strengthens the case for creating a comprehensive system for tracking the chain of custody over firearms. People do kill people, and disproportionately use firearms to do so. Illinois should do everything in its power to develop a regulatory framework that helps law enforcement identify the very people who illegally traffic guns and put them in the hands of violent criminals. ■

II. FEDERAL SOLUTIONS

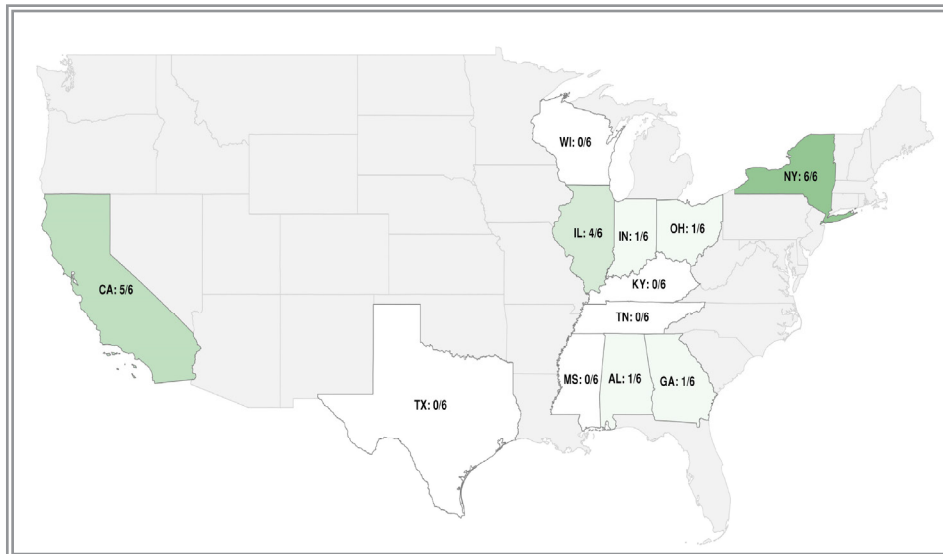
The Chicago Police Department has consistently traced close to 60 percent of its crime guns to other states. The data speaks for itself, but additional gun offender surveys and time to crime recovery analyses indicate that states with lax gun laws like Indiana and Mississippi are a primary target for gang members and their gun trafficker source buyers.⁷³ In addition to anecdotal admissions from gang members, researchers compared guns traced to gang members against a non-gang-affiliated comparison group of crime guns, and found that *almost triple the number of crime guns recovered from gang members originally came from Indiana.*⁷⁴

Additional research reinforces a rather obvious economic principle: weaker gun laws in a state increases the export of crime guns, and stronger gun laws in a state increases the import of crime guns.⁷⁵ Illinois can and must do better to reduce the flow of guns from in-state FFL dealers. But even with this necessary step forward to regulate in-state firearm sales, Chicago remains uniquely vulnerable to interstate firearms trafficking due to surrounding states with weak regulations over the primary and secondary gun sale markets, including Indiana, Wisconsin, and Kentucky. Not just Chicago, but the nation, needs a national response to meaningfully deter illegal gun trafficking and the subsequent gun violence that follows in its wake.

The table below demonstrates the need for a national, comprehensive solution, by comparing gun regulations in Illinois, California, and New York to the largest source states of crime guns in Illinois identified in this report. The list of regulations in each state include:

- **Permit to Purchase Laws:** a statewide license or permit system is required to purchase a firearm, indicating to law enforcement, FFL dealers, or gun sellers that a person has passed a state and federal background check;
- **Registration of Firearms:** a statewide system to track the transfer of a firearm from one person to the next;
- **Lost and Stolen Firearm Reporting:** a state law requiring a person to report a firearm lost or stolen to authorities within a certain time;
- **Gun Show Background Check:** a state law requiring background checks for any firearm sale on the premises of a gun show;
- **Private Sale Background Check:** a state law requiring background checks for any firearm sale between private individuals (non-FFL dealers, non-gun show vendors);
- **State Gun Dealer Regulations:** a state license requirement for all FFL dealers, providing state and/or local authority and oversight

GUN LAWS IN SELECTED STATES



GUN LAWS IN SELECTED STATES

State	Gun Laws	Permit to Purchase Firearms	Registration of Firearms	Lost and Stolen Background Check	Gun Show Background Check	Private Sale Background Check	State Gun Dealer Regulations
CA	5/6	Yes	No*	Yes	Yes	Yes	Yes
NY	6/6	Yes	Yes**	Yes	Yes	Yes	Yes

TOP TEN CONTRIBUTORS TO CHICAGO'S CRIME GUNS


1 IL	4/6	Yes	No	Yes	Yes	Yes	No
2 IN	1/6	No	No	No	No	No	Yes***
3 MS	0/6	No	No	No	No	No	No
4 WI	0/6	No	No	No	No	No	No
5 OH	1/6	No	No	Yes	No	No	No
6 KY	0/6	No	No	No	No	No	No
7 GA	1/6	No	No	No	No	No	Yes***
8 TN	0/6	No	No	No	No	No	No
9 AL	1/6	No	No	No	No	No	Yes***
10 TX	0/6	No	No	No	No	No	No

* CA - Requires all sales take place with a background check at point of sale of licensed firearms dealer or gun show vendor, and that all sale records be maintained, including thumbprint of purchaser.

** NY - Assault Weapons only, but notice to authorities required upon the transfer or sale of any firearm.

*** AL, GA, IN - Handguns only.





As discussed within the recommendations for state-level solutions, Illinois gun laws are far from perfect. Although Illinois can technically claim four of the six statewide regulations described above, improvements to the private sale background check system and lost and stolen reporting law are needed to make them truly enforceable.⁷⁶ Additionally, the system for seizure of revoked or suspended FOID cards – and illegally possessed firearms – requires committed resources and more focused efforts.⁷⁷

When Illinois is compared to the largest source states for crime guns in Chicago, the necessity for a national solution becomes truly apparent. Chicago's source states for crime guns have few if any statewide measures that govern primary and secondary firearm sales, or that help law enforcement identify a potential straw purchaser.⁷⁸ By comparison, New York and California have a robust set of regulations to aid gun trafficking investigations and deter straw purchasers.⁷⁹ Crime gun recoveries in major cities like Los Angeles and New York City demonstrate the obvious benefits from each state's respective regulatory framework.

