

Written Testimony of

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“GUN THEFT PREVENTION ACT”

“Tools to Combat Illegal Gun Trafficking In Our Communities

By Enhancing the Security at Federally Licensed Gun Shops, and

In The Home.”

Before the

U.S. House of Representatives

House Rules Committee

Subcommittee on Legislative and Budget Process

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Chairman Morelle, Ranking Member Burgess, members of the Subcommittee, thank you for the opportunity to testify today. “Otto van Bismarck famously said, “Politics is the art of the possible.” And so compromise seeks the “best possible” solution.”¹ An opportunity, exists today to advance the cause of meaningful change. The Gun Theft Prevention Act can move our nation closer to the ideals contained in the preamble of our Constitution, “form(ing) a more perfect Union, establish Justice (and) ensur(ing) domestic Tranquility.”²

The first step in achieving compromise is identification of common ground. No matter what side of this debate one may be on, absent respectful acknowledgement of differences and open recognition of areas of consensus, we are doomed to failure. While elections are a zero-sum event, governance is about leadership, collaboration and compromise. At least three areas of this debate are ripe for collaboration; safety, security and training. The largest organizations³ at both ends of this debate are committed to promoting the secure storage, safe handling as well as emphasizing the necessity of firearms training. While significant core ideological differences exist, no one can argue that there would be less victims if gun owners safely stored firearms not in their immediate possession, practiced basic gun safety, and underwent training maintaining proficiency on the safety, security and use of their firearms.

As a lifetime gun owner and participant in shooting sports, I will always support and promote legal and responsible gun ownership. Inherent in the right to possess firearms is the responsibility to be proficient in their use, care and safe-keeping.

¹ <https://www.forbes.com/sites/daviddavenport/2018/01/24/congress-and-the-lost-art-of-compromise/?sh=29ee9a2ed597>.

² Preamble to the Constitution of the United States of America

³ Everytown for Gun Safety Action Fund, Inc. & The National Rifle Association of America

Responsible Commercial Firearms Management & Positive Gun Ownership

I am proposing two guiding themes of future legislation at the Federal level--including this legislation--that can significantly reduce the opportunity for those with ill intent to illegally possess firearms. To avoid the hyperbole and vitriol associated with any discussion of firearms and law, the first theme I am offering is “responsible commercial firearms management.” The second theme the Federal government should use to guide its effort is promoting “positive gun ownership.” A positive approach to education and information sharing will go a long way to diffuse the vilification of the more than 75-million gun owners in the United States. If we are willing to eliminate the “us versus them” mentality so prevalent today and work on finding common ground as a starting point, we will significantly reduce the supply of stolen guns available to the criminal element. We want to incentivize responsible gun ownership, not criminalize gun owners and dealers.

In my 35+ years in law enforcement, to include the U.S. Army and local law enforcement, on a daily basis I have seen first-hand the consequences of the use of illegal firearms on victims, their families and the community at large. I know many of you have heard from victims and their families and understand the pain and suffering, as well as the long-term effects of these life-altering events. The overarching challenge before this body is to effect purposeful change to reduce victimization without trampling on States’ and individual rights.

With fine-tuning, the Gun Theft Prevention Act can enhance the security, efficiency and management of firearms in commerce without creating an overly burdensome regulatory scheme for business owners. There are almost 400-million

privately owned firearms in the United States.⁴ Currently almost 0.1% of those firearms are stolen or lost annually.⁵ That's potentially 400-thousand firearms reported lost or stolen. Ninety-five percent (95%) of the losses are from private owners, five percent (5%) from dealers, distributors and manufacturers.⁶

Gun Theft Protection for Federal Firearms Licensees

According to the ATF there are almost 82,000 Federal Firearms Licensees in the United States.⁷ A vast majority of those are legitimate and competent small businesses responsibly selling firearms. There is an unknown number of Federal Firearms Licensees who have acquired their licenses, not for purposes of engaging in the sale of firearms, but to validate personal possession of guns not available to most citizens under current federal and state laws. In fiscal year 2020 ATF reported that it conducted 5,823 inspections of licensees.⁸ At this rate, it will take more than 13 years to inspect every FFL just one time.