Looking beyond Illinois' borders, several straightforward recommendations were set forth in the previous gun trace report in 2014. One recommendation included the establishment of a collaborative gun tracing effort among law enforcement agencies in the Midwest region.⁸⁰ Illinois law currently requires all law enforcement agencies to trace each illegally possessed firearm “when appropriate” to the ATF National Tracing Center.⁸¹ A recently enacted state law creates a Violent Crime Intelligence Task Force under the Illinois State Police, which includes priorities for multi-jurisdictional information sharing among law enforcement to help reduce gun violence.⁸² Regardless of any legislation, law enforcement agencies can do more to

collaborate outside of their jurisdictions both regionally and state-to-state to help identify gun trafficking trends and assist investigations. While this second Chicago Police gun trace analysis only provides a one-way view of crime guns coming into Chicago, it certainly underscores that law enforcement agencies must work together across state borders to meaningfully curtail illegal firearms trafficking.

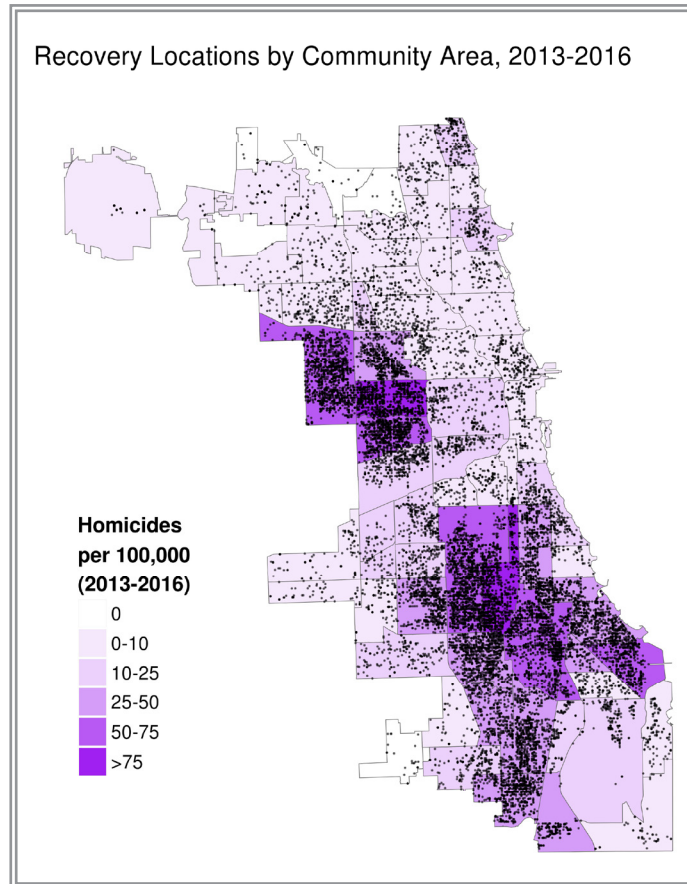
There are a number of additional federal solutions that will have a direct impact on firearm diversions to criminals and gun-related violence:

- Pass the Gun Trafficking Prevention Act,⁸³ which includes enforcement measures at every link in the illegal chain of custody of a trafficked firearm;
- Create comprehensive background checks on all firearm sales, regardless of the venue or type of seller;
- Lift ATF restrictions on oversight and enforcement of gun dealers;
- Increase ATF resources, manpower, and enforcement of current firearm trafficking laws;
- Regulate and track online sales of all firearms;
- Lift restrictions on firearm sale recordkeeping, data access, and reporting;
- Increase federal prosecution of gun trafficking and illegal gun possession offenses;
- Increase federal law enforcement collaboration with local and state law enforcement agencies across regions



APPENDIX A: CHICAGO CRIME GUN RECOVERIES AND COMPARISON HOMICIDE RATES

Not surprisingly, Chicago crime guns are recovered primarily in areas of the City with the greatest concentration of gun violence, corresponding to the need for police to focus on illegal gun possession or use.



The report examines links between the location of a crime gun's original source dealer and where the traceable gun is actually recovered. Many firearms are ultimately dispersed throughout Chicago. Such dispersion demonstrates the broad network of individuals involved in the illegal secondary gun markets. ■



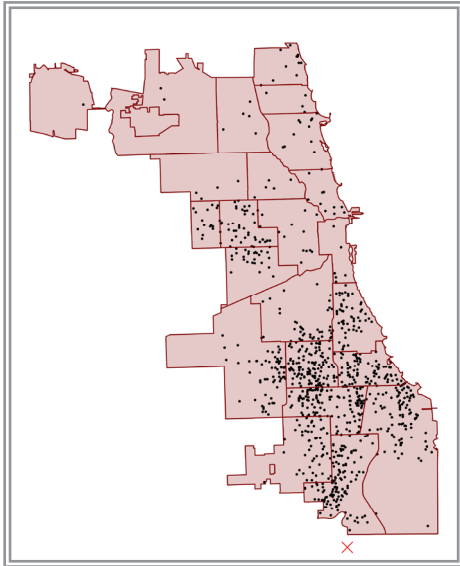
APPENDIX B: CHICAGO CRIME GUN RECOVERY LOCATIONS BY INDIVIDUAL SOURCE DEALER

The red "X" below denotes the gun shop's location, and each black dot represents a recovered crime gun.

In parentheses, the total number of crime guns recovered under the four-year study, and the percentage of those guns recovered within three years, are listed next to each source dealer (Total # of Crime Guns Recovered / Percentage with Time to Crime Recovery Within Three Years).

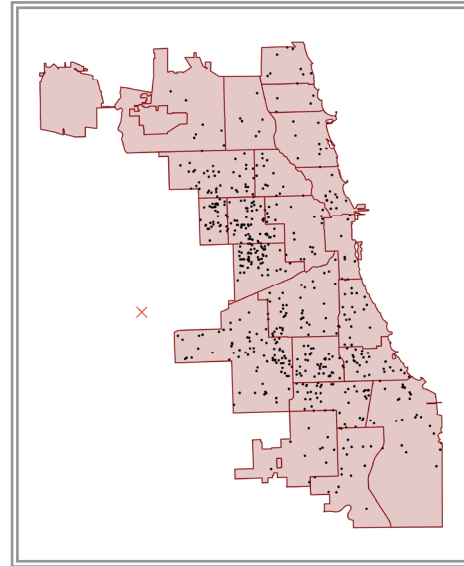
Chuck's Gun Shop

Riverdale, IL (Total Guns 997 / TTC 39%)



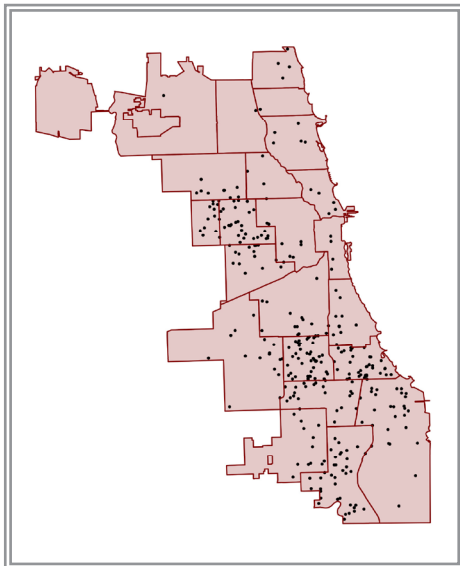
Midwest Sporting Goods

Lyons, IL (Total Guns 676 / TTC 61%)



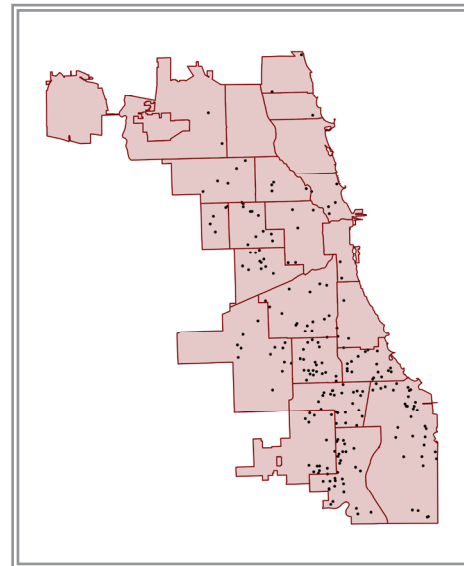
Westforth Sports

Gary, IN (Total Guns 341 / TTC 45%)



Cabela's

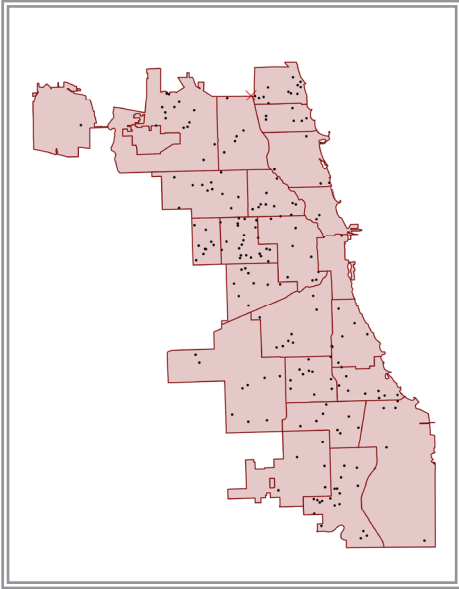
Hammond, IN (Total Guns 253 / TTC 67%)





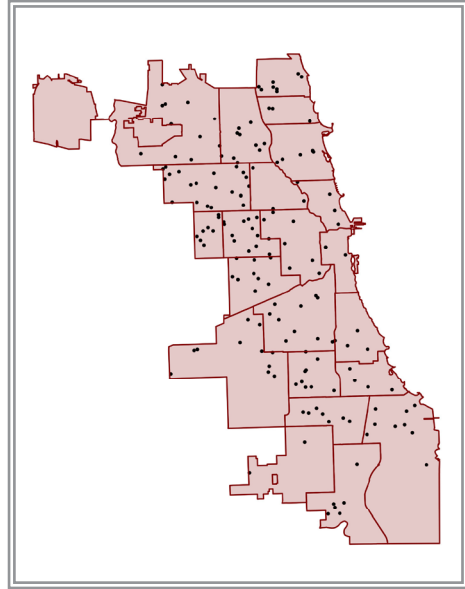
Shore Galleries

Lincolnwood, IL (Total Guns 241 / TTC 12%)



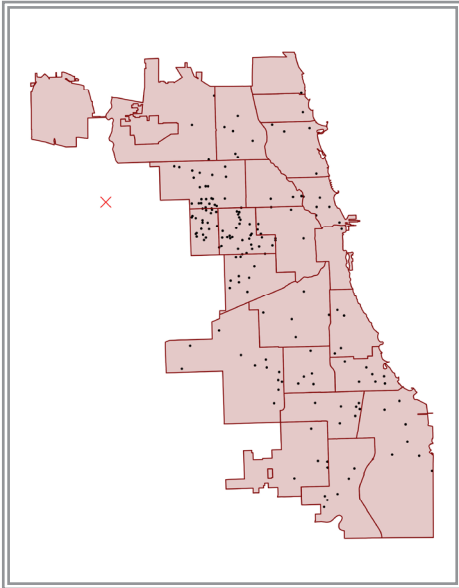
GAT Guns

East Dundee, IL (Total Guns 219 / TTC 47%)



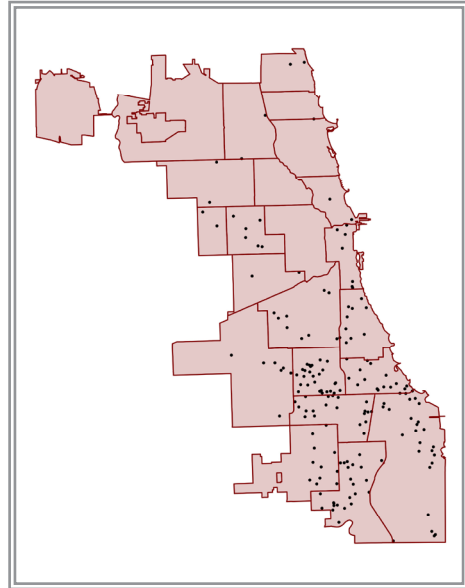
Suburban Sporting Goods

Melrose Park, IL (Total Guns 202 / TTC 68%)