More ATF Agents

More ATF agents available to educate, conduct inspections and promote best practices for physical security of gun dealers would reap great benefits in dealing with preventable gun thefts.

⁴ <https://americangunfacts.com/gun-ownership-statistics/>.

⁵ https://everytownresearch.org/report/stolen-guns-pose-a-tremendous-risk-to-public-safety/?_gl=1*jtxy1j*_ga*ndg5mde3mdez1je2ntq3nzqzodg.*_ga_l0fwv3ek3*mty1ndc3ndm4oc4xljeumty1ndc3ndq5ni4w#foot_note_20.

⁶ Id.

⁷ https://www.atf.gov/firearms/listing-federal-firearms-licensees/complete?field_ffl_date_value%5Bvalue%5D%5Byear%5D=2022&ffl_date_month%5Bvalue%5D%5Bmonth%5D=1.

⁸ <https://www.atf.gov/firearms/compliance-inspections>.

Also, the authority for ATF to deny or revoke licenses to those not involved in commerce, will permit ATF to focus its efforts on those licensees actually selling guns to ensure responsible commercial firearms management.⁹

Tailoring the Physical Security Plan

Requiring those with licensees to submit security plans and confirm implementation of an acceptable plan is formalizing what responsible business owners do on a regular basis and is not an overly burdensome mandate.¹⁰

The compulsory physical security requirements in legislation before this body,¹¹ while aspirational, may in many cases create financial hardships for small business owners. The ATF has developed comprehensive security guidelines for FFL holders.¹² These guidelines are effective when used appropriately. As an alternative to mandating a few of the requirements that do not take into consideration all of the issues unique to individual property characteristics (location, risk factors, local zoning laws, etc.), ATF working collaboratively with licensees can develop a suitable plan. ATF using well-established and proven guidelines can exercise discretion to develop a plan specific to that licensee's circumstances.¹³ The result will be a plan that meets all necessary physical security requirements but tailored to the licensee's location.¹⁴ Essential to success will be ATF's authority to effectively address non-compliance.

⁹ H.R 4423(9).

¹⁰ H.R 4423(2)(b) & (c).

¹¹ H.R 4423(2)(a).

¹² <https://www.atf.gov/firearms/learn-about-firearms-safety-and-security>.

¹³ Id.

¹⁴ Certainly the requirements for physical security in a big-box sporting goods store licensee in an urban setting are different than a rural Iowa licensee working out of his home.

Every licensee in business by necessity must keep their inventory secure. Requiring licensees to submit a suitable security plan and confirm implementation of that plan is a positive act. As discussed above, development of this plan in collaboration with ATF can be the basis for mandating physical requirements for that specific facility.

Whether or not these limited physical security requirements remain in current proposed legislation, I would strongly urge the development of a low interest loan or grant program through, possibly, the Small Business Administration¹⁵ to incentivize to reduce the burden of improving physical security for licensees.

Minimum Standards for Employees of Licensees

Requiring licensees to conduct background checks on employees upon hiring, and thereafter annually, using the “National Criminal Background Check System” (NICS), to ensure the individual’s fitness¹⁶ to possess a firearm is not overly burdensome. More importantly to this effort, should be a plan to incentivize and assist states to fully utilize NICS reporting capabilities.¹⁷

¹⁵ <https://www.sba.gov/funding-programs>.

¹⁶ Perkin’s Report of every reported stolen or lost firearm in Monroe County, NY between 2016 and 2021. See Chart 1 below. Our research established that 18% of the lost and stolen guns were taken by thefts characterized broadly as “inside jobs” such as an *employee theft from a business*, or a theft from an invited guest in a home. Background checks of employees is a first step to eliminating employees that have been disqualified from possessing firearms under Federal law.