Pelchers Shooter Supply

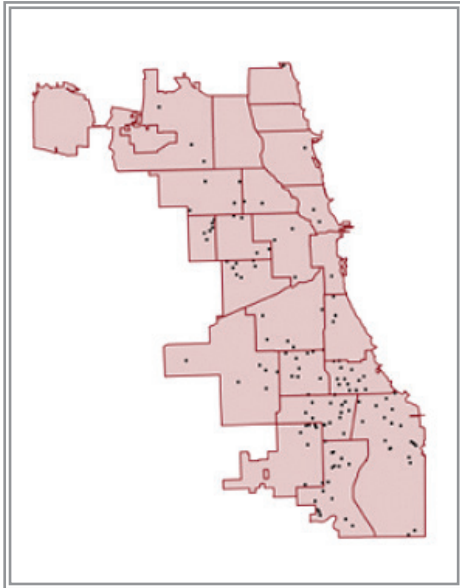
Lansing, IL (Total Guns 193 / TTC 63%)





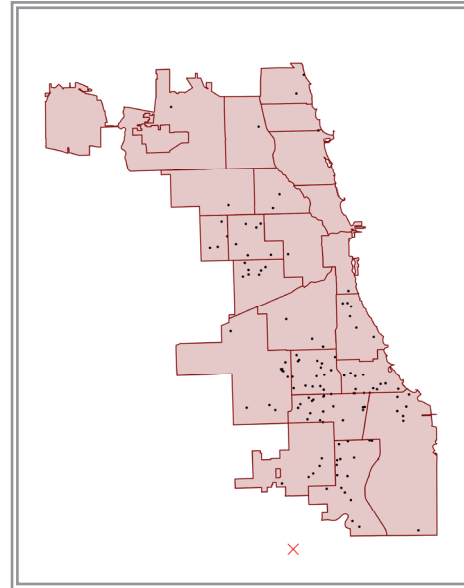
Blythe's Sport Shop

Griffith, IN (Total Guns 139 / TTC 19%)



Sporting Arms & Supply

Posen, IL (Total Guns 128 / TTC 64%)





APPENDIX C: CROSS-CITY COMPARISONS OF FIREARM RECOVERIES

Firearm recoveries			
	Chicago	Los Angeles	New York
2011	7,303	6,006	2,883
2012	7,444	4,724	2,779
2013	6,681	5,130	2,624
2014	6,762	5,529	2,510
2015	6,762	6,151	2,508
2016	6,644	5,908	3,583

Note: Excludes weapons obtained through turn-in and buy-back programs.

Recoveries per capita			
	Chicago	Los Angeles	New York
2011	270	157	35
2012	275	123	34
2013	246	132	31
2014	248	142	30
2015	248	155	29
2016	244	149	42

Note: Excludes weapons obtained through turn-in and buy-back programs.



**APPENDIX D:
TOP TEN SOURCE DEALERS OF CRIME GUNS RECOVERED: 2013-2016 AND YEAR BY YEAR**

Top 10 sources dealers of guns recovered during 2013-2016

FFL Name	City	County	State	# Guns	# Purchasers	# Reported Stolen	% of all eTraced Guns	% short TTC (<3yrs)	% short TTC (<1yr)
CHUCK'S GUN SHOP	RIVERDALE	COOK	IL	997	960	43	7%	39%	21%
MIDWEST SPORTING GOODS	LYONS	COOK	IL	676	632	42	5%	62%	36%
WESTFORTH SPORTS	GARY	LAKE	IN	341	319	0	2%	45%	20%
CABELA'S	HAMMOND	LAKE	IN	253	232	2	2%	67%	32%
SHORE GALLERIES	LINCOLNWOOD	COOK	IL	241	231	9	2%	12%	5%
GAT GUNS	EAST DUNDEE	KANE	IL	219	188	9	1%	47%	24%
SUBURBAN SPORTING GOODS	MELROSE PARK	COOK	IL	202	185	11	1%	68%	46%
PELCHERS SHOOTER SUPPLY	LANSING	COOK	IL	193	182	12	1%	63%	29%
BLYTHE'S SPORT SHOP	GRIFFITH	LAKE	IN	139	138	1	1%	19%	9%
SPORTING ARMS & SUPPLY	POSEN	COOK	IL	128	124	12	1%	64%	36%

Top 10 sources dealers of guns recovered in 2013

FFL Name	City	County	State	# Guns	# Purchasers	# Reported Stolen	% of all eTraced Guns	% short TTC (<3yrs)	% short TTC (<1yr)
CHUCKS GUN SHOP	RIVERDALE	COOK	IL	251	245	9	8%	33%	15%
MIDWEST SPORTING GOODS	LYONS	COOK	IL	129	122	5	4%	53%	29%
WESTFORTH SPORTS	GARY	LAKE	IN	82	79	0	2%	40%	19%
GAT GUNS	EAST DUNDEE	KANE	IL	66	53	0	2%	30%	18%
SHORE GALLERIES	LINCOLNWOOD	COOK	IL	65	64	2	2%	12%	6%
CABELAS	HAMMOND	LAKE	IN	47	45	0	1%	79%	32%
PELCHERS SHOOTERS SUPPLY	LANSING	COOK	IL	38	36	1	1%	68%	41%
BLYTHES SPORT SHOP	GRIFFITH	LAKE	IN	34	34	0	1%	21%	6%
BELLS GUN & SPORT SHOP	FRANKLIN PARK	COOK	IL	34	34	1	1%	0%	0%
RAY OHERRON CO	LOMBARD	DU PAGE	IL	33	33	4	1%	18%	6%