¹⁷ <https://www.justice.gov/opa/press-release/file/1042731/download>. Recognizing that there are a number of obstacles to complete reporting of relevant NICS information, the FBI has always had a dedicated staff committed to the outreach, training and support of local, state, tribal and federal agency counterparts.

Local Experience

In the recent past in my community, we dealt with a reckless gun shop owner. His inaction to keep accurate inventory records, combined with weak physical security of the shop itself, directly contributed to eight incidents of burglary—two in one week—the theft of at least 133 firearms over approximately 13 years. (It is impossible to determine the exact number of guns stolen on account of the owner’s failure to maintain accurate records). Because of very limited enforcement rules and tools on both the state and federal level, as well as no mandated minimums for security in this shop, multiple burglaries occurred, resulting in numerous firearms being stolen before a local county court¹⁸ was able to intercede. On more than one occasion ATF and members of the Sheriff’s Office evaluated security and made reasonable but effective recommendations to the owner. On each of these occasions, the owner chose not to implement the recommended changes and our community suffered multiple successful burglaries, causing more than one hundred guns to illegally enter into our community and others. If ATF had the ability to “enforce” reasonable standards, a significant number of guns would not have made it onto the streets and into the hands of criminals.

While any level of security is never perfect when a criminal is committed to perpetrating a theft, this business owner in particular made these criminals’ success much more likely. Conversely, we have seen criminals’ efforts foiled because of well-executed physical security plans.

¹⁸ Under New York Law, County Court Judges are the Licensing Officers for Pistol Permits and Dealers’ Licenses’. This authority allowed the Court to review the circumstances of the thefts and make a determination not to renew this dealer in firearm’s license to sell firearms in New York.

A second example in my community involves businesses that primarily distribute firearms to other dealers. In the last fifteen years, our investigations identified nearly 100 incidents wherein firearms were lost or stolen while in transit between a manufacturer and local distributors. Proposed legislation does not deal with improving security and accountability during the shipping phase of business. Under current law, FFL licensees are required to report thefts¹⁹ or losses²⁰ from their shop inventory. Remarkably, there is no legal requirement for reporting loss or thefts from interstate shipments.²¹

In Monroe County in the last six years, 974 guns have been reported lost or stolen in 662²² unique events.²³ These totals include both commercial entities and private citizens. Almost half the guns stolen in Monroe County (433) were the result of burglaries (both home and business, including licensees). Most telling is that 85% of the guns stolen were unsecured.²⁴ People have the right to be secure in their homes and not suffer the experience of being a crime victims. The sad reality we face today requires an extra level of consideration in securing valuables to

¹⁹ Lost or stolen firearms pose a threat to public safety. Licensed firearms dealers are the first line in maintaining the security and lawful transfer of firearms. Any FFL who has knowledge of the theft or loss of a firearm from their inventory must report the theft or loss, by telephone and in writing, within 48 hours of discovery to ATF and to the local law enforcement agency. <https://www.atf.gov/firearms/learn-about-firearms-safety-and-security>

²⁰ A "loss" of a firearm occurs when a licensee cannot determine the disposition/location of a firearm but there is no indication that it was stolen. In many instances, the licensee can determine the disposition of firearms by conducting a thorough inventory. If a complete inventory has been conducted, the FFL should conduct an exhaustive review of all acquisition and disposition records, shipping records, and if applicable all ATF Forms 4473. If the firearm cannot be accounted for, the licensee must report the loss to ATF. <https://www.atf.gov/firearms/learn-about-firearms-safety-and-security>

²¹ Regulations do not require you to report these incidents, but ATF strongly recommends it as a best business practice. ATF accepts voluntary reporting of the theft or loss of firearms from interstate shipments completed by a licensee or non-licensee and provides ATF Form 3310.6, Interstate Firearms Shipment Theft/Loss Report, to assist in reporting. <https://www.atf.gov/firearms/learn-about-firearms-safety-and-security>

²² 662 individuals or businesses were victimized and as part of that victimization, guns were stolen.

²³ See footnote 16.

²⁴ These thefts were out of homes and businesses that may have been secured but the items stolen were not secondarily secured.

minimize risk. A quarter of the guns stolen in Monroe County were out of vehicles, almost all of which were unlocked.

Below is a summary of the results of our research:

Monroe County 2016-2021	Firearms	Incidents
Burglary	378	210
Burglary - Safe ²⁵	55	20
Other Larceny ²⁶	174	117
Domestic ²⁷	55	29
Vehicle – Unlocked	205	190
Vehicle – Locked	36	28
Lost ²⁸	61	58
Lost – Public Restroom	7	7
Lost - Not recoverable ²⁹	3	3
	974	662

Chart 1 (Perkins Report)

Two Levels of Reporting

Paramount to law enforcement’s success in significantly reducing stolen and lost firearms is the timely and complete reporting of the loss and recovery of those firearms. A number of differing or non-existent state requirements currently hinders efforts to fully investigate and track lost or stolen firearms. Developing and implementing an effective tool for law enforcement is critical to accomplishing an objective of this bill. It should be easy to answer the question “of the guns used to commit a crime, how many were stolen?” Yet, because of the lack of a

²⁵ Burglaries where the safe was stolen with guns inside.

²⁶ These thefts are broadly characterized as “inside jobs” such as an employee theft from a business, or a theft from an invited guest in a home.

²⁷ Stolen by someone in a domestic relationship as defined by New York State Law.

²⁸ Firearm was reported lost at some point in time. May have been stolen

²⁹ For instance a gun that has fallen overboard while on a boat

comprehensive national centralized database to report stolen and illegal guns, it is extremely difficult and overly burdensome to answer that question. While the data is currently being recorded on crime reports, there is a need for a synthesized comprehensive national database.

Repealing the Tiahrt Amendments may have the unintended consequence of encouraging currently voluntarily participating agencies to cease doing so. Within the law enforcement community it is believed by many that a repeal will compromise ongoing law enforcement investigations, personal information and potentially create misleading and inaccurate results when used for research. This tracing system was formulated to be an operational, *law enforcement sensitive* tool for ongoing investigations and not intended to be a comprehensive data research collection tool. From a law enforcement perspective, accurate and complete tracking and tracing of lost or stolen firearms is a critical investigative tool containing law enforcement sensitive information. The challenge for Congress is to figure out how to achieve maximum participation by law enforcement in using the tracking and tracing capability already existing in the United States and ensuring funding exists to allow for scaling up capabilities as participation increases.

The Perkins' Report, referenced above, had to be developed by painstakingly reviewing every crime report involving a firearm to assemble the data.³⁰ As a senior law enforcement executive having the best information is critical to effective decision making. We rely heavily on the FBI's "Uniform Crime Reporting Program (UCR) in decision making on policy and dedication of

³⁰ Id. At 14.

resources.³¹ Expanding the UCR to include lost and stolen gun data would be exceedingly useful for policy development and for research.³² Imperative to making this data useful would be the maximum participation by law enforcement (the UCR is a voluntary program. Once again, incentivizing maximum comprehensive and consistent participation by law enforcement is something Congress could ensure.

Mandating timely reporting of lost or stolen firearms to local law enforcement, who will in turn feed that information to an expanded UCR data tool upon its development and implementation and in the law enforcement sensitive Federal tracking and tracing capability, will bear positive results, maximizing the potential for recovery and apprehension of those responsible for the theft.

Positive Gun Ownership

A second proposed theme for future legislation focuses on gun owners. Since a vast majority of guns in criminal commerce are from individual owners, the Federal Government can be most effective in promoting positive and safe gun ownership. That being said, we must hold individuals who steal, possess and deal in illegal firearms 100% accountable. Prosecution at the Federal level with mandatory incarceration is an effective tool in reducing the flow and possession of illegal firearms.