Top 10 sources dealers of guns recovered in 2014

FFL Name	City	County	State	# Guns	# Purchasers	# Reported Stolen	% of all eTraced Guns	% short TTC (<3yrs)	% short TTC (<1yr)
CHUCKS GUN SHOP	RIVERDALE	COOK	IL	277	271	9	7%	39%	25%
MIDWEST SPORTING GOODS	LYONS	COOK	IL	170	159	10	4%	58%	35%
WESTFORTH SPORTS	GARY	LAKE	IN	94	92	0	2%	40%	11%
SHORE GALLERIES	LINCOLNWOOD	COOK	IL	73	71	5	2%	11%	3%
CABELAS	HAMMOND	LAKE	IN	68	67	1	2%	71%	35%
PELCHERS SHOOTERS SUPPLY	LANSING	COOK	IL	53	49	6	1%	58%	25%
MIDWEST GUN EXCHANGE	MISHAWAKA	ST JOSEPH	IN	44	44	0	1%	18%	0%
RAY OHERRON CO	LOMBARD	DU PAGE	IL	43	42	7	1%	21%	2%
SPORTING ARMS & SUPPLY	POSEN	COOK	IL	43	39	9	1%	58%	28%
SUBURBAN SPORTING GOODS	MELROSE PARK	COOK	IL	42	41	0	1%	48%	40%

Top 10 sources dealers of guns recovered in 2015

FFL Name	City	County	State	# Guns	# Purchasers	# Reported Stolen	% of all eTraced Guns	% short TTC (<3yrs)	% short TTC (<1yr)
CHUCKS GUN SHOP	RIVERDALE	COOK	IL	249	241	12	7%	44%	26%
MIDWEST SPORTING GOODS	LYONS	COOK	IL	198	193	16	5%	65%	44%
WESTFORTH SPORTS	GARY	LAKE	IN	75	73	0	2%	45%	20%
CABELAS	HAMMOND	LAKE	IN	58	57	1	2%	62%	34%
SUBURBAN SPORTING GOODS	MELROSE PARK	COOK	IL	54	52	2	1%	67%	54%
SHORE GALLERIES	LINCOLNWOOD	COOK	IL	48	47	1	1%	17%	4%
PELCHERS SHOOTERS SUPPLY	LANSING	COOK	IL	46	44	1	1%	57%	11%
GAT GUNS	EAST DUNDEE	KANE	IL	38	35	3	1%	46%	27%
CABELAS	HOFFMAN ESTATES	COOK	IL	37	32	2	1%	78%	30%
BLYTHES SPORT SHOP	GRIFFITH	LAKE	IN	36	36	0	1%	17%	14%

Top 10 sources dealers of guns recovered in 2016

FFL Name	City	County	State	# Guns	# Purchasers	# Reported Stolen	% of all eTraced Guns	% short TTC (<3yrs)	% short TTC (<1yr)
CHUCKS GUN SHOP	RIVERDALE	COOK	IL	220	219	13	5%	41%	16%
MIDWEST SPORTING GOODS	LYONS	COOK	IL	179	169	11	4%	69%	35%
WESTFORTH SPORTS	GARY	LAKE	IN	90	87	0	2%	56%	30%
SUBURBAN SPORTING GOODS	MELROSE PARK	COOK	IL	85	74	8	2%	84%	47%
CABELAS	HAMMOND	LAKE	IN	80	68	0	2%	59%	28%
GAT GUNS	EAST DUNDEE	KANE	IL	77	66	6	2%	58%	26%
BORDERLINE SHOOTING SPORTS	CRETE	WILL	IL	74	65	2	2%	100%	59%
PELCHERS SHOOTERS SUPPLY	LANSING	COOK	IL	56	55	4	1%	68%	39%
SHORE GALLERIES	LINCOLNWOOD	COOK	IL	55	51	1	1%	8%	6%
BRADIS	CAMBY	MARION	IN	34	34	0	1%	35%	9%

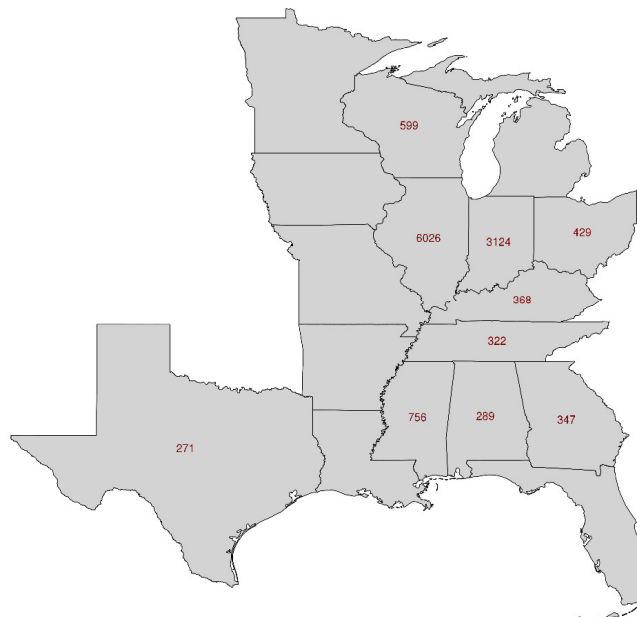


APPENDIX E:

TOP TEN SOURCE DEALERS OF CRIME GUNS RECOVERED: 2013-2016 AND YEAR BY YEAR

	State	N	% of all eTraced guns
1	ILLINOIS	6026	40%
2	INDIANA	3124	21%
3	MISSISSIPPI	756	5%
4	WISCONSIN	599	4%
5	OHIO	429	3%
6	KENTUCKY	368	2%
7	GEORGIA	347	2%
8	TENNESSEE	322	2%
9	ALABAMA	289	2%
10	TEXAS	271	2%
		12531	84%

Top 10 source states for recovered guns, 2013-2016





**APPENDIX F:
TYPES OF GUNS TRACED, AND TRACES INVOLVING MULTIPLE BUYERS, 2013-2016**

Types of guns recovered, 2013-2016

# Handguns	Handguns	# Rifles	Rifles	# Shotguns	Shotguns
19789	90%	1062	5%	1039	5%

Gun recoveries by single and multiple purchasers, 2013-2016

# Guns bought by each purchaser	# Purchasers	% of all eTraced Guns	% Stolen	% Short TTC (<3yrs)	% Short TTC (<1yrs)	% Handguns
1	13645	92%	2%	27%	12%	94%
2	367	5%	3%	61%	35%	89%
3	65	1%	2%	62%	37%	83%
4	22	1%	3%	61%	23%	88%
5 or more	28	2%	0%	72%	37%	79%



¹ Bureau of Alcohol, Tobacco, Firearms, and Explosives. Fact Sheet – National Tracing Center. (March, 2016). Available at <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center>

² Cook. The Technology of Personal Violence, 14 Crime & Just. 1 (1991).