³¹ The Uniform Crime Reporting (UCR) Program generates reliable statistics for use in law enforcement. It also provides information for students of criminal justice, researchers, the media, and the public. The program has been providing crime statistics since 1930.

The UCR Program includes data from more than 18,000 city, university and college, county, state, tribal, and federal law enforcement agencies. Agencies participate voluntarily and submit their crime data either through a state UCR program or directly to the FBI's UCR Program. <https://www.fbi.gov/services/cjis/ucr>.

³² Creating new gun related data in the UCR reporting system will negate the need to repeal the Tiahrt Amendments leaving that tool to be used for what it was intended for and creating the database for research.

In our lifetime, we have seen the result of government efforts to reduce drunk driving³³ and smoking³⁴ through far-reaching education and public service announcements. The impact of a campaign to educate gun owners of the risk and effect of the theft of their firearms would be effective and far-reaching. Most of the guns stolen or lost in our community are not independently secured when stolen.³⁵ Congress supporting a broad, positive public service campaign on this issue alone will have the desired effect. We have developed, in collaboration with the University of Rochester Medical Center, an educational program that has included, published materials, social media, local news coverage and public personal appearances by trauma medical staff and law enforcement to discuss, educate and reinforce the importance of safe practices with firearms and what can happen when guns are left unsecured or make their way into the hands of criminals. Our efforts have been limited because of funding. Congress funding the development a comprehensive national campaign augmented by local funding for tailored campaign would positively impact our community and positively reinforce the importance of responsible firearm ownership.

As Sheriff of Monroe County, I have to comment on the courageous and professional work of the law enforcement officers in our community working every day to rid our streets of illegal firearms. Partnering with federal law

³³ In 2004 systematic review on the effectiveness of mass media campaigns for reducing AID and alcohol-related crashes was published. The results showed that, overall, media campaigns lead to a median decrease in alcohol-related crashes of 13 %.

[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4558837/#:~:text=published%20a%20systematic%20review%20on%3A%206%20to%2014%20%25\).](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4558837/#:~:text=published%20a%20systematic%20review%20on%3A%206%20to%2014%20%25).)

³⁴ Research shows that mass media campaigns can effectively encourage smoking cessation and contribute to reductions in smoking prevalence among adults aged 18 or older (1–4). An international review of evidence from 121 anti-tobacco mass media campaigns showed strong evidence of positive behavioral effects.

[https://www.cdc.gov/pcd/issues/2020/19_0271.htm#:~:text=Research%20shows%20that%20mass%20media,positive%20behavioral%20effects%20\(5\).](https://www.cdc.gov/pcd/issues/2020/19_0271.htm#:~:text=Research%20shows%20that%20mass%20media,positive%20behavioral%20effects%20(5).)

³⁵ According our research, more than 700 guns that are lost or stolen are not on the individual or independently secured.

enforcement and U.S. Attorneys' Offices under—for example— Project Guardian³⁶, is a model that has shown significant viability and success in achieving this goal. Law enforcement in Monroe County is second only to New York City in the recovery of illegal firearms.³⁷ A recommitment to enhanced funding for federal, state and local partnerships in enforcement is more than worth the investment.

Thank you. I look forward to answering any questions you may have.

³⁶ Project Guardian's implementation is based on five principles: Coordinated Prosecution, Enforcing the Background Check System, Improved Information Sharing, Coordinated Response to Mental Health Denials and Crime Gun Intelligence Coordination. <https://www.justice.gov/archives/ag/about-project-guardian>.

³⁷ In 2020 (the most recent reported statistics by ATF) local law enforcement recovered 708 guns in the City of Rochester. <https://www.atf.gov/resource-center/firearms-trace-data-new-york-2020#recovery-cities>.

Submission to the Record by
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