³ City of Chicago – Office of the Mayor & Chicago Police Department. Tracing the Guns: The Impact of Illegal Guns on Violence in Chicago. (May 27, 2014). Available at <https://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2014/May/05.27.14TracingGuns.pdf>

⁴ Richard & Hemenway. Homicide, Suicide, and Unintentional Firearm Fatality: Comparing the United States with other high-income countries. J. Trauma Inj. Infect. Crit. Care 70:238-43 (2011).

⁵ Webster & Wintemute. Effects of Policies Designed to Keep Firearms From High Risk Individuals; Annu. Rev. Public Health. 36:21-37 (2015).

⁶ Small Arms Survey: Estimating Civilian Owned Firearms. Graduate Institute of International and Developmental Studies, Geneva (2011). http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-9.pdf

⁷ See Ind. Code Ann. 35-47-2-14 (Indiana Handgun Dealer’s License); Wisc. Admin. Code Just 10.04(1) (Wisconsin does not require state gun dealer license, but requires dealer to report all handgun sales); Ohio Rev Code 2923.20(A)(5) (Ohio Lost and Stolen Reporting Law); OCGA 16-11-129(a) (Georgia prohibits registration of firearms); OCGA 16-11-173(b)(1) (Georgia preempts local regulation of gun shows); OCGA 43-16-2 (Georgia Handgun Dealer’s License); Ala. Code Ann. 40-12-143 (Alabama only requires license tax for gun show vendors); Ala. Code 13A-11-78 (Alabama Handgun Dealer’s License); See also Governing Magazine: Gun Show Background Checks State Laws. January 2016. <http://www.governing.com/gov-data/safety-justice/gun-show-firearms-background-checks-state-laws-map.html>

⁸ Press Release 9/22/2016. Office of the Mayor, City of Chicago. Mayor Emanuel Outlines Comprehensive Public Safety Strategy. https://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2016/September/Outlines_Comprehensive_Public_Safety_Strategy.pdf

⁹ The Firearm Concealed Carry Act; Public Act 098-0063, Illinois General Assembly (Rep. Phelps/Sen. Forby), eff. July 9, 2013.

¹⁰ See Senate Bill 1657 *engrossed*; Illinois General Assembly (Sen. Harmon/Rep Willis). Available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=10000SB1657eng&GA=100&SessionId=91&DocTypeId=SB&LegID=104404&DocNum=1657&GAID=14&Session=>

¹¹ *Author’s Note*: The data used in this report represents firearms that were recovered by the Chicago Police Department and successfully traced to a federally licensed firearms dealer based on the firearm’s make, model, and serial number maintained in ATF records from the initial point of sale.

¹² City of Chicago, Tracing the Guns: The Impact of Illegal Guns on Violence in Chicago, *supra* note 3.

¹³ U.S. Department of Justice, Bureau of Alcohol, Tobacco, and Firearms, National Tracing Center. *ATF Firearms Tracing Guide: Tracing Firearms to Reduce Violent Crime*. (November 2011). <https://www.atf.gov/file/58631/download>

¹⁴ U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms. *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*. (June 2000).

¹⁵ Webster & Wintemute. Effects of Policies Designed to Keep Firearms from High-Risk Individuals. Annu. Rev. Public Health 2015. (January 7, 2015). See also Bureau of Alcohol, Tobacco, and Firearms. Fact Sheet – Multiple Firearms Sales or Other Disposition Reporting. (March 2016). Available at <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-multiple-firearms-sales-or-other-disposition-reporting>. (Short time to crime coupled with multiple purchase serves as an indicator of firearms trafficking).


¹⁶ See Village Code of Lyons, Illinois, Title 4, Chapter 4-1-3(E); see also Chicago Tribune, “Lyons OK’s Unprecedented Gun Shop Regulations,” (Oct. 28, 2015). Available at <http://www.chicagotribune.com/news/ct-lyons-gun-shop-ordinance-20151027-story.html>.

¹⁷ See *Appendix D*: Analysis of 2013 to 2016 Chicago Police Crime Gun Recovery Data. In 2015, 43.94% of the crime guns traced back to Midwest Sporting Goods were recovered within one year of sale. In 2016, 34.64% of the crime guns traced back to Midwest Sporting Goods were recovered within one year of sale.



- ¹⁸ City of Chicago, Tracing the Guns: The Impact of Illegal Guns on Violence in Chicago, *supra* note 3.
- ¹⁹ City of Chicago, Tracing the Guns: The Impact of Illegal Guns on Violence in Chicago, *supra* note 3. See also Ind. Code Ann. 35-47-2-14 (Indiana Handgun Dealer’s License); Wisc. Admin. Code Just 10.04(1) (Wisconsin does not require state gun dealer license, but requires dealer to report all handgun sales); Ohio Rev Code 2923.20(A)(5) (Ohio Lost and Stolen Reporting Law); OCGA 16-11-129(a) (Georgia prohibits registration of firearms); OCGA 16-11-173(b)(1) (Georgia preempts local regulation of gun shows); OCGA 43-16-2 (Georgia Handgun Dealer’s License); Ala. Code Ann. 40-12-143 (Alabama only requires license tax for gun show vendors); Ala. Code 13A-11-78 (Alabama Handgun Dealer’s License).
- ²⁰ See Following the Gun: Enforcing Federal Laws Against Firearm Traffickers, *supra* note 14. See also Bureau of Alcohol, Tobacco, Firearms, and Explosives. Fact Sheet – Multiple Firearms Sales Disposition Reporting. (March 2016). Available at <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-multiple-firearms-sales-or-other-disposition-reporting>
- ²¹ See Moore v. Madigan, 702 F.3d 933 (7th Cir. U.S. 2012); People v. Aguilar, 2013 IL 112116 (Ill. S. Ct. 2013)
- ²² The Firearm Concealed Carry Act; Public Act 098-0063, Illinois General Assembly (Rep. Phelps/Sen. Forby), eff. July 9, 2013.
- ²³ 430 ILCS. 65/13.1; 430 ILCS 66/ 90
- ²⁴ See Chicago Municipal Code, Article III, Chapter 8-20-110 et seq. (repealed Sep. 11, 2013 but previously pertained to a required Chicago Firearms Permit and registration certificate).
- ²⁵ Chicago Municipal Code, Title IV, Chapter 4-144-700 et seq. (eff. July 25, 2014); and Title IV, Chapter 4-151-010 et seq. (eff. July 6, 2011).
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- ³⁷ See Senate Bill 1657 *engrossed* (Sen. Harmon/Rep. Willis).
- ³⁸ See Firearm Owners’ Protection Act. Public Act 99-308. (May 19, 1986).
- ³⁹ Office of the Inspector General, U.S. Department of Justice, Rep. No. I-2004-005, Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms, and Explosives. (2004).





⁴⁰ 111th Congress; Consolidated Appropriations Act 2010, Public Act 111-117 (2009).

⁴¹ See *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, *supra* note 20.

⁴² See Chicago Municipal Code, Title IV, Chapter 4-144-700; (eff. July 25, 2014).

⁴³ See Senate Bill 1657 *engrossed*, Illinois General Assembly.

⁴⁴ Webster, Vernick, Bulzacchelli, & Vittes. Recent Federal Gun Laws, Gun Dealer Accountability and the Diversion of Guns to Criminals in Milwaukee. *J. Urban Health* 89. (2012).

⁴⁵ Fleegler, Lee, & Monuteaux. Firearm Legislation and Firearm-Related Fatalities in the United States. *JAMA Intern Med.* 173. (2013).

⁴⁶ *Id.* See also Webster & Wintemute. Effects of Policies Designed to Keep Firearms From High Risk Individuals, *supra* note (iv).

⁴⁷ 430 ILCS 65/ *et seq.*

⁴⁸ *Id.*

⁴⁹ Brady Handgun Violence Prevention Act. Public Act 103-159. 103rd Congress. (Feb. 28, 1994); 430 ILCS 65/3(a) & 3.1.

⁵⁰ 430 ILCS 65/3(a-5).

⁵¹ 430 ILCS 65/3(a-10).

⁵² *Id.*

⁵³ 430 ILCS 65/3(b)

⁵⁴ 720 ILCS 5/24-3(k)(1); 430 ILCS 65/3.1 & 14(e)

⁵⁵ 430 ILCS 65/3(b); 720 ILCS 5/24-3(k)(1)

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⁵⁷ Miller, Hepburn, & Azrael. Firearm Acquisition Without Background Checks: Results of a National Survey. *Annals of Internal Medicine.* (Feb. 21, 2017).

⁵⁸ See ARMSLIST Power Search available at <http://www.armslist.com/classifieds/powersearch>; (last accessed on Oct. 12, 2017).

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⁶⁴ Cook, Parker, & Pollack. Sources of Guns to Dangerous People: What We Learn By Asking Them. *Journal of Preventive Medicine* 79. (October 2015).

⁶⁵ *Id.*



⁶⁶ 720 ILCS 5/24-4.1

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Cook, Parker, & Pollack. Sources of Guns to Dangerous People: What We Learn By Asking Them, *supra* note 64.

⁷⁰ See Bureau of Alcohol, Tobacco, Firearms, and Explosives E-form 4473 (October 2016). Available at <https://www.atf.gov/file/61446/download>.

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⁷⁵ Knight. State Gun Policy and Cross-State Externalities: Evidence From Crime Gun Tracing. *Am. Econ. J. Econ. Policy* 5. (2013).

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⁷⁷ See Management Audit of the Department of State Police's Administration of the Firearm Owner's Identification Act, *supra* note 59.

⁷⁸ See Ind. Code Ann. 35-47-2-14 (Indiana Handgun Dealer's License); Wisc. Admin. Code Just 10.04(1) (Wisconsin does not require state gun dealer license, but requires dealer to report all handgun sales); Ohio Rev Code 2923.20(A)(5) (Ohio Lost and Stolen Reporting Law); OCGA 16-11-129(a) (Georgia prohibits registration of firearms); OCGA 16-11-173(b)(1) (Georgia preempts local regulation of gun shows); OCGA 43-16-2 (Georgia Handgun Dealer's License); Ala. Code Ann. 40-12-143 (Alabama only requires license tax for gun show vendors); Ala. Code 13A-11-78 (Alabama Handgun Dealer's License)

⁷⁹ See NY Penal Law 400.00(9) (New York Permit to Purchase); NY Penal Law 400.00(9) (New York Permit must contain each handgun owned); NY Penal Law 265.10(7) (New York firearm owner required to notify authorities upon transfer of firearm); NY Penal Law 400.00(16-a) (New York registration requirement for assault weapons and large capacity ammunition feeding device); NY Penal Law 400.10 (New York Lost and Stolen Reporting Law); NY Gen. Bus. Law 896 & 897 (New York Gun Show Background Checks); NY Gen. Bus. Law Article 39-DDD 898 (New York Private Sale Background Checks); NY Penal Law 265.00(9) (New York Gun Dealer License); Cal. Penal Code 26840, 27540(e), 31615 (California Permit to Purchase); Cal. Penal Code 27545, 28100, 28160 (California Background Check for all firearm transfers, maintain sale record and purchaser information); Cal. Penal Code 25250 (California Lost and Stolen Reporting Law); Cal. Penal Code 27200 (Gun Show Background Checks); Cal. Penal Code 26500 (California State Gun Dealer License)

⁸⁰ City of Chicago – Office of the Mayor & Chicago Police Department. Tracing the Guns: The Impact of Illegal Guns on Violence in Chicago, *supra* note 3.

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⁸² See Public Act 100-0003, eff. 1/1/2018 (Sen. Raoul/Rep. Durkin)

⁸³ H.R. 1475 – Gun Trafficking Prevention Act of 2017 (Rep. Maloney), available at <https://www.congress.gov/bill/115th-congress/house-bill/1475>









13 – ANEXO – Harvard Study: Gun Control Is Counterproductive



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HARVARD STUDY: GUN CONTROL IS COUNTERPRODUCTIVE

I've just learned that Washington, D.C.'s petition for a rehearing of the *Parker* case in the U.S. Court of Appeals for the D.C. Circuit was denied today. This is good news. Readers will recall in this case that the D.C. Circuit overturned the decades-long ban on gun ownership in the nation's capitol on Second Amendment grounds.

However, as my colleague Peter Ferrara explained in his *National Review Online* article following the initial decision in March, it looks very likely that the United States Supreme Court will take the case on appeal. When it does so – beyond seriously considering the clear original intent of the Second Amendment to protect an individual's right to armed self-defense – the justices of the U.S. Supreme Court would be wise to take into account the findings of a recent study out of Harvard.

The study, which just appeared in Volume 30, Number 2 of the *Harvard Journal of Law & Public Policy* (pp. 649-694), set out to answer the question in its title: "Would Banning



Firearms Reduce Murder and Suicide? A Review of International and Some Domestic Evidence.” Contrary to conventional wisdom, and the sniffs of our more sophisticated and generally anti-gun counterparts across the pond, the answer is “no.” And not just no, as in there is no correlation between gun ownership and violent crime, but an emphatic no, showing a negative correlation: as gun ownership increases, murder and suicide decreases.

The findings of two criminologists – Prof. Don Kates and Prof. Gary Mauser – in their exhaustive study of American and European gun laws and violence rates, are telling:

Nations with stringent anti-gun laws generally have substantially higher murder rates than those that do not. The study found that the nine European nations with the lowest rates of gun ownership (5,000 or fewer guns per 100,000 population) have a combined murder rate *three times higher* than that of the nine nations with the highest rates of gun ownership (at least 15,000 guns per 100,000 population).

For example, Norway has the highest rate of gun ownership in Western Europe, yet possesses the lowest murder rate. In contrast, Holland’s murder rate is nearly the worst, despite having the lowest gun ownership rate in Western Europe. Sweden and Denmark are two more examples of nations with high murder rates but few guns. As the study’s authors write in the report:

If the mantra ‘more guns equal more death and fewer guns equal less death’ were true, broad cross-national comparisons should show that nations with higher gun ownership per capita consistently have more death. Nations with higher gun ownership rates, however, do not have higher murder or suicide rates than those with lower gun ownership. Indeed many high gun ownership nations have much lower murder rates. (p. 661)

Finally, and as if to prove the bumper sticker correct – that “gun don’t kill people, people do” – the study also shows that Russia’s murder rate is *four times higher than the U.S.* and more than 20 times higher than Norway. This, in a country that practically eradicated private gun ownership over the course of decades of totalitarian rule and police state methods of suppression. Needless to say, very few Russian murders involve guns.

The important thing to keep in mind is not the rate of deaths by *gun* – a statistic that anti-gun advocates are quick to recite – but the *overall* murder rate, regardless of means. The criminologists explain:

[P]er capita murder overall is only half as frequent in the United States as in several other nations where gun murder is rarer, but murder by strangling, stabbing, or beating is much more frequent. (p. 663 – emphases in original)

It is important to note here that Profs. Kates and Mauser are not pro-gun zealots. In fact, they go out of their way to stress that their study neither proves that gun control causes higher murder rates nor that increased gun ownership

necessarily leads to lower murder rates. (Though, in my view, Prof. John Lott's *More Guns, Less Crime* does indeed prove the latter.) But what is clear, and what they do say, is that gun control is ineffectual at preventing murder, and apparently counterproductive.

Not only is the D.C. gun ban ill-conceived on constitutional grounds, it fails to live up to its purpose. If the astronomical murder rate in the nation's capitol, in comparison to cities where gun ownership is permitted, didn't already make that fact clear, this study out of Harvard should.

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**14 – ANEXO – Gun control study's dramatic results
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US gun control

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Gun control study's dramatic results 'implausible', say leading researchers

Findings suggest implementing three state laws at federal level could reduce the rate of US gun deaths by more than 90%, but experts say it's 'not good science'



▲ The study compared 25 different state gun laws and concluded that nine of them were associated with reduced gun death rates. Photograph: Andrew Gombert/EPA

Thu 10 Mar 2016 23.30 GMT



61 224

Implementing three state gun control laws at the federal level could reduce the rate of American gun deaths by more than 90%, a new study has found.

But leading gun violence researchers have called that result “implausible”, and said the study’s design is so flawed that some of its findings are not believable.

The paper, published in the British medical journal *The Lancet* and written by researchers at Boston University, Columbia University and the University of Bern in Switzerland, found that one of the three most effective gun policies were laws requiring ballistic imaging or microstamping, which help law enforcement identify guns used in crimes.

Experts noted that the laws, which were on the books in only three states, were not actually being implemented in practice.

That “would be the biggest red flag, obviously, when they’re finding huge effects of a law that doesn’t exist”, Daniel Webster, the director of the Johns Hopkins Center for Gun Policy and Research, said.

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He called the paper’s approach “just not good science”.

While some of the paper’s findings are interesting, it’s “highly questionable” whether other results “are an accurate reflection of reality”, David Hemenway, a leading gun violence researcher at Harvard’s school of public health, wrote in a comment published along with the paper.

Bindu Kalesan, the paper’s lead author, defended its findings as important contributions to an extremely complex and difficult area of research. The criticisms of the paper were “expected”, she wrote.

When it comes to American gun laws, she said, “there are so many layers to this. Every time I remove one layer, there’s another layer.”

For instance, looking at whether the state laws that the study evaluated were actually being implemented was “another layer” beyond what the researchers chose to examine, she said. While further research is needed, she said, “what we’ve offered is a strong direction that we can go in”.

